

Docket No. TG-230191 - Vol. I

In the Matter of: Somers Sunrise Enterprises, LLC

May 17, 2023



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining)
the Proper Carrier)
Classification of and Complaint)
for Penalties Against:) DOCKET TG-230191
)
Somers Sunrise Enterprises, LLC)
)

PREHEARING CONFERENCE

VOLUME I

Pages 1-21

DATE TAKEN: MAY 17, 2023

REPORTED BY: CARISA KITSELMAN, RPR, CCR 2018

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18 ROGER SOMERS
19 Owner/operator

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1 MAY 17, 2023

2 9:31 A.M.

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4 ADMINISTRATIVE JUDGE KOPTA: Let's be on the
5 record in Docket TG 23-0191, captioned In the Matter of
6 Determining the Proper Carrier Classification of and
7 Complaint for Penalties Against: Somers Sunrise
8 Enterprisers, LLC.

9 The day is Wednesday, May 20th -- no, May 17th,
10 getting ahead of myself, 2023. We are here for a
11 prehearing conference in this matter.

12 I'm Gregory J. Kopta, the administrative law
13 judge, who the Commission has assigned to preside in in
14 this matter.

15 So let's begin by taking appearances starting
16 with Commission Staff.

17 MS. STRAUSS: Good morning, Your Honor. My
18 name is Josephine Strauss. I'm the attorney general
19 representing Staff in this matter.

20 ADMINISTRATIVE JUDGE KOPTA: All right. Thank
21 you.

22 And for Somers Sunrise Enterprisers?

23 MR. SOMERS: My name is Roger Somers,
24 owner/operator, president of Somers Sunrise Enterprisers.

25 ADMINISTRATIVE JUDGE KOPTA: All right. Thank

1 you.

2 And I believe Mr. Stanovksy, you are appearing
3 for Waste Management.

4 MR. STANOVSKY: Yes, that's correct.

5 Walker Stanovsky at Davis Wright Tremaine LLP
6 for Waste Management. And also on the line and appearing
7 for Waste Management will be Amy Lewis, who is in-house
8 counsel. Senior legal counsel is her title at Waste
9 Management.

10 ADMINISTRATIVE JUDGE KOPTA: All right. Thank
11 you.

12 Any other appearances? Hearing none.

13 Let's begin, then, with the petition to
14 intervene.

15 Mr. Stanovsky, I've read the petition that you
16 filed. I don't have any questions at the moment.

17 Do you have anything to add to what you have
18 already filed?

19 MR. STANOVSKY: I don't believe so, Your
20 Honor.

21 Happy to answer questions or concerns if anyone
22 has any. But nothing to add.

23 ADMINISTRATIVE JUDGE KOPTA: All right. Are
24 there any objections to the intervention of Waste
25 Management in this proceeding?

1 MS. STRAUSS: None from Staff, Your Honor.

2 ADMINISTRATIVE JUDGE KOPTA: Mr. Somers, do
3 you have any objection to Waste Management participating
4 in this proceeding as an intervener?

5 MR. SOMERS: Oh, no. No, sir.

6 ADMINISTRATIVE JUDGE KOPTA: Okay. I do have
7 one clarification, shall we say.

8 You say that you -- that Waste Management will
9 only expand this proceeding to the extent necessary to
10 determine whether Somers is operating at any of the
11 service territories of Waste Management.

12 Is that correct? Is my understanding correct?

13 MR. STANOVSKY: Yes, Your Honor.

14 You know, we understand the evidence and the
15 investigation report is based on drop-offs at the grant
16 county transfer station. But it's unclear sort of where
17 the waste is coming from. Or, you know, whether there
18 might be other incidents.

19 In fact, Waste Management believes there have
20 been other drop-off locations as well.

21 It would be similar issues, similar conduct.

22 ADMINISTRATIVE JUDGE KOPTA: Okay. And you --
23 well, I mean, you are aware that this is a Commission
24 investigation into proper classification and potential
25 penalties, which means that Waste Management would not be

1 entitled to any individual relief even if it were to
2 intervene.

3 MR. STANOVSKY: Yes. Understood, Your Honor.

4 ADMINISTRATIVE JUDGE KOPTA: All right. And
5 at least as far as the carrier classification goes, I
6 don't see the extent to which they are providing service
7 and in Waste Management service territories as
8 necessarily expanding the scope of this proceeding. But
9 we can take that up if it ever becomes an issue.

10 But certainly to the extent that Somers is
11 operating in service territory served by Waste
12 Management, then I do believe you have an interest in
13 this proceeding.

14 So I will grant the petition to intervene.

15 MR. STANOVSKY: Thank you, Your Honor.

16 ADMINISTRATIVE JUDGE KOPTA: The next issue is
17 discovery.

18 Do the parties wish to have the discovery rules,
19 the Commission's discovery rules available?

20 MS. STRAUSS: Your Honor, I think having the
21 admissions discovery rules available would be beneficial
22 in this matter. So the Staff would like to have those
23 rules available.

24 ADMINISTRATIVE JUDGE KOPTA: All right.

25 Mr. Somers, are you aware of what that means?

1 MR. SOMERS: No, sir.

2 ADMINISTRATIVE JUDGE KOPTA: Well, the
3 Commission has rules governing basically what kind of
4 information parties can gather from each other prior to
5 the hearing. And those include the data requests,
6 primarily, which are written requests for information
7 that parties need to respond to.

8 So those are the rules that the Commission has
9 in place for proceedings like this that are
10 adjudications. And so what it means is that Staff can
11 send you written questions that you would then need to
12 respond to.

13 Does that make sense to you?

14 MR. SOMERS: Yes. Yes.

15 ADMINISTRATIVE JUDGE KOPTA: Okay. And,
16 similarly, if you have questions of Staff or of Waste
17 Management, then you can send them written requests for
18 information, and they will need to provide you with
19 answers. So it works both ways.

20 MR. SOMERS: Thank you, sir.

21 ADMINISTRATIVE JUDGE KOPTA: All right. I
22 will make the discovery rules available.

23 I believe the next thing is schedule.

24 Have the parties had any opportunity to discuss
25 a proposal for a schedule?

1 MS. STRAUSS: Yes, Your Honor.

2 Mr. Somers and I have spoken about a proposed
3 schedule. We were not aware Waste Management was
4 intervening until yesterday, so we have not discussed the
5 schedule with Waste Management. So are open to changing
6 it if the schedule is not amendable to them.

7 I can tell you the dates that we discussed if
8 that's appropriate at this time.

9 ADMINISTRATIVE JUDGE KOPTA: It is. If you
10 would, please.

11 MS. STRAUSS: Yes. So we would like to
12 propose a settlement conference for July 11, 2023. But
13 we request that language be included that that date can
14 change by mutual agreement of all the parties with a
15 letter being entered into the record.

16 We would also propose an exchange of proposed
17 exhibits on July 11, 2023. And an evidentiary hearing on
18 July 18, 2023.

19 ADMINISTRATIVE JUDGE KOPTA: So you're not
20 anticipating any prefiled written testimony; is that
21 correct?

22 MS. STRAUSS: Not at this time, Your Honor.

23 ADMINISTRATIVE JUDGE KOPTA: Okay. So the
24 settlement date and the exhibit date is the same.

25 MS. STRAUSS: Yes.

1 ADMINISTRATIVE JUDGE KOPTA: Is that
2 intentional?

3 MS. STRAUSS: Yes, Your Honor. It was mostly
4 just the -- the settlement date is mostly just a
5 placeholder in case that date needs to change.

6 ADMINISTRATIVE JUDGE KOPTA: All right. Okay.
7 Mr. Stanovsky, is that acceptable to you?

8 MR. STANOVSKY: Your Honor, I think -- I don't
9 think Waste Management opposes having a settlement
10 conference on July 11th. But whether we do or not, I
11 think we would propose having a settlement conference at
12 an earlier date as well. Maybe, you know, once a little
13 bit of discovery has been done.

14 But it seems like there -- depending on, you
15 know, how the parties engage and how things look after
16 the early stages of things, we would hope this is a case
17 that doesn't need to go through, you know, all of the
18 discovery that might be needed before hearing prior to a
19 settlement conference.

20 ADMINISTRATIVE JUDGE KOPTA: Well, as you may
21 be aware, the Commission requires there to be a
22 settlement conference scheduled in every adjudication.
23 And we all understand that is largely a placeholder just
24 to make sure it actually happens.

25 That does not preclude, of course, the parties

1 from entering into settlement negotiations at any other
2 time. So there may be more than one settlement
3 conference. It doesn't have to be scheduled, at least
4 with respect to the Commission. So that's something that
5 the parties need to discuss among themselves to determine
6 whether it would be beneficial to have a settlement
7 conference outside of the purview of what we would
8 establish in the procedural schedule.

9 MR. STANOVSKY: Okay. That all makes sense.

10 In that case, I think the schedule works all
11 right as proposed.

12 But, I guess, I would make it known subject to
13 how things unfold, Waste Management would be interested
14 in settlement discussions, you know, earlier as well.
15 Although recognizing that it's -- it's the Commission
16 Staff's proceeding.

17 ADMINISTRATIVE JUDGE KOPTA: Well, that is
18 something that you can take up with the parties.

19 All right. That schedule is fine with me as far
20 as I know.

21 We will continue to have virtual proceedings,
22 and so this would be a hearing via Zoom.

23 Is that something that you are able to -- to do,
24 Mr. Somers, in terms of participation in an evidentiary
25 hearing?

1 MR. SOMERS: Yes, sir.

2 And I would like to talk to them about a
3 settlement. It would be the first time I've ever been
4 able to talk to them. They haven't contacted me or
5 anything prior to that. So I would like to talk to them.

6 ADMINISTRATIVE JUDGE KOPTA: By "them," who do
7 you mean? The Commission Staff or Waste Management or
8 both?

9 MR. SOMERS: Waste Management. Isn't that who
10 I would settle things with?

11 ADMINISTRATIVE JUDGE KOPTA: Well, no. You
12 would need to settle with Commission Staff. Although
13 because Waste Management is also a party, then, you know,
14 that is also an option that you can settle with Waste
15 Management.

16 But this is a proceeding that is generated by
17 Commission Staff. And so to resolve the proceeding
18 through settlement, you would need to make an agreement
19 with Commission Staff. And I understand you've -- at
20 least had preliminary discussions with Commission Staff
21 with respect to resolving these issues.

22 MR. SOMERS: Yes. They came to me with a
23 proposal. And I -- I gave them a counter proposal. And
24 I think they've rejected that. So I don't -- I'm not
25 sure where we go from here.

1 ADMINISTRATIVE JUDGE KOPTA: Well, where we go
2 from here is we proceed on the track of adjudication. In
3 which case we would go by the schedule, assuming that I
4 adopt it, which I intend to do. Which means you would
5 need to file your exhibits on the 11th of July. And we
6 would have a hearing on the 18th of July.

7 Obviously if you all can resolve these issues
8 prior to that time, then that would take care of this
9 case.

10 But if not, then we will need to have a hearing.
11 And I will need to make a decision.

12 Is that -- do you understand?

13 MR. SOMERS: Yes. And I do have some things
14 that I have to hopefully bring this ahead so we don't
15 have to go to that date. But, I mean, I talk to that
16 with them, personally?

17 ADMINISTRATIVE JUDGE KOPTA: Yes, yes. This
18 is -- this is the formal part of the proceeding in which
19 I would establish the schedule that would be -- that we
20 would use if necessary for me to make a decision.

21 But anything that you all want to try and work
22 on to resolve this before that hearing, then you can do
23 that on your own and have your own decisions and not
24 involve me.

25 MR. SOMERS: Okay. I don't quite understand

1 all that. But I have some invoices here that -- the big
2 question seems to be that I am transporting solid waste
3 over highways in Washington State for means of
4 compensation. Is that correct?

5 ADMINISTRATIVE JUDGE KOPTA: Well, that's my
6 understanding based on the complaint that the Commission
7 has filed.

8 But this is not really the time to go into the
9 issues that are going to be resolved in this proceeding.

10 Right now we're just setting up a schedule. So
11 hopefully --

12 MR. SOMERS: Oh.

13 ADMINISTRATIVE JUDGE KOPTA: So, I mean, I
14 would -- I would be glad to answer whatever questions
15 that I can about the process.

16 But if you want to have a discussion about the
17 substance of the complaint, then you would need to talk
18 with Commission Staff and Waste Management.

19 MR. SOMERS: Okay. Now is not the time to do
20 that?

21 ADMINISTRATIVE JUDGE KOPTA: Now is not the
22 time to do that.

23 MR. SOMERS: Okay.

24 ADMINISTRATIVE JUDGE KOPTA: This is a
25 prehearing conference which is just setting up the formal

1 process. And that's a rather straightforward endeavor.
2 The substance is usually a little more complicated. So
3 that's just something that we're not dealing with here
4 today.

5 If necessary, we will deal with the merits, the
6 substance, the actual disagreements at the hearing in
7 July if it comes to that.

8 MR. SOMERS: Okay.

9 ADMINISTRATIVE JUDGE KOPTA: All right. I
10 will adopt that hearing schedule.

11 Is there anything else that we need to cover
12 today?

13 MS. STRAUSS: Not from Staff, Your Honor.

14 MR. STANOVSKY: Your Honor, I don't know that
15 there's anything exactly to be done, you know, in this
16 proceeding at this point.

17 But, I guess, Waste Management would just want
18 to put on the record that the notice in this case seems
19 to have gone out somewhat late and irregularly. I
20 believe Waste Management didn't receive notice of the
21 complaint until last Wednesday, if I recall. I
22 personally didn't receive it at all. I don't think it
23 appeared on any of the Commission's open docket weekly
24 notices. Though the complaint itself has the date of
25 April 19th on it.

1 And I don't think -- when I first looked,
2 probably Thursday or maybe even Friday last week, I don't
3 think there was even an electronic, you know, docket
4 entry in the Commission's docket system.

5 So not sure what happened just as far as the
6 back end, you know, notice and documentary procedures.

7 But that was one reason that our intervention
8 came in a little late on Friday. And my understanding
9 from the WRRRA is that they also didn't receive notice
10 until rather late before this conference as well.

11 So, again, I don't know if there's anything you
12 need to do about that. But I guess for the benefit of
13 staff and the AAG, obviously it helps -- you know, it
14 helps other parties respond timely if notice is
15 consistent and well in advance.

16 ADMINISTRATIVE JUDGE KOPTA: I appreciate you
17 bringing that to our attention. As you suggest, there's
18 not anything to be done at this point.

19 From a formal perspective, the only person that
20 really needs to get notice is the company, and apparently
21 they did. We like to provide courtesy notice to those
22 who might be interested. And so my apologies that that
23 took a little bit longer than it should have.

24 But I will make a note of that and we'll see if
25 there's something -- some process issue that we need to

1 address to make sure that -- or to minimize the chance of
2 that happening in the future.

3 MR. STANOVSKY: Great. Thank you.

4 And we do appreciate the courtesy notices, and
5 we understand the Commission is doing its best. And
6 generally that's very good. So don't want to make a
7 mountain out of a molehill. But thought it was worth a
8 mention. Thank you.

9 ADMINISTRATIVE JUDGE KOPTA: No. I appreciate
10 that. And, you know, everything can always be better.
11 We can't know that unless you tell us, and we appreciate
12 you letting us know.

13 MR. STANOVSKY: I'm sorry. One other
14 housekeeping thing if I could, Your Honor.

15 ADMINISTRATIVE JUDGE KOPTA: Sure.

16 MR. STANOVSKY: If we can add Waste
17 Management's in-house paralegal to the service list, is
18 that appropriate to put on the record now, or how should
19 we address that?

20 ADMINISTRATIVE JUDGE KOPTA: Yes. I will be
21 entering a prehearing conference order that establishes
22 the schedule and basically memorializes the decisions
23 that I've made today.

24 So in advance of that, you know, in the next day
25 or two, if you could -- each of you, each of the parties,

1 could e-mail to me who you want to be on the service
2 list.

3 So, Mr. Stanovsky, if you would just include
4 that paralegal and yourself and the in-house counsel for
5 Waste Management, then I can make sure that's on the
6 service list that's attached to the prehearing conference
7 order.

8 MR. STANOVSKY: Very good. Thank you.

9 ADMINISTRATIVE JUDGE KOPTA: And similarly,
10 Ms. Strauss, if you want anybody in addition to yourself,
11 then send me an e-mail letting me know. I mean, even if
12 you don't, send me an e-mail letting me know who on
13 Commission Staff should be on the service list.

14 MS. STRAUSS: Absolutely, Your Honor.

15 And I would also like to note for the
16 intervening party, it does appear that my e-mail address
17 appeared wrong on the complaint. I don't know what
18 happened in the process of getting filed and distributed.
19 But it's my name but at atg.wa.gov. Not UTC. Just want
20 to clarify that.

21 MR. STANOVSKY: Thank you.

22 ADMINISTRATIVE JUDGE KOPTA: And, Mr. Somers,
23 if you would also send me an e-mail with anybody -- or
24 everybody that you want to have included on the official
25 service list for Somers. And a service list is basically

1 a list of all of the people that will get a copy of
2 anything that is filed.

3 So if Staff files a motion, for example, then
4 everybody on the service list will get a copy of it,
5 including you, obviously.

6 And, similarly, if you make any kind of a
7 filing, then you will have to provide a courtesy copy via
8 e-mail to everybody that's on the service list.

9 Does that make sense to you?

10 MR. SOMERS: Yes. And just to note, I have
11 not been able to find anybody to represent me. I've got
12 an appointment via phone with somebody in the Tri-Cities
13 on the 6th at 1:00.

14 If -- if they decide to represent me, then I
15 will notify everybody I will -- I'm finding counsel.

16 ADMINISTRATIVE JUDGE KOPTA: That's fine. You
17 can always send in -- or your counsel can send in what is
18 called a notice of appearance, which basically lets the
19 Commission and everybody on the service list know that
20 this person will be representing you. So that's
21 perfectly fine. And we can amend the service list to
22 include that person so that he or she will get all of the
23 copies of everything that is filed.

24 MR. SOMERS: Okay.

25 ADMINISTRATIVE JUDGE KOPTA: Is there anything

1 that you want to raise, Mr. Somers, before we adjourn?

2 MR. SOMERS: Such as? What would you mean?

3 ADMINISTRATIVE JUDGE KOPTA: Well, at this
4 point it's just a formality that I'm asking you if
5 there's anything else that we need to talk about today.
6 And this is strictly from an early procedural
7 perspective. I think you and I have already gone through
8 the procedural-type issues.

9 But I just want to make sure that there's
10 nothing else from a procedural standpoint that you wanted
11 to raise.

12 MR. SOMERS: I -- not knowing total procedure
13 on any of this, I don't have anything right now.

14 I would like to talk to Staff and Waste
15 Management to come to a settlement so we don't have to
16 take up more of your time later. So I would like a
17 meeting with them again.

18 ADMINISTRATIVE JUDGE KOPTA: Well, I think
19 that that would be a good thing. And I would certainly
20 encourage you to do that. And once we're through with
21 this, then feel free to contact Ms. Strauss and,
22 Mr. Stanovsky, if you want to try and schedule something
23 in terms of a discussion.

24 MR. SOMERS: Okay. Thank you.

25 ADMINISTRATIVE JUDGE KOPTA: All right.

1 You're welcome. And I believe that concludes our
2 business for today. So we are adjourned. Thank you very
3 much.

4 (The videoconference hearing
5 concluded at 9:54 a.m.)
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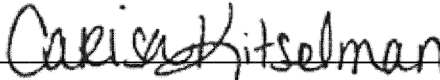
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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KITSAP

I, Carisa Kitselman, a Certified Court Reporter
in and for the State of Washington, do hereby certify
that the foregoing transcript is true and accurate to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 1st day of June, 2023.





CARISA KITSELMAN, RPR, CCR #2018