

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application TG-081725 of	)	DOCKET TG-081725
	)	
NORTHWEST INDUSTRIAL	)	
SERVICES, LLC, d/b/a AMERICAN	)	ORDER 02
ON SITE SERVICES	)	
	)	
For a Certificate of Public Convenience	)	ORDER QUASHING
and Necessity to Operate Motor	)	DATA REQUESTS AND
Vehicles in Furnishing Solid Waste	)	DECLINING TO INVOKE
Collection Service	)	DISCOVERY RULES
.....	)	

1 **NATURE OF PROCEEDING.** Docket TG-081725 involves an application by Northwest Industrial Services, LLC, d/b/a American On Site Services (American On Site), for a solid waste collection, or garbage, certificate to provide solid waste collection service consisting of construction demolition, industrial manufacturing waste, and recycling material in portions of Pend Oreille County, Washington. Robert L. Nichols, d/b/a B & N Sanitary Service (B & N), protested the application.

2 **PROCEDURAL HISTORY.** On December 3, 2008, the Washington Utilities and Transportation Commission (Commission) held a prehearing conference in this matter before Administrative Law Judge (ALJ) Adam E. Torem. On December 12, 2008, the Commission issued Order 01, *Prehearing Conference Order*, in this docket, noting in paragraph 6 as follows:

It does not appear that formal discovery will be required in this proceeding. If the need for discovery becomes apparent later, any party may request by motion that the Commission allow for discovery pursuant to the Commission’s discovery rules, WAC 480-07-400 – 425.

3 At a status conference conducted on February 12, 2009, no party indicated any intention or sought to invoke the Commission’s discovery rules.

4 At some point in February 2009, American On Site served data requests on B & N. On February 27, 2009, B & N filed its *Objection to Data Requests*.

5 On March 4, 2009, American On Site filed a *Motion for Leave to Pursue Discovery*.

6 On March 6, 2009, the Commission issued a Notice of Opportunity to File Responses to both B & N's Objection and American On Site's Motion. The Commission set March 11, 2009, as the deadline to file responses.

7 On March 6, 2009, B & N filed its Reply to American On Site's Motion. On March 9, 2009, Commission Staff filed its Response to American On Site's Motion. Finally, on March 10, 2009, American On Site filed its Reply. The Commission has reviewed all of these submissions.

8 **Discussion.** WAC 480-07-400(2) explains "when discovery [is] available" as follows:

(a) *Subpoenas always available.* Subpoenas are available as a means of discovery as provided in Title 80 or 81 RCW and chapter 34.05 RCW.

(b) *When other discovery methods available.* If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery described in subsections (1)(c)(iii) through (vi) of this section and in WAC 480-07-410 and 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of an electric company, natural gas company, pipeline company, telecommunications company, water company, solid waste company, low-level radioactive waste disposal site, or a segment of the transportation industry;

(ii) Any proceeding that the commission declares to be of a potentially precedential nature;

(iii) Any complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, violations of provisions in Titles 80 and 81 RCW; or

(iv) Any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule.

The parties' filings all acknowledge that this docket does not meet the criteria set out in paragraphs (b)(i), (ii), or (iii). Therefore, invocation of the discovery rules remains within the Commission's discretion.

- 9 Neither American On Site nor B & N have submitted to the Commission the data requests that gave rise to these pleadings. Therefore, the Commission has gleaned only a vague notion of what information American On Site seeks from the parties' submissions. The filings "talk around" the specific issue but apparently agree that the information sought "will be readily available by cross-examination at hearing." *See* B & N Reply, at 2; *see also* American On Site Response at 1-2.
- 10 American On Site explains its need to conduct discovery as necessary to obtain and present evidence to enable the Commission to rule on its application. *See* Declaration of Paul J. Allison, at 1. American On Site does not explain why this information could not be obtained by subpoena or at hearing. American On Site's response also fails to explain why it must conduct formal discovery to carry its burden of proof at hearing.
- 11 Commission Staff indicates that it does not object to invoking the discovery rules.
- 12 **Commission Decision.** Parties to a proceeding before the Commission are obliged to adhere to the Commission's rules and orders. American On Site served data requests without authority. Further, American On Site Services has not demonstrated that the needs of this case require the methods of discovery specified in the Commission's discovery rules.
- 13 The undersigned Administrative Law Judge concludes that all information required for a decision in this docket can be made available through cross-examination at the evidentiary hearing. Therefore, only subpoenas shall be utilized by the parties prior to the hearing in this matter.

### ORDER

- 14 THE COMMISSION ORDERS THAT:
- 15 (1) Protestant B & N Sanitary Services' Objection to Data Requests is SUSTAINED. Therefore, Applicant American On Site Services' data requests are quashed and rendered moot.

- 16           (2) Applicant American On Site Services' Motion for Leave to Pursue Discovery is DENIED. The Commission declines to invoke its discovery rules in this proceeding.

DATED at Olympia, Washington, and effective March 13, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge