## Docket Nos. TG-200650 and TG-200651 (Consolidated) - Vol. II

## Murrey's Disposal Co. Inc. v. Waste Management of Washington

December 18, 2020



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			1	APPEARANCES	
			2 3	ADMINISTRATIVE LAW JUDGE: ANDREW J. O'CONNELL	
	MURREY'S DISPOSAL CO, INC., ) DOCKETS TG-200650 and ) TG-200651 (Consolidated)		4 5		
	Complainant, ) )		6	FOR MURREY'S DISPOSAL CO .:	
	vs. )			BLAIR FASSBURG	
	WASTE MGMT. OF WASH., INC., ) WASTE MGMT. DISPOSAL SERVICES)		7	DAVE WILEY Williams Kastner	
	OF OR., AND MJ TRUCKING AND )		8	601 Union Street, Suite 4100	
	CONTRACTING, ) )		9	Seattle, Washington 98101 (206) 628-2772	
	Respondents. )*Caption Continued*		10	bfassburg@williamskastner.com dwiley@williamskastner.com	
			11 12	FOR WASTE MANAGEMENT:	
	VIRTUAL PREHEARING CONFERENCE, VOLUME II		13	ANDREW KENEFICK	
	Pages 78-115		14	720 Fourth Avenue Suite 400	
	ADMINISTRATIVE LAW JUDGE ANDREW J. O'CONNELL		15	Kirkland, Washington 98033 (425) 825-2003	
				akenefick@wm.com	
	December 18, 2020		16 17		
	9:30 a.m.		18	FOR THE RESPONDENTS:	
	Washington Utilities and Transportation Commission 621 Woodland Square Loop Southeast			JESSICA GOLDMAN	
	Lacey, Washington 98503		19	Summit Law Group, PLLC 315 Fifth Avenue South	
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	www.buellrealtime.com		25		
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1 (Pages 78 to 81)

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1	We're conducting this prehearing conference	1	me as soon as possible. And I'm aware that the parties
2	virtually with audio and video through computer software	2	already have my email address, but for the record, it is
3	and via telephone. The benefits of this is that it	3	Andrew.j.oconnell, that's O-C-o-n-n-e-I-I, @utc.wa.gov.
4	allows me and the parties and any intervenors the	4	Also, if anyone would like to add names and email
5	ability to see and hear each other even though we are	5	addresses of other representatives or support staff who
6	not physically in the Commission's hearing room.	6	should receive electronic courtesy copies of all
7	Okay. Let's let's move forward with	7	documents filed in this proceeding, please email that to
8	short appearances. Let's begin with Murrey's Disposal.	8	me as well and I will include that information as an
9	MR. FASSBURG: Good morning, Your Honor.	9	appendix to the prehearing conference order so that all
10	Blair Fassburg and Dave Wiley via telephone of Williams	10	of the parties have it.
11	Kastner here on behalf of Murrey's Disposal Company.	11	Next I want to address whether there is a
12	JUDGE O'CONNELL: Thank you.	12	need for a protective order in this case. There hasn't
13	And for respondents?	13	been a motion filed for a protective order from either
14	MR. KENEFICK: Good morning, Your Honor.	14	party, either side. But do the parties anticipate a
15	This is Andrew Kenefick, in-house counsel on behalf of	15	need for a protective order in this case?
16	Waste Management of Washington and Waste Management	16	MR. FASSBURG: So for Murrey's counsel, I
17	Disposal Services of Oregon.	17	would say at this moment the answer is possibly yes but
18	JUDGE O'CONNELL: Thank you.	18	not yet yes. It depends upon ultimately what types of
19	MS. GOLDMAN: And good morning, Your Honor.	19	information we need to exchange. And and I don't
20	This is Jessica Goldman on behalf of all of the	20	want to get out too far ahead of ourselves, but we
21	respondents of Summit Law Group.	21	discussed this week the possibility of exchanging some
22	JUDGE O'CONNELL: Okay. Thank you. It was	22	information informally as opposed to through discovery,
23	very garbled, so for the court reporter, I heard that it	23	and I don't yet know if any of that information that
24	was Jessica Goldman on behalf of the respondents from	24	would be exchanged informally would be something for
25	Summit Law Group; is that correct, Ms. Goldman?	25	which Waste Management or the respondents would want a
	Page 83		Page 85
1	Page 83	1	
1	MS. GOLDMAN: Yes, it is. I'm here on	1	protective order, but we would certainly be willing to
2	MS. GOLDMAN: Yes, it is. I'm here on behalf of all of the respondents. There are additional	2	protective order, but we would certainly be willing to enter one should they feel the need for that.
2 3	MS. GOLDMAN: Yes, it is. I'm here on behalf of all of the respondents. There are additional respondents beside Waste Management.	2 3	protective order, but we would certainly be willing to enter one should they feel the need for that. JUDGE O'CONNELL: Okay. Well, before I turn
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2 (Pages 82 to 85)

	Page 86		Page 88
1	might have a different idea than I had, which is fine.	1	that presents a clear legal issue, and granted that when
2	I'd like to hear from the parties. Prior to this	2	you file a motion to dismiss, you are accepting the
3	hearing, I had sent a message to the parties with some	3	facts as alleged by the the other side, in this case
4	general expectations of a schedule, which were	4	by the by the the protestants.
5	admittedly based on certain assumptions that may or may	5	I I think we look at this as the the
6	not have been correct.	6	need to sort of move to summary judgment would be simply
7	To summarize for the record, my review of	7	a repetition of the briefing that's already been done.
8	the pleadings in this case and the procedure of similar	8	I don't know that there are that many facts I don't
9	cases held at the Commission indicated to me that the	9	know if there are any material facts that are at issue.
10	parties in this case may likely be wanting to move for a	10	What we had thought was and certainly looking for
11	summary judgment at some point. And if that were to be	11	input from you as to whether this sort of would work. I
12	the case, my suggestion was that the parties agree to a	12	have not done it before in the UTC, but the notion would
13	specified period for discovery and a date on which both	13	be that the parties would confer and identify the
14	sides would file motions for summary judgment and a date	14	material findings of fact that we could stipulate to.
15	on which both sides would submit responses to each	15	I can't say for sure that we would agree a
16	other's motions.	16	hundred percent, and if there are material facts that
17	At that point, if the Commission was still	17	we're in disagreement about, then we might have to
18	unable to grant summary judgment for either side, the	18	revert back to the more typical way of doing it. But
19	procedure would could have been to reconvene a second	19	assuming that we can agree to the material facts, and I
20	prehearing conference to establish the procedure going	20	don't think there are that many at issue, then we would
21	forward from there. But I am open certainly to the	21	certainly we would I think propose not having to go
22	ideas from the parties of how they think it might be	22	through the the the exercise of filing summary
23 24	best to move forward.	23 24	judgment motions when the legal issues have already been
24	So with that background and and and in	24	explained, and I don't have I don't know that it's
25	anticipation that perhaps the parties have had a chance	25	likely that that filing the same papers is going to
	Page 87		Page 89
1	to discuss, let me turn to Murrey's Disposal and ask if	1	cause yourself or the Commissioners to change their
2	you've had a chance to discuss how to move forward with	2	minds. So we would rather get this teed up with a final
3	the respondents and maybe what that looks like.	3	order so that we could then prosecute the appeal of the
4	MR. FASSBURG: Absolutely. And I I think	4	case.
5	I'd prefer to let them describe the process that they	5	So we were in effect thinking of coming up
6	had in mind that they had raised with us this week. I	6	with stipulated findings of fact and then it would be a
7	will say first, your ideas in terms of a procedural	7	final order issued that we would would be a final
8	schedule do make sense were it not for the proposal and	8	order. I'm not sure if it would have to be an initial
9	I think perhaps could be part of the procedural schedule	9	order from you which would then be issued in final by
10	as part of contingency or fallback plans. But I'll let	10	the Commissioners or it would be a final order from you.
11	Ms. Goldman and Mr. Kenefick address their proposal,	11	But in any event, we were kind of wanted
12	because I believe in the process that would come first,	12 13	to get this set up so that we could have a final order
13 14	and if it doesn't work or or if it's not something	14	that would then be an appealable event based upon the stipulated facts and based upon the the written
14 15	the Commission wants to entertain, then what you proposed could come next.	14	decision of the of the Commission on the on the
16	JUDGE O'CONNELL: Okay. That makes sense.	16	affirming your dismissal or denial of our motion to
17	Let me turn to Mr. Kenefick and Ms. Goldman.	17	dismiss.
18	Go ahead.	18	JUDGE O'CONNELL: So I'm I want to repeat
19	MR. KENEFICK: Yeah, Your Honor, the	19	it to make sure I understand the proposal. The proposal
20	procedurally, as you know, we filed motions to dismiss.	20	would be for the parties to collaborate to identify the
21	Those motions were denied by yourself. We filed a	21	material facts that they would stipulate to and would
22	petition for review with of that decision with the	22	submit those material facts to the Commission somehow?
23	Commissioners themselves and they denied that or they I	23	MR. KENEFICK: Yes.
24	guess affirmed your your decision.	24	JUDGE O'CONNELL: Okay. And at that point,
25	We look at this case as being one that is	25	the Commission would accept those material facts and

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	Page 90		Page 92
1	issue a decision on the the legal part of it without	1	MR. WILEY: Your Honor?
2	the need for agreed amount of discovery or a hearing of	2	MR. KENEFICK: round of briefing. I
3	really any sort or any motions from the parties?		I'll defer to Dave. Dave certainly has got some
4	MR. KENEFICK: Well, it would be I guess		exper or Mr. Wiley certainly has some experience and
5	I'd assume that the reasoning in in the well, in		may have some thoughts. Mr. Wiley?
6	your in really the Commission's decision on the	6	JUDGE O'CONNELL: Mr. Wiley, go ahead.
7	petition for review in effect would be the conclusions		Thank you.
8	of law. And I don't know that I'd have to look back	8	MR. WILEY: Your Honor, I I just I
9	at that decisions to look at all of the facts that they		just wanted to add to the process that was described by
10	cited, but in effect, we would just be addressing any		Mr. Kenefick that I think it would be up to the
11	any disagreements we might have on the facts that are		Commission to determine whether it adopts the the
12	positive to support that. And if there are no		Order 03 or adds any additional findings and conclusions
13	disagreements, then then in effect the their		that I think it retains the right in its discretion to
14	decision on the motion to dismiss would end up being the		include in the order.
15	final order.	15	I think our point is that both sides feel
16	And I don't want to make it sound like there		that we have pretty well comprehensively exhausted our
17	are a lot of disagreements on material facts or on		legal arguments and that this case is a question of law.
18	facts. There are certainly facts that were alleged in		I agree with Mr. Kenefick that that there don't
19	the complaint that that we don't agree with that are,		appear to be material facts in dispute. Some of the
20	you know, factually incorrect and we might be able to		factual renditions of location of facilities, things
21	work with Murrey's counsel to explain why those are not		like that we need to discuss, and we're amenable on
22	quite right. I don't know that they're material, but		immaterial facts to addressing their concerns about
23	that in a sense we're we're transforming the the		accuracy.
24	Commission's decision affirming your denial of the	24	But other than that, I just wanted to to
25	motion to dismiss, we're transforming that into the	25	include that I think that the Commission should retain
	Page 91		Page 93
1		1 t	2
1 2	final order of the Commission subject to any sort of		Page 93 he right to expand upon Order 03 based on the arguments t's received should it so choose, but with the idea
	final order of the Commission subject to any sort of tweaking of the facts that in order to comply with	2 it	he right to expand upon Order 03 based on the arguments t's received should it so choose, but with the idea
2	final order of the Commission subject to any sort of tweaking of the facts that in order to comply with what what truly are the facts.	2 it 3 t	he right to expand upon Order 03 based on the arguments
2 3	final order of the Commission subject to any sort of tweaking of the facts that in order to comply with	2 if 3 t 4 a	he right to expand upon Order 03 based on the arguments t's received should it so choose, but with the idea hat Waste Management is going to or the respondents
2 3 4	final order of the Commission subject to any sort of tweaking of the facts that in order to comply with what what truly are the facts. JUDGE O'CONNELL: So what I the any	2 if 3 t 4 a	he right to expand upon Order 03 based on the arguments t's received should it so choose, but with the idea hat Waste Management is going to or the respondents are going to appeal, do an an administrative appeal
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2       NR. WLEY: Your Honor, Dave Wiley again, I       2       We lost you for about the last 20 or 30 seconds.         3       did review your initial order, saw your footnote on that and performs to Pipe - you know, the Classic Pipe Bruce case et cetera. Clearly that's and iso for the resondents to - to decide, but I - to based on my experience both at the Commission and in court has bus for the resondents to - to decide, but I - to based on my experience both at the Commission and in court papel cases in this circuit, 1 do think that ground has been heavily plowed as Mr. Kenefick suggested at the end.       In the order to make cleares other material that could be in - in the proposed way going forward by respondents, there - the ground has been heavily plowed as Mr. Kenefick suggested at the commission and the commissind the the commission and		Page 94		Page 96
2       MR. WLEY: Your Honor, Dave Wiley again, I       2       We lost you for about the last 20 or 30 seconds.         3       did review your initial order, saw your for about the data 20 or 30 seconds.       JUDGE OCONNELL: Okay. Thank you for staying with me, and I apologize. Sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the technology flat we use, sometimes the nature of the reacter of the second the secon	1	thinking the Cleanwell [phonetic] case.	1	MR. KENEFICK: We can I can hear you now.
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4       and some of the textual references to Pipe – you know,       5         5       the Classic Pipe Bruce case et cettera. Clearly that's       5         6       and some of the textual references to be dode, but I –       5         7       based on my experience both at the Commission and in       7         7       court appeal cases in this circuit, I do think that       7         8       and run met appeal cases in this circuit, I do think that       7         9       precluded by the parties' proposal dam of the cornission, Ive been involved in three or four medical       7         11       We also have a statutory provision, ROW       11       suppose, So I dom think that is at this point         12       81.77.100, that addresses that very clearly. The       13       13       pust seeking some clarity, I guess; of what to expect.         14       wasts cases where the Commission addressed this,       11       precluded by the parties' proposal can work for the         15       Cleanewell being the magnet pust ment and in the case sourd and suppare clarity, I guess, of what to expect.       11         16       So that - again, that's up to them, but it       12       16       Commission, very being work of the         17       wasts cases where the Commission addie more than, you know, a compating, but       11       17       16         18<	3		3	-
6       an issue for the respondents to – to decide, but I –         7       based on my experience both at the Commission and in       in the order to make clear that if that is going to be         8       court appeal cases in this circuit, I do think that       in the order to make clear that if that is going to be         9       ground has been heavily plowed as Mr. Kenefick suggested       in – in the proposed way going forward supplicated to I         11       We also have a statutory provision, RCW       in – in the proposed way going forward supplicated to I         12       81.77.100, that addresses that very clearly. The       in – in the proposed way going forward supplicated to I         12       waste cases where the Commission addressed this,       int – in the proposed way going forward supplicated to I         13       uset cases where the Commission as ord an       aside or dicta more than, you know, a compelling, but       int – in the greed and the commission as ord an         14       waste cases where the adjust proposed in three.       in – in the you that be adjust proposed as a negument by them, and I – I         15       interpreted your footheat and fix sussion as sort of an       aside or dicta because I what you intended to thy that.         16       coses. And if that was going to be one of the adjust proposed.       more in the rese would move         24       forward by use proposed.       feedback before we go forward.         12<	4		4	staying with me, and I apologize. Sometimes the nature
7       based on my experience both at the Commission and in court appeal cases in this circuit, I do think that ground has been heavily plowed as Mr. Kenefick suggested at the end.       7       in the order to make dear that if that is going to be an argument going forward by respondents, there - the parties may need to address other material that could b in - in the proposed way going forward stipulated to 1         11       We also have a statutory provision, RCW       10       11	5	the Classic Pipe Bruce case et cetera. Clearly that's	5	of the technology that we use, sometimes we have blips.
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21 I don't know if I'm frazen ar vou are Looks like				-
21I don't know if I'm frozen or you are. Looks like21recognize that, you know, a motion to dismiss, you know22Your Honor, I think you just froze up for the last 2022doesn't end the case if it's denied, I mean, the case		•	1	recognize that, you know, a motion to dismiss, you know,
23 seconds or so. 23 goes forward.			1	
24 JUDGE O'CONNELL: Hello? Did I just lose 24 Would they feel that, you know, a motion for			1	-
25 connection? 25 summary judgment would in effect tee up their you		-		

5 (Pages 94 to 97)

	Page 98		Page 100
1		1	
	know, their drafting up a final decision that they know is sort of the the the end-all of of the case	1 2	final order reaching summary determination on a
2 3	is to as opposed to simply a motion to dismiss, which	3	stipulated record incorporating our arguments from the motion to dismiss on the legal issues into the motion.
4	said well, no, it's you know, we're not going to	4	If if you agree no motions are required
5	we're going to keep jurisdiction, we're going to keep	5	and that the parties can simply present this for final
5	moving forward.	6	order, I would think that it would be simple enough if
7	We I think we had envisioned that the	7	what we did was offer a proposed order for the
8	motion to dismiss, other than the fact that there might	8	
9	be some nuances in the fact that the motion to dismiss	9	Commissioners to consider. It would expressly state
10	was really not much different than a motion for summary	10	that the respondents have not waived the right to appeal, they do not waive any objection or error. It
11	judgment, in which case we didn't know whether it made	11	simply provides a mechanism by which the Commissioners
12	sense to have to go through the process of briefing	12	can reach the final rulings.
13	summary judgment all over again on the same pleadings.	13	So if again, if it needs to be via a
14	We certainly could if that makes it more comfortable for	14	motion, we can make that really simple, but I think the
15	the Commission to to then issue a final decision as	15	parties just envision this wouldn't even require that so
16	opposed to just relying on what's been filed on the	16	long as we explain what it is we were asking for,
17	motion to dismiss.	17	because I think both sides agree the dispositive issue
18	JUDGE O'CONNELL: Before I before I get	18	is whether or not their service is granted. And I don't
19	to Murrey's Disposal, I appreciate the efficiency in	19	think any other legal arguments were intended to be
20	what's being proposed, because what I'm hearing from the	20	presented for additional findings or conclusions.
21	parties is that there isn't going to be much difference	21	So unless I'm overreaching in making that
22	in the legal arguments presented given the material	22	statement, I I think a proposed order would look a
23	facts that will be agreed to. But I I'm expecting	23	lot like a combination of Order 02 and Order 03 based on
24	the Commissioners to want to issue another order that	24	the stipulation of facts.
25	applies the facts or the law to the facts that are	25	JUDGE O'CONNELL: Okay. Mr. Kenefick,
	Page 99		Page 101
1		1	Page 101 Ms. Goldman?
1 2	Page 99 agreed upon. And I I hear your proposal and the way	1 2	
	agreed upon.		Ms. Goldman?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	agreed upon. And I I hear your proposal and the way I it's possible that it needs to be explained one more time. The way I hear it is that it is essentially asking for a determine a final determination from the Commission that of the kind that would come from a summary judgment motion but without the without the need to repeat all the legal arguments that have already been made in a motion for a summary judgment. And it's that efficiency that I see as being savings to the parties and to the Commission as far as resources and time, and I can appreciate that. While maybe you're thinking about how I'm understanding this, Mr. Kenefick, let me let me turn to the respondents to see what it is they might have to say. MR. FASSBURG: Thank you, Your Honor. I believe the description that's been given today is pretty fair, and I there's not a whole lot I have to add to that other than that I wanted to say I think procedurally if the Commission is interested in a motion to present this as opposed to it just being a stipulation with an understanding of what the parties are requesting, I think a pretty simple request could be	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Ms. Goldman? MR. KENEFICK: Well, if I'm if I'm sort of getting the sense from you, Your Honor, I it it sounds a little like it might be more comfortable to proceed a little more traditionally. I've not talked with Mr. Fassburg or Ms. Goldman about this, I'm sort of going off the hip here. But if to proceed more traditionally, maybe it does make sense to simply have Murrey's file a motion for summary judgment. We would then, you know, respond and, you know, do it that way. If if if there is some concern about about teeing this up in a way that that is more comfortable to the Commissioners, and I don't know that it's necessarily that much more work. I mean, we've all done the briefing two or three times already. I just I just get the sense from I'm getting the sense from you that there's a little there might be a little bit of discomfort in in in the the process that we set up. JUDGE O'CONNELL: Discomfort, I mean, I would just express that it's a little unfamiliar, and I can see the appeal of it and why why the parties might be in favor of it. It's something that I had not anticipated, and having heard it and and not
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	agreed upon. And I I hear your proposal and the way I it's possible that it needs to be explained one more time. The way I hear it is that it is essentially asking for a determine a final determination from the Commission that of the kind that would come from a summary judgment motion but without the without the need to repeat all the legal arguments that have already been made in a motion for a summary judgment. And it's that efficiency that I see as being savings to the parties and to the Commission as far as resources and time, and I can appreciate that. While maybe you're thinking about how I'm understanding this, Mr. Kenefick, let me let me turn to the respondents to see what it is they might have to say. MR. FASSBURG: Thank you, Your Honor. I believe the description that's been given today is pretty fair, and I there's not a whole lot I have to add to that other than that I wanted to say I think procedurally if the Commission is interested in a motion to present this as opposed to it just being a stipulation with an understanding of what the parties	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Ms. Goldman? MR. KENEFICK: Well, if I'm if I'm sort of getting the sense from you, Your Honor, I it it sounds a little like it might be more comfortable to proceed a little more traditionally. I've not talked with Mr. Fassburg or Ms. Goldman about this, I'm sort of going off the hip here. But if to proceed more traditionally, maybe it does make sense to simply have Murrey's file a motion for summary judgment. We would then, you know, respond and, you know, do it that way. If if if there is some concern about about teeing this up in a way that that is more comfortable to the Commissioners, and I don't know that it's necessarily that much more work. I mean, we've all done the briefing two or three times already. I just I just get the sense from I'm getting the sense from you that there's a little there might be a little bit of discomfort in in in the the process that we set up. JUDGE O'CONNELL: Discomfort, I mean, I would just express that it's a little unfamiliar, and I can see the appeal of it and why why the parties might be in favor of it. It's something that I had not

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1	Commissioners might react as far as their comfort level.	1	just for consideration here? And that is one of the
2	So I would intend to before I told you yes, I'm	2	prerequisites sort of moving forward on any of these
3	comfortable with that procedure, I would discuss it with	3	grounds is to establish a stipulated set of facts. I'm almost thinking that what we do is we we set another
4 5	the Commissioners before saying that the Commission is	45	prehearing conference for, you know, mid January or
5	comfortable going forward that way.	6	whatever, the 15th or somewhere in there. In advance of
7	I'm also hearing that the parties might also be amenable to some form of a more traditional procedure	7	that, the parties would work out and prepare and see if
8	as Mr. Fassburg and Mr. Kenefick, you've outlined in	8	we can stipulate to a set of facts. Then we once we
9	general, that there be something presented that would	9	know that, we could reconvene.
10	contain some outline of the agreed material facts and	10	You can and we at that point, we could
11	some sort of a motion either restating the previous	11	decide whether the to proceed sort of on this more
12	legal arguments in a motion for summary judgment or	12	expedited means or if instead we just say we just set a
13	perhaps a joint motion that would adopt the prior legal	13	schedule for for filing a, you know, motion for
14	arguments.	14	summary judgment. And I I don't know if I assume
15	If I was to consider two options, one being	15	that that would be I think cross-motions doesn't make
16	that to just to accept a stipulation of facts from	16	sense, but but because we've already done the
17	the parties and issue a decision on that or issue an	17	briefing, but maybe then we could set it up in a more
18	order saying that the previous decision applies or to do	18	traditional way, and we wouldn't be arguing about well,
19	something else, I guess I'd like to hear from the	19	they're genuine issues in material fact. Really we'd be
20	parties what that something else might be, because I	20	arguing about the legal merits, and that would tee it up
21	think there's a little a little bit of difference	21	in a more traditional way for the Commissioners to then
22	between, Mr. Kenefick, what you're what you just	22	decide and issue a final order.
23	proposed and what Mr. Fassburg was proposing. So	23	JUDGE O'CONNELL: Mr. Wiley, Mr. Fassburg?
24	Yes, Mr. Fassburg, Mr. Wiley?	24	MR. FASSBURG: I think that makes sense. I
25	MR. WILEY: Hi, Your Honor. I did want to	25	think I heard two different alternatives there. In
	Page 103		Page 105
1	say in my experience, which has been a long time at the	1	terms of or it's possible I misheard Mr. Kenefick.
2	Commission, I've never seen a motion for a motion to	2	But in terms of setting another prehearing conference to
3	dismiss reach this substantive stage so early. And the	3	deal with what we would need to do if this does not work
4	reason I think and the explanation for that is	4	out in terms of the stipulation of facts makes sense.
5	interlocutory review is rarely granted as you are aware,	5	And I think a deadline for filing motions for summary
6	and in granting interlocutory review here at the	6	determination might be premature if it's going to be
7	Commission provided dispositive legal analysis that	7	joint. And I like to think through contingency plans.
8	basically preempted, in our view at least, the, you	8	And so my thinking is if we're going to
9	know, further argument, formal argument.	9	reach a stipulation of fact, we're going to be able to
10	I did want to respond as well to	10	file a joint motion for summary determination without a
11	Mr. Kenefick's statement about the process, the more	11	deadline specifically for that. If we need a deadline
12	traditional process. I could see a stipulated motion	12	for dueling motions, it would only because it would
13	for summary determination where each side set forth	13	only be because we felt like we couldn't reach a deal
13 14	for summary determination where each side set forth their argument if we come to that. I don't think we	13 14	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional
13 14 15	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me	13 14 15	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense.
13 14 15 16	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the	13 14 15 16	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing
13 14 15 16 17	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the vehicle you know, I think we're all amenable to a	13 14 15 16 17	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing is that that might be dependent upon whether the parties
13 14 15 16 17 18	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the vehicle you know, I think we're all amenable to a vehicle that that makes the Commission the most	13 14 15 16 17 18	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing is that that might be dependent upon whether the parties can agree to a stipulation of the materials facts; is
13 14 15 16 17 18 19	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the vehicle you know, I think we're all amenable to a vehicle that that makes the Commission the most comfortable knowing that Waste Management intends to	13 14 15 16 17 18 19	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing is that that might be dependent upon whether the parties can agree to a stipulation of the materials facts; is that correct?
13 14 15 16 17 18 19 20	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the vehicle you know, I think we're all amenable to a vehicle that that makes the Commission the most comfortable knowing that Waste Management intends to take this to superior court.	13 14 15 16 17 18 19 20	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing is that that might be dependent upon whether the parties can agree to a stipulation of the materials facts; is that correct? MR. FASSBURG: Yes, yes. And I and I
13 14 15 16 17 18 19 20 21	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the vehicle you know, I think we're all amenable to a vehicle that that makes the Commission the most comfortable knowing that Waste Management intends to take this to superior court. So I just you know, we want to cooperate	13 14 15 16 17 18 19 20 21	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing is that that might be dependent upon whether the parties can agree to a stipulation of the materials facts; is that correct? MR. FASSBURG: Yes, yes. And I and I think we will. I'm just thinking give us 30 days to
13 14 15 16 17 18 19 20 21 22	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the vehicle you know, I think we're all amenable to a vehicle that that makes the Commission the most comfortable knowing that Waste Management intends to take this to superior court. So I just you know, we want to cooperate in that, but we want to expedite, and as you say, we	13 14 15 16 17 18 19 20 21 22	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing is that that might be dependent upon whether the parties can agree to a stipulation of the materials facts; is that correct? MR. FASSBURG: Yes, yes. And I and I think we will. I'm just thinking give us 30 days to reach this stipulation and file a stipulated motion, and
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13 14 15 16 17 18 19 20 21 22 23	for summary determination where each side set forth their argument if we come to that. I don't think we would need cross-motions, which seems redundant to me based on what you're hearing from us. But the vehicle you know, I think we're all amenable to a vehicle that that makes the Commission the most comfortable knowing that Waste Management intends to take this to superior court. So I just you know, we want to cooperate in that, but we want to expedite, and as you say, we	13 14 15 16 17 18 19 20 21 22 23	only be because we felt like we couldn't reach a deal and we're going to file them in the more traditional sense. JUDGE O'CONNELL: Okay. So what I'm hearing is that that might be dependent upon whether the parties can agree to a stipulation of the materials facts; is that correct? MR. FASSBURG: Yes, yes. And I and I think we will. I'm just thinking give us 30 days to reach this stipulation and file a stipulated motion, and

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1	deadline for motions for summary determination.	1	MR. KENEFICK: I would think so as well. I
2	MR. KENEFICK: Although, I am a little	2	think we're kind of dead time between now and the start
3	confused by the notion of a stipulated motion for	3	of the year, but that would give us roughly two weeks to
4	summary determination. I don't think there I don't	4	pull something together.
5	think that that would be the case because we might	5	JUDGE O'CONNELL: Okay. And that second
б	stipulate to the facts, but we're not going to stipulate	6	week, I have pulled up a calendar, I believe you're
7	to the arguments. So it can't really be a joint motion	7	referring to the second week being between the January
8	if that's what you're thinking.	8	11 and January 15, 2021. What I'm
9	MR. FASSBURG: No, that I can articulate	9	MR. WILEY: The week before too.
10	the thought there. None of this is conventional,	10	JUDGE O'CONNELL: Oh, the week even before.
11	especially not at the Commission. But if if we're	11	MR. KENEFICK: I was I was assuming
12	looking for avoiding repetition of the argument, a	12	January 15th would be sort of our target.
13	stipulated motion might just simply state the parties	13	JUDGE O'CONNELL: Well, let me let me put
14	are requesting the Commission rule on summary	14	this out there. I from hearing from the parties, I
15	determination on the same legal question raised in the	15	think it's prudent to give you time to come up with
16	motion to dismiss and incorporate by reference the	16	stipulation of facts and then for us to have another
17	arguments each party set forth therein. Therefore, we	17	conference. To me it sounds like that conference will
18	wouldn't need to file pages of briefing that essentially	18	be more of a status conference to decide how we're going
19	repeat everything we've already said.	19	forward from there, in particular what the immediate
20	MR. KENEFICK: Thank you.	20	next step from there will be. I'm tempted to set a
21	JUDGE O'CONNELL: Yeah. So what what I'm	21	deadline for the parties to file a stipulated set of
22	hearing would be I'm finding this much more	22	facts of January 15 and then for us to reconvene that
23	appealing, that we give the parties some time to reach a	23	next week either via conference call or or here on
24	stipulated set of material facts and then reconvene to	24	Teams.
25	determine exactly how we want to go forward at that	25	MR. WILEY: Fair enough.
	Page 107		Page 109
1	point. And the parties can discuss whether such a I	1	JUDGE O'CONNELL: What what is the
2	don't think the joint motion, if it is a joint motion,	2	parties' what are the parties' availability for a
3	would be one for necessarily summary determination. It	3	half hour or an expected half or hour conference in that
4	might be a motion that's somewhat new that would	4	following week of January 18 to 22nd after I've had a
5	preserve the parties' arguments that they've already	5	chance to see the stipulated facts and kind of digest
6	made legally.	6	what next step we might be comfortable taking?
7	l'm l at this point, l'm l'm	7	MR. KENEFICK: I know the 18th is Martin
8	leaning towards this the idea of giving the parties	8	Luther King Day, so I'm not going to otherwise my
9	more time to establish the stipulation of facts and then	9	availability looks good.
10	we can reconvene and have a more have have further	10	MR. FASSBURG: Mine does too.
11	discussion about how we're going to tee this up for the	11 12	MR. WILEY: Yes. JUDGE O'CONNELL: Okay.
12 13	Commission's final determination.	13	MS. GOLDMAN: Your Honor, can you hear me?
13 14	MR. FASSBURG: Can I suggest that in the interim if if you or the Commissioners have your own	14	JUDGE O'CONNELL: Yes, Ms. Goldman. You're
15	ideas of how you think this works procedurally, we may	15	breaking up a little bit, but I can hear you.
16	not need a an additional prehearing conference for	16	MS. GOLDMAN: Okay. My availability other
17	counsel and you to schedule a conference call to discuss	17	than January 18th, which is Martin Luther King, I can be
18	what you prefer for moving forward.	18	available any day other than January 22nd. I have a
19	JUDGE O'CONNELL: Yes, well, let me ask how	19	hearing in the morning.
20	long the parties would anticipate that they would need	20	JUDGE O'CONNELL: Okay. What I heard,
21	to be able to determine whether they can agree on the	21	Ms. Goldman, was that you're available any of the days,
22	stipulated facts or not.	22	not the 18th and not the 22nd. If that's if that's
23	MR. WILEY: Your Honor, I I feel pretty	23	correct, that means you're available the 19th, 20th, and
24	strongly that we can do it by the second week in January	24	21st and
25	I would think.	25	MS. GOLDMAN: That's correct.

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1	-	1	
1	JUDGE O'CONNELL: Okay. And in looking at		that we've outlined here in that prehearing conference
2	the my calendar and the Commission's availability, it appears that the perhaps the afternoon of the 20th	2	order.
3 4	would be available for all parties and for the	4	Is there anything else that we need to discuss today to move forward or that I will I need
4 5	Commission. Would	5	to be aware of as something that I need to address in
6	MR. KENEFICK: Other than 2:00 p.m., 2:00 to	6	that prehearing conference order? And let's turn to
7	3:00 p.m., I could do it.	7	Murrey's Disposal first.
8	JUDGE O'CONNELL: Okay. Well, in that case,	8	Mr. Fassburg, Mr. Wiley?
9	I would I would recommend that we convene after that	9	MR. FASSBURG: I actually I don't know if
10	conflict between 2:00 and 3:00 p.m. I don't anticipate	10	it was obvious to everyone else, I lost my signal for a
11	it being longer than a half hour or an hour-long	11	good 90 seconds or so, and so I'm not able to respond
12	conference. So my intent, then, would be that I	12	based on what you described. But I checked with
13	schedule it for 3:30 p.m. on the 20th. Does that avoid	13	Mr. Wiley who did hear, so I will just defer to him.
14	conflicts for the other representatives?	14	JUDGE O'CONNELL: Mr. Wiley?
15	MR. WILEY: Yes.	15	MR. WILEY: No, I I think you summarized
16	JUDGE O'CONNELL: Okay. Okay. Let me	16	what the next steps are, Your Honor, and I did note that
17	let's so the plan going forward will be I will set a	17	you said the stipulation should be filed by the 18th. I
18	deadline of January 18th for the parties to submit in	18	believe that's MLK Day I think.
19	the docket a stipulation of material facts or a letter	19	JUDGE O'CONNELL: I apologize.
20	indicating that you're unable to reach a stipulation of	20	MR. WILEY: That's okay.
21	the facts. And I will I will set a	21	JUDGE O'CONNELL: So my intention was the
22	[Teams interference.]	22	Friday before MLK Day, and obviously I'm getting that
23	MR. KENEFICK: You said I will set a	23	confused with today being the 18th and a Friday. I
24	conference I think you were	24	apologize. My intention was that the parties should
25	JUDGE O'CONNELL: Okay. I'm back.	25	file their stipulation of facts by the close of business
	Dago 111		
	Page 111		Page 113
1		1	
1 2	Apologies again to the parties. I will set a conference	1 2	on January 15th
		1	
2	Apologies again to the parties. I will set a conference for January 20th at 3:30 p.m.	2	on January 15th MR. WILEY: Okay.
2 3	Apologies again to the parties. I will set a conference for January 20th at 3:30 p.m. MR. KENEFICK: Okay.	2 3	on January 15th MR. WILEY: Okay. JUDGE O'CONNELL: 2021, and thank you for
2 3 4	Apologies again to the parties. I will set a conference for January 20th at 3:30 p.m. MR. KENEFICK: Okay. JUDGE O'CONNELL: And I will memorialize	2 3 4	on January 15th MR. WILEY: Okay. JUDGE O'CONNELL: 2021, and thank you for catching my misspeak. And then we will convene again on
2 3 4 5	Apologies again to the parties. I will set a conference for January 20th at 3:30 p.m. MR. KENEFICK: Okay. JUDGE O'CONNELL: And I will memorialize that by well, let me talk about typically the Commission issues a prehearing conference order that outlines the scope of the proceeding, outlines the	2 3 4 5	on January 15th MR. WILEY: Okay. JUDGE O'CONNELL: 2021, and thank you for catching my misspeak. And then we will convene again on January 20th at 3:30 p.m. MR. KENEFICK: Your Honor, I assume on the filing of that at the beginning you mentioned having to
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1		
1 2	JUDGE O'CONNELL: Okay. Thank you. MR. FASSBURG: Nothing from Murrey's.	
3	JUDGE O'CONNELL: Okay. Well, then, I	
4	will I plan to issue an order shortly, within the	
5	you know, the very beginning of next week at the latest	
6	and containing the procedural process that we have	
7	outlined in our discussion today. And if there's	
8	nothing else, then we will be adjourned and we will	
9	reconvene on January 20th. Thank you.	
10	(Adjourned at 10:25 a.m.)	
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1	CERTIFICATE	
2	0 E R TH TO RTE	
3	STATE OF WASHINGTON	
4	COUNTY OF THURSTON	
5		
6	I, Tayler Garlinghouse, a Certified Shorthand	
7	Reporter in and for the State of Washington, do hereby	
8	certify that the foregoing transcript is true and	
9 10	accurate to the best of my knowledge, skill and ability.	
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14	Jouly grorein chouse.	
15	<u>Jaylın Gentinghause</u> Tayler Garlinghouse, CCR 3358	
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