

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman
Stephen McAlpine
Rebecca L. Pauli
Norman Rokeberg
Janis W. Wilson

In the Matter of the Joint Application for Transfer
of Refuse Utility Certificate of Public Convenience
and Necessity Nos. 502, 653, 654, 655, and 656
from ALASKA PACIFIC ENVIRONMENTAL
SERVICES I, LLC to WASTE CONNECTIONS OF
ALASKA, INC.

U-17-013

ORDER NO. 2

**ORDER FINDING MOTION MOOT, GRANTING PETITION FOR
CONFIDENTIALITY, ADDRESSING TIMELINE FOR DECISION, AND
SCHEDULING CONSUMER INPUT HEARING**

BY THE COMMISSION:

Summary

We find the motion for leave to file reply, filed by Waste Connections of Alaska, Inc. (Waste Connections) moot. We grant the petition for confidentiality filed by subsidiaries of Waste Connections. We address the timeline for a final decision in this proceeding. We schedule a consumer input hearing in Juneau.

Background

Alaska Pacific Environmental Services I, LLC (APES-I) and Waste Connections filed a joint application to transfer Certificates of Public Convenience and Necessity (Certificate) No. 502, 653, 654, 655, and 656 from subsidiaries of APES I to newly created subsidiaries of Waste Connections.¹ Certificate No. 653 authorizes the

¹Joint Application for Transfer of Certificates of Public Convenience and Necessity Nos. 502, 653, 654, 655, & 656, filed February 28, 2017 (Application).

1 provision of refuse service in the road accessible portions of the City and Borough of
2 Juneau (CBJ). Simultaneous with filing of the Application, the newly created subsidiaries
3 of Waste Connections² filed a petition for confidential treatment of information redacted
4 from Exhibit A of the Application, entitled Asset Purchase Agreement.³

5 We issued public notice of the Application and the Petition with comments
6 due by March 28, 2017. The CBJ timely filed comments, including comments in
7 opposition to the Petition.⁴ Waste Connections filed a motion for leave to file a reply to
8 the CBJ Comments⁵ and filed reply comments.⁶ No other comments were received in
9 response to our public notice.

10 Discussion

11 Motion for Leave to Reply

12 The procedure to have information in an application classified as
13 confidential is set out in 3 AAC 48.648(d). This regulation specifically authorizes
14 applicants to reply to comments in opposition to a petition to classify information as
15 confidential, if the reply is filed within five business days of the end of the comment
16 period.⁷ Waste Connections filed its Reply on March 31, 2017, three business days after
17 close of the public notice comment period. The Reply was filed in compliance with the
18 requirements of 3 AAC 48.648(d) and therefore we find the Motion moot.

19 ²Alaska Waste-Denali, LLC; Alaska Waste-Juneau, LLC; Alaska Waste-Dutch
20 Harbor, LLC; Alaska Waste-Nome, LLC; and Alaska Waste-Ketchikan, LLC (jointly
referred to as Waste Connections).

21 ³*Petition for Confidentiality*, filed February 28, 2017 (Petition).

22 ⁴Correspondence from D.R. Watt, P.E., City Manager, filed March 28, 2017 (CBJ
Comments).

23 ⁵*Motion for Leave to File Reply*, filed March 31, 2017 (Motion).

24 ⁶*Reply to Comments on Petition for Confidentiality*, filed March 31, 2017 (Reply).

25 ⁷3 AAC 48.648(d).

Petition for Confidentiality

Records filed with us are presumed to be public under AS 42.05.671(a) and 3 AAC 48.040(a). A petition for confidential treatment of records that is filed with an application must meet the requirements of 3 AAC 48.045.⁸ A party seeking to have information classified as confidential under that regulation must identify the record and show good cause, including facts, reasons, or other grounds to classify the record as confidential.⁹ Good cause includes a showing that:

(1) disclosure of the record to the public might competitively or financially disadvantage or harm the person with confidentiality interest or might reveal a trade secret; and

(2) the need for confidentiality outweighs the public interest in disclosure.¹⁰

This standard requires us to balance the interests of the party seeking confidential treatment against the public interest in disclosure.

Waste Connections seeks to have the purchase price for its acquisition of APES-I classified as confidential. This information is redacted from the Asset Purchase Agreement at paragraphs 1.4(a) and 1.4(b).¹¹ Waste Connections asserts that the purchase price includes the price paid for APES-I regulated and unregulated assets and that public disclosure of this information could competitively disadvantage Waste Connections by disclosing how it is strategically targeting resources. Waste Connections asserts that there is little public interest in this information because the regulated subsidiaries will continue to provide quarterly and annual reports disclosing operating

⁸3 AAC 48.648(d).

⁹3 AAC 48.045(a).

¹⁰3 AAC 48.045(b).

¹¹Petition at 4; Application, Exhibit A at 12, 13.

1 results.¹² Waste Connections also seeks to have the amount of the purchase price
2 allocated to paying for the restrictive covenant in Section II of the Asset Purchase
3 Agreement classified as confidential. This information is redacted from the Asset
4 Purchase Agreement at paragraph 1.6.¹³

5 CBJ asserts that disclosure of the purchase price cannot harm Waste
6 Connections because they have no competitors in the Juneau refuse collection market.
7 CBJ further asserts that there is substantial public interest in the purchase price because
8 that is a critical component of the rates that will be paid in the future for refuse collection
9 in Juneau. CBJ states that Waste Connections should not be allowed to hide the
10 purchase price from public view by bundling it with the purchase price of regulated and
11 unregulated assets of APES-I in multiple communities.¹⁴

12 In reply, Waste Connections asserts that there is no public interest in the
13 purchase price because Waste Connections will not be seeking to recover the purchase
14 price through an acquisition adjustment to rates. Waste Connections further asserts that
15 the purchase price is an aggregate number for all of APES-I's assets and that disclosure
16 of that number will not satisfy any public interest in the price paid for the Juneau refuse
17 collection assets. Finally, Waste Connections agrees with CBJ that the regulated Juneau
18 refuse collection market is not competitive. However, Waste Connections states that it is
19 also purchasing APES-I assets related to non-regulated competitive markets in Juneau,
20 and asserts that disclosure of the purchase price could competitively disadvantage Waste
21 Connections in those competitive markets.¹⁵

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23 ¹²Petition at 5.

24 ¹³Petition at 4; Application, Exhibit A at 16.

25 ¹⁴Comments at 2.

26 ¹⁵Reply at 1-2.

1 Purchase Price

2 In setting rates, we are guided in part by AS 42.05.441(b), which states:

3 In determining the value for rate-making purposes of public utility property
4 used and useful in rendering service to the public, the commission shall be
5 guided by acquisition cost or, if lower, the original cost of the property to the
6 person first devoting it to public service, less accrued depreciation, plus
7 materials and supplies and a reasonable allowance for cash working capital
8 when required.

9 APES-I and Waste Connections publicly disclosed the net book value¹⁶ of the plant used
10 to provide regulated refuse collection service in each of the five communities served
11 pursuant to Certificates No. 502, 653, 654, 655, and 656.¹⁷ We have examined the
12 unredacted Asset Purchase Agreement and find that the book value of the plant providing
13 regulated service in these five communities is substantially less than that the APES-I
14 purchase price. Thus we expect that the book value rather than the purchase price will
15 be used in ratemaking for the utilities, unless Waste Connections seeks an acquisition
16 adjustment.

17 Waste Connections states that it will not be seeking an acquisition
18 adjustment based upon the APES-I purchase price.¹⁸ Accepting that statement, we find
19 that the purchase price redacted from the Asset Purchase Agreement will not affect rates
20 and that there is little public interest in disclosure of the aggregate purchase price for
21 APES-I. We find that public disclosure of the purchase price information might
22 competitively disadvantage Waste Connections in the non-regulated competitive markets
23 in which it operates by showing the amount of resources it is willing to allocate to
24 participation in those markets. This potential harm outweighs the public interest in

25 ¹⁶Book value equals original cost when placed into public service less accumulated
26 depreciation.

¹⁷Application, Exhibit B.

¹⁸Reply at 1-2.

1 disclosure. Therefore, we grant the Petition with respect to the purchase price information
2 redacted from paragraphs 1.4(a) and 1.4(b) of the Asset Purchase Agreement.

3 Allocation of Purchase Price to Restrictive Covenant

4 We received no comments in opposition to Waste Connections' request to
5 have the amount of the purchase price allocated to the restrictive covenant in Section II
6 of the Asset Purchase Agreement classified as confidential. This covenant is the
7 agreement by the principle owners of APES-I to not compete with or disparage Waste
8 Conections for a periof of five years. We find that public disclosure of this information
9 could financially harm Waste Connections should they acquire any other refuse utilities
10 where negotiation of a similar covenant may be desirable. This potential harm outweighs
11 the public interest in disclosure of this information. Therefore, we grant the Petition with
12 respect to the information redacted from paragraph 1.6 of the Asset Purchase Agreement.

13 Decision Timeline

14 The commission is required by AS 42.05.175(a)(3) to issue a final decision
15 regarding an application to transfer a certificate not later than 180 days after the date a
16 complete application is filed. The Application was reviewed under 3 AAC 48.648, and
17 with our decision to grant the Petition, the Application was complete as filed.¹⁹ Therefore,
18 we will issue a final order in this proceeding no later than August 27, 2017.²⁰

19 Consumer Input Hearing

20 The CBJ requested that a public hearing be held in Juneau on Waste
21 Connections' proposed acquisition of APES-I. The CBJ stated that: "A public hearing will
22 allow the Commission and the applicant to hear the interests and needs of the public
23

24 ¹⁹3 AAC 48.648(d)(1).

25 ²⁰The 180th day is Sunday, August 27, 2017; therefore, the commission will issue
its decision by Friday, August 25, 2017.

1 regarding service and rates.”²¹ The CBJ has graciously offered to make its Assembly
2 Chamber available for this hearing. APES-I and Waste Connections did not object to the
3 CBJ’s request for a public hearing.

4 We schedule a consumer input hearing to begin at 5:30 p.m. on May 25,
5 2017, in the Assembly Chamber, City and Borough of Juneau, 155 S. Seward Street,
6 Juneau, Alaska. We require representatives of APES-I and Waste Connections to attend
7 this consumer input hearing. The representatives of APES-I and Waste Connections
8 attending this consumer input hearing shall provide an overview of Waste Connections’
9 proposed acquisition of APES-I. The CBJ and interested members of the public will be
10 allowed to comment on the interests and needs of the public regarding refuse utility
11 service and rates. The representatives of APES-I and Waste Connections will be allowed
12 an opportunity to respond to the comments received. This consumer input hearing is
13 scheduled to conclude at 7:00 p.m., unless members of the public are in attendance and
14 have not yet had an opportunity to comment.

15 **ORDER**

16 THE COMMISSION FURTHER ORDERS:

17 1. The *Motion for Leave to File Reply*, filed March 31, 2017, by Waste
18 Connections of Alaska, Inc. is moot.

19 2. The *Petition for Confidentiality*, filed February 28, 2017, by Alaska
20 Waste-Denali, LLC; Alaska Waste-Juneau, LLC; Alaska Waste-Dutch Harbor, LLC;
21 Alaska Waste-Nome, LLC; and Alaska Waste-Ketchikan, LLC is granted.

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25 ²¹Comments at 1.
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1 3. A consumer input hearing²² is scheduled to convene at 5:30 p.m. on
2 Thursday, May 25, 2017, in the Assembly Chamber, City and Borough of Juneau, located
3 at 155 S. Seward Street, Juneau, Alaska.

4 DATED AND EFFECTIVE at Anchorage, Alaska, this 27th day of April, 2017.

5 BY DIRECTION OF THE COMMISSION
6 (Commissioners Stephen A. McAlpine and Robert M. Pickett,
7 not participating.)



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23 ²²If you are a person with a disability who may need a special accommodation,
24 auxiliary aid, service, or alternative communication format in order to participate in the
25 scheduled event, please contact Joyce McGowan at 1-907-276-6222, TTY 1-907-276-
26 4533, toll free at 1-800-390-2782, or send your request via electronic mail to
rca.mail@alaska.gov, by May 18, 2017, to make the necessary arrangements.

Any party wishing to appear telephonically at the scheduled event must advise us
in advance and provide a telephone number where it may be reached for that appearance.