

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER T-35949

WASTE CONNECTIONS BAYOU, INC.,
EX PARTE

Docket No. T-35949, In re: Application for a common carrier certificate of non-hazardous oilfield waste and non-hazardous industrial solid waste for disposal, statewide.

(Decided July 26, 2021)

ORDER

Overview

Waste Connections Bayou, Inc. (“Waste Connections Bayou,” “Company,” or “Applicant”) seeks from the Louisiana Public Service Commission (“LPSC” or “Commission”) a common carrier certificate to allow for the transportation of non-hazardous oilfield waste and non-hazardous industrial solid waste, statewide. Waste Connections Bayou is a Delaware company with a business address in Leesville, Louisiana, and it currently possesses a Commission certificate that was issued to its predecessor, Progressive Waste Solutions of LA, Inc. (“Progressive Waste Solutions of LA”).

Background

On April 9, 2021, Waste Connections Bayou filed an application (“Application”) seeking authorization from the Commission to operate as a common carrier of non-hazardous oilfield waste and non-hazardous industrial solid waste, statewide. Notice of the Application was published in the Commission’s Official Bulletin on April 16, 2021. No interventions were filed during the intervention period or at any point thereafter.

At the initial status conference on May 6, 2021, representatives of the Applicant and the Commission Staff agreed to a procedural schedule with a hearing on July 21, 2021, during which the Applicant would have the burden of proving fitness under the Commission’s General Order dated January 23, 2018.¹

The Applicant filed its Pre-Hearing Statement on July 14, 2021. The Commission Staff filed its Pre-Hearing Statement on July 12, 2021, advising that it supports Waste Connections Bayou’s application. Due to the support of the Commission Staff and the lack of any intervenors, the Application is considered unopposed.

Jurisdiction and Applicable Law

¹ See, GENERAL ORDER (Jan. 23, 2018), Docket No. R-34054, *In re: Rulemaking to examine the Commission’s Rules of Practice and Procedure related to a motor carrier of waste proving public convenience and necessity when applying for a common carrier certificate or contract carrier permit, as well as possible adoption of rules and regulations specific to applications for common carrier certificates or contract carrier permits as it relates to hauling waste* (repealing and reenacting Rule 33 and Rule 34 of the Rules of Practice and Procedure of the Louisiana Public Service Commission and superseding General Orders dated May 30, 2012 (R-30297) and October 18, 2017 (R-34054)).

The Commission derives its jurisdiction over common carriers and public utilities from the Louisiana Constitution of 1974. Article IV, Section 21(B) of the Constitution provides, in pertinent part, that:

[t]he [C]ommission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

In addition, La. R.S. 45:163 provides that “[t]he [C]ommission has the power and authority necessary to supervise, govern, regulate, and control motor carriers...which transport household goods, passengers, or waste intrastate and to fix reasonable and just rates, fares, tolls, or charges for the commodities furnished or services rendered by such motor carriers.” La. R.S. 45:164 states that “[n]o motor carrier of waste shall operate without first having obtained from the [C]ommission a common carrier certificate or contract carrier permit.” La. R.S. 45:164(B) provides that an applicant for a common carrier certificate, contract carrier permit, or expansion of authority granted in an existing certificate must prove fitness by proving all of the following:

- (1) The applicant holds, or is capable of acquiring, an insurance policy that complies with [C]ommission rules.
- (2) The applicant has the financial ability to provide the transportation of waste for disposal in a safe and efficient manner.
- (3) The applicant holds, or is capable of acquiring all the necessary authorizations required by any and all regulatory authorities for the transportation of waste for disposal.
- (4) The applicant holds, or is capable or [sic] acquiring for use, equipment and man power to provide transportation services in a safe and efficient manner
- (5) The applicant has in place, or is capable of establishing, a safety program necessary for the safe and efficient transportation of waste for disposal.

The Commission’s General Order dated January 23, 2018 incorporated the above requirements into Rule 33 of the Commission’s Rules of Practice and Procedure, which now reads (in pertinent part) as follows:

- A. An applicant applying for a common carrier certificate, contract carrier permit, or expansion of authority granted in an existing certificate or permit authorizing the transportation of non-hazardous oilfield waste, hazardous waste or non-hazardous industrial solid waste shall prove fitness...in a hearing before an administrative law judge or hearing officer by proving that the applicant:
 1. holds, or is capable of acquiring, an insurance policy providing coverage of two hundred fifty thousand dollars for

injury or death per person or five hundred thousand dollars per occurrence, and ten thousand dollars property damage,

2. has the financial ability to provide the transportation of waste for disposal in a safe and efficient manner,
3. holds, or is capable of acquiring, all of the necessary authorizations required by any and all regulatory authorities for the transportation of waste for disposal[,]
4. holds, or is capable of acquiring for use, equipment and man power to provide transportation services in a safe and efficient manner, and
5. has in place, or is capable of establishing, a safety program necessary for the safe and efficient transportation of waste for disposal.

...

- D. The provisions of this rule are applicable to all applications for common carrier certificates and contract carrier permits of waste and all applications for expansion of existing waste authority, including those applications which are presently pending before the Commission but have not yet gone to hearing on the merits.
- E. All restrictions on existing certificates or permits are valid until expansion of authority is applied for and a new certificate or permit is granted. However, any restrictive language in any existing common carrier certificate or any contract carrier permit of waste that prevents the carrier from applying for expanded authority for any period of time is null and void...
- F. Certificates or permits issued after the adoption of this rule shall not contain restrictions.

The Hearing

A hearing on the Application was convened on July 21, 2021. At the hearing, appearances were made by Waste Connections Bayou and the Commission Staff. At the time of the hearing, the Application was unopposed.

The Applicant's Request for Authority

The Applicant is seeking authority to transport non-hazardous oilfield waste and non-hazardous industrial solid waste, statewide, without restrictions. The Applicant currently possesses Common Carrier Certificate No. 5966-D, which was granted to Progressive Waste Solutions of LA, the Company's predecessor. Common Carrier Certificate No. 5966-D authorizes the transportation of certain commodities in certain locations, subject to certain restrictions. The Applicant's personnel acknowledged that the Applicant cannot possess two common carrier certificates at once, and that the Applicant will need to file a Form T-80 canceling Progressive Waste Solutions of LA's authority under Common Carrier Certificate No. 5966-D.

Testimony and Evidence Presented by the Applicant

In support of its Application, Waste Connections Bayou presented the testimonies of Patrick Smyth and Brance Hudson.

Testimony of Patrick Smyth

Mr. Smyth is employed by Waste Connections Bayou as a District Manager. Mr. Smyth testified that he has been employed in the waste industry full-time for twenty (20) years, and he collaborated with the other district managers in Louisiana to prepare his testimony on behalf of the Company. Mr. Smyth testified that Waste Connections Bayou is a Delaware corporation that was organized in October of 2000. Waste Connections Bayou's sole shareholder is Waste Connections US, which wholly-owned by Waste Connections, Inc. ("WCN"), a publicly-traded company based in Ontario, Canada. The Applicant shares certain departments (e.g., payroll, legal) with WCN, but the Applicant does not lease property from any affiliate company.

Mr. Smyth briefly described the history of Waste Connections Bayou and of its predecessor, Progressive Waste Solutions of LA. Specifically, Mr. Smyth testified that, in 2016, the Applicant's parent corporation Waste Connections, Inc. acquired and combined with Progressive Waste Solutions, Ltd., which at that time was the parent company of Progressive Waste Solutions of LA. Following the 2016 acquisition, Progressive Waste Solutions of LA continued operating as a subsidiary of Progressive Waste Solutions, Ltd.; however, in 2018 Progressive Waste Solutions of LA amended its Certificate of Incorporation to change its name to Waste Connections Bayou, Inc.

Mr. Smyth testified that the Applicant's predecessor Progressive Waste Solutions of LA received Common Carrier Certificate No. 5966-D, that the Applicant is in full Compliance with the Commission's rules and regulations, and that there are no encumbrances on that Certificate. Mr. Smyth acknowledged that Waste Connections Bayou currently seeks a Common Carrier Certificate with a much broader scope of authority than that conveyed by the Common Carrier Certificate issued to Progressive Waste Solutions of LA. Mr. Smyth testified that he consulted with Commission Staff and was advised that it would be more appropriate for Waste Connections Bayou to submit its current application for a new Common Carrier Certificate, rather than to try to expand the one previously issued to Progressive Waste Solutions of LA. Mr. Smyth confirmed the Applicant's understanding that a single entity cannot have two separate Common Carrier Certificate numbers, and that cancellation of Common Carrier Certificate No. 5966-D will need to be requested if Waste Connections Bayou's current Application is approved. Additionally, Mr.

Smyth committed to filing a Form T-80 requesting cancellation of Common Carrier Certificate No. 5966-D if the requested authority is granted.

Mr. Smyth testified that Waste Connections Bayou provides residential and commercial waste pickup and roll-off services, primarily the collection of municipal solid waste. Waste Connections Bayou operates exclusively in Louisiana, and has eight (8) terminals in the state (specifically, in Alexandria, Bridge City, Leesville, Monroe, Natchitoches, Opelousas, Rayne, and Shreveport). Mr. Smyth testified that he does not anticipate that the Applicant will file an application for a certificate to haul saltwater.

Mr. Smyth testified that Waste Connections Bayou has an insurance policy which meets the Commission's requirements, and it covers all of the Company's equipment and employees. Mr. Smyth further testified that Waste Connections Bayou is in good standing with the Louisiana Secretary of State, and that the Company is in full compliance with the Commission's rules and regulations.

Mr. Smyth testified that Waste Connections Bayou has over three hundred (300) employees; almost all of these employees reside in Louisiana. According to Mr. Smyth, Waste Connections Bayou anticipates hiring more employees if the Application is granted, and does not plan to use owner-operators. Mr. Smyth identified Waste Connections Bayou's equipment list and affirmed that Waste Connections Bayou has three hundred and thirty-one (331) trucks and twenty-five (25) trailers. Mr. Smyth clarified that the Company will only use its tractors and trailers for Commission-regulated waste transportation, and equipment used for residential and commercial waste transportation will not be used in that capacity. Mr. Smyth described Waste Connections Bayou's maintenance system, and testified that the majority of maintenance is performed in-house by the Company.

Mr. Smyth provided an overview of Waste Connections Bayou's hiring, training and safety programs. Mr. Smyth identified and described Waste Connections Bayou's safety manual, and testified that the Company conducts daily, weekly and monthly safety meetings. Mr. Smyth testified that Waste Connections Bayou has a drug and alcohol policy, and works with another company to perform drug screenings prior to employment, randomly, after an accident and on reasonable suspicion. Mr. Smyth also described Waste Connections Bayou's no tolerance cellphone policy.

Testimony of Brance Hudson

Mr. Hudson is a district comptroller with Waste Connections Bayou, and he reviewed the financial documents for the Company and its ultimate corporate parent, WCN. Mr. Hudson testified that WCN's financial documents show a very strong financial position for Waste Connections Bayou and WCN are in a strong financial position, and that Waste Connections Bayou anticipates that its net revenue and profits will increase if the requested authority is granted. Mr. Hudson testified that Waste Connections Bayou's owner is able and willing to put capital in the Company, if necessary, and that there are no financial factors limiting the Company in providing safe and efficient waste transportation. According to Mr. Hudson, Waste Connections Bayou has never filed for bankruptcy. The Company has not been subject to a state or IRS tax audit; however, in 2017, Progressive Waste Solutions of LA was subject to a federal audit of excise tax returns, but there were no charges, fines, penalties, or other adverse actions taken. Mr. Hudson explained that this audit was conducted for filings made prior to the merger of Progressive Waste Solutions, Ltd. and WCN. Additionally, Progressive Waste Solutions of LA was subject to a state desk audit of 2014 Louisiana corporate income and franchise return that was solely based on tax credits for a compressed natural gas ("CNG") station and CNG trucks. This audit was performed after the merger of WCN and Progressive Waste Solutions, Ltd., and a small assessment was levied due to an inability to compile all adequate records. Mr. Hudson testified that this audit was based on Progressive Waste Solutions of LA's records prior to the merger. .

In support of the testimonies of Mr. Smyth and Mr. Hudson, the Applicant submitted the following exhibits into evidence at the hearing:

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| Exhibit A | A copy of Waste Connections Bayou, Inc.'s Common Carrier of Waste by Motor Vehicle Application, as filed on April 9, 2021, with attachments (Safety Manual redacted); |
| Exhibit B | A copy of an Acord Certificate of Liability Insurance, identifying insurance formation for Waste Connections Bayou, Inc., dated November 3, 2020; |
| Exhibit C, <i>in globo</i> | Copies of the following documents (submitted electronically on USB drive) (admitted confidentially under seal): <ul style="list-style-type: none">• A balance sheet and income statement for Waste Connections Bayou, Inc., with a closing month of December 2018;• A BS Close Report and P&L Close Report for Waste Connections Bayou, Inc., with a closing month of December 2019;• A balance sheet and income statement for Waste |

Connections Bayou, Inc., with a closing month of December 2020;

- A United States Securities and Exchange Commission Form 10-K Annual Report filing for Waste Connections, Inc. for the fiscal year ended December 31, 2016;
- A United States Securities and Exchange Commission Form 10-K Annual Report filing for Waste Connections, Inc. for the fiscal year ended December 31, 2017;
- A United States Securities and Exchange Commission Form 10-K Annual Report filing for the fiscal year ended December 31, 2018;
- A United States Securities and Exchange Commission Form 10-K Annual Report filing for the fiscal year ended December 31, 2019;
- A United States Securities and Exchange Commission Form 10-K Annual Report filing for the fiscal year ended December 31, 2020;
- A United States Securities and Exchange Commission Form 10-Q Annual Report filing for Waste Connections, Inc. for the quarterly period ended September 30, 2020; and
- A United States Securities and Exchange Commission Form 10-Q Quarterly Report filing for Waste Connections, Inc. for the quarterly period ended March 31, 2021;

Exhibit D

A copy of an equipment list for Waste Connections Bayou, Inc.;

Exhibit E, *in globo*

Copies of the following documents:

- A list of Louisiana Department of Environmental Quality permits held by Waste Connections Bayou, Inc.; and
- A certificate issued by the Louisiana State Licensing Board of Contractors to Waste Connections of Louisiana, Inc. [sic], dated July 28, 2018;

Exhibit F

A copy of Waste Connections Bayou, Inc.'s Safety Manual (admitted electronically on USB drive) (**admitted confidentially under seal**);

Exhibit G, *in globo*

Copies of the following documents:

- LPSC Staff's First Set of Data Requests to Waste Connections Bayou, Inc.; and
- Waste Connections Bayou, Inc.'s Responses to LPSC Staff's First Set of Data Requests (**financial documents redacted**);

Exhibit H

Waste Connections Bayou, Inc.'s Supplemental Responses

Exhibit I, *in globo*

to LPSC Staff's First Set of Data Requests; and

Copies of the following documents:

- LPSC Staff's Second Set of Data Requests; and
- Waste Connections Bayou, Inc.'s Responses to LPSC Staff's Second Set of Data Requests.

Commission Staff's Position

The Commission Staff expressed its support for the Application, both in its Pre-Hearing Statement and verbally at the July 21, 2021 hearing. The Commission Staff confirmed, both in its Pre-Hearing Statement and verbally at the hearing, that there are no complaints, citations, or violations pending against Waste Connections Bayou and that Waste Connections Bayou has no current annual report due or outstanding ISF reports or fees.

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Conclusion

Having considered the application of Waste Connections Bayou, Inc., the testimony and evidence presented in support of the Application, the directives of the Commission's General Order dated January 23, 2018, Rule 33 of the Commission's Rules of Practice and Procedure, and other applicable law, we find that Waste Connections Bayou, Inc. has established its fitness to operate, and that a common carrier certificate should be issued to the Applicant.

Accordingly, **IT IS HEREBY ORDERED** that Waste Connections Bayou, Inc. be issued a common carrier certificate, authorizing operations in Louisiana intrastate commerce as a common carrier of non-hazardous oilfield waste and non-hazardous industrial solid waste, statewide.

IT IS FURTHER ORDERED that the issuance of the common carrier certificate is conditioned upon the full compliance of Waste Connections Bayou, Inc. with the laws of the State of Louisiana and the rules and regulations of the Louisiana Public Service Commission.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
July 27, 2021



A handwritten signature in blue ink, appearing to read "Brandon M. Frey".

BRANDON M. FREY
SECRETARY

/S/ CRAIG GREENE

DISTRICT II
CHAIRMAN CRAIG GREENE

/S/ ERIC F. SKRMETTA

DISTRICT I
VICE CHAIRMAN ERIC F. SKRMETTA

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