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From: O"Connell, Andrew J. (UTC)
To: "AKenefick@wm.com"; "sharonh@SummitLaw.com"; "jesset@SummitLaw.com"; "karenl@SummitLaw.com"; "dwiley@williamskastner.com"; "SLeake@williamskastner.com"; "BFassburg@williamskastner.com"; "jessicag@SummitLaw.com"
Cc: Doyle, Paige (UTC)
Subject: RE: Docket TG-200651 and Docket TG-200650: Motions for Summary Determination
Date: Thursday, August 6, 2020 11:11:00 AM
Attachments: image002.png
image003.png
image004.png

Counselors Goldman and Fassburg,

I have reviewed your requests and explanations in Dockets TG-200650 and TG-200651. While they are separate and distinct, I will address the cases in a single email as you have.

No documents were submitted with Respondents' Motion in Docket TG-200650 and the Commission will treat it as a Motion to Dismiss under WAC 480-07-380.

Similarly, the Commission will treat the Motion in Docket TG-200651 as a Motion to Dismiss under WAC 480-07-380. Attachments A and B to Respondents' Motion are documentation of at least some of the conversations referenced in the Complaint. However, these documents are not publicly available and appear to represent prior legal inquest, opinion, and discussion between entities that are now opposed. I am aware of the laws and regulations governing Commission authority and need not rely upon these documents when ruling on the Motion according to WAC 480-07-380 and the standards under Washington CR 12(b)(6) and 12(c).

Complainants in both cases need not respond to the motion to dismiss as if is a motion for summary determination. Any responses should not, therefore, necessitate a great delay. However, in each of the separate dockets I will set a response deadline of August 20, 2020. This email will be placed in each docket, and a notice of opportunity to respond will be issued in each docket.

Best,

Andrew J. O'Connell
Administrative Law Judge
t: (360) 664-1285
c: (360) 878-0578
e: andrew.j.oconnell@utc.wa.gov

Utilities and Transportation Commission
Respect. Professionalism. Integrity. Accountability.

From: Jessica Goldman [mailto:jessicag@SummitLaw.com]
Sent: Wednesday, August 5, 2020 3:30 PM
To: Fassburg, Blair <BFassburg@williamskastner.com>; Pearson, Rayne (UTC) <rayne.pearson@utc.wa.gov>
Cc: Kenefick, Andrew <AKenefick@wm.com>; Sharon Hendricks <sharonh@SummitLaw.com>; Jesse

Taylor <jesset@SummitLaw.com>; Karen Lang <karenl@SummitLaw.com>; Wiley, Dave <dwiley@williamskastner.com>; Leake, Sean <SLeake@williamskastner.com>
Subject: RE: Docket TG-200651 and Docket TG-200650: Motions for Summary Determination

Judge Pearson,

We represent the Respondents in both of the actions filed by Mr. Fassburg. These are separate actions, with wholly independent complaints.

There are no "supporting exhibits" filed with our Motion to Dismiss TG-200650. There is not even an arguable basis to convert that Motion to Dismiss to one for summary determination.

As regards the second case, TG-200651, Mr. Fassburg's complaint in that action referenced and cited to a pre-filing conversation between his law firm and in-house counsel for Waste Management. We attached the referenced correspondence to out Motion to Dismiss. Pursuant to Washington law, that does not convert the second Motion to Dismiss into one for summary determination either. For ease of reference, I have copied footnote 1 from that Motion to Dismiss below:

> Where a complainant, like Murrey's, "asserts allegations in a complaint on specific documents but does not physically attach those documents, the documents may be considered in ruling on a CR 12(b)(6) motion for judgment on the pleadings" and doing so does not convert the motion to one for summary judgment. *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 844, 347 P.3d 487 (2015); *accord Sebek v. City of Seattle*, 172 Wn. App. 273, 275, n.2, 290 P.3d 159 (2012).

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From: Fassburg, Blair <BFassburg@williamskastner.com>
Sent: Wednesday, August 5, 2020 3:00 PM
To: Pearson, Rayne (UTC) <rayne.pearson@utc.wa.gov>
Cc: Jessica Goldman <jessicag@SummitLaw.com>; Kenefick, Andrew <AKenefick@wm.com>; Sharon Hendricks <sharonh@SummitLaw.com>; Jesse Taylor <jesset@SummitLaw.com>; Karen Lang <karenl@SummitLaw.com>; Wiley, Dave <dwiley@williamskastner.com>; Leake, Sean <SLeake@williamskastner.com>
Subject: Docket TG-200651 and Docket TG-200650: Motions for Summary Determination

Dear Judge Pearson:

Yesterday we were served with an Answer and a Motion to Dismiss in each of the above-captioned Complaint cases along with Notices of Appearance. Based on our review of WAC 480-07-380 (1) and (2) and because of the supporting exhibits attached to the Motion, we are treating the Motion to Dismiss as a Motion for Summary Determination to which a response would be due by rule on Monday, August 23, 2020 and not Friday, August 14.

Could the Commission confirm the above understanding? If it believes that the ten-day rule only applies, due to the conflict with another matter at the Commission next week, we will have to seek an extension of the response period.

Best regards,

Blair I. Fassburg
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