

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TG-140560
TRANSPORTATION)	
COMMISSION,)	ORDER 04
)	
Complainant,)	
)	ORDER GRANTING IN PART/ DENYING IN PART EXPEDITED
v.)	MOTION FOR EXTENSION OF TIME, RESCHEDULING HEARING
WASTE CONTROL, INC. (G-101),)	(Set for September 2-3, 2014, at 9:30 a.m.)
Respondent.)	
)	
.....)	

1 **Background.** On April 3, 2014, Waste Control, Inc. (WCI or Company) filed with the Washington Utilities and Transportation Commission (Commission) new Tariff No. 16 reflecting a general rate increase that, if approved, would generate approximately \$532,000 (15.4 percent) in additional revenue. Both the Commission’s regulatory staff (Staff)¹ and the Washington Refuse and Recycling Association (WRRRA) are parties to this docket. The Commission convened a prehearing conference in this docket on April 30, 2014, and adopted a procedural schedule which contained the deadline for Staff to file response testimony on June 20, 2014, and scheduled an evidentiary hearing for August 6-7, 2014.

2 **Appearances.** David W. Wiley, Williams, Kastner & Gibbs PLLC, Seattle, Washington, represents WCI. Brett Shearer, Assistant Attorney General, Olympia, Washington, represents Staff. James K. Sells, Gig Harbor, Washington, represents WRRRA.

¹ In a formal proceeding, such as this, the Commission’s Staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

3 **Expedited Motion for Extension of Time.** On June 12, 2014, Staff filed an Expedited Motion for Extension of Time, Motion to Clarify the Scope of WAC 480-07-520(4), and Motion to Compel Discovery (Staff Motion).² Staff requests an extension of the deadline for filing its response testimony and exhibits from June 20, 2014, to August 29, 2014.³ It argues that the Company has continuously objected to Staff's data requests and failed to provide all supporting formulas on WCI's spreadsheets.⁴ Specifically, Staff states it has received inadequate responses from the Company to Staff Data Request Nos. 7, 8, and 11.⁵ It asks that the Commission extend the deadline for it to file its response testimony and exhibits, as well as the remaining procedural schedule, by ten weeks.⁶

4 On June 9, 2014, WCI filed a Motion for Appointment of a Discovery Master and/or Alternatively, Scheduling of a Discovery Conference (WCI Motion). The Company asserts that the parties have reached a discovery impasse despite "the thousands of pages of responses, supporting data and documents supplied so far by the Company in discovery in [Dockets] TG-131794 and TG-140560."⁷ WCI requests the assistance of a third-party intermediary to resolve the dispute.⁸ In the alternative, WCI requests the Commission convene a discovery conference as "the most comprehensive, efficient and streamlined process to potentially [resolve continuing discovery issues and challenges of insufficiency]" of Company data request responses.⁹

5 The Commission issued a Notice of Opportunity to Comment on both motions on June 13, 2014. WCI filed a response in opposition to the extension request (WCI Response). The Company argues that "other than persistent and unending portrayals of the Company's case as not 'technically compliant,' there have been no showings

² Responses to Staff's Motion to Compel and Motion to Clarify the Scope of WAC 480-07-520(4), as well as responses to WCI's Motion for Appointment of a Discovery Master and/or Alternatively, Scheduling of a Discovery Conference are due on June 23, 2014. As a result, this Order will only address the expedited request for a continuance.

³ Staff Motion, ¶¶ 1 and 42.

⁴ *Id.*, ¶¶ 17-28.

⁵ *Id.*, ¶ 2.

⁶ *Id.*, ¶ 1.

⁷ *Id.*, ¶ 3.

⁸ WCI Motion, ¶¶ 3 and 10.

⁹ *Id.*, ¶ 9.

by Staff in its motion for continuance as to what substantive issues in this proceeding are actually not susceptible to present and prospective Staff presentation and response.”¹⁰ WRRRA also filed an opposition to Staff’s request for additional time (WRRRA Response), citing language within the Commission’s rule, WAC 480-07-385, which only allows continuances where doing so will not result in prejudice to the parties or the Commission.¹¹ WRRRA states that “[t]he Company, at the least, must be given the opportunity to prove its case within a reasonable time.”¹²

6 **Discussion.** WAC 480-07-385(2) provides that the Commission will grant a request for continuance for good cause and if the request will not prejudice the parties or the Commission. Further, WAC 480-07-385(4) states that a continuance will only be granted to a specific date. Staff has demonstrated good cause for a continuance in the discovery dispute relating to WAC 480-07-520(4) and WCI’s spreadsheets. WRRRA asserts that the Company will be prejudiced by the extension of Staff’s testimony deadline, yet it fails to point to specific instances of prejudice that would result if the Commission granted Staff’s request. Even the Company, while opposing the continuance request, admits that the parties are at a discovery impasse. It would be unreasonable to require Staff to file response testimony with the ongoing discovery issues unaddressed. Responses to both Staff and WCI’s Motions are not due until June 23, 2014, and the Commission still needs to consider the merits of both proposals. Following the Commission’s review, either an order compelling discovery will need to be drafted or a subsequent discovery conference convened prior to the filing of Staff’s response case.

7 While some time is clearly needed to resolve these issues, eight weeks seems excessive given the limited data in dispute and the seven weeks the parties have already had since the prehearing conference to work through these issues. Neither WCI nor WRRRA suggested an alternative to Staff’s proffered eight week extension. Given the Commission’s schedule and the amount of discovery that has already taken place, the schedule should be revised to extend all dates from the prehearing conference order by four weeks. The evidentiary hearing should be rescheduled for September 2-3, 2014, at 9:30 a.m.

¹⁰ WCI Response, ¶ 7. (Emphasis in original)

¹¹ WRRRA Response at 2.

¹² *Id.*

ORDER

THE COMMISSION ORDERS THAT:

- 8 (1) The Expedited Motion for Extension of Time, filed by Staff, is granted in part
and denied in part, in accordance with paragraphs 6 and 7 above.
- 9 (2) The procedural schedule established in Order 02, Prehearing Conference Order
and Notice of Hearing, is extended by four weeks.
- 10 (3) The evidentiary hearing scheduled for August 6-7, 2014, is rescheduled for
September 2-3, 2014, at 9:30 a.m.

DATED at Olympia, Washington, and effective June 18, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge