

October 23, 2009

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VIA EMAIL AND FIRST CLASS MAIL

David Danner, Executive Secretary
Washington Utilities and Transportation Commission
Attn.: Records Center
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Docket No. TG-091259 West Waste & Recycling, Inc. and Docket No. TG-091019 Murrey's Disposal Company, Inc. d/b/a Olympic Disposal, Consolidated – Preservation of Objection to Prehearing Conference Order No. 2, Paragraph 8

Dear Mr. Danner:

Pursuant to WAC 480-07-430(a) and with reference to provisions of 480-07-810, the applicant, Murrey's Disposal Company, Inc. dba Olympic Disposal ("Olympic Disposal"), protestant in application TG-091259, seeks to preserve its right in any post-hearing proceeding to take exception to the ruling granting intervention status to West Waste & Recycling in the Olympic Disposal application as noted on the record at the prehearing conference. The basis of our objection to their participation as an intervenor in our application case is WAC 480-70-106(2)(b), which appears to provide that any party who is eligible to file a protest but fails to do so within the 30-day period "may not in any way participate further in the proceeding, unless that person can show the Commission did not provide proper notice of the pending application." We also do not believe WAC 480-70-106(2)(c) is to be read independently of subsection 2(b), allowing parties who fail to timely qualify as protestants to avoid the scope of the rule by orally petitioning to secure intervention status at a prehearing conference and otherwise collaterally attacking the application.

Because West Waste & Recycling, Inc. had the ability to file a competing application any time after the original notice of Olympic Disposal's application on the Commission's weekly docket of July 6, 2009 and did not do so until the eleventh hour and then failed to simultaneously protest or otherwise petition in writing to be an intervenor under the rule, we would contend that their participation as an intervenor should be denied despite their substantial interest in the competing application. Such a position also appears consistent with previous Commission case law in the motor carrier field, i.e., Order MV No. 147856, in re Application P-77496 of *Joseph N. D'Amico dba Security Services/Courier*

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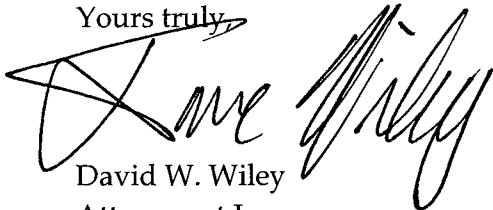
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Services (May, 1994). However, particularly because this is a consolidated, comparative application, Olympic Disposal does not now wish to seek interlocutory review of this issue and simultaneously incur the time, expense and likely delay that would be occasioned by prospective interlocutory review and thus accepts the ruling at the prehearing conference granting West Waste's participation as an intervenor in application TG-091019 for the comparative application hearing expressly without any waiver of right to seek further Commission review as we believe is inferred in Section 17 of Prehearing Conference Order No. 2.

Again, the purpose of this correspondence is merely to note a continuing objection to this single ruling granting intervenor status to West Waste & Recycling in Application TG-091019.

Finally, we ask leave to reserve the right to contest the propriety of the intervention status in any post-hearing process, if necessary.

Yours truly,

A handwritten signature in black ink, appearing to read "David W. Wiley", written over the typed name below.

David W. Wiley
Attorney at Law
(206) 233-2895
dwiley@williamskastner.com

DWW:lct

cc: Client

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing document upon all parties of record in this proceeding, by email and mailing properly addressed first-class, postage-prepaid copies as follows:

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Seattle, WA 98104-7035

DATED at Seattle, Washington this 23rd day of October, 2009.



Lyndsay C. Taylor