

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 8<sup>th</sup> day of November 2023.

CASE NO. 23-0813-SWF-PW-CN

Apple Valley Waste Services, Inc.

Petition for a Determination that No Certificate of Need is Required, and in the Alternative Application for a Certificate of Need for an Emergency Interim Transfer Station, Petition for Waiver, and for Expedited Processing.

**COMMISSION ORDER**

The Commission grants Apple Valley Waste Services, Inc.'s (Apple Valley) Petition for a Determination that No Certificate of Need is Required (Petition).

**BACKGROUND**

On October 16, 2023, Apple Valley filed a Petition requesting the Commission find that the arrangement described in the Petition for the use of a facility (Facility) formerly operated by Entsorga West Virginia, LLC (Entsorga) in Berkeley County, WV does not require a certificate of need. (Petition at ¶¶ 13-20). In the alternative, the Petition requests that the Commission grant an emergency certificate of need on an expedited timetable (Petition at ¶ 32). Apple Valley also requested that the Commission waive the obligation to present a Tariff Rule 42 Exhibit, to propose rates, or to publish notice of such rates as no members of the public will be affected by this application (Petition at ¶ 33).

Apple Valley is an affiliate of the certificated intrastate motor carrier, AVW of West Virginia, Inc. ("AVW-WV"), which has authority to provide solid waste collection services in Berkeley, Hampshire, Jefferson, and Mineral Counties, WV (Petition at ¶ 2). AVW-WV previously disposed a portion of the solid waste it collected at the Entsorga facility (Id. at ¶ 3). The Entsorga facility was temporarily closed in May of 2022 and was later abandoned (Id. at ¶ 6). The Petition stated that AVW-WV has worked with the West Virginia Department of Environmental Protection (DEP) and the Berkeley County Solid Waste Authority (Berkeley County SWA) without compensation to extinguish fires, remove roughly 75% of the trash that was left at the time of abandonment, and address a vermin problem (Id.).

On February 6, 2023, Entsorga filed for Chapter 11 bankruptcy protection. The bankruptcy case was ultimately dismissed as a result of Entsorga's and the bankruptcy estate's inability to obtain insurance (Id. at ¶ 7). After dismissal of the bankruptcy case, the Berkeley County SWA terminated the lease between it and Entsorga. The Berkeley County SWA now has possession and control of the facility. AVW-WV's inability to use the Entsorga facility as a place of disposal has allegedly increased its cost of operations by forcing AVW-WV to drive greater distances to alternative disposal sites, which increase its operational expenses in fuel, labor, and vehicle wear and tear (Id. at ¶ 9).

Apple Valley was the successful respondent in a request for proposal issued by the Berkeley County SWA to use the Entsorga site on a short term, month to month basis (Id. at ¶ 11). According to the filing, under the terms of a lease agreement with the Berkeley County SWA, AVW-WV would use an area located within the footprint of the facility to aggregate solid waste it collects onto roll off containers, which would then be transported to places of disposal (Id. at ¶ 12). This practice will reportedly reduce AVW-WV's expenses by approximately \$100,000 per month, which in turn will defer AVW-WV's need to seek a rate increase (Id.). No entity other than AVW-WV will use the facility to be located within the former Entsorga footprint (Id. at ¶ 13).

On October 18, 2023, Staff filed its response to Apple Valley's Petition.

On October 20, 2023, Waste Management of West Virginia Inc. (Waste Management), and LCS Services, Inc. (LCS), filed their Motion to Intervene and Protest.

On October 23, 2023, Allied Waste Services of North America, LLC d/b/a Republic Services of West Virginia (Republic) filed its Protest and Motion to Intervene.

On October 26, 2023, the Jefferson County Solid Waste Authority (JCSWA) filed its Petition to Intervene and Protest.

On October 30, 2023, Apple Valley filed its response to Staff's prior response and to the petitions to intervene.

On November 3, 2023, Staff filed its surreply to Apple Valley's Petition.

## DISCUSSION

Based on information in the filing, it does not appear that Apple Valley is operating any facility. The filing indicates that Berkeley County SWA owns the facility and has entered into a lease agreement which allows AVW-WV, a certificated hauler of solid waste in West Virginia, to use a portion of the facilities to transfer waste it collects from customers from small trucks to larger trucks (consolidation operation). The Commission has previously concluded that small consolidation operations limited to waste collected solely from the carrier's customers, performed at no cost to customers other than the carrier's existing rates, and occurring prior to transportation to a disposal facility, are within the certificate authority granted to the motor carriers who collect solid waste (See Fly-By-Nite Disposal Service, Inc., Case No. 02-1154-SWF-CN; see also Morgan Sanitation & Recycling Corporation, Case No. 98-1339-SWF-CN<sup>1</sup>). Such consolidation operations save motor carriers time and expenses in transporting collected waste to a disposal facility, allow more economical services to be provided to residents in rural areas, save wear and tear on highways, lessen greenhouse gas emissions, and protect customer interests by delaying rate increases for collection services (Id.).

While there may be an affiliated agreement between Apple Valley and AVW-WV which required Commission approval, with regard to a certificate of need for a solid waste disposal facility we determine that AVW-WV is consolidating loads within its authority to operate as a motor carrier in West Virginia, and no further certificate of need is required.

The consolidation operations described in this matter represent an effort to provide more efficient service by a solid waste carrier. The Commission should encourage, not discourage, efforts made, such as consolidation operations used by AVW-WV, to keep solid waste carriers' costs down to provide incentives to the public to properly dispose of waste.

It is not in the State's interest to require motor carriers who choose to consolidate smaller loads, collected only from their customers, to expend the considerable resources necessary to process a certificate of need application for an operation that, in the interest of reducing costs, is simply transferring solid

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<sup>1</sup> In these cases, the Commission eventually granted certificates of need although it did not believe that the facilities required certificates of need. The sole reason for the Commission to determine that a certificate of need should be granted was a tension between the Commission conclusion that a certificate of need was not required and DEP's position that it could not grant a permit for the operations of those Motor Carriers' consolidation stations unless they received a certificate of need from the Commission. There is no such issue or tension, apparent or alleged, with regard to the use of the Entsorga facility.

waste loads from smaller trucks to larger trucks for ultimate delivery to disposal sites. The Commission believes that it is in the public interest to encourage such operations by motor carriers who collect solid waste.

### **FINDINGS OF FACT**

1. Apple Valley is an affiliate of the certificated intrastate motor carrier, AVW-WV, which has authority to provide solid waste collection services in Berkeley, Hampshire, Jefferson, and Mineral Counties, WV (Petition at ¶ 2).

2. AVW-WV previously disposed a portion of the solid waste it collected at the certificated facility operated by Entsorga in Berkeley County, WV (Id. at ¶ 3).

3. The Entsorga facility was temporarily closed in May of 2022 and was later abandoned (Id. at ¶ 6).

4. AVW-WV represents that its inability to use the Entsorga facility as a place of disposal has increased its cost of operations by forcing it to drive greater distances to alternative disposal sites, which increases its operational expenses in fuel, labor, and vehicle wear and tear (Id. at ¶ 9).

5. Under the terms of a lease agreement with the Berkeley County SWA, AVW-WV would occupy the facilities located within the footprint of the facility previously operated by Entsorga, to aggregate solid waste it collects onto roll off containers carried by larger trucks, which would then be transported to solid waste facilities (Id. at ¶ 12).

6. Consolidation of loads as proposed by AVW-WV should allow AVW-WV to reduce its operating costs, which should ultimately help keep rates down for its solid waste customers.

7. AVW-WV represents that its proposed practice will reduce AVW-WV's expenses by approximately \$100,000 per month, which in turn will defer AVW-WV's need to seek a rate increase (Id.).

8. No entity other than AVW-WV will use the facility to be located within the former Entsorga footprint (Id. at ¶ 13).

### **CONCLUSIONS OF LAW**

1. Consolidation of load operations limited to waste collected solely from a carrier's customers, performed at no cost to customers other than the

carrier's existing rates, and occurring prior to transportation to a disposal facility, are functions included within the certificate authority granted to the motor carriers who collect solid waste.

2. Under the facts presented in this case, consolidation of loads operations of AVW-WV does not constitute a solid waste disposal facility requiring a separate certificate beyond the authority to operate as a trash hauler already authorized for AVW-WV in its motor carrier certificates.

### ORDER

IT IS THEREFORE ORDERED that the Petition for a determination that no certificate of need is required is granted.

IT IS FURTHER ORDERED that the motions to intervene by Waste Management of West Virginia Inc., LCS Services, Inc., Allied Waste Services of North America, LLC d/b/a Republic Services of West, and the Jefferson County Solid Waste Authority are granted.

IT IS FURTHER ORDERED that upon entry of this Order this case shall be removed from the Commission docket of active cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement and on Commission Staff by hand delivery.

A True Copy, Teste,



Karen Buckley, Executive Secretary

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