

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE CONTROL, INC.,

Respondent.

DOCKET TG-140560

WASTE CONTROL, INC.'S MOTION  
FOR APPOINTMENT OF A  
DISCOVERY MASTER AND/OR,  
ALTERNATIVELY, SCHEDULING OF  
A DISCOVERY CONFERENCE

**I. INTRODUCTION**

1 Waste Control, Inc. (hereinafter “the Company” or “Waste Control”), by counsel, pursuant to WAC 480-07-375(1)(c), WAC 480-07-425(1) and WAC 480-07-415, requests that the Commission designate a person “to assist the parties in resolving pending discovery disputes” or, alternatively, convene a discovery conference in this matter.<sup>1</sup>

**II. FACTS SURROUNDING THIS MOTION**

2 Indeed, even before May 15, 2014, when the Company, by counsel, requesting in a letter the Staff consider “prepar[ing] a stipulation to address the Administrative Law Judge or an appointed discovery master on these issues the option of third party assistance in resolving discovery issues has been communicated.” Up and until June 3, 2014, the Company believed that the Staff was still potentially considering that option, albeit over a long period of time. But on Thursday, June 5, 2014, it learned through new senior Staff counsel, that it

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<sup>1</sup> This option is not a new suggestion. It has been discussed with Staff since at least the start of the second week of May as the email correspondence attached to the Declaration of Counsel and incorporated by this reference here reflects.

will instead seek a Motion to Compel Discovery.<sup>2</sup> The Company does not believe such a decidedly sharp adversarial approach to apparent discovery disputes is consistent with either the sequence in Civil Rules or the Commission's own requirements for informal resolution of discovery disputes such as is set forth in WAC 480-07-425.

### **III. ARGUMENT IN SUPPORT OF APPOINTMENT OF DISCOVERY MASTER AND/OR CONVENING A DISCOVERY CONFERENCE**

3 While the Company will, of course, respond to a formal Motion to Compel which it understands will be imminently served, it also now wishes to mitigate the spiraling costs and volume of discovery responses and apparent continuing dissatisfaction by Staff with the thousands of pages of responses, supporting data and documents supplied so far by the Company in discovery in Docket Nos. TG-131794 and TG-140560 and therefore seeks the oversight of and third-party intervention on the apparent disputes of the parties on pending discovery to date.

4 Alternatively or concurrently, it similarly contends that WAC 480-07-415 should be considered in this circumstance by the Commission in order to address the apparent continuing objections by Staff to technical compliance with the Company's refiled general rate case and to mitigate the constant pattern of discovery requests and follow up requests from Staff to the Company in this matter. As the attached Declaration of David W. Wiley in Support of the Motion for a Discovery Master and/or convening of a Discovery Conference suggests, the Company has hardly been silent in repeatedly reaching out to Staff and counsel via email, correspondence and telephone overtures over a considerable interval in attempts

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<sup>2</sup> While the Staff's Motion to Compel will undoubtedly seek involvement of the assigned Administrative Law Judge, the Company believes a third-party discovery master, as is the practice under the Civil Rules and as is anticipated by WAC 480-07-425(1), is likely the more appropriate facilitator/adjudicator of standard and ongoing discovery rule interpretation and application issues in this proceeding.

to address issues such as procedural rule interpretations, technical formatting of the general rate case, repeated objections by the Staff to the rate case's compliance with WAC 480-07-520(4) and 480-07-140(6) and a host of other issues both in this and the original case.

5 In fact, the Company has repeatedly offered to meet with Staff and counsel to address lingering allegations by Staff of incomplete or insufficient responses.<sup>3</sup> Other than a technical conference which transpired by phone between accounting representatives on May 14<sup>th</sup> and 15<sup>th</sup> rather than in person,<sup>4</sup> as had been scheduled under the Prehearing Conference Order, there has been negligible effort to date to communicate with the Company about any alleged continuing deficiencies or shortcomings in the discovery process. In the Company's view, none of this is consistent with the public interest by consequently increasing rate case costs through adversary proceedings nor in anticipating an ability to "avoid the need for written data requests and time for their preparation" (WAC 480-07-415).

6 The Company contends there is no reason that form objections to the Company's underlying case in chief cannot be addressed in informal or formal discovery conference settings or, as noted, in additional technical conference(s). Long intervals of Staff silence after service of

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<sup>3</sup> One such occasion, as the letter of April 29, 2014 in the attached documents attests, was an offer to meet a half hour before the Prehearing Conference ("PHC") convened. Despite the Company's overture and appearance, Staff never appeared until the start of the PHC nor explained why it was unwilling to informally discuss the issues it had raised in letter to the Administrative Law Judge it had sent and served the prior afternoon. This is indicative of a one-way communication pattern experienced by the Company in this proceeding.

<sup>4</sup> The Commission will note from the Prehearing Conference record that the technical conference was to be an in-person site visit meeting but was unilaterally converted to a telephone conference by the Staff auditor. Rather than an omnibus "technical conference" however, the Staff auditor informed the Company's accountants that that conference was solely limited to reconciling differences between the dismissed and current filing and no other topics would be addressed. Why that was not an ideal forum to resolve all technical differences including the Staff's assertion that the filing was not "technically compliant" with Commission rules is baffling, but not surprising concerning the perceived communication pattern experienced by the Company after suspension.

responses have passed and refusing to acknowledge moving past threshold formatting stages do little to advance the public interest in addressing the substance of the legal issues in this proceeding. Rate case analysis should hardly be viewed as an opportunity for “gotcha” by any party. In the undersigned’s experience, exchanging information between rate case parties is a relatively straightforward and reasonable process to reach the underlying statutory issues of fair, just and sufficient regulated solid waste rates.

7 As noted in the attached May 23 letter to then Staff counsel, the Commission looks by analogy to the Civil Rules in interpreting and applying its own procedural rules. There, CR 26(i)<sup>5</sup> clearly mandates a “meet and confer” requirement before bringing discovery disputes to a judge. Other than an inconclusive, mandatory technical conference almost seven weeks ago, why has this not been possible here despite multiple offers and overtures by the Company? The Staff’s silence, of course, is palpable. Instead, they apparently prefer to propound voluminous data requests and weeks later broadly opine lack of completion in the responses. Staff appears to have little interest in pursuing any sort of “collaborative” approach apparently because they believe the statutory burden of proof is synonymous with “that’s your interpretation of the procedural and discovery rules and we don’t have to cooperate with or respond to questions from you.” Such discussion and efforts are tantamount it seems, in the Staff’s view, to Staff “assisting” the Company in presenting its case.

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<sup>5</sup> See also, *Case v. Dundom*, 115 Wn. App. 199, 204, 58 P. 3d 919 (2003), explaining that CR 26(i)’s design is “to facilitate non-judicial solutions to discovery problems by requiring a conference before a court order.” The Staff here again appears disinterested in non-judicial solutions to lingering discovery issues and again defaults to the view that discovery or other conferences where any dialogue takes place is a form of “helping the Company present its case.”


- 8 The Company and its representatives have a broader view of discovery which we believe also furthers alternative dispute resolution principles of the Commission referenced in WAC 480-07-700. Propounding discovery questions and successive follow up interrogatory and document production demands and then failing to respond to letter and email inquiries from the Company about satisfaction, sufficiency and materiality is inconsistent with the Commission's reference to good faith efforts, collaborative processes and communicating "... directly and informally, to reduce or avoid the need for written data requests and time for their preparation." (WAC 480-07-415).
- 9 With word of yet another procedural challenge and potential requested delay to the Commission's hearing schedule in this previously dismissed and refiled matter, the Company now actively seeks the engagement of the Administrative Law Division and the Commission to resolve apparent continuing discovery disputes and challenges of insufficiency, believing that an omnibus discovery conference will likely be the most comprehensive, efficient and streamlined process to potentially accomplish that objective.
- 10 With the position of the Staff on recent overtures/entreaties as to its views in response to recent Data Request Responses and procedural rule interpretations, it is apparent that some intermediary or other neutral party could well assist in moving us past discovery impasse. The Company has been and is willing to fully cooperate in good faith in that effort and trusts that the natural adversarial litigation model at this juncture will nevertheless accommodate such an approach which the Civil Rules and the Commission's procedural rules seem to anticipate.

**IV. CONCLUSION/PRAYER FOR RELIEF**

11 For the reasons described above, Waste Control, Inc. asks that a discovery master be appointed herein and/or alternatively a discovery conference under WAC 480-07-415 be convened to assist the parties in finally moving this matter forward.

DATED this 9<sup>th</sup> day of June, 2014.

RESPECTFULLY SUBMITTED,  
WILLIAMS, KASTNER & GIBBS PLLC

By   
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## CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2014, I caused to be served the original and five (5) copies of the foregoing document to the following address via first class mail, postage prepaid to:

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
Attn.: Records Center  
P.O. Box 47250  
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Olympia, WA 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to: [records@utc.wa.gov](mailto:records@utc.wa.gov)

and an electronic copy via email and first class mail, postage prepaid, to:

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