

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MURREY'S DISPOSAL COMPANY, INC.,

Complainant,

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC., WASTE  
MANAGEMENT DISPOSAL SERVICES OF  
OREGON, INC., AND MJ TRUCKING &  
CONTRACTING, INC.,

Respondents.

DOCKET TG-200650

RESPONDENTS' MOTION FOR LEAVE  
TO FILE REPLY BRIEF IN SUPPORT OF  
MOTION TO DISMISS

**I. RELIEF REQUESTED**

1. Respondents Waste Management of Washington, Inc., Waste Management Disposal Services of Oregon, Inc., and MJ Trucking & Contracting, Inc. ("Respondents") move for leave to file a brief in reply to Murrey's Disposal Company, Inc.'s ("Murrey's") Response in Opposition to Respondents' Motion to Dismiss.

**II. ARGUMENT**

2. WAC 480-07-380(1)(a) authorizes a respondent to file a motion to dismiss where the complainant's pleading fails to state a claim on which the Commission may grant relief. The Rule further authorizes the complainant to file a response to such a motion. WAC 480-07-380(1)(c). The Rule says nothing about reply briefs which always are allowed in Superior Court to ensure that the tribunal is fully apprised of the law.

3. In response to Murrey's request, the Presiding Officer previously exercised his discretion to allow Murrey's additional time to respond to Respondents' Motion to Dismiss.

4. Pursuant to that authorization, Murrey's yesterday filed its Response in Opposition to Respondents' Motion to Dismiss.

5. As anticipated by Respondents, the determinative issues of federal law raised by Murrey's claims warrant thorough briefing to the Presiding Officer. That is confirmed by Murrey's misapprehension of federal statutes, regulations and caselaw in its responsive brief.

6. As the Presiding Officer advised in his communications to the parties, citing *inter alia* to WAC 480-07-110(1), “[i]n addition to requests from parties, the Commission may on its own initiative (and has done so regularly in the past) request responses, replies, and/or briefs from parties on issues when the Commission determines additional argument would be beneficial to its consideration.” Aug. 6, 2020 e-mail; *see also, e.g., Wash. State Attorney General’s Office v. Pacifcorp*, Docket No. UE-110070, 2011 WL 1620659, \*18 (WUTC Apr. 27, 2011) (granting request for leave to file reply on motion to dismiss); *Waste Connections of Wash., Inc. v. Enviro/Con & Trucking*, Docket No. TG-071194, 2009 WL 2701436, \*2 (WUTC Aug. 24, 2009) (granting request by Murrey’s parent corporation and current counsel for leave to file reply on motion to dismiss)

7. Respondents now seek leave to file a reply brief to explain to the Presiding Officer the critical legal errors made by Murrey’s and why the Commission lacks any jurisdiction to regulate in these circumstances.<sup>1</sup>

8. Based on the previously-planned family vacations of in-house counsel for the Waste Management Respondents (August 28-September 2) and of counsel for all the Respondents (September 3-September 7), Respondents ask for leave to file a reply brief by September 11, 2020. This time is required to fully address the errors of law in Murrey’s response.

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<sup>1</sup> In his August 6, 2020 e-mail to the Presiding Officer, counsel for Murrey’s argued that WAC 480-07-360(5) governs a request for a reply in support of a motion to dismiss. He then quoted from WAC 480-07-370(5). Neither rule applies here. The provision Murrey’s counsel quoted applies only to a “reply to an answer or response.” WAC 480-07-370(5). By the Rule’s definition, an “answer” is “[a] pleading responding to a formal complaint.” WAC 480-07-370(2). A motion is not an “answer.” Respondents separately and timely filed their Answers. Likewise, the Rule provides that a “response” is “[a] pleading responding to a petition.” WAC 480-07-370(4). A “petition” is an “original pleading[] that seek[s] relief other than formal complaints and applications as defined in this section and all pleadings that seek relief from a commission order.” WAC 480-07-370(3)(a). A motion also is not a “response.” This is confirmed by WAC 480-07-375 which specifically defines “motions” to mean any request for Commission action “[e]xcept for pleadings.” WAC 480-07-375(1). Motions specifically are defined to include “dispositive motions.” WAC 480-07-375(1)(a). As noted above, the rule that governs a “motion to dismiss” is WAC 480-07-380.

### III. CONCLUSION

9. Respondents respectfully request leave to file a reply brief in support of their motion to dismiss by September 11, 2020.

RESPECTFULLY SUBMITTED this 21<sup>ST</sup> Day of August, 2020.

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

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- Via U.S. Mail
- Via Email

DATED at Seattle, Washington, this 21<sup>ST</sup> day of August, 2020.

*s/Karen Lang*

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