

0001

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 In re Application No. GA-079114)Docket No. TG-021359
4 of)Volume I
5 EMPIRE DISPOSAL, INC.)Pages 1-18
6)
7 For Extension of Authority)
8 Under Certificate No. G-75, for)
9 a Certificate of Public)
10 Convenience and Necessity to)
11 Operate Motor Vehicles in)
12 Furnishing Solid Waste)
13 Collections Service.)
14 _____)

10

11 A prehearing in the above matter
12 was held on January 23, 2003, at 1:32 p.m., at 1300
13 Evergreen Park Drive, Southwest, Olympia, Washington,
14 before Administrative Law Judge LAWRENCE BERG.

15

16 The parties were present as
17 follows:

18 EMPIRE DISPOSAL, INC., by James
19 Sells, Attorney at Law, 9657 Levin Road, N.W.,
20 Silverdale, Washington, 98383.

21 WASTE MANAGEMENT, by Polly L.
22 McNeill, Attorney at Law, Summit Law Group, 315 Fifth
23 South, #1000, Seattle, Washington, 98104.

24 THE COMMISSION, by Donald T.
25 Trotter, Assistant Attorney General, 1400 Evergreen
26 Park Drive, S.W., P.O. Box 40128, Olympia,
27 Washington, 98504-0128.

24

25 Barbara L. Nelson, CCR
26 Court Reporter

0002

1 JUDGE BERG: We'll be on the record. This
2 is a joint prehearing conference being conducted in
3 two separate dockets before the Washington Utilities
4 and Transportation Commission. The first docket is
5 Number TG-021358, captioned In re Application Number
6 GA-079113 of Empire Disposal, Inc. for authority to
7 transfer a portion of rights under certificate. The
8 second docket number, TG-021359, is captioned In re
9 Application Number GA-079114 of Empire Disposal, Inc.
10 for extension of authority under Certificate Number
11 G-75.

12 Today's date is January 23rd, 2003. The
13 prehearing conference is being conducted in Hearing
14 Room 108 at the Commission's headquarters in Olympia,
15 Washington. The prehearing conferences take place
16 pursuant to due and proper notice served to parties
17 on December 27th, 2002. My name is Lawrence Berg.
18 I'm the Administrative Law Judge who has been
19 assigned to preside over both proceedings.

20 At this time, we'll proceed to take
21 appearances of the parties. What I will be looking
22 for from counsel is a name, the party represented,
23 address, telephone number, fax, and e-mail address.
24 In addition, please feel free to introduce any people
25 who accompany you to the hearing this morning. And I

0003

1 think we'll start with the applicant, Empire
2 Disposal, Inc.

3 MR. SELLS: Thank you. If Your Honor
4 please, James Sells, Attorney, appearing on behalf of
5 applicant in both proceedings, Empire Disposal, Inc.,
6 and on behalf of Naslund Disposal Services, as well,
7 in 021358. 9657 Levin Road, N.W., Suite 240,
8 Silverdale, Washington, 98383. Telephone,
9 360-307-8860; fax, 360-307-8865; e-mail,
10 jimsells@rsulaw.com.

11 JUDGE BERG: I'll note that a protest has
12 been filed in both proceedings by Waste Management,
13 Inc. Let's go ahead and take your appearance next,
14 Ms. McNeill.

15 MS. McNEILL: Thank you. Polly L. McNeill,
16 representing Protestant, Waste Management of
17 Washington, Inc. Address, 315 Fifth Avenue South,
18 Suite 1000, Seattle, Washington, 98104. Phone
19 number, 206-676-7040; fax, 676-7041; e-mail address
20 is pollym@summitlaw.com. And I have with me today
21 Bob Schille, who is a representative of Waste
22 Management.

23 THE REPORTER: Would you spell his name,
24 please?

25 MS. McNEILL: Schille is S-c-h-i-l-l-e.

0004

1 Bob is B-o-b. No.

2 JUDGE BERG: Thank you very much.

3 MR. SELLS: Excuse me, Your Honor. I
4 neglected to introduce Aaron Lawhead, President of
5 Empire Disposal.

6 JUDGE BERG: All right. Thank you. For
7 Commission Staff?

8 MR. TROTTER: For the Commission, my name
9 is Donald T. Trotter, Assistant Attorney General. My
10 address is 1300 South Evergreen Park Drive, S.W.,
11 Olympia, 98504. My telephone number is 360-664-1189.
12 My fax number escapes me at the moment. I'll have to
13 provide that to you later. My e-mail address is
14 dtrotter@wutc.wa.gov.

15 JUDGE BERG: Thank you, Mr. Trotter. As
16 noted in the notice of prehearing conferences, the
17 purpose -- purposes of the conference here today is
18 to discuss preliminary matters, the hearing process,
19 issues to be resolved, and the possibility of
20 consolidating these two dockets.

21 I would like first to take up preliminary
22 matters. The one matter that I have on my list, as
23 mentioned to parties before going on the record,
24 relates to the cover letter filed along with the
25 protest by Waste Management. In the cover letters

0005

1 that were filed, there's a statement of the
2 possibility of the amicable resolution of issues
3 regarding service in the territories sought with the
4 applications.

5 And I want to just open it up for both you,
6 Ms. McNeill, and you, Mr. Sells, to generally let me
7 know where the parties might be in that process.

8 MR. SELLS: If Your Honor please, these --
9 both these applications are largely the result of the
10 Commission's mapping process. And once we got what
11 we believe the correct mapping done, thanks to Ms.
12 Reynolds on the Staff, it appeared that we were
13 probably serving some territory that was not within
14 our area and probably not serving some territory that
15 was in it. The two applications aim to correct that.

16 There -- at the time, we were unaware of
17 any direct overlap with Waste Management. We were
18 aware of the overlap with Naslund, we being Empire
19 Disposal, and reached agreement on that. It's quite
20 possible, however, that there is some overlap with
21 Waste Management. It's also quite possible that the
22 parties would want to exchange some areas that either
23 they have been serving that aren't in their area and
24 didn't know it or that would make more sense for the
25 one company to serve than the other.

0006

1 Most of this area is highly rural.
2 Customers are spread out and for many, many years,
3 neither company, I think, really understood exactly
4 where their exact boundaries of their territory were.

5 I spoke with Ms. McNeill prior to her even
6 filing the protest and frankly encouraged her to do
7 that in order that we could get this whole thing down
8 here and, with the Commission's help, get it all
9 straightened out. I see a very high likelihood of
10 this matter resolving itself.

11 JUDGE BERG: Anything you'd like to add,
12 Ms. McNeill?

13 MS. McNEILL: Yes, thank you. I just
14 concur with that entirely. I think that, for our
15 part, there does appear to be some overlap on the
16 territory, but, more importantly, I think the two
17 companies have been operating out in that area
18 historically with an understanding of what territory
19 was each other's respective certificated territory,
20 and that this is an opportunity to reconcile what the
21 certificates say with what the actual service
22 histories and operations have been.

23 And I don't think that there's any reason
24 to expect any kind of opposition from either of the
25 parties once they sit down and talk to each other

0007

1 about where they've been serving and how they've been
2 serving and make some corrections in the language of
3 their respective certificates.

4 JUDGE BERG: Does this potential overlap
5 also extend to the area presently served by
6 Carroll-Naslund, the subject of Docket Number
7 TG-021358, or does this only extend to the
8 application for extension in 021359? Do we know?

9 MS. McNEILL: I'd have to defer to Mr.
10 Schille on that one.

11 MR. SCHILLE: It's only the extension, I
12 believe.

13 MS. McNEILL: I believe it's only the
14 extension. But we filed -- knowing, of course, that
15 an application to a transfer -- or a protest to a
16 transfer is very rarely successful, we filed, out of
17 an abundance of caution, the protest to both the
18 transfer and the extension, because it just wasn't
19 clear, at the point of the deadline for filing
20 protests, where exactly the overlap. And I should
21 say not just overlap; I think there are gaps out
22 there, as well as overlaps, from both the
23 certificates.

24 JUDGE BERG: Mr. Trotter, do you have any
25 position to present at this point?

0008

1 MR. TROTTER: Just a couple of comments,
2 Your Honor. I contacted both Ms. McNeill and Mr.
3 Sells this week and I raised a concern regarding the
4 extent of an overlap, if there was any overlap. I
5 think Mr. Sells said there does appear to be some
6 overlap. Our analysis at this point indicates that
7 there isn't any, and if there isn't, then the protest
8 is not well-taken. But we're definitely not here to
9 litigate that issue today. We would certainly be
10 more than happy to explore with the Protestant and
11 the Applicant the Commission's analysis of the maps
12 and make sure it matches theirs so that we can avoid
13 problems down the line. But right now, our position
14 is, based on what we've been able to do to date, is
15 that there's no overlap in -- with Waste Management
16 in either of these applications.

17 So we need to be convinced of the contrary,
18 but we're more than happy to engage in a process that
19 encourages the parties to talk among themselves and
20 try to work out the facts.

21 JUDGE BERG: Recognizing the extraordinary
22 circumstances of these cases, not the least of which
23 is that the Applicant urged the Protestant to file a
24 protest, do the parties feel it would be more
25 beneficial to simply schedule another prehearing

0009

1 conference at this time, rather than go forward and
2 look into the other issues that have been referred
3 to?

4 MR. SELLS: I think that's a very good
5 idea, Your Honor. I know that Waste Management's
6 local manager over there and Mr. Lawhead are going to
7 get together next week, I think, and they're both
8 very familiar with the geography of this area, and
9 they're the ones that are going to have to figure it
10 out. And then we're going to have to bring it back
11 down here, and if there is -- are some changes to it,
12 sit down with Ms. Reynolds again and get them right.
13 So that's the plan, anyway.

14 JUDGE BERG: All right. Ms. McNeill.

15 MS. MCNEILL: Again, I agree with Mr.
16 Sells. I don't always, but I do today. I think
17 continuing even the prehearing conference to a
18 further date would be better than actually
19 artificially, I think, taking a date from the busy
20 schedule of putting a hearing date out there, and all
21 that that entails for LAPD and things like that, so I
22 believe everybody has no expectation that this will
23 do anything other than settle, so I don't think it
24 makes any sense to do that administrative process.

25 JUDGE BERG: Mr. Trotter.

0010

1 MR. TROTTER: Well, being part of that
2 anybody, I will say I would not object to that, as
3 long as our right to object to the protest is
4 preserved, not granting the intervenor status or
5 protestant status today. That will be deferred,
6 along with everything else. I have no objection to
7 that.

8 I would say that there appears to be
9 consensus, subject to counsel acknowledging it, that
10 there seems to be no overlap with respect to the
11 transfer of authority from Naslund to Empire. If
12 that's the case, I don't see any reason to continue
13 that. I believe that can be handled on an ex parte
14 basis and the other application can be -- have the
15 prehearing conference continued.

16 But so long as the prehearing conference is
17 continued and there's -- our ability to object to the
18 protest is preserved, I have no problem with the
19 suggestion.

20 JUDGE BERG: Ms. McNeill, would your client
21 be prepared at this time to commit to a formal
22 withdrawal of the protest in Docket Number TG-021358?
23 Not that I'm looking to effect that withdrawal today,
24 but just to get some indication that there would be a
25 follow-up formal written communication to the

0011

1 Commission withdrawing the protest so that Staff
2 could proceed to address the application for transfer
3 on an ex parte basis.

4 MS. McNEILL: Well, Your Honor, I'd be
5 reluctant to do that today until Mr. Lawhead and Mr.
6 Patterson out in Waste Management's Spokane office
7 have sat down together, because, as I said at the
8 outset, it's my understanding that there's not only
9 some overlap that we believe is apparent on the
10 extension, but also, operationally, there have been
11 areas out there where the two parties have been
12 respectively served for years, and happily doing so,
13 and I just don't know, as I sit here today, whether
14 that entirely excludes the territory that has been
15 requested for transfer.

16 The only thing that I can envision, and
17 perhaps this would be irrelevant to it, but what I
18 think is going to be the outcome of the discussions
19 next week is that we'll come in with an amended --
20 that the Applicant will amend its application so that
21 the territory will reflect the actual operational
22 history and then, of course, at some point in time
23 Waste Management will also probably have to file an
24 application, but there are many areas for which there
25 will need some corrective applications with Waste

0012

1 Management's territory. And if that were to include
2 some of the area that is within the legal description
3 of the transfer, I just wouldn't want to be
4 foreclosed from that opportunity if the protest is
5 dismissed.

6 I mean, I am mindful of the fact that, as I
7 said earlier, protesting a transfer is not a -- you
8 know, it's a very difficult matter, and I don't know
9 whether, if we were to dismiss our protest to the
10 transfer, whether that would, in fact, foreclose an
11 amended application that might include some of that
12 territory or not, but that would be my fear.

13 JUDGE BERG: Has service to any customers
14 in that Carroll-Naslund area that is the subject of
15 the proposed transfer been disrupted while these
16 matters are pending?

17 MR. SELLS: No. It's my understanding that
18 the customers in the transfer area, for the most
19 part, were already being served by Empire, and that's
20 why Naslund simply agreed to effect the transfer.
21 It's our understanding that there is no Waste
22 Management territory or overlap in that former
23 Naslund area, but --

24 JUDGE BERG: I understand, Mr. Sells. In
25 the interim, Empire Disposal is continuing to serve

0013

1 those customers in that proposed area to be
2 transferred?

3 MR. SELLS: That is correct, Your Honor.

4 JUDGE BERG: All right.

5 MS. McNEILL: Excuse me, Your Honor.

6 JUDGE BERG: Yes, Ms. McNeill.

7 MS. McNEILL: You know, I have to say that,
8 as is often the case, the non-attorneys present with
9 me today seem to be fairly confident that there's not
10 going to be any reason to intrude on the territory of
11 the transfer application. It's in an entirely
12 different county. I apologize for not really being
13 aware of that. If that -- if it would make matters
14 easier, we would be willing, in that case, to
15 withdraw the protest to that transfer application.

16 JUDGE BERG: My main concern was twofold.
17 Number one, was efficiently disposing of the
18 application from the Commission's perspective, and
19 number two, ensuring that if there were any delay
20 until a follow-up meeting, that there would be no
21 party who would be -- public, private party who might
22 be adversely affected. So that's where -- that's the
23 reason for the questions I asked.

24 I'm confident that there would be no
25 adverse consequences to any member of the public, and

0014

1 if it's still the preference of the parties to wait
2 until the conclusion of the follow-up meeting between
3 the companies, then I would be more than willing just
4 to rely on the good faith of the parties that they
5 would make that representation as soon as possible.
6 If the parties are now prepared to make that
7 representation -- and by that, principally, it's the
8 Protestant -- then I think it would be good to begin
9 closure on that by clearing up that docket, and it
10 would also resolve the issue of consolidation from
11 the Commission's perspective.

12 MS. McNEILL: Now that I understand that
13 the extension is in a completely different county, I
14 think we would be -- we would be pleased to withdraw
15 our protest and respond to Mr. Trotter's request, as
16 well as your own, Your Honor. And I will follow up
17 with a letter, then, on Monday confirming withdrawal
18 of that protest.

19 JUDGE BERG: Thank you. That's very
20 helpful.

21 MS. McNEILL: Yeah, sure.

22 JUDGE BERG: Then what we will do is we
23 will simply look to reschedule another prehearing
24 conference in Docket Number TG-021359. I would urge
25 both Mr. Lawhead and Mr. Schille, as you begin to

0015

1 compare notes, it might be beneficial to either get
2 Staff in the loop, in the sense of actually
3 participating in your discussions, or plan to meet
4 with Staff soon after meeting among yourselves,
5 particularly in light of the fact that it's Staff's
6 expertise that brought the possible map conflict to
7 light in the first place, and it may be that they can
8 also help expedite your own discussions on where
9 lines could or should be drawn.

10 I'll make no requirement of that; I'll just
11 leave it to the parties to work that out and to
12 include Staff in a way that will make your businesses
13 and your job much easier, seeing that there's that
14 mutual benefit to be served.

15 How much time would the parties request
16 before resuming another -- conducting another
17 prehearing conference to pick up where we left off?

18 MR. SELLS: Parties are of the belief they
19 can come up with some specific language in two
20 months.

21 MR. TROTTER: We have no objection to that
22 time frame. And do I understand correctly we do
23 preserve our right to object to the protest?

24 JUDGE BERG: Yes, sir. Maybe the best way
25 to approach this, then, is what I'll do is I will

0016

1 continue this prehearing conference to a later date.
2 We will shoot for a date two months in the future.
3 I'll have ALD support staff contact all counsel who
4 are present here today with two or three dates that
5 are clear on the Commission's calendar, and to get
6 your assent to one of those dates, and then we will
7 compare everybody's calendar here, and then I'll send
8 out a notice of the date of the continued prehearing
9 conference.

10 So what we'll do formally, when we adjourn
11 here, I will in essence be closing the prehearing
12 conference as it relates to 021359 and continuing the
13 prehearing conference in 021358 with the subsequent
14 --

15 MR. TROTTER: I think you got those
16 reversed.

17 JUDGE BERG: You're right, thank you. I
18 will be closing the prehearing conference as it
19 relates to Docket Number TG-021358, and I will be
20 continuing the prehearing conference in Docket
21 TG-021359 to a date to be noticed later.

22 I will -- we will shoot for a date 60 days
23 in advance. However, I will also request that the
24 parties jointly file a status report in 30 days. The
25 status report need only represent that meetings have

0017

1 been conducted, progress is being made, and further
2 meetings have been scheduled. And with those
3 representations, then I feel that I've fulfilled my
4 job of making sure the parties do, in fact, make
5 progress and that, when we come to the next
6 prehearing conference, either there will be an
7 amicable resolution or we'll be discussing the issues
8 to be addressed at hearing.

9 MR. TROTTER: I'd just note, Your Honor, I
10 did bring with me today some maps that the Staff
11 mapping people have put together, and I'll share a
12 copy of each with each counsel, and our Staff is
13 available to discuss these and just to get it right.
14 I'm not sure this is the last word, but maybe it will
15 be the start for discussions with Staff so that the
16 companies know where their certificate areas are and
17 are not and can work through those issues if we need
18 to.

19 JUDGE BERG: All right. In light of the
20 fact that we're conducting an abbreviated prehearing
21 conference here today, so as not to incur unnecessary
22 expense and time on the behalf of the parties and
23 counsel, I would also just informally urge the
24 parties to confer with Staff before leaving today,
25 look at those maps, be sure you understand what it is

0018

1 that Staff has prepared and, you know, start laying
2 the groundwork for your discussions.

3 Anything else? All right. Then at this
4 time, I will -- the prehearing conference in
5 TG-021358 is continued to -- excuse me, the
6 prehearing conference in Docket TG-021359 is
7 continued, and the parties will be notified of that
8 subsequent date, approximately 60 days from today's
9 date, and the prehearing conference here today is
10 adjourned. Thank you, everybody.

11 MS. McNEILL: Thank you.

12 (Proceedings adjourned at 1:59 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25