

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

MURREY’S DISPOSAL COMPANY,
INC.,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC, WASTE
MANAGEMENT DISPOSAL
SERVICES OF OREGON, INC., and MJ
TRUCKING AND CONTRACTING,
INC.

Respondents.

MURREY’S DISPOSAL COMPANY,
INC.,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC, WASTE
MANAGEMENT DISPOSAL
SERVICES OF OREGON, INC., and
DANIEL ANDERSON TRUCKING
AND EXCAVATION, INC.,

Respondents.

DOCKETS TG-200650 & TG-
200651 (*Consolidated*)

ORDER 03

GRANTING REVIEW OF
INTERLOCUTORY ORDER AND
AFFIRMING DENIAL OF
MOTIONS TO DISMISS

BACKGROUND

- 1 On July 15, 2020, Murrey’s Disposal Company, Inc. (Murrey’s Disposal), filed with the Washington Utilities and Transportation Commission (Commission) a complaint against Waste Management of Washington, Inc. (WMW), Waste Management Disposal Services of Oregon, Inc. (WMDSO), and MJ Trucking & Contracting, Inc. Murrey’s Disposal filed a second complaint against WMW, WMDSO, and Daniel Anderson Trucking and Excavation, Inc. (respondents in both complaints collectively Respondents). The complaints allege that Respondents are providing solid waste collection services in Murrey’s Disposal’s service territory in unincorporated Jefferson and Clallam counties

without a certificate of public convenience and necessity and request that the Commission order Respondents to cease and desist from such activity.

2 On August 4, 2020, the Respondents filed answers to the complaints and motions to dismiss (Motions). Respondents contend that the Commission lacks jurisdiction over the complaints because federal law preempts Commission regulation of the intermodal rail and motor carrier transportation of solid waste Respondents are providing.

3 On August 20, 2020, Murrey's Disposal filed responses opposing the Motions. Following consolidation of these dockets, a hearing, and supplemental briefing from the parties, the presiding Administrative Law Judge entered Order 02 Denying Motion to Dismiss (Order 02) on October 19, 2020.

4 On October 29, 2020, Respondents filed a Petition for Interlocutory Review of Order 02 (Petition). Murrey's Disposal filed its Response opposing the Petition (Response) on November 9, 2020.

DISCUSSION AND DECISION

5 The Commission has discretion to review interlocutory orders and may accept review of such orders if “[i]mmediate review could save the commission and the parties substantial effort or expense.”¹ A determination whether the Commission lacks jurisdiction to adjudicate the complaints and their corresponding dismissal would save the Commission and the parties the substantial expense of litigating the complaints. Accordingly, we exercise our discretion to review Order 02. Upon review, we conclude that federal law does not preempt Commission jurisdiction of solid waste collection services in Washington and therefore affirm denial of the Motions.

6 Respondents contend that “Congress has expressly, unambiguously, and broadly preempted state regulation of the highway transportation segment of a continuous intermodal movement of containerized solid waste involving rail transportation. The federal Surface Transportation Board (‘STB’) has exclusive jurisdiction to regulate the continuous intermodal transportation of containerized solid waste from [WMW’s] customer to the landfill by rail carrier **and** motor carrier. The [Commission], like all other state agencies, is preempted from regulating here.”² Murrey’s Disposal counters that 49 U.S.C. § 10501 provides the STB with exclusive jurisdiction over economic regulation of

¹ WAC 480-07-810(2)(c).

² Petition ¶ 1 (double emphasis in original).

rail carrier transportation, but Respondents are not authorized rail carriers, and the STB has “never assumed jurisdiction over solid waste collection and transportation by motor carriers.”³

7 Order 02 finds that “[g]iven the importance and inherently local nature of collecting solid waste from a Washington residential or commercial customer, only a clear and manifest intent by Congress to preempt state regulatory authority over the local collection of solid waste could support Respondents’ Motion.”⁴ Order 02 concludes that “[w]hen solid waste is collected locally in [‘trailers on flat car’ or ‘containers on flat car’] containers and transported via truck, its regulation falls outside the jurisdiction of the STB and state regulation is not preempted by the [federal statute] due to the intrinsically local nature of solid waste collection, which may impact the health, safety, and aesthetic well-being of the community.”⁵

8 We agree with the conclusion in Order 02 that the jurisdiction Congress and the STB have asserted over intermodal transport by rail and motor carrier does not preempt state regulation of solid waste collection service.

9 Washington has long regulated the handling of solid waste. Chapters 70A.205 and 81.77 Revised Code of Washington (RCW) establish the legislative authority for such regulation, which involves not only the Commission but the state Department of Ecology and county and city governments. The Legislature has defined “solid waste handling” very broadly as “the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.”⁶

10 Specifically with respect to the Commission’s responsibilities, the Legislature requires:

The commission shall supervise and regulate every solid waste collection company in this state,

³ Response ¶ 2.

⁴ Order 02 ¶ 22.

⁵ *Id.* ¶ 28.

⁶ RCW 70A.205.015(23).

- (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;
- (5) By requiring compliance with local solid waste management plans and related implementation ordinances;
- (6) By requiring certificate holders under chapter [81.77](#) RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW [70A.205.005](#) and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans.⁷

A “solid waste collection company” is “every person or his or her lessees, receivers, or trustees, owning, controlling, 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 A “common carrier” for these purposes is “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.”⁹

- 11 The Commission has promulgated rules in Chapter 480-70 WAC to implement this authority. “The purpose of these rules is to administer and enforce Chapter 81.77 RCW by establishing standards for: Public safety; Fair practices; Just and reasonable charges; Nondiscriminatory application of rates; Adequate and dependable service; Consumer protection; and Compliance with statutes, rules and commission orders.”¹⁰ Those rules define a “solid waste collection company” as “every common carrier, including a contract carrier, who provides solid waste collection service,” and “solid waste collection” is “collecting solid waste from residential or commercial customers and transporting the

⁷ RCW 81.77.030.

⁸ RCW 81.77.010(9).

⁹ RCW 81.77.030(1).

¹⁰ WAC 480-70-001.

solid waste, using a motor vehicle, for collection and/or disposal over the highways of the state of Washington for compensation.”¹¹ The Commission has also included in its rules the determination that neither the Interstate Commerce Act nor the Federal Aviation Administration Authorization Act exempt solid waste collection companies operating in Washington from Commission regulation.¹²

- 12 Respondents characterize the service they are providing to the two customers in Murrey’s Disposal’s service territory as container on flat car (COFC) intermodal transportation of solid waste, which Respondents claim “is distinct from the general transportation of solid waste solely by motor carrier from origin to destination which is regulated by the [Commission]” and “is subject to the STB’s exclusive jurisdiction.”¹³ We do not agree with Respondents’ characterization of their service.
- 13 Based on the factual allegations in the complaints, which we accept for purposes of the Motions, Respondents are providing solid waste collection service. They are “collecting solid waste from . . . commercial customers and transporting the solid waste, using a motor vehicle, for collection and/or disposal over the highways of the state of Washington for compensation.”¹⁴ Respondents are using COFC intermodal transportation to transport the solid waste, but that is only a portion of the service they are providing.
- 14 None of the federal statutes, rules, or agency decisions on which the Respondents rely state or otherwise support the conclusion that federal jurisdiction over COFC intermodal transportation of solid waste extends to the entirety of the solid waste collection service of which that transport is a part. The federal law on which the Respondents rely at most reflects the STB’s assertion of jurisdiction over the combination of rail and motor carrier transportation when *rail carriers* provide or arrange provision of that transport, but none of the Respondents are rail carriers. Even then, neither Congress nor the STB has extended federal authority over solid waste handling by rail carriers.
- 15 To the contrary, Congress exempted solid waste rail transfer facilities from STB jurisdiction,¹⁵ thus preserving states’ ability to regulate such facilities in the same manner

¹¹ WAC 480-70-041.

¹² WAC 480-70-006(5).

¹³ Petition ¶ 77.

¹⁴ WAC 480-70-041.

¹⁵ 49 U.S.C. § 10501(c)(2)(B).

as non-rail solid waste management facilities.¹⁶ Respondents cannot credibly claim that Congress would respect state authority over solid waste rail transfer facilities that are used as part of rail transportation yet preempt states from regulating the collection, disposal, and other handling of solid waste before and after a company transports it. The more reasonable conclusion is that Congress has never granted the STB jurisdiction over those activities or solid waste collection service as a whole.

16 Acceptance of Respondents' contrary position would have repercussions far beyond these dockets. WMW is a certificated solid waste collection company (albeit without authority to operate in Murrey's Disposal service territory), but the preemption Respondents propose would preclude the Commission (or any municipality that has contracted for, or engages in, solid waste collection) from regulating *any* company that provides solid waste collection service using COFC intermodal transportation anywhere in the state. The Commission would also be precluded from regulating any other aspect of that service, including the contents or type of the solid waste collected, transported and disposed of, enforcement of county and city comprehensive solid waste management plans, public safety, and consumer protection. Indeed, none of the provisions of Chapters 70A.205 and 81.77 RCW and Chapter 480-70 WAC would apply to that service or the companies that provide it. In the absence of express Congressional intent to so preempt state authority over solid waste handling, we decline to find such preemption and deny the Motions.

17 We need not ascribe to Respondents an intent to undermine Washington's authority over solid waste handling. Based on the allegations in the complaints, Respondents appear to be interested only in serving large commercial customers that are located in another solid waste collection company's exclusive service territory. The Legislature has established a process by which the Commission can authorize more than one solid waste collection company to operate in the same service territory.¹⁷ If Respondents seek to serve solid waste collection customers outside of WMW's service territory, they cannot rely on claims of federal preemption of solid waste collection service to circumvent that process.

ORDER

THE COMMISSION ORDERS:

18 (1) The Commission exercises its discretion to accept review of Order 02.

¹⁶ See Petition ¶ 66 (quoting *Town of Babylon & Pinelawn Cemetery – Petition for Declaratory Order*, FD 5057, 2009 WL 3329242, *5 (S.T.B. Oct. 15, 2009)).

¹⁷ RCW 81.77.040.

- 19 (2) The Commission affirms Order 02 and denies the motions to dismiss the complaints in these consolidated dockets.
- 20 (3) The Commission refers the consolidated cases back to the presiding administrative law judge for further proceedings.

Dated at Lacey, Washington, and effective December 7, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner