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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASTE CONNECTIONS OF )  
WASHINGTON, INC., )

4 )

5 Complainant, )

6 vs. )

7 ) DOCKET NO. TG-071194

8 ) Volume I

9 ENVIRO/CON & TRUCKING, INC., ) Pages 1 - 28

10 a Washington Corporation, )

11 ENVIROCON, INC., a )

12 corporation, and WASTE )

13 MANAGEMENT DISPOSAL SERVICES )

14 OF OREGON, INC., )

15 )

16 Respondents. )

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A prehearing conference in the above matter  
was held on August 2, 2007, at 1:30 p.m., at 1300 South  
Evergreen Park Drive Southwest, Olympia, Washington,  
before Administrative Law Judge THEODORA MACE.

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The parties were present as follows:

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WASTE CONNECTIONS OF WASHINGTON, INC., by  
DAVID W. WILEY, Attorney at Law, Williams, Kastner, 601  
Union Street, Suite 4100, Seattle, Washington 98101;  
telephone, (206) 233-2895.

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ENVIRO/CON & TRUCKING, INC.; WASTE MANAGEMENT  
DISPOSAL SERVICES OF OREGON, INC., by POLLY L. MCNEILL,  
Attorney at Law, Summit Law Group, 315 Fifth Avenue  
South, Suite 1000, Seattle, Washington 98104;  
telephone, (206) 676-7040.

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Kathryn T. Wilson, CCR

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Court Reporter

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1           ENVIROCON, INC., by JOHN R. HERRIG, Attorney  
at Law, Herrig, Vogt & Stoll, 1030 North Center  
2           Parkway, Suite 201, Kennewick, Washington 99336;  
telephone, (509) 943-6691.

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          ENVIROCON, INC., by STEPHEN A. WATSON III,  
4           Attorney at Law, 101 International Way, Post Office Box  
16655, Missoula, Montana, 59808; telephone, (406)  
5           523-1751.

6           CLARK COUNTY, by LORI VOLKMAN (via bridge  
line), Deputy Prosecuting Attorney, Civil Division of  
7           the Prosecuting Attorney's Office, Post Office Box  
5000, Vancouver, Washington 98666; telephone, (360)  
8           397-2478.

9           WASHINGTON REFUSE & RECYCLING ASSOCIATION, by  
JAMES K. SELLS, Attorney at Law, Ryan, Sells,  
10          Uptegraft, 9657 Levin Road Northwest, Suite 240,  
Silverdale, Washington 98383; telephone, (360)  
11          307-8860.

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1                                    P R O C E E D I N G S

2                    JUDGE MACE:  Let's be on the record in the  
3  complaint of Waste Connections of Washington, Inc.,  
4  against Enviro/Con & Trucking, Inc., a Washington  
5  corporation, Envirocon, a corporation, and Waste  
6  Management Disposal Services of Oregon, Inc., and these  
7  are the Respondents.  This is Docket TG-071194.  My  
8  name is Theodora Mace.  I'm the administrative law  
9  judge who has been assigned to this case.  We're  
10  convened today for a prehearing conference, and we are  
11  convened at the offices of the Washington Utilities and  
12  Transportation Commission in Olympia, Washington.

13                    I would like to take the oral appearances of  
14  counsel now, and I need to have the long form, which  
15  means you have to give me -- you don't have to give me  
16  your Social Security number, but just about everything  
17  else; name, address, phone, fax, and e-mail address,  
18  and I will start with counsel for Waste Connections of  
19  Washington.

20                    MR. WILEY:  David W. Wiley.  I'm with the law  
21  firm of Williams Kastner, 601 Union Street, Suite 4100,  
22  Seattle, Washington, 98101.  I'm appearing for Waste  
23  Connections of Washington, Inc.  My direct line is  
24  (206) 233-2895.  My fax number is (206) 628-6611, and  
25  my e-mail address is dwiley@williamskastner.com.

0004

1 JUDGE MACE: Ms. McNeill?

2 MS. MCNEILL: Thank you, Your Honor. My name  
3 is Polly L. McNeill. I represent the Respondents  
4 Enviro/Con Trucking, Inc., and for the record, there is  
5 no ampersand in the name, and Waste Management Disposal  
6 Services of Oregon, Inc. I am with the Summit Law  
7 Group, 315 Fifth Avenue South, Suite 1000, Seattle,  
8 Washington, 98104. My direct dial phone number is  
9 (206) 676-7040. My direct fax line number is (206)  
10 676-7041, and my e-mail address is  
11 pollm@summit.law.com, and I did all of that without  
12 having to read it off of a card.

13 JUDGE MACE: Impressive. My understanding is  
14 Clark County prosecuting attorney office is entering an  
15 appearance, and your name is Lori Volkman on the  
16 conference phone?

17 MS. VOLKMAN: That's correct. It's Lori  
18 Volkman, V-o-l-k-m-a-n. I'm with the civil division of  
19 the prosecuting attorney's office for Clark County, and  
20 I think most of you folks know I'm appearing today for  
21 Bronson Potter who couldn't be here. He will remain  
22 primary counsel on this case for Clark County.

23 JUDGE MACE: I need to have the address,  
24 phone, and fax, and I suppose you can give us  
25 Mr. Potter's information.

0005

1 MS. VOLKMAN: It's the same for both of us.  
2 It's Post Office Box 5000, Vancouver, Washington,  
3 98666, and our phone number is (360) 397-2478. The fax  
4 number here is (360) 397-2184, and our e-mails are  
5 constructed the same, but it's  
6 bronson.potter@clark.wa.gov, and my e-mail is  
7 lori.volkman@clark.wa.gov.

8 JUDGE MACE: Any other appearances either on  
9 the telephone line or in the hearing room?

10 MR. SELLS: James Sells, 9657 Levin Road  
11 Northwest, Suite 240, Silverdale, Washington, 98383;  
12 telephone, (360) 307-8860; fax, (360) 307-8865; e-mail,  
13 jimsells@rsulaw.com, appearing on behalf of proposed  
14 intervenor Washington Refuse and Recycling Association.

15 JUDGE MACE: Thank you. Mr. Herrig?

16 MR. HERRIG: John R. Herrig, H-e-r-r-i-g,  
17 1030 North Central Parkway, Suite 201, Kennewick,  
18 Washington, 99336. Phone is (509) 943-6691. Fax is  
19 (509) 735-6470, and I represent Envirocon,  
20 Incorporated.

21 JUDGE MACE: Ms. McNeill, you represent  
22 Enviro/Con Trucking?

23 MS. MCNEILL: That's correct, and I think for  
24 ease of all the parties, we've adopted the vernacular  
25 referring to the trucking company as ECTI and

0006

1 Mr. Herrig's client as Envirocon. They are not  
2 related.

3 MR. HERRIG: We have one more appearance,  
4 Your Honor.

5 JUDGE MACE: Go ahead.

6 MR. WATSON: Stephen A. Watson the Third --

7 JUDGE MACE: Let me just interrupt for a  
8 moment. What is your e-mail, Mr. Herrig?

9 MR. HERRIG: jrh@hvslaw.com.

10 MR. WATSON: Stephen A. Watson the Third,  
11 Envirocon, Inc., 101 International Way, Post Office Box  
12 16655, Missoula, Montana, 59808. Direct line is (406)  
13 523-1751. Fax is (406) 543-7987. The e-mail address  
14 is swatson@envirocon.com.

15 JUDGE MACE: Any other appearances? Hearing  
16 none, let us turn first to the question of petitions to  
17 intervene. My understanding is that Clark County is  
18 seeking to intervene in this case. Is that correct,  
19 Ms. Volkman?

20 MS. VOLKMAN: Yes.

21 JUDGE MACE: Is there any objection to the  
22 granting of that petition to intervene?

23 MS. MCNEILL: Yes.

24 JUDGE MACE: The grounds for your objection?

25 MS. MCNEILL: The grounds for my objection

0007

1 are that in the petition to intervene, the grounds for  
2 the interest of the party is alleged to be a violation  
3 of the Clark County code, Chapter 24, and specifically,  
4 it says that the conducts of the respondents violates  
5 Chapter 24.12 of the Clark County code --

6 JUDGE MACE: Is there someone else that has  
7 come on the conference bridge at this point?  
8 Ms. Volkman are you still there?

9 MS. VOLKMAN: Yes.

10 JUDGE MACE: Sorry, Ms. McNeill.

11 MS. MCNEILL: Thank you. The only allegation  
12 in the complaint regarding the Clark County code states  
13 that the ongoing collection and transportation of C&D  
14 waste violates local law, specifically Chapter 24.12 of  
15 the Clark County code and that those activities appear  
16 to circumvent the solid waste management plan for Clark  
17 County by avoiding delivery of the collected C&D waste  
18 to County transfer stations.

19 Chapter 24.12 of the Clark County code says  
20 nothing about delivering any kind of waste to County  
21 transfer stations, and none of the allegations in the  
22 complaint violate any provisions of Chapter 24.12 of  
23 the Clark County code. For that reason, we don't  
24 believe Clark County has an interest in this  
25 proceeding.

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1 JUDGE MACE: You object as well?

2 MR. HERRIG: Envirocon joins the objection of  
3 Waste Management of Oregon and adds that the Clark  
4 County statute that we understand the intervenor is  
5 attempting to prosecute on is also a criminal statute  
6 and highly object to prosecution of my client in this  
7 forum on a criminal statute.

8 JUDGE MACE: Any other objections?  
9 Ms. Volkman, your response?

10 MS. VOLKMAN: Let me clear up that under  
11 Clark County ordinances, and that is Clark County,  
12 Sections 24.12 and 24.13, which both regulate solid  
13 waste, there is a discretion regarding whether it's a  
14 civil or criminal process, and we are certainly not  
15 involved at that level at this very premature point in  
16 the proceeding, but I think basically, Clark County is  
17 requesting intervention because counties are  
18 specifically charged with insuring there is a harmony  
19 between these state and local regulation of the solid  
20 waste carriers and that Clark County holds an interest,  
21 whether through specifically imposed mandates or their  
22 general police powers, to supervise those activities  
23 within its own unincorporated area.

24 So I think under general principle, that  
25 certainly speaks to the standard for intervenors in



0009

1 terms of the substantial interest in the subject  
2 matter, but also, I think the line is blurred where a  
3 county is involved the difference between public  
4 interest standard and a substantial interest. Those  
5 two issues sort of merge when you are talking about a  
6 county.

7           But in any event, it's not a secret that this  
8 activity is having and will continue to have an  
9 economic impact on the current solid waste system in  
10 general, and the economics of the existing plan are  
11 based on this waste stream actually getting into the  
12 system. So it's the County's position that the stated  
13 purpose of the County's solid waste ordinance is to  
14 provide a coordinated management plan.

15           I understand Envirocon and the trucking  
16 company's argument that Clark County's code doesn't  
17 specifically use the words "construction and demolition  
18 debris." Generally, our statute regulates all persons  
19 who engage in collection, storage, handling,  
20 utilization, or disposal of solid waste, and that's  
21 Clark County code 24.12.060, subsection one. If you  
22 read that in conjunction with RCW 70.95.030, which is  
23 the definition section, and that's under subsection 23,  
24 "demolition and construction debris" is a term that is  
25 specifically included in the definition of solid waste,

0010

1 so I think Clark County's ordinance clearly covers  
2 demolition construction debris.

3           The ultimate issue that obviously is not to  
4 be decided today is whether the activity is incidental  
5 to the plan in place or whether it's significant, and I  
6 think it's premature at this point without any  
7 discovery to exclude Clark County from their role in  
8 helping coordinate and supervise the process on a local  
9 level. Beyond that, I think Mr. Wiley has some more  
10 specific Commission rulings and information that I know  
11 he would like to familiarize you all with, so with your  
12 permission, Judge, I would like to turn the podium over  
13 to him on that specific issue.

14           JUDGE MACE: Mr. Wiley?

15           MR. WILEY: Getting to the intervention rule,  
16 there is a two-prong test. It's whether the proposed  
17 intervenor has a substantial interest in the  
18 proceeding. We've just heard from Ms. Volkman about  
19 the substantial interest, but also whether their  
20 participation would be consistent with the public  
21 interest.

22           As far as the direct or substantial interest,  
23 I think Ms. Volkman mentioned 70.95.030 and the  
24 definition of solid waste, but also under Title 81 RCW,  
25 and specifically, a couple of provisions, 120 and 160,

0011

1 talk about the involvement and the intersection of  
2 county solid waste management and Commission  
3 regulation. 81.77.120, of course, deals with  
4 submission of comprehensive plans and review by the  
5 Commission to make sure it complies with state law, and  
6 81.77.160 deals in the rate-setting context with the  
7 types of charges for disposal of solid waste, whether  
8 they are designated under solid waste management plans  
9 and whether they are implemented consistently with  
10 county plans and Commission statutory requirements for  
11 setting rates.

12           So I think the substantial interest exists in  
13 both statutory schemes, Title 70.95 and Title 81.77,  
14 but the Commission has also had an opportunity over the  
15 years to review the roles of county and public sector  
16 entities in both rate, in complaint, and application  
17 cases, and generally and fairly consistently, with a  
18 minor exception or to two along the way, comes down on  
19 the side of finding that the participation by the  
20 public sector entity is clearly consistent with the  
21 public interest.

22           The most important case to articulate that  
23 role was the Sunshine Disposal case, which was an  
24 application case from 1986. It was Order MV No.  
25 133753, hearing number E-19104. That case, the

0012

1 Commission dismissed protests by the County and City of  
2 Spokane in a recycling CC application, but found  
3 instead that both the City and the County should be  
4 granted intervention status in the proceeding finding  
5 that both the City and County of Spokane are public  
6 entities with statutory responsibilities regarding  
7 waste disposal as well as the public health, safety,  
8 and welfare within their jurisdictions.

9           Clearly, Clark County's concern with the flow  
10 of waste within its boundary is a matter consistent  
11 with its police power functions, and we believe this  
12 case raises direct implications about generation of  
13 solid waste within county borders and whether  
14 identified solid waste streams as defined under state  
15 law are being deflected from the regulated solid waste  
16 collection company in potential violation of state and  
17 possibly local law. We believe that element alone  
18 confirms Clark County's prominent role under these  
19 facts and that participation by Clark County is fully  
20 consistent with the public interest under the second  
21 prong of the test in WAC 480-07-355.

22           JUDGE MACE: Does anyone else wish to speak  
23 on this side of the issue; that is, in support of  
24 intervention? Any response?

25           MS. MCNEILL: I would like to make a

0013

1 response; thank you. Since we started with the  
2 opposition, I guess I get to come back and respond to  
3 this.

4 First of all, just to get something off the  
5 table, there is not a dispute about whether C&D waste  
6 falls within the definition of solid waste --

7 JUDGE MACE: When you say "C&D"....

8 MS. MCNEILL: Construction and demolition  
9 waste. If I may briefly, this case involves an  
10 environmental remediation project in unincorporated  
11 Clark County, and in the course of a remediation  
12 conducted under the Model Toxics Control Act, the  
13 facility is generating material, some of which is  
14 hazardous waste and is taken to a hazardous waste  
15 landfill, some of which in part of the demolition is  
16 not hazardous waste. It's solid waste and it's being  
17 taken to a solid waste landfill. There is also, by the  
18 way, a significant waste streams consisting of  
19 recyclable materials that is being salvaged. I just  
20 say that because there has been no context for any of  
21 this discussion.

22 In transporting materials from the facility  
23 as part of the remediation project, the Complainant's  
24 concern has to do solely with the nonhazardous and  
25 nonrecyclable material, and that they are referring to

0014

1 as construction and demolition waste, it's referred in  
2 the industry as C&D waste, so there is your  
3 terminology. Clark County filed its petition to  
4 intervene on the basis of an allegation that its code  
5 was being violated. There is nothing in the solid  
6 waste management plan that is either stated in its  
7 petition, certainly, or that is applicable to an  
8 environmental remediation project, per se. The only  
9 application would be if the outcome of this proceeding  
10 is in favor of the Complainant. In that case, then  
11 this would be considered solid waste that would be  
12 managed by Clark County within its system, but at this  
13 point in time, it's not, and the only interest that  
14 Clark County has been able to state is a violation of a  
15 code that does not apply to the activities in question.  
16 The code cited refers to transportation and collection,  
17 and the only requirements stated in the code have to do  
18 with whether the loads are covered and whether they  
19 have littering, and none of those have been alleged as  
20 any violation.

21           There are some inference that the interests  
22 of the County has to do with the flow of solid waste,  
23 but there is nothing in this code that requires any  
24 flow of solid waste particularly, and references to  
25 statutory provisions under which the Commission is

0015

1 authorized to review solid waste management plans to  
2 determine the cost impact of the policy stated in those  
3 plans on the one hand references to Commission laws  
4 that require consideration of compliance with solid  
5 waste management plans in rate setting are not  
6 applicable to a proceeding in which a complaint has  
7 been levied against respondents for allegedly  
8 transporting solid waste without a certificate.

9           Counties do not have any statutory authority  
10 to license or to authorize or to grant approvals for  
11 collection under state law. That authority is  
12 specifically limited to either municipalities or the  
13 Commission, and that's why we are here today. Clark  
14 County's interest in this may be relevant depending on  
15 the outcome of the proceeding at that point in time,  
16 but until there is a ruling by the Commission of  
17 whether or not this is a regulated operation, they have  
18 no interest, and I fail to see what they are going to  
19 be adding, and I don't understand -- I think it's  
20 somewhat telling that Mr. Wiley is making arguments for  
21 the County. I think it's sort of a ganging up on the  
22 Respondents as much as they can.

23           JUDGE MACE: Mr. Wiley, I would like to have  
24 a copy of the Sunshine Disposal case, and I would like  
25 to have a copy of the County ordinance, Ms. Volkman.

0016

1 It was cited in various documents and you spoke of it  
2 today, but I don't have a copy of it, and it would be  
3 helpful for me to have a copy of that chapter.

4 MS. VOLKMAN: We have that all on line, so I  
5 will get that to you right away.

6 MR. HERRIG: Could I just add that I think  
7 that counsel for the County stated that they have  
8 discretion as to this intervention and whether they are  
9 going to civilly prosecute under that statute if they  
10 are allowed to or criminally prosecute.

11 As representing the party that didn't hire  
12 the trucks and didn't arrange for disposal -- we are  
13 the demolition and remediation contractor -- I really  
14 strongly object to there being any open-endedness to  
15 the possibility that a nonjury trial criminal  
16 prosecution is going to occur in this forum, and if  
17 Clark County has the discretion, I think now is the  
18 time to voice that we are going to proceed if allowed  
19 to intervene on the civil end as opposed to on the  
20 criminal end.

21 JUDGE MACE: Let me just clarify my  
22 understanding of this proceeding. This is a proceeding  
23 that claims that solid waste has been carried  
24 improperly, and it asks for a cease and desist order  
25 from the Commission or --



0017

1 MR. WILEY: Declaratory order.

2 JUDGE MACE: Right. Furthermore, my  
3 understanding is that if I decide that it's appropriate  
4 to allow intervention of Clark County, it will only be  
5 as far as Clark County can give information on whether  
6 or not those two actions should take place, because  
7 that's what the Commission can do.

8 I have not reviewed the statute or the  
9 ordinance, however, but I'm willing to go by the seat  
10 of my pants and say that I don't think the Commission  
11 can prosecute you or enter any kind of order that would  
12 call for your criminal prosecution. I don't believe  
13 the Commission has any power to do that.

14 MR. HERRIG: I understand that, Your Honor,  
15 but it appears to me that if there isn't a choice or  
16 election by Clark County, we could be prosecuted twice  
17 for the same offense, once civilly in this proceeding  
18 and once criminally later on, and I think they have to  
19 elect. They can go at any time to a Superior Court  
20 judge on this ordinance and prosecute people.

21 They have chosen to intervene in this  
22 proceeding, and as I understand it, there will be  
23 witnesses sworn under oath. There will be evidence  
24 that's given. It can't become the subject of a later  
25 criminal prosecution, because as a criminal defense

0018

1 attorney, I wear a totally different hat than this  
2 Commission would want me to wear in cooperation and  
3 discovery and to speed the process. A criminal  
4 defendant has no obligation whatsoever to subject  
5 himself to depositions, to subject himself to basically  
6 any discovery, and has the right to all of the work  
7 papers of all the prosecuting attorneys, and I don't  
8 believe that this particular forum is that kind of  
9 forum, so I think the election is necessary now.

10 JUDGE MACE: Ms. Volkman?

11 MS. VOLKMAN: The allegation by Clark County  
12 that criminal charges have been filed, so your client  
13 is not a criminal defendant, and in a normal course of  
14 case proceedings under any civil condition, the sworn  
15 testimony of any potential defendant could be used  
16 against him later in time if it was inconsistent with a  
17 statement they are making in a later criminal case.

18 But let me be clear about the fact that Clark  
19 County's intervention and interest is not in order to  
20 gain information for a criminal trial. Clark County's  
21 interest is in insuring a consistency of the  
22 enforcement of its own rules and regulations and its  
23 own police power and its own citizens that are going to  
24 get the flow-through and the final effect of the  
25 outcome. So it doesn't have anything to do at this

0019

1 point with whether it's criminal or civil but only that  
2 the specific ordinance requires Clark County to monitor  
3 whether or not solid waste carriers have the necessary  
4 permit. That's the bottom line.

5 JUDGE MACE: Mr. Wiley?

6 MR. WILEY: A couple of things that I want to  
7 respond to. First of all, I think this whole argument  
8 about criminal violations is a result of what appears  
9 to be at least a distraction if not a red herring.  
10 It's a reference to the statute, 81.77.090, which is  
11 cited in my complaint and which has been in any and  
12 every solid waste complaint that I've been involved in  
13 in over 20 years, Your Honor. It is not to suggest  
14 that the Commission is invested with criminal  
15 jurisdictional power, nor is it to address any  
16 potential interventions or intervenors' jurisdiction  
17 whatsoever. It merely cites to the statute, which  
18 talks about gross misdemeanors for violation of  
19 Commission law.

20 Now, with respect to Ms. McNeill's comments,  
21 just briefly, I think we've already been over the  
22 statutory intercessions, and we can dispute those. We  
23 have differing interpretations, but I don't think  
24 Ms. McNeill's comments directly responded to is the  
25 broader public interest standard that the Commission

0020

1 has often alluded to in granting intervention and  
2 participation by public sector intervenors on issues of  
3 major important policy.

4           This case, we submit, has major policy  
5 implications and clearly will involve the interaction,  
6 the jurisdictional interaction of local and state  
7 government in regulating the collection and  
8 transportation of solid waste. We think that basis  
9 alone should be a due-process basis for allowing the  
10 participation of the County.

11           MR. HERRIG: Could I add one more thing?

12           JUDGE MACE: No. I think I've heard enough  
13 on the issue at this point. I can't require the County  
14 to make any statement one way or the other about  
15 whether they are going to seek some kind of criminal  
16 prosecution on the basis of their statutes. All I can  
17 do is admit them or not admit them as an intervenor  
18 based on the Commission's rules and regulations. You  
19 have to talk with them about what they intend to do and  
20 make any agreements you make with them about that  
21 issue, about that criminal prosecution issue, and  
22 whether you participate in this case, you have to make  
23 that decision. I'm going to go ahead and make a  
24 decision on the intervention, and you will have to  
25 decide what you want to do at that point, I believe.

0021

1           Having said that, I'm not going to make that  
2 decision today. I'll make that decision after I take a  
3 look at the ordinance and after I take a look at that  
4 case and after I think about what you've said today.  
5 It will be made in the prehearing conference order. So  
6 Ms. Volkman, I have not ruled on the petition to  
7 intervene, but I'm going to ask that you be included in  
8 any discussions about scheduling and any of the other  
9 prehearing conference issues that we need to address.

10           MS. VOLKMAN: That's great. I have  
11 Mr. Potter's schedule in front of me, so I'm prepared  
12 to do that. Mr. Potter is going to continue to be the  
13 primary attorney. He was just not available today.

14           JUDGE MACE: Off the record.

15           (Discussion off the record.)

16           JUDGE MACE: I have a few other things that I  
17 want to go over before we turn to scheduling, and one  
18 of them is whether or not the parties will be seeking  
19 discovery of each other in this case.

20           MR. SELLS: Excuse me. I have a petition to  
21 intervene as well, Your Honor, although I haven't  
22 received any objections.

23           JUDGE MACE: I'm so sorry. Go ahead.

24           MR. SELLS: Thank you. If Your Honor  
25 please, I have not received any written objections to

0022

1 our petition on behalf of the Washington Refuse and  
2 Recycling Association. I would simply point out a  
3 couple of WAC's, WAC 480-07-340, which defines  
4 "persons" as including a whole bunch of things,  
5 including association, of which WRRRA is. It's a  
6 nonprofit trade association, and then WAC 480-07-355  
7 allows any person to petition for intervention in these  
8 types of matters.

9 Our reason for petitioning is very simple.  
10 Anything involving the carriage of solid waste in any  
11 manner affects every solid waste company in the state.  
12 At least of this morning, there are about 30  
13 independent companies, so it's not just the Waste  
14 Connections and the Waste Managements that may be  
15 affected or that will be affected by this decision.  
16 It's companies in Colville and Edmonds and places like  
17 that.

18 We, being WRRRA, to my knowledge in the over  
19 20 years I've been doing it, have been either a party  
20 or an intervenor in every single solid waste case that  
21 has come before the Commission. We do not intend to  
22 and will not broaden the issues. We may or may not  
23 call one witness, probably not, and I promise I will  
24 not engage in any friendly cross-examination because  
25 I've been warned about that before, but again, I have

0023

1 not received any indication that there are objections  
2 to this, at least in writing.

3 JUDGE MACE: Are there any objections to this  
4 petition to intervene?

5 MS. MCNEILL: No.

6 MR. HERRIG: On behalf of Envirocon, Inc., we  
7 don't object. We would appreciate getting a copy of  
8 the pleading. I don't have it.

9 JUDGE MACE: Thank you. I'll also address  
10 this petition to intervene in the prehearing conference  
11 order, but likely it will be granted. Is there anybody  
12 I've missed? Then let's turn to the question of  
13 discovery and whether or not the parties will be  
14 engaging in discovery.

15 MR. WILEY: Yes, Your Honor. Both counsel  
16 for the primary respondent, ECTI and Waste Management  
17 and myself have had discussions about this issue. We  
18 believe that, and I'm looking for the rule. I believe  
19 it's -- we have looked at the rule on discovery, and it  
20 appears this is the type of proceeding --

21 MS. MCNEILL: 400.

22 MR. WILEY: Thank you, 400. -- that would  
23 trigger -- yes. It's 480-07-400(2)(b)(3), which is any  
24 complaint proceeding involving claims of discriminatory  
25 or anticompetitive conduct, unjust or unreasonable

0024

1 rates, and violations of provisions in Title 80 and 81  
2 RCW.

3 Under that premise, Your Honor, we believe  
4 that the discovery rule should be triggered, which we  
5 acknowledge is somewhat unusual in transportation  
6 cases, but I think, and Ms. McNeill can speak for  
7 herself, but from my standpoint, I think it would be  
8 beneficial to resolving and possibly streamlining the  
9 procedure that we are engaged in.

10 As you know, I requested a brief adjudicative  
11 proceeding in my complaint. I'm not sure whether that  
12 is any longer relevant, and we can get into the reasons  
13 why, Your Honor, but we think that one way to get to  
14 whatever label we put on this proceeding is to trigger  
15 the discovery rule and allow some time to develop  
16 facts. From the Complainant's standpoint, we are  
17 hopeful we can come up with significant stipulations  
18 and possibly ideally avoid a hearing altogether if we  
19 can develop enough facts to submit and maybe a motion  
20 for summary adjudication or some sort of stipulated  
21 record.

22 JUDGE MACE: I will indicate in the  
23 prehearing conference order whether the discovery rule  
24 will be invoked, and you can proceed. Protective  
25 order?



0025

1           MS. MCNEILL: I am not aware of the need for  
2 a protective order, except the point that Mr. Herrig  
3 makes with regard to the potential -- whether the whole  
4 proceeding and testimony and evidence in the proceeding  
5 is ever going to be used in a criminal matter.

6           JUDGE MACE: Usually a protective order is  
7 designed to protect trade information, commercial  
8 information, and without wanting to go out on a limb,  
9 it's not the kind of thing that's designed to shroud  
10 whole proceedings because of criminal prosecution.

11           MS. MCNEILL: As Mr. Wiley indicated, he and  
12 I have discussed, and Mr. Herrig also, generally how we  
13 envision this proceeding going forward, and on the  
14 issue of a protective order, at this point in time, we  
15 don't think there is a need for one, but we would want  
16 to reserve the possibility of requesting one.

17           JUDGE MACE: By all means, if it comes about  
18 that you need to have that protection, just contact me  
19 and we can make sure a protective order is in place.

20           MS. MCNEILL: Thank you.

21           JUDGE MACE: That is all I have right now  
22 with regard to the little housekeeping matters. I'll  
23 mention one more thing before we close the prehearing  
24 conference, except that we have to talk about schedule,  
25 and I'm wondering if you have talked about scheduling.

0026

1 It looks like you have. Are you ready to present a  
2 schedule that the parties have agreed to, or do you  
3 need some time to discuss it?

4 MS. MCNEILL: If we could go off the record  
5 briefly and then come back on the record.

6 JUDGE MACE: 15 minutes?

7 MR. WILEY: Yes, but I would like you to stay  
8 on initially for some discussion on BAPS as a process.  
9 I don't think that will affect the scheduling, but I  
10 would like to talk about that off record as well.

11 JUDGE MACE: Yes. My understanding is that  
12 at least one of the respondents objects to it because  
13 it's not appropriate, and I have to take into account,  
14 according to the rule, the interests of the parties,  
15 and I have to admit that I have another concern about  
16 it and that is my own time schedule and whether or not  
17 I would be able to accomplish what's needed to be  
18 accomplished within the relatively brief period that  
19 rule permits. So I'm happy to talk about it with you,  
20 but I'm not so sure it will work. We are off the  
21 record.

22 (Recess.)

23 JUDGE MACE: The parties have discussed  
24 scheduling and they have arrived at the following  
25 proposed schedule. It calls for an initial round of

0027

1 discovery requests to be made by September 5th;  
2 responses to the discovery requests by September 22nd;  
3 a second round of requests by October 26th with  
4 responses by November 15th. If depositions are to be  
5 taken, they will be taken after September 26th.

6           The parties have agreed on a date for a  
7 continued prehearing conference of Wednesday, November  
8 28th, at 1:30 in the afternoon at which time they will  
9 address whether or not they will be filing dispositive  
10 motions, stipulations, briefs, and whether or not there  
11 is a hearing required. We have been given the Web site  
12 that will allow us to access the Clark County code  
13 provisions that are mentioned in the petition to  
14 intervene, and Mr. Wiley will be providing us with  
15 copies of the Sunshine Disposal case.

16           MR. WILEY: Your Honor, I just wanted to  
17 clarify. I thought you said September 22nd for the  
18 responses, which is a Saturday. I think what we had  
19 decided was the 26th.

20           JUDGE MACE: If I said the 22nd, I apologize.  
21 You will be receiving in the prehearing conference  
22 order, in addition to my ruling on the petitions to  
23 intervene, some instructions about the filing of  
24 documents. That likely won't be pertaining to you  
25 until we get to after the next prehearing conference.

0028

1 Your discovery questions and answers do not need to be  
2 provided to the Commission. They only need to be  
3 provided amongst yourselves. Do not provide me with  
4 copies of that information.

5 MR. WILEY: Your Honor, did you say you will  
6 address the number of copies needed in the e-mail?

7 JUDGE MACE: It will be included in the  
8 prehearing conference order. Anything else?

9 MS. MCNEILL: If we are willing to stipulate  
10 to service by e-mail, do we need to do that on the  
11 record?

12 JUDGE MACE: That would be helpful if you  
13 would do that now.

14 MS. MCNEILL: I'm willing to stipulate  
15 service by e-mail.

16 JUDGE MACE: Is there anybody that does not  
17 wish to be served by e-mail? It looks like all the  
18 parties are -- and Ms. Volkman, to the extent you  
19 become a party, is service by e-mail acceptable to you?

20 MS. VOLKMAN: Yes.

21 JUDGE MACE: It looks like it's unanimous.

22 Thank you very much. I appreciate your courtesy.

23 (Prehearing conference adjourned at 2:42 p.m.)

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