
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Waste Management of West Virginia, Inc.,
LCS Services, Inc., Allied Waste Services of North America, LLC,
doing business as Republic Services of West Virginia,
and Jefferson County Solid Waste Authority,
Petitioners,

v.

The Public Service Commission of West Virginia
and Apple Valley Waste Services, Inc.,
doing business as Apple Valley Waste,
Respondents.

**STATEMENT OF THE RESPONDENT
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA OF
ITS REASONS FOR THE ENTRY OF ITS ORDER OF NOVEMBER 8, 2023**

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**TO THE HONORABLE JUSTICES OF THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA:**

The Respondent, Public Service Commission of West Virginia (“Commission”), hereby tenders for filing with this Honorable Court this statement of its reasons for the entry of its Order of November 8, 2023, in Case No. 23-0813-SWF-PW-CN that is the subject of this appeal.

I. STATEMENT OF THE CASE

In this appeal, Waste Management of West Virginia, Inc. (“Waste Management”), LCS Services, Inc. (“LCS”), Allied Waste Services of North America, LLC, doing business as Republic Services of West Virginia (“Republic”), and Jefferson County Solid Waste Authority (“JCSWA”) (collectively “Petitioners”) incorrectly argue that the Commission erred in granting Apple Valley Waste Services, Inc.’s (“Apple Valley”) Petition that No Certificate of Need is Required (“Petition”).

On October 16, 2023, Apple Valley filed its Petition requesting that the Commission find the contractual use of a portion of a facility did not require a certificate of need. Commission Record¹, at Bates No. 000101-000110. In the alternative, the Petition requested that the Commission grant an emergency certificate of need on an expedited timetable. Commission Record, at Bates No. 000108-000109. Apple Valley also requested that the Commission waive the obligation to present a financial exhibit, to propose rates, or to publish notice of rates because no members of the public would be affected by the Petition. Commission Record, at Bates No. 000109-000110.

¹ The Commission electronically submitted the Commission Record of Case No. 23-0813-SWF-PW-CN to the Court on January 8, 2024.

Apple Valley is an affiliate of the certificated intrastate motor carrier, AVW of West Virginia, Inc. ("AVW"), which has authority to provide solid waste collection services in Berkeley, Hampshire, Jefferson, and Mineral Counties, West Virginia. Commission Record, at Bates No. 000103. Prior to its closure, AVW disposed of a portion of the solid waste it collected at the facility which was formerly operated by Entsorga West Virginia, LLC (Entsorga), as a commercial solid waste facility certificated by the Commission. Commission Record, at Bates No. 000103.

In 2013, the Commission granted Entsorga a certificate of need to construct and operate a commercial solid waste facility. Recommended Decision issued March 11, 2013, which became a Final Order on March 31, 2013, Case No. 12-0803-SWF-CN; see *also* Commission Record, at Bates No. 000103. The Entsorga commercial solid waste facility was closed in May of 2022 and was later abandoned with trash left in buildings, which attracted vermin and created a fire risk. Commission Record, at Bates No. 000104.

On February 6, 2023, Entsorga filed for Chapter 11 bankruptcy protection. Commission Record, at Bates No. 000104. The bankruptcy case was ultimately dismissed as a result of Entsorga's and the bankruptcy estate's inability to obtain insurance. Commission Record, at Bates No. 000104. After dismissal of the bankruptcy case, the Berkeley County Solid Waste Authority (BCSWA) terminated the lease between it and Entsorga and took possession and control of the facility. Commission Record, at Bates No. 000104. AVW's inability to use the Entsorga facility as a place of disposal increased its cost of operations by forcing AVW to drive greater distances to alternative disposal sites, which increased its operational expenses in fuel, labor, and vehicle wear and tear. Commission Record, at Bates No. 000105.

A fire eventually broke out at the Entsorga facility and lasted from July 23-26, 2023. Commission Record, at Bates No. 000104. The Petition stated that AVW worked with the West Virginia Department of Environmental Protection (DEP) and the BCSWA, without compensation, to extinguish fires, remove roughly 75% of the trash that was left at the time of abandonment, and address a vermin problem. Commission Record, at Bates No. 000104.

Apple Valley was the successful respondent in a request for proposal issued by the BCSWA to use the Entsorga site on a short term, month to month basis. Commission Record, at Bates No. 000105. According to the filing, under the terms of a lease agreement with the BCSWA, AVW would use an area located within the footprint of the facility – not to dispose of solid waste – but rather to aggregate solid waste it collects onto roll off containers before transporting it to places of disposal. Commission Record, at Bates No. 000105. This practice would reduce AVW's expenses by approximately \$100,000 per month and defer AVW's need to seek a rate increase. Commission Record, at Bates No. 000105. According to the Petition, no entity other than AVW would use the facility located within the former Entsorga footprint. Commission Record, at Bates No. 000106.

On October 18, 2023, Staff filed its response to Apple Valley's Petition and asserted that a certificate is required for an "internal transfer station." Commission Record, at Bates No. 000093-000100.

On October 20, 2023, Waste Management and LCS filed their Motion to Intervene and Protest. Commission Record, at Bates No. 000084-000091. On October 23, 2023, Republic filed its Protest and Motion to Intervene. Commission Record, at Bates No.

000078-000083. On October 26, 2023, JCSWA filed its Petition to Intervene and Protest. Commission Record, at Bates No. 000068-000072.

On October 30, 2023, Apple Valley filed its response to Staff's prior response and to the petitions to intervene. Commission Record, at Bates No. 000053-000067.

On November 3, 2023, Staff filed its surreply to Apple Valley's Petition and argued that Apple Valley's intended operations fall within the definition of a commercial solid waste facility. Commission Record, at Bates No. 000044-000052.

The Commission disagreed with its Staff. On November 8, 2023, the Commission issued an Order that granted Apple Valley's Petition. Commission Record, at Bates No. 000039-000043. The Commission noted its prior orders concluding that small consolidation operations of 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 within the certificate authority granted to the motor carriers who collect solid waste. Commission Record, at Bates No. 000041. 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. Commission Record, at Bates No. 000041. The Commission also stated that it was 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 waste loads from smaller trucks to larger trucks for ultimate delivery to disposal sites. Commission Record, at Bates No. 000041-42.

On December 6, 2023, Petitioners filed their Joint Motion to Stay Pending Appeal. Commission Record, at Bates No. 000028-000038. The Joint Motion alleged that the November 8, 2023 Commission Order contradicts the West Virginia Code and State Rules, and that it contradicts prior decisions by the Commission and the DEP. Commission Record, at Bates No. 000034.

On December 8, 2023, Petitioners filed their Brief with the Supreme Court of Appeals of West Virginia to appeal the Commission's Order.

II. SUMMARY OF ARGUMENT

The Commission was within its authority to rule, under the facts presented in this case, that a certificated motor carrier's use of a location to consolidate loads does not constitute a commercial solid waste disposal facility requiring a separate certificate beyond the carrier's certificate authority to operate as a trash hauler. 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, is not a commercial transaction because no money changes hands. Rather, it is a function included within the certificate authority granted to the motor carriers who collect solid waste pursuant to Chapter 24A of the West Virginia Code. The Commission's ruling did not exceed its statutory jurisdiction and powers, there is adequate evidence to support the Commission's findings, and the substantive result of the Commission's order was proper.

Therefore, the Petitioners' appeal should be denied, and the Commission's Final Order of November 8, 2023, should be affirmed.

III. STATEMENT REGARDING ORAL ARGUMENT

By Order entered December 19, 2023, the Court stated that the Clerk of the Court will, on a later date, provide counsel with a Notice of Argument under Rule 19(b) of the Rules of Appellate Procedure, containing further information on the time of the oral argument.

IV. STANDARD OF REVIEW

This Court has held, “[a]s a general rule, ‘[i]nterpreting a statute or an administrative rule or regulation presents a purely legal question subject to *de novo* review.’” Pool v. Greater Harrison Cty. Pub. Serv. Dist., 241 W. Va. 233, 237, 821 S.E.2d 14, 18 (2018); *citing* Syllabus Point 1, Appalachian Power Co. v. State Tax Dept of W.Va., 195 W.Va. 573, 466 S.E.2d 424 (1995).

With respect to this Court's review of Commission decisions, the Court has previously held:

The principle is well established by the decisions of this Court that an order of the public service commission based upon its finding of facts will not be disturbed unless such finding is contrary to the evidence, or is without evidence to support it, or is arbitrary, or results from a misapplication of legal principles. United Fuel Gas Company v. Public Service Commission, 143 W. Va. 33, 99 S.E.2d 1 (1957); Syl. Pt. 5, Boggs v. Pub. Serv. Comm'n, 154 W. Va. 146, 174 S.E.2d 331 (1970); Syl. pt. 1, Sierra Club v. Pub. Serv. Comm'n of W. Va., 241 W. Va. 600, 827 S.E.2d 224 (2019).

Trulargo, LLC v. P.S.C. of W. Va., 242 W. Va. 482, 483, 836 S.E.2d 449, 450 (2019).

In Monongahela Power Co. v. Pub. Serv. Comm'n, 166 W.Va. 423, 276 S.E.2d 179, 180 (1981), this Court adopted the comprehensive standard of review of Commission decisions as applied by many states and outlined in Permian Basin Area Rate Cases, 390 U.S. 747 (1968):

In reviewing a Public Service Commission order, we will first determine whether the Commission's order, viewed in light of the relevant facts and of the Commission's broad regulatory duties, abused or exceeded its authority. We will examine the manner in which the Commission has employed the methods of regulation which it has itself selected, and must decide whether each of the order's essential elements is supported by substantial evidence.... The Court's responsibility is not to supplant the Commission's balance of these interests with one more nearly to its liking, but instead to assure itself that the Commission has given reasoned consideration to each of the pertinent factors.

Monongahela Power Co., Syllabus Point 2 (in relevant part).

This Court summarized its three-pronged analysis in Monongahela Power Co. in Syllabus Point 1 of Central West Virginia Refuse, Inc. v. Pub. Serv. Comm'n, 190 W.Va. 416, 438 S.E.2d 596 (1993) as follows:

The detailed standard for our review of an order of the Public Service Commission contained in Syllabus Point 2 of Monongahela Power Co. v. Public Service Commission, 166 W.Va. 423, 276 S.E.2d 179 (1981) may be summarized as follows: (1) whether the Commission exceeded its statutory jurisdiction and powers; (2) whether there is adequate evidence to support the Commission's findings; and (3) whether the substantive result of the Commission's order is proper.

Central West Virginia Refuse, Inc. v. Pub. Serv. Comm'n, 190 W.Va. 416, 420; 438 S.E.2d 596, 600-601 (1993).

V. ARGUMENT

- I. **The Commission decision that the facility at issue was not a commercial solid waste facility was proper under the law and consistent with Commission rationale set forth in prior Orders.**

Pursuant to W. Va. Code § 24-1-1(a), the Legislature conferred upon the Commission the authority and duty to 1) regulate the practice, services, and rates of public utilities in order to provide the availability of adequate, economical and reliable utility services throughout the state, 2) ensure that rates and charges for utility services are just, reasonable, and 3) encourage energy conservation and the effective and efficient management of regulated utility enterprises. Pursuant to W. Va. Code § 24-1-1(b), the Commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy, and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

As to the regulation of commercial solid waste facilities, the Commission has authority to oversee the certificate of need process for commercial solid waste facilities. Specifically, W. Va. Code § 24-2-1c states that any person applying for a permit to construct, operate or expand a commercial solid waste facility, as defined in W. Va. Code § 22-15-2, must first obtain a certificate of need from the Commission.

Under W. Va. Code § 22-15-2, a “commercial solid waste facility” is any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility. It is questionable whether the facility at issue could be regarded as “accepting” any waste at all, given that the waste will first be consolidated, and then transported to an ultimate place of disposal.

The same statute also defines “solid waste facility” as:

[A]ny system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities, and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with §22-15-2 of this code. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of §17-23-1 *et seq.* of this code, is not a solid waste facility and an advanced recycling facility is not a solid waste facility.

W. Va. Code § 22-15-2.

The term “transfer station” is not defined by W. Va. Code § 22-15-2. A definition of transfer station can be found at W. Va. C.S.R. § 33-1-2.133 which states:

“Transfer Station” means a structure, or combination of structures, machinery or devices at a place, location or facility where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility; *Provided* that when the generator of solid waste disposes of said waste into a container such as a roll-off, greenbox or bin that is temporarily positioned (i.e. not more than five days) at a specific location for transport by a transportation unit, such container will not be considered a transfer station. Under any circumstances, leachate, litter, and windblown materials must be properly managed.

This definition of transfer station was promulgated by the DEP. However, the Commission’s authority is to grant or deny a certificate of need for a commercial solid waste facility in accordance with the provisions set forth W. Va. Code § 24-2-1c. Additionally, W. Va. Code § 24-2-1c(h) states that the Commission “shall promulgate rules relating to the types of commercial solid waste facility modification or construction that require certificates of need.” The Commission’s rules applicable to commercial solid

waste applications and obtaining certificates of need are found at W.Va. C.S.R. § 150-1-10.3.6 et. seq. ("Rules of Practice and Procedure"). The Commission issues certificates of convenience and necessity to motor carriers to collect solid waste and transport solid waste for disposal under Chapter 24A of the West Virginia Code, specifically W. Va. Code § 24A-2-5, and its Rules of Practice and Procedure (W. Va. C.S.R. § 150-1-10, *et. seq.*) or Motor Carrier Rules (W. Va. C.S.R. § 150-9-1). Neither of the Rules of Practice and Procedure or the Motor Carrier Rules say anything pertinent to the issue on appeal.

The Commission previously has concluded that small consolidation operations limited to waste collected solely from a motor 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 Morgan Sanitation & Recycling Corporation, Case No. 98-1339-SWF-CN, 2001 W.Va. PUC LEXIS 1857; *see also* Fly-By-Nite Disposal Service, Inc., Case No. 02-1154-SWF-CN, 2008 W. Va. PUC LEXIS 400.

In Morgan Sanitation, an application for a certificate of need to operate a transfer station was filed by Morgan Sanitation & Recycling Corporation (MSRC) on October 28, 1998. 2000 W.Va. PUC LEXIS 1558 at *1. MSRC had a certificate of convenience and necessity, pursuant to W. Va. Code § 24A-2-5, to haul solid waste and used the McDowell and Wyoming county landfills prior to their closures. 2000 W.Va. PUC LEXIS 1558 at *1-*2. The closures required MSRC to travel longer distances to landfills in Raleigh County and Summers County which made shipping in small truckloads cost prohibitive. 2000 W.Va. PUC LEXIS 1558 at *2. Therefore, MSRC intended to transfer its truckloads of waste into a tractor-trailer prior to hauling the waste to landfills. 2000 W.Va. PUC LEXIS

1558 at *2. MSRC's planned operation would only accept waste from its own collection vehicles and would not accept waste from the public. 2000 W.Va. PUC LEXIS 1558 at *5.

By Order dated January 13, 2000, the Commission found that MSRC's "transfer facility" was neither a public transfer station, nor a commercial solid waste facility because MSRC simply transferred waste from its small collection trucks to a larger one, due to the longer hauling distances that resulted from the closure of two closer landfills. 2000 W.Va. PUC LEXIS 1558 at *5-*6. As such, MSRC was not planning to provide additional utility service to the public and use of that noncommercial transfer station was a part of how MSRC chose to provide solid waste hauling service. 2000 W.Va. PUC LEXIS 1558 at *6. The process simply allowed MSRC to reduce its operating costs, which ultimately helps keep rates down for its solid waste customers. 2000 W.Va. PUC LEXIS 1558 at *6. The Commission's decision was limited to the specific facts set forth in that case as the Commission noted that MSRC's facility was not the usual (presumably commercial) sort of "transfer station." 2000 W.Va. PUC LEXIS 1558 at *7.

After the Commission's Order was entered, DEP contacted the Commission by letter and advised that it disagreed with the Commission's conclusion. 2001 W.Va. PUC LEXIS 1857 at *4. Subsequently, Commission Staff recommended that the Commission reconsider the matter in light of issues raised by the sister state regulating agency. 2001 W.Va. PUC LEXIS 1857 at *5.

On May 11, 2000, the Commission reopened the matter and DEP was made a party. 2001 W.Va. PUC LEXIS 1857 at *7. By a split decision, the Commission concluded that MSRC's transfer station was a commercial solid waste facility within the meaning of W. Va. Code § 24-2-1c, and granted MSRC a certificate of need. 2001 W.Va. PUC LEXIS

1857 at *35-*38. The Commission also limited the decision to the specific facts set forth in that case. 2001 W.Va. PUC LEXIS 1857 at *37.

The concurring and dissenting opinions of Morgan Sanitation provide context that is important to the case at hand. Specifically, the concurring opinion noted that the Commission's prior order of January 13, 2000, correctly concluded that no certificate was needed because MSRC was simply consolidating waste from its smaller collection trucks into a larger truck that then hauled the solid waste to a distant landfill. 2001 W.Va. PUC LEXIS 1857 at *39. The concurring opinion joined the majority for "purely practical reasons", those being that the DEP would not provide a permit to MSRC until it received a certificate of need from the Commission. 2001 W.Va. PUC LEXIS 1857 at *38-*39. The concurring opinion further noted that other states had a workable process where small loads could be consolidated without triggering a complicated regulatory filing. 2001 W.Va. PUC LEXIS 1857 at *39. The dissent in Morgan Sanitation reiterated that MSRC's operation was an integral part of its certificated trash hauling authority and that the Commission should encourage, not discourage, efforts to lower costs for the disposal of waste. 2001 W.Va. PUC LEXIS 1857 at *44, *47.

A similar series of rulings occurred in Fly-By-Nite. On August 7, 2002, Fly-By-Nite Disposal Services, Inc. (Fly-By-Nite) applied for a certificate of need to operate a commercial solid waste transfer station. 2008 W. Va. PUC LEXIS 400 at *6. Fly-By-Nite collected solid waste from residential customers in Mercer County. Fly-By-Nite used a fleet of small trucks to service its rural routes. The carrier consolidated waste using mobile compacting units that it moved each day depending on where waste was collected before

Fly-By-Nite moved the compacted waste to a disposal site. 2008 W. Va. PUC LEXIS 400 at 1* and *3.

On August 29, 2005, and Administrative Law Judge (ALJ) recommended that the Commission conclude that using modified pickup trucks to haul mechanically unloaded containers to a mobile compactor, and, in turn, hauling compacted loads to a landfill for disposal did not constitute a transfer station or other solid waste facility within the meaning of W. Va. Code § 24-2-1c. 2008 W. Va. PUC LEXIS 400 at *12-*13. The ALJ concluded that, in hilly and rural areas with low population density, Fly-By-Nite's operating premise made good sense and probably was the only way to economically serve those areas. 2008 W. Va. PUC LEXIS 400 at *13.

After the Recommended Decision was issued, the Commission granted a petition to intervene filed by the DEP. 2008 W. Va. PUC LEXIS 400 at *15. On February 25, 2008, the Commission granted Fly-By-Nite a certificate of need to operate mobile compacting stations as a commercial solid waste facility. 2008 W. Va. PUC LEXIS 400 at *59.

Again, however, the context of the Fly-By-Nite ruling is significant. In line with the Commission's initial decision in Morgan Sanitation, in Fly-By-Nite the Commission held 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, such as those conducted in Morgan Sanitation and Fly-By-Nite, were within the certificate of convenience and necessity held by motor carriers that collect solid waste. 2008 W. Va. PUC LEXIS 400 at *26-*27. The Commission noted that such consolidation operations save motor carriers time in transporting collected waste to a disposal facility; allow appropriate service to be provided

to West Virginia residents who live in rural areas; save wear and tear on highways, lessen greenhouse gas emissions and conserve gasoline as fewer vehicles are needed to deposit solid waste at landfills; save landfill operators' resources as fewer vehicles must be processed; protect customer interests by delaying rate increases for solid waste collection services; and do not make motor carriers of solid waste facility operators. 2008 W. Va. PUC LEXIS 400 at *27. The Commission stated that it was in the public interest to encourage motor carriers to collect and consolidate small loads of solid waste. 2008 W. Va. PUC LEXIS 400 at *27.

In Fly-By-Nite the Commission noted that because it disagreed with DEP as to what constituted a "commercial solid waste facility," the Commission felt it had to grant a certificate of need authority for certain operations. As in Morgan Sanitation, the Commission again employed a pragmatic approach when it recognized the importance of having a working relationship with DEP in the certificating and permitting of solid waste facilities, notwithstanding the demanding, and sometimes seemingly conflicting, statutory requirements of both agencies. 2008 W. Va. PUC LEXIS 400 at *29. Although the Commission believed that small consolidation operations limited to waste collected solely from the carrier's customers, performed at no cost to the customers are within the certificate authority granted to the motor carriers, the Commission noted that it must balance the interests of Fly-By-Nite, its customers, and the position of a sister state agency in the DEP. 2008 W. Va. PUC LEXIS 400 at *51-52. Thus, on February 25, 2008, the Commission ultimately granted Fly-By-Nite a certificate of need to operate mobile compacting stations as a commercial solid waste facility. 2008 W. Va. PUC LEXIS 400 at *59.

In Morgan Sanitation and Fly-By-Nite, the Commission eventually granted certificates of need although it did not believe that certificates of need were required for the consolidation of loads operations. The sole reason for the Commission's ultimate decisions was a tension between the Commission's conclusion that a certificate of need was not required and the DEP's position, fourteen years ago, that it could not grant a permit for the consolidation stations unless a motor carrier first received a certificate of need to operate a commercial solid waste facility from the Commission. In the present case, DEP has not raised any objection to the Commission's Order or to waste consolidation activities at the former EntSORGA commercial solid waste facility. Thus, the Commission's ruling in the matter at hand is consistent with its rationale in previous cases.

S&K Sanitation, Inc., Case No. 08-0507-SWF-CN, 2008 W. Va. PUC LEXIS 2470, cited by Petitioners, is an outlier compared to the Commission's discussions and rationale in Morgan Sanitation and Fly-By-Nite. On April 7, 2008, S&K Sanitation (S&K) filed an application for a certificate of need to operate a solid waste transfer station in Preston County. The proposed transfer station was to only be used by S&K, and not the public or other solid waste transporters. 2008 W. Va. PUC LEXIS 2470 at *1. The Recommended Decision of the ALJ granted the certificate of need to operate the transfer station. 2008 W. Va. PUC LEXIS 2470 at *6. Afterwards, S&K filed exceptions to the Recommended Decision's requirement to file a tariff for its transfer station. The Commission granted S&K's exceptions because the transfer station would not be open to the public. 2008 W. Va. PUC LEXIS 2936 at *2-3.

The S&K decision is of little significance. The application was uncontested and decided shortly after the DEP became involved in the Fly-By-Nite proceeding. Thus, the

Commission was aware of DEP's then position regarding transfer stations. Furthermore, the West Virginia Supreme Court has stated that in a regulatory action, as distinguished from merely applying law or policy to past facts, an agency must at all times be free to take such steps as may be proper in the circumstances, irrespective of the past decision. Even when conditions remain the same, the administrative understandings of those conditions may change, and the agency must be free to act. Central W. Va. Refuse v. Public Serv. Comm'n, 190 W. Va. 416, 420, 438 S.E.2d 596, 600 (1993).

Therefore, the Commission's determination that the facility in question did not qualify as a commercial solid waste facility was in accordance with the law and aligned with the reasoning outlined in previous Orders issued by the Commission.

II. There was adequate evidence to support the Commission's ruling, the decision is in the public interest, and the substantive result was proper.

Pursuant to W. Va. Code § 24-1-1(a), the Legislature conferred upon the Commission the authority and duty to 1) regulate the practice, services, and rates of public utilities in order to provide the availability of adequate, economical and reliable utility services throughout the state, 2) ensure that rates and charges for utility services are just, reasonable, and 3) encourage energy conservation and the effective and efficient management of regulated utility enterprises. The Commission's decision was supported by adequate evidence, was in the public interest, and the substantive result was proper because:

- AWW holds a certificate of convenience and necessity to collect and dispose of solid waste. Commission Record, at Bates No. 000103.

- AWW's operation expenses increased when the commercial solid waste facility operated by Entsorga ceased operations. Commission Record, at Bates No. 000105.
- AWW will use the site at issue to consolidate smaller loads of solid waste into larger vehicles for transportation to a commercial solid waste facility for ultimate disposal. Commission Record, at Bates No. 000105.
- The consolidation operations are not commercial in that no financial transactions will occur at the site.
- No other motor carriers or the public will bring solid waste to the site. Commission Record, at Bates No. 000106.
- The DEP has not intervened or expressed any objections to the Commission decision or the consolidation of loads operations.
- AWW's voluntary assistance to DEP to clean up the former commercial solid waste facility site served the public interest by extinguishing fires, removing solid waste, and addressing a vermin infestation. Commission Record, at Bates No. 000104.
- AWW's ability to use the Entsorga facility to consolidate loads will reduce operational expenses in fuel, labor, and vehicle wear and tear. Commission Record, at Bates No. 000105.
- Customers of AWW will benefit from the consolidation operations because the carrier's reduced costs of approximately \$100,00 per month will enable it to defer rate increases. Commission Record, at Bates No. 000105.
- The consolidation process allows more economical services to be provided to residents in rural areas. 2008 W. Va. PUC LEXIS 400 at *50-51.

- Efforts to consolidate waste before its transportation to a solid waste disposal site lessen greenhouse gas emissions, save wear and tear on the State's highways, and fewer vehicles must be processed at landfills. Commission Record, at Bates No. 000041.
- The public interest is served when the Commission declines to conduct an unnecessary regulatory proceeding.

Therefore, the Commission's decision fulfilled its statutory duties because there was more than adequate evidence to support a finding that the Commission's decision was in the public interest and the substantive result was proper.

VI. CONCLUSION

The Commission was within its authority when it ruled, under the facts presented in this case, consolidation of loads operations of AVW-WV does not constitute a commercial 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. This Court should affirm the Commission's Final Order of November 8, 2023.

Respectfully submitted this 22nd day of January 2024.

THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
By Counsel,



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CERTIFICATE OF SERVICE

I, Ryan A. Brown, Counsel for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "Statement of the Respondent, Public Service Commission, of its Reasons for the Entry of its Orders of November 8, 2023" has been served upon the following parties of record by First Class United States Mail, postage prepaid this 22nd day of January, 2024:

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