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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND) DOCKETS TG-121366, TG-121367
TRANSPORTATION COMMISSION,) TG-121369, TG-121370 and
) TG-121371
v.) Pages 1-28
))
Complainant,))
))
RABANCO LTD, D/B/A CONTAINER))
HAULING, EASTSIDE DISPOSAL,))
RABANCO COMPANIES, RABANCO))
CONNECTIONS, LYNNWOOD DISPOSAL,))
ALLIED WASTE SERVICES OF LYNNWOOD,))
ALLIED WASTE SERVICES OF KLINKITAT))
COUNTY, TRI-COUNTY DISPOSAL,))
ALLIED WASTE SERVICES OF KENT &))
RABANCO COMPANIES, AND SEATAC))
DISPOSAL (G-12), AND FIORITO))
ENTERPRISES, INC. & RABANCO))
COMPANIES D/B/A KENT MERIDIAN))
DISPOSAL COMPANY (G-60).))
))
Respondents.))

HEARING, VOLUME I
Pages 1-28
ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

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9:33 A.M.
JUNE 14, 2013

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest, Room 206
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A P P E A R A N C E S

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OLYMPIA, WASHINGTON, JUNE 14, 2013

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9:33 A.M.

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P R O C E E D I N G S

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JUDGE FRIEDLANDER: Let's get started.

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I am Marguerite Friedlander, the administrative law
judge for the Washington Utilities and Transportation
Commission.

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We are here today for a prehearing conference to
discuss procedural matters relating to the tariff filings of
Waste Management, Inc. -- Waste Management of Washington, Inc.,
and Rabanco LTD.

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The first order of business today will be to take
appearances.

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Let's go ahead and start with Waste Management.

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MS. McNEILL: Is the microphone on?

JUDGE FRIEDLANDER: I don't think so. I don't hear
it.

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21

22

MS. McNEILL: Does it not need to be?

JUDGE FRIEDLANDER: We probably should have it on.
You should see a little red -- the dot.

23

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25

MR. WILEY: Yeah, it's not going on.

JUDGE FRIEDLANDER: Is it not plugged in?

MS. McNEILL: I think it's not plugged in.

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1 (Pause in the proceedings.)

2 MS. McNEILL: Thank you, Your Honor. Polly McNeill,
3 for Waste Management of Washington, Inc. My full name is Polly
4 L. McNeill. My firm is Summit Law Group. Address: 315 Fifth
5 Avenue South, Suite 1000, Seattle, Washington 98104. My phone
6 number is 206.676.7040, and my e-mail address is
7 pollym@summitlaw.com.

8 JUDGE FRIEDLANDER: Great.

9 MS. McNEILL: And with me today is Andrew Kenefick,
10 in-house counsel for Waste Management, and Rob Sherman, director
11 of operations for Waste Management of Washington.

12 JUDGE FRIEDLANDER: Great. Thank you.

13 And on behalf of Rabanco LTD?

14 MR. WILEY: Yes, Your Honor. Dave Wiley,
15 representing Rabanco Limited, Allied Waste - Republic Services,
16 appearing today.

17 And I have filed a notice of appearance in this
18 matter, so can I dispense with all the other particulars, or do
19 we need that for the record?

20 JUDGE FRIEDLANDER: As long as the information on the
21 notice of appearance is correct, we'll just take that --

22 MR. WILEY: Thank you.

23 JUDGE FRIEDLANDER: -- for what it is.

24 And appearing today on behalf of Staff?

25 MR. FASSIO: Michael Fassio, Assistant Attorney

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1 General, appearing today on behalf of Utilities and
2 Transportation Commission Staff. I have also filed a notice of
3 appearance in this docket with my contact information.

4 JUDGE FRIEDLANDER: Okay. Thank you.

5 And we also have a petition for leave to intervene
6 filed on behalf of Washington Refuse and Recycling Association.

7 Mr. Sells?

8 MR. SELLS: That is correct. If Your Honor please,
9 we have filed petitions to intervene in both the Waste
10 Management and the Rabanco dockets, and I won't read the numbers
11 because they're voluminous.

12 James Sells, attorney, appearing of behalf of
13 proposed Intervenor, WRRRA. Address is: Private Mailbox 22,
14 3110 Judson Street, Gig Harbor, Washington 98335; telephone:
15 360.981.0168; e-mail: jamessells@comcast.net.

16 With me today is also Executive Director Brad Lovaas,
17 L-o-v-a-a-s, executive director of WRRRA.

18 JUDGE FRIEDLANDER: Great. Thank you.

19 And speaking of the petition, why don't we dispense
20 with that next.

21 Are there any objections to the intervention of WRRRA?

22 MS. McNEILL: On behalf of Waste Management, no, Your
23 Honor.

24 JUDGE FRIEDLANDER: Thank you.

25 Mr. Wiley?

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1 MR. WILEY: None, Your Honor.

2 JUDGE FRIEDLANDER: Okay. Thank you.

3 And having an interest in the proceeding, I will go
4 ahead and grant that petition, Mr. Sells.

5 MR. SELLS: Thank you, Your Honor.

6 JUDGE FRIEDLANDER: Let's turn now to the main
7 purpose of today's prehearing conference. I'll note for the
8 record that yesterday, the Commission considered Docket 010374,
9 Item 30 -- which, while related to this matter is not part of
10 today's proceeding, but I think it does need to be stated what
11 the Commission has or has not done in that docket in order to go
12 forward with this one, given the suspension periods coming up
13 for both of the Companies' tariffs filings.

14 It's my understanding -- and the parties can correct
15 me if I'm wrong or misstate, but it's my understanding that at
16 yesterday's open meeting, the Commission considered Staff's
17 latest draft of Item 30, and the parties have committed to work
18 together to resolve whatever controversies remain regarding the
19 language in Staff's draft and bring that back to the Commission
20 for an open meeting on June 27th. And the quandary that we find
21 ourselves in is that Waste Management's tariffs have been
22 suspended until July 1st, and after that, they would go into
23 effect by operation of law.

24 So we need to decide at this juncture whether or not
25 we're having a hearing, whether or not Waste Management would be

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1 willing to waive the suspension period for 30 days, and how to
2 proceed from here.

3 So we've had some discussions off the record as far
4 as process goes, but I would like Ms. McNeill to go ahead and
5 let the -- for the record, just discuss what Waste Management
6 would propose doing.

7 MS. McNEILL: Thank you, Your Honor. Well, I
8 wonder...

9 We're responding to a proposal from the Staff, and I
10 wonder whether Mr. Fassio should first describe what the
11 procedural context that I would be responding to --

12 JUDGE FRIEDLANDER: That's fine.

13 MS. McNEILL: -- would be.

14 Thanks.

15 JUDGE FRIEDLANDER: That's fine.

16 Mr. Fassio?

17 MR. FASSIO: Certainly, Your Honor. As you
18 mentioned, yesterday the Commission heard TG-010374, the changes
19 to the solid waste tariff template, Item 30, but didn't take
20 action. And those changes would apply to the entire industry,
21 including the parties here, and the language that's been
22 developed extensively is much broader and more comprehensive
23 than the tariff language that is contained in the suspended
24 tariffs.

25 And that's our understanding that the parties, the

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1 stakeholders, are close to developing and perhaps implementing
2 changes, and that, as you mentioned, the Commission yesterday
3 expressed that they may take up the issue again at the open
4 meeting on the 27th.

5 And the Commission also discussed these adjudications
6 there, and as Staff recalls, two of the Commissioners expressed
7 that, in the light of the progress made in that Item 30 docket,
8 that they would be prepared to allow the suspended Company
9 specific provisions, tariff provisions, to go into effect by
10 operation of law, and that the broader industry-wide changes can
11 be handled in a rule -- rulemaking or this adjudication can be
12 converted into a rulemaking, and the language would be
13 incorporated into a rule, you know, or -- or that the Commission
14 may take action on the 27th.

15 And so based on that, the Staff proposed to the
16 parties yesterday and would propose again this morning, to
17 resolve these specific company proposals tariff filings by
18 allowing them to become effective by operation of law pending
19 the outcome of a rulemaking or a decision in that other docket,
20 and to convert these adjudicative proceedings into a rulemaking
21 proceeding under the Administrative Procedures Act that would
22 encompass and incorporate the extensive record that has been
23 developed over the last year and on which it appears the
24 Commission is close to finalizing.

25 Staff believes this would not prejudice the parties

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1 here today in any way, because their tariffs would go into
2 effect and would protect them; provide protections in the
3 tariffs regarding labor disputes. And regardless of whatever
4 action is taken in a rulemaking at some point, the Companies
5 would be required to file tariffs that comport with that. But
6 in the meantime, their tariffs would go into effect by operation
7 of law.

8 Just briefly, one of the means by which this is in
9 the public interest and the Commission's interest to convert
10 this into a rulemaking from an adjudication is because
11 resolution of these tariffs fall short of the broader issues
12 that have been developed. There have been numerous issues
13 raised and close to decided.

14 For example, the language in the Companies' tariff
15 filings doesn't cover missed service due to natural disaster,
16 and there's a number of consumer protection-related,
17 operations-related proposals that are currently in discussion
18 and being developed with input from all stakeholders in the
19 entire industry that are not incorporated into these -- into
20 these tariff filings. So we believe it's in the public interest
21 to resolve both this tariff filing, as well as that process in a
22 sort of effective manner and an expedited manner, if possible.
23 And so that is why we make that proposal today.

24 JUDGE FRIEDLANDER: Thank you.

25 Ms. McNeill?

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1 MS. McNEILL: Thank you, Your Honor, and thank you,
2 Mr. Fassio.

3 On behalf of Waste Management, we applaud the
4 creative thinking that has been utilized to come to this
5 proposal, and we are supportive of the proposal.

6 Indeed, we feel that the discussions in the Item 30
7 docket have become very productive, and at the end of
8 yesterday's open meeting, I think both -- all parties felt that
9 their concerns were being listened to, and that the
10 Commissioners were actively engaged and involved in helping to
11 provide some problem-solving solutions for how regulated solid
12 waste collection companies can deal with work stoppage
13 situations.

14 The conundrum on behalf my client that we find
15 ourselves in is we don't really feel that we have the luxury to
16 wait for that rulemaking to conclude, because every day we are
17 at risk of having a sympathy strike, and we do have some -- we
18 do have a collective bargaining agreement that -- the term of
19 which expires at the end of the month.

20 So the offer of the procedural solution that Staff is
21 suggesting gives the Company, Waste Management, my client, some
22 cover and recourse should something unexpected occur in that
23 regard. But also, then, either by converting this adjudication
24 to rulemaking or the Item 30 matter to rulemaking -- and I'm not
25 clear about how that decision is made, but in either event,

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1 converting it to a rulemaking. And I believe it can be
2 conducted as an expedited rulemaking under the APA as well,
3 because there's been so much of a negotiated rulemaking process
4 that has taken place in the Item 30 matters.

5 But putting that aside for the moment for the context
6 of this adjudication, we would agree. I mean, it sounds
7 self-evident. Of course, we would agree to having our tariff go
8 into effect by operation of law.

9 We have expressed, I think, a desire to work with all
10 parties on achieving a resolution of this, I guess, and -- and
11 included in that was a discussion about whether the Company
12 would be willing to waive the suspension period for an
13 additional month.

14 And we would do that, but we -- and we still are
15 willing to do that, but we don't perceive that that is necessary
16 at this point, particularly because the Item 30 matter is going
17 to be coming back before the Commissioners before the end of
18 this month. And so they will have an opportunity at that open
19 meeting, I think, to give us an indication of whether they are
20 troubled by having the tariff go into effect by the operation of
21 law or not and if they were, then we would act to correct that.

22 But I believe that the clear indication from at least
23 two of the Commissioners yesterday was that allowing these
24 tariffs to go into effect by operation of law does exactly what
25 Mr. Fassio described, which is give the relief -- the near term

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1 relief that the Company needs and yet still perpetuate the
2 opportunity for further discussions on an industry-wide
3 solution, because there are other unionized solid waste
4 collection companies.

5 JUDGE FRIEDLANDER: Okay. Thank you.

6 MS. McNEILL: Thank you.

7 JUDGE FRIEDLANDER: And, Mr. Wiley?

8 MR. WILEY: Yes, Your Honor. As you know, I
9 wasn't -- because of scheduling conflicts yesterday afternoon, I
10 wasn't involved in the conference call that you three had, nor
11 have I had time to really digest what the proposal is other than
12 to say that I would join the comments of Ms. McNeill about the
13 need for interim protection. These are suspended items that
14 have been long pending before the Commission, and a number of
15 external factors have developed during that period which
16 directly implicate the issues raised by the filing.

17 I have not -- one of the things I have not digested
18 is this whole concept of conversion to a rulemaking and what
19 effect that's going to have on the protracted discussions and
20 arguments that have already been entered into the record.

21 As Chairman Danner said yesterday at the open
22 meeting, he has concerns about credit for time served. I join
23 those concerns, because we have done so much process. And, you
24 know, I think parties have really tried to hone their comments
25 and address iterations of the rules that the Staff has been

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1 proposing, so if we have to go back to square one on that, I'm
2 not very happy because it's expensive and it's time-consuming.

3 So putting that issue aside and qualifying that I
4 totally agree with Chairman Danner on his point, we certainly
5 would prefer having the benefit of the tariff that we have filed
6 go into effect as soon as possible.

7 Ours, apparently, is not due to be effective until
8 August 1st. We would join any expedited trail on that, we'd
9 jump on that train, but I do want to point out that those
10 initial filings were relatively rudimentary in that they were a
11 process of informal negotiations between the Staff and the
12 Companies. They certainly are better than what we have now, but
13 they are not anywhere near as sophisticated as the kind of
14 detail that we have been honing over the last six to eight
15 months.

16 So, again, I point that out merely to underscore my
17 concern that if we're going back to square one because somebody
18 now thinks this should be in a rulemaking rather than in an open
19 meeting workshop tariff template form, I do have some concerns
20 about that, and we need to talk through what that's going to
21 mean.

22 JUDGE FRIEDLANDER: Thank you.

23 And, Mr. Sells?

24 MR. SELLS: Thank you. If Your Honor please, one of
25 the main rules of being an Intervenor is not to mess up anybody

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1 else's plans and not to screw up the schedule either.

2 I do want to point out, as Ms. McNeill did, that we
3 do have members other than Rabanco who are unionized, and,
4 hopefully, will not experience a strike, but are probably just
5 as vulnerable for that to happen at any time with a sympathy
6 strike and so forth, a walkout, as the two large Companies.

7 I would also add that the twenty -- I'm not really
8 sure what, if anything, is going to happen at the open meeting
9 on the 27th. I want to make everyone aware, for what it's
10 worth, that that is the first day of the annual WRRR meeting,
11 and most of our members will already be there. Some of
12 Department of Ecology, some of UTC Staff, and one of the
13 Commissioners will be speaking down there. Whether or not
14 that's going to be a problem, I don't know. It's south of here,
15 so people could stop, if necessary, on their way. I can
16 certainly be here and will be here.

17 JUDGE FRIEDLANDER: Thank you.

18 Okay. So I guess I have a couple of questions that
19 came to mind based on the different presentations that the
20 parties have made.

21 With regard to Ms. McNeill, I would ask -- I'm trying
22 to get the chronology down here so that I understand how things
23 might play out assuming best/worst-case scenario on the 27th.

24 So we have tariff revisions that are suspended until
25 July 1st. Presumably, the parties will be bringing something

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1 back to the Commission on the 27th of June and at that time,
2 there may be agreement; there may not.

3 Assuming that there's agreement, the Commissioners
4 may or may not actually adopt what has been proposed, so I think
5 we still do have a need for that 30-day waiver, in my mind, and
6 the reason why is just that. We don't know what's going to
7 happen at the 27th. We all have our fingers crossed and have
8 the best of hopes that this is going to get resolved, but we've
9 seen before that that may not necessarily come to be. That's my
10 first point.

11 The second point -- let's see. I think with regard
12 to Mr. Wiley's concern and certainly Chairman Danner's concern
13 about continuing the process in a rulemaking where it has left
14 off in Docket TG-010374 is well taken, but also note that
15 Mr. Sells has obviously raised an equally valid point in that
16 some of his members have not had a chance to participate in that
17 docket. These are all things that I'll discuss with the
18 Commissioners, and I don't think the rulemaking has to be
19 decided at this juncture. We can go forward with discussions
20 about the main focus, which is the immediacy of Waste
21 Management's tariff.

22 Rabanco, as Mr. Wiley has pointed out, the suspension
23 period does not end until August 1st. We have still
24 approximately six weeks to address that matter. And point well
25 taken that the tariffs that were filed back a year ago by both

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1 Rabanco and Waste Management are substantially different than
2 what the proposed language is the parties are working out
3 consensus at now.

4 So, again, Rabanco, setting them aside for a moment,
5 I don't think that is either a need that we have to address at
6 this point. Really, I guess at this point, I would ask Waste
7 Management two questions: First of all, whether or not there
8 would be a possibility of -- and I think you've already
9 addressed this, but I kind of want to get a firm answer on the
10 record -- whether Waste Management would be willing to extend
11 the suspension period for 30 days.

12 And the other thing, the other quandary I would put
13 to Waste Management is assuming best-case scenario, assuming the
14 27th the Commission approves this proposed language, all the
15 parties agree that that Item 30 template will go into effect,
16 what does Waste Management plan to do, because the tariffs that
17 would otherwise go into effect are vastly different from this
18 template.

19 So would Waste Management then file in the afternoon
20 after the open meeting tariffs that conform to this template, or
21 are they looking for them to go into effect and then from there
22 work on coming up with tariffs that conform to now a template?

23 MS. McNEILL: Thank you, Your Honor. Let me take the
24 second question first.

25 My understanding is that the Commission is moving

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1 towards amending the tariff template, and as we discussed
2 yesterday, that's the form of the tariff that is put online for
3 the companies to use when they file their rate -- general rate
4 cases. It's set in stone, and my understanding is that, but for
5 the unusual exigencies of the work stoppage, there is not
6 commonly understood to be a right by the companies to file for
7 an amendment to the tariff. And were it not for this particular
8 situation involving work stoppages and the encouragement of
9 Staff and the Commission to actually file for these tariff
10 amendments, it really is an unusual practice.

11 So my understanding is that if the tariff template
12 were to be amended by action of the open meeting or as a result
13 of rulemaking, that that -- then all solid waste companies would
14 be required to use that tariff template.

15 I don't know. I think it's an open question about
16 whether they -- everybody would need to immediately refile with
17 the same rates that they have in their current tariff, or
18 whether it would be something that would be adopted during the
19 next rate filing procedures or what. But however we were
20 directed to do that, we would comply with the requirements to
21 use the approved tariff form.

22 However, this highlights my answer to the first
23 question, because if the Commissioners were to approve a new
24 tariff template on October [sic] 27th and say, That's it. We're
25 done. We've got agreement. We're going to publish it -- and I

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1 think we all would really be delighted to see that happen. We
2 don't need to do rulemaking. We don't need to do anything more.
3 You all need to file now to comport with this tariff that we're
4 approving, then Waste Management would go about filing that
5 tariff for approval.

6 But the 27th is a Thursday. Whether it would happen
7 in time for it to have an effect by the 1st of the month, I
8 don't know.

9 And so my answer to the first question is that we
10 will be willing to waive the time period, but only if we need
11 to. We do not want to have a month, and it's a particularly
12 sensitive month for us because it is the end of a collective
13 bargaining agreement at the end of June. So we don't really
14 want to waive the suspension period and leave ourselves exposed
15 for the month of July unless we need to.

16 And I understand that it's awkward procedurally, but
17 I can commit on behalf of my client that if at the open meeting
18 it became either apparent by express comments from the
19 Commissioners or a discussion or an outcome of that proceeding
20 that you need another -- we need another month in the
21 adjudications, then -- I mean, I could promise to come down with
22 a letter in my hand waiving the suspension period, ready to drop
23 at the Records Center if that's what we needed to do. But my
24 strong preference is not to do that until we are really required
25 to do that. "Required," using the term loosely. I mean, nobody

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1 is mandating us --

2 JUDGE FRIEDLANDER: Right.

3 MS. McNEILL: -- to do that. But, I mean --

4 JUDGE FRIEDLANDER: Right. Understood.

5 MS. McNEILL: -- where it requires for purposes of
6 facilitating the process.

7 JUDGE FRIEDLANDER: Okay. Right, right, and I think
8 that I understand where Waste Management is coming from.

9 Not having attended the open meeting for obvious
10 ex parte reasons, I am going off of what the parties have said
11 the Commissioners' actions and words have been at the open
12 meeting for -- at face value.

13 I need to discuss this more with the Commissioners
14 and make sure all three of them are comfortable with the
15 potential of letting Waste Management's tariffs go into effect
16 by operation of law without any kind of order. I think that is
17 fairly unprecedented.

18 MS. McNEILL: I do, too.

19 JUDGE FRIEDLANDER: I think it's very -- I'm not sure
20 of any time in recent history where we've ever let tariffs go
21 into effect by operation of law after we've started an
22 adjudication process to develop a record, so I will discuss that
23 with the Commissioners. It sounds like from the open meeting,
24 that there's at least the presumption that they may be or are
25 thinking that would be okay.

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1 The other thing is the rulemaking. I will discuss
2 that with them as well. My thought procedurally is it might be
3 better to start the rulemaking in Docket TG-010374. As we
4 discussed a little bit off the record, that docket is not a
5 rulemaking, so it would be eligible, I believe, for conversion
6 into one. We could even do it procedurally where we consolidate
7 this docket and that docket so we have everything into one big
8 amalgamated docket for consideration in the rulemaking so that
9 we aren't starting from scratch.

10 But that's procedural questions. I don't think --
11 unless someone has issues with any of the approaches that we've
12 discussed, I think that's something that can -- a decision that
13 can be made outside of this prehearing conference as well. It's
14 not something that we have to arrive at today.

15 And so I guess what I would suggest is that I get
16 back with you all and let you know what we're going to do from
17 here after I have a discussion with all of the Commissioners.
18 Then I can let you know, and we'll be at a firmer place to stand
19 on.

20 Is there anything else that anyone wanted to raise?

21 MR. FASSIO: Your Honor, just one point of
22 clarification for the record to my comments.

23 I just wanted to cite when we indicated converting
24 this adjudication into a rulemaking per the APA, that was
25 pursuant to RCW 34.05.070, which applies to, in the course of an

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1 adjudicative or rulemaking proceeding, undertaken to the chapter
2 that another proceeding may be unappropriated.

3 So I believe that APA provision applies to
4 converting this into a rulemaking, but it may not apply to
5 converting the other docket into a rulemaking.

6 JUDGE FRIEDLANDER: Right. And that is a very good
7 point, because I don't know what kind of a proceeding that was.
8 It seems to not fit into any real definitive box. I don't see
9 it as an adjudication, but it certainly wasn't a CR 101
10 rulemaking. So I honestly have no -- that would be something
11 we'd have to research a little bit further.

12 But, again, the immediacy for the rulemaking is maybe
13 not as great as the immediacy for the answer to whether these
14 tariffs go into effect, so I will -- Ms. McNeill, do you want to
15 say something?

16 MS. MCNEILL: Excuse me. If I may, I was going to
17 say that I completely agree with that, and I don't mean to
18 misstate our optimism about the Commission actually issuing a
19 decision at the open meeting on the 27th. I actually think it
20 is more likely that what we may find at the outcome of the 27th
21 is the initial rule that could be used in the expedited
22 rulemaking process.

23 And while I do believe, boy, this is all untrodden
24 territory, including the suspension -- thank you for
25 acknowledging that.

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1 JUDGE FRIEDLANDER: Mm-hm.

2 MS. McNEILL: While I do believe -- based on my brief
3 review, there needs to be a 45-day notice on that, but I kind of
4 think that that really might be all that is required under the
5 APA, given the massive amount of negotiated rulemaking that has
6 occurred so far. But that would be my -- I guess if I had to
7 predict, that would be my prediction; that we will come out of
8 the open meeting with something that will be the start of an
9 abbreviated rulemaking. I would not want to, however, foreclose
10 the Commissioners from exercising their authority to adopt
11 something at that meeting also.

12 JUDGE FRIEDLANDER: Sure.

13 MS. McNEILL: So it's just probably less likely.

14 JUDGE FRIEDLANDER: Mr. Wiley?

15 MR. WILEY: Yes, Your Honor. A couple of points.

16 I won't be here on the 27th, so -- but with the fact
17 that we have an August 1 suspension date, that gives me a little
18 bit more leeway.

19 One of the points you made -- and I have been cited
20 to the emergency rulemaking --

21 MS. McNEILL: Expedited.

22 MR. WILEY: -- expedited rulemaking rule in the
23 statute -- there is a 45-day notice provision. And one of the
24 comments that you made that sparks some approval by me is the
25 fact that we're talking about some voluminous records.

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1 I think it would be logical that these dockets
2 include the -- if we are going to a bifurcated process in the
3 future, that these dockets include the voluminous comments and
4 maybe open meeting transcripts, stakeholder transcripts, because
5 I don't think we should have to build our record from scratch
6 again -- credit for time served -- and that's one point that I
7 hope you'll make when you talk with the Commissioners.

8 One point I also wasn't clear on is do you want to do
9 this in a break now and come back on the record, or are you
10 thinking that we're going to recess today or...

11 You know, our preferences are whatever yours are.

12 JUDGE FRIEDLANDER: Sure. And that's a very good
13 point. We may be able to get some resolution today if we can go
14 off the record. I honestly don't know what the morning schedule
15 is for the Commissioners. They may or may not be available.

16 MS. MCNEILL: They were supposed to be here.

17 JUDGE FRIEDLANDER: That's true. That's true. But
18 since they found out they weren't going to need to be, they may
19 have made other arrangements. So I can definitely check on that
20 if it would offer some -- a little bit more certainty to the
21 parties.

22 And let me see if I have any additional questions.

23 And I guess I would say, too, that I expect that the
24 Commission will provide more clarity at the June 27th open
25 meeting as far as when the tariffs, revised tariffs, might need

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1 to be filed, or if they need to be filed right away. I would
2 imagine the Commission will have an opinion about that; that
3 there's no sense in allowing tariffs to go into effect if we're
4 going to revise the language anyway.

5 So maybe, you know, rather than just have these
6 temporary tariffs go into effect for a couple of days, or
7 however long it takes to prepare revised tariffs, assuming that
8 the language gets decided at the open meeting, then, you know,
9 the language gets decided, Item 30 is resolved, the tariffs
10 would go into effect, and then immediately afterwards, you would
11 just have to refile revised tariffs. That really doesn't make
12 too much sense, so I would imagine you'll get more guidance at
13 the open meeting as far as that goes.

14 If there's nothing further -- and I haven't heard
15 from anyone on the conference bridge. I assume that they're
16 listening in attentively and not wanting to participate.

17 But if there's nothing further, why don't we take a
18 brief recess. And I will loop back around with the
19 Commissioners and see what clarity I may be able to offer you.

20 MR. WILEY: Great.

21 JUDGE FRIEDLANDER: Okay. We are off the record.

22 (Discussion off the record.)

23 JUDGE FRIEDLANDER: Let's go back on the record.

24 I've had a chance to discuss the extension of the
25 suspension period with the Commissioners, as well as letting the

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1 tariffs just go into effect and recognizing Waste Management's
2 concerns that future labor disputes can always occur at any time
3 and that their preference is to have something in place. And
4 this was apparently discussed a little bit yesterday. I haven't
5 heard any objections from the parties as far as, No, please
6 don't do this. This would be horrendous.

7 The Commissioners are of the opinion that that would
8 be a tactic they could take; that these could go into effect by
9 operation of law with the understanding that if something gets
10 decided definitively, language is adopted on the 27th, the
11 Companies would be expected to file conforming tariffs really
12 shortly.

13 In other words, you may have a tariff that goes into
14 effect for a day, two days, three days, before you're required
15 to file something else that would conform and then go to
16 another -- I believe it would go to another open meeting. I
17 don't think that would be a compliance filing, because this
18 is --

19 MS. McNEILL: You're right.

20 JUDGE FRIEDLANDER: -- it is a very odd --

21 MS. McNEILL: You're right, but...

22 JUDGE FRIEDLANDER: -- odd duck.

23 MS. McNEILL: So that tariff filing...

24 MR. SELLS: That's true.

25 JUDGE FRIEDLANDER: Right, right, because this was

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1 not something that we've directed you specifically by order that
2 I'm aware of if the language got adopted at the open meeting.

3 In other words, though -- and, honestly, that is
4 something that gets decided at the open meeting. And,
5 thankfully, I'm out of that process and -- and I'm sure you will
6 get some guidance in the order that is entered when that does go
7 to the open meeting.

8 So as I said, at least this provides a little bit of
9 clarity to the parties. The Commissioners are not opposed to
10 letting these go into effect by operation of law. It gives us a
11 little bit more -- and especially you folks a little bit more
12 leeway to discussions for discussions regarding the proposed
13 language.

14 Mr. Wiley, did you have anything that you wanted to
15 mention?

16 MR. WILEY: In thinking about your comments about the
17 prospective open meeting after, I think you're right, except I
18 think they'll probably go no action or consent if --

19 JUDGE FRIEDLANDER: Sure.

20 MR. WILEY: -- they have been, you know, vetted at
21 the open meeting.

22 JUDGE FRIEDLANDER: Sure.

23 MR. WILEY: So I've got more peace of mind on that
24 issue procedurally.

25 JUDGE FRIEDLANDER: Yeah, I would agree with that.

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1 Typically, if Staff is fine with tariffs, they will
2 go on the no consent or -- no consent. No action or consent
3 agenda, so...

4 MS. McNEILL: Probably no action, right?

5 JUDGE FRIEDLANDER: Yeah.

6 MR. WILEY: Yeah.

7 JUDGE FRIEDLANDER: No action, I believe.

8 Yeah, Penny is nodding yes.

9 So is there anything else that we need to discuss
10 before we adjourn?

11 MS. McNEILL: No, Your Honor, not from Waste
12 Management.

13 MR. WILEY: No.

14 JUDGE FRIEDLANDER: Okay. Anything from the
15 conference bridge?

16 Nope. Okay. I believe we're adjourned. Thank you
17 so much.

18 (Proceeding concluded at 10:22 a.m.)

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