

Docket No. TG-200250 - Vol. I

In the Matter of the Application of: ADE Dumpsters, LLC

July 13, 2020



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application) DOCKET TG-200250
of)
))
ADE DUMPSTERS, LLC,)
))
For Authority to Operate as a)
Solid Waste Collection Company)
in Washington)
)

TELEPHONIC PREHEARING CONFERENCE, VOLUME I

Pages 1-18

ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

July 13, 2020

1:36 p.m.

Washington Utilities and Transportation Commission
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2 ADMINISTRATIVE LAW JUDGE:

3 MICHAEL HOWARD

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1 LACEY, WASHINGTON; JULY 13, 2020

2 1:36 P.M.

3 --oOo--

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

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6 JUDGE HOWARD: Let's be on the record. The
7 time is 1:36 p.m.

8 My name is Michael Howard, and I am an
9 administrative law judge with the Washington Utilities
10 and Transportation Commission.

11 We are here today for a prehearing
12 conference in Docket TG-200250, which is captioned In
13 the Matter of the Application of ADE Dumpsters, LLC for
14 authority to operate as a solid waste collection company
15 in Washington.

16 This conference is primarily going to be an
17 opportunity for the parties to clarify the issues and
18 discuss a procedural schedule. After today's
19 conference, I will enter an order setting out a
20 procedural schedule and setting a date for the hearing
21 itself.

22 So let's start by taking appearances. Could
23 we have an appearance for ADE Dumpsters, LLC?

24 Mr. Douglas, are you on the line at this point?

25 Mr. Douglas, if you are talking, your line does seem to

1 be muted from my end.

2 Okay. We will take appearances from the
3 other parties and intervenors and then return to that
4 company.

5 Do we have an appearance for Murrey's
6 Disposal Company?

7 MR. WILEY: Yes, Your Honor. Dave Wiley.
8 Address is shown on the protest for Murrey's Disposal
9 and for Rabanco and Harold LeMay.

10 JUDGE HOWARD: Thank you, Mr. Wiley.

11 Can we have an appearance for Waste
12 Management of Washington?

13 MR. KENEFICK: Yes, Your Honor, this is
14 Andrew Kenefick (phone interference.)

15 JUDGE HOWARD: We are getting some
16 background noise -- we are getting some background
17 noise, so please be aware of that and mute your lines if
18 needed.

19 Sorry, Mr. Kenefick, was that you?

20 MR. KENEFICK: Yes, this is Andrew Kenefick,
21 in-house counsel for Waste Management. I was thinking
22 Walker Stanovsky was going to be on, but I have not
23 heard him yet. But if he's on, he can do an appearance
24 now as well.

25 JUDGE HOWARD: Okay. And -- thank you.

1 And do we have an appearance for Washington
2 Refuse and Recycling Association?

3 MR. WHITTAKER: Yes, Your Honor. This is
4 Rod Whittaker, associate counsel for Washington Refuse
5 and Recycling Association, and Jim Sells, our general
6 counsel, is also on the line.

7 JUDGE HOWARD: Thank you.

8 Do we have an appearance from any counsel
9 for Commission Staff or Public Counsel?

10 MR. YOUNG: This is Mike Young with
11 regulatory services. We do not have representation from
12 the Attorney General, but Staff is available for -- for
13 questions and information, if necessary.

14 JUDGE HOWARD: Thank you, Mr. Young. I was
15 just double-checking that we did not have a
16 representative from Staff in this case, but I appreciate
17 it.

18 Could we have -- try to have that appearance
19 again from ADE Dumpsters?

20 MR. DOUGLAS: We are here. Anthony Douglas
21 and JoAn Douglas. Sounds like my microphone's working.

22 JUDGE HOWARD: Thank you, Mr. Douglas, and
23 could you give your contact information for the record?

24 MR. DOUGLAS: Contact information, telephone
25 number is 253-314-6785, our mailing address is 509 East

1 52nd Street in Tacoma, 98404, our email address would be
2 adeent1997@gmail.com.

3 JUDGE HOWARD: Great, thank you. And is
4 your -- I can hear you fine, you feel like your
5 connection is working now?

6 MR. DOUGLAS: Yeah, thank you.

7 JUDGE HOWARD: Okay. So, again, this is a
8 conference to discuss some procedural issues at the
9 start of the case. First thing I want to do today would
10 be to check in with the owners of ADE Dumpsters, Mr. and
11 Mrs. Douglas, on -- on the issues in this case.

12 So as you may be aware, other solid waste
13 carriers like Murrey's Disposal and Waste Management
14 have filed protest to your company's application, and
15 then the Commission set this matter for adjudication.
16 And you do not have to provide any testimony or argument
17 in support of your application today. This conference
18 is simply an opportunity to discuss the procedures in
19 the case and clarify the issues.

20 Since you are not represented by a lawyer, I
21 wanted to take just a few minutes to talk with you
22 before we discuss procedural schedule and other issues.
23 Are you aware that you can have a lawyer represent you
24 before the Commission?

25 MR. DOUGLAS: Yes, we are aware.

1 JUDGE HOWARD: Okay. Did you discuss the
2 procedural schedule in the case with the lawyers for the
3 other parties before the call?

4 MR. DOUGLAS: I haven't discussed with any
5 of the attorneys as of yet.

6 JUDGE HOWARD: Okay. We can make time to do
7 that today. And are you familiar with the basic legal
8 issue in this case?

9 MR. DOUGLAS: No, we're not, but we have a
10 minor idea of what's going on.

11 JUDGE HOWARD: Okay. And, of course, I --
12 as the administrative law judge for the Commission, I
13 can't give you advice as if I was your attorney, but the
14 basic issue here is created by the state laws, RCW
15 81.77.040, which states that if an application such as
16 this one is protested, then the Commission can only
17 grant the application if the existing companies are not
18 providing service to the satisfaction of the Commission.

19 So I did want to at the very least point you
20 to that -- that issue. But, again, we won't be taking
21 any argument today on the actual merits of the case,
22 we're just going to be talking about some procedures.

23 MR. DOUGLAS: Okay.

24 JUDGE HOWARD: So do you have any -- any
25 questions at this point?

1 MR. DOUGLAS: From what I understand of the
2 situation, I don't know when would be the appropriate
3 time to -- to even approach the other -- the other
4 agencies that have problems with our service being added
5 to -- we're not trying to do what they do, we're trying
6 to just be a little small piece over here. So I
7 don't -- I'm not clear on what the steps are at this --
8 at this juncture of our -- of our discussion.

9 JUDGE HOWARD: Well, I -- I think shortly,
10 we will set aside time for the parties to discuss the
11 schedule in the case and there are -- unfortunately,
12 there are just difference of issues that -- that would
13 be helpful for you to be aware of. I would encourage
14 you to seek out a lawyer if you are able to. But
15 let's -- let's proceed with our conference today and
16 we -- I will leave time for -- brief amount of time for
17 questions at the end.

18 The next main topic I wanted to talk about
19 today is interventions. So we received a petition to
20 intervene from the Washington Refuse and Recycling
21 Association. Do we have anyone on the call who wishes
22 to intervene besides that -- that organization?

23 So hearing none, do we have any objections
24 to that petition to intervene from Washington Refuse and
25 Recycling Association? So hearing no objections to that

1 petition, I intend on granting that petition in the
2 prehearing conference order and I will -- and I will
3 indicate that.

4 Next on the issue of discovery, would the
5 parties like to have the discovery rules available? And
6 I would perhaps turn first to Murrey's Disposal.

7 MR. WILEY: Your Honor, I -- I thought about
8 it briefly. I -- at this point, no, and as you know
9 under the rules, an application as opposed to rate and
10 complaint cases, the discovery rules aren't triggered by
11 transportation applications. So at this point, I would
12 say no subject to revisiting after we get your order.

13 JUDGE HOWARD: Thank you.

14 Do we have -- would any party disagree with
15 that and like to have the discovery rules available?

16 MR. DOUGLAS: I think that we need to
17 leave -- this is Anthony Douglas. I think we need to
18 relieve -- we need to leave that open for -- for our --
19 our point of view as there is definitely some
20 information we'd like to know from the -- the people
21 that are opposing. And I think if we close that door
22 for ourselves, it would be reckless.

23 MR. WILEY: All right. I don't object to
24 that if it's reciprocal.

25 JUDGE HOWARD: Mr. -- Mr. Wiley, was that

1 you?

2 MR. WILEY: Yes, sorry. I'm supposed to
3 identify myself, aren't I? And what I said was I don't
4 object to that if it's reciprocal. I don't know how
5 Mr. Kenefick or WRRR feel.

6 JUDGE HOWARD: Yes --

7 MR. KENEFICK: This is Andrew Kenefick --

8 JUDGE HOWARD: Go ahead.

9 MR. KENEFICK: This is Andrew Kenefick with
10 WRR -- I mean, Andrew Kenefick with Waste Management.
11 That's fine. I'd go along with Mr. Wiley's proposal in
12 terms of it being reciprocal if -- if the applicant is
13 discerned [sic] invoking discovery rules. I'm not sure
14 if Walker Stanovsky has joined yet. He said he was
15 going to. I don't know if he has.

16 JUDGE HOWARD: Mr. Stanovsky, do we have you
17 on the line? Okay.

18 MR. KENEFICK: Apparently not.

19 JUDGE HOWARD: Okay.

20 MR. KENEFICK: We can proceed. That's fine.

21 JUDGE HOWARD: Mr. Sells, would you like to
22 respond on the issue of having discovery be available?

23 MR. WHITTAKER: This is Rod Whittaker. I
24 can jump in and just state that we're -- we're fine with
25 what the parties have agreed to thus far.

1 JUDGE HOWARD: Okay. Well, I appreciate the
2 parties' agreement on this issue. So I will -- I will
3 plan on including this in the prehearing conference
4 order.

5 Would the parties like a protective order?
6 And I would perhaps turn to Mr. Wiley first on this.

7 MR. WILEY: Thank you, Your Honor. Dave
8 Wiley. Yes, I think particularly if -- if there's going
9 to be financial information disclosed in discovery, we
10 would seek that -- that would apply, would allow that
11 information to be reviewed by counsel and
12 representatives, but not disclosed outside of that.

13 JUDGE HOWARD: Okay.

14 MR. KENEFICK: Waste Management agrees with
15 that as well.

16 MR. DOUGLAS: Anthony Douglas agrees as
17 well.

18 JUDGE HOWARD: Great.

19 And do we have any position from WRRRA on
20 that?

21 MR. WHITTAKER: No, Your Honor, we're fine.

22 JUDGE HOWARD: Okay. I will plan on issuing
23 a discovery order after this conference.

24 The next main topic would be the procedural
25 schedule. From my discussion here on the record with

1 Mr. Douglas, it sounds like the parties, at least with
2 ADE Dumpsters, did not have an opportunity to discuss a
3 procedural schedule. Would it be helpful if I place --
4 if I left the call from my end and the parties discussed
5 that procedural schedule?

6 MR. STANOVSKY: Hi, Walker Stanovsky here.
7 I really apologize. I made a calendar error initially
8 and had trouble connecting, but I'm here now.

9 JUDGE HOWARD: Great, thank you.

10 MR. KENEFICK: In response to your question,
11 Judge Howard, I think that makes sense for us to do a
12 discussion amongst all of us while you're on break.

13 JUDGE HOWARD: Sounds good. And could
14 you identify yourself? Was that Mr. Wiley?

15 MR. KENEFICK: I'm sorry, that was
16 Mr. Kenefick.

17 JUDGE HOWARD: Okay, great. Thank you.

18 Okay. Well, in that case, I will -- I will
19 leave the call from my end. We will go off the record
20 in a moment here. Would one of the parties' attorneys
21 be willing to call me on my work cell when the parties
22 are done conferring?

23 MR. WHITTAKER: This is Rod Whittaker, I can
24 do that.

25 JUDGE HOWARD: Okay. Great.

1 Mr. Whittaker -- let's -- let's go off the record now
2 and then we'll -- and I'll give you my work cell.

3 (A break was taken from
4 1:51 p.m. to 2:22 p.m.)

5 JUDGE HOWARD: All right. Let's be back on
6 the record. The parties have agreed on a procedural
7 schedule during a recess, and I will -- I have been sent
8 it via email, and I will now read that into the record.

9 The first deadline after this prehearing
10 conference is applicant's opening testimony and exhibits
11 due September 4th, 2020; discovery cutoff,
12 September 18th, 2020; response testimony by Staff,
13 protestants, and the inter- -- intervenor, Octobers --
14 October 9th, 2020. Looks like we have another discovery
15 cutoff date of October 23rd, 2020. I am anticipating
16 that was the one intended, so I would -- I would plan on
17 deleting the September 18th deadline that I just read.

18 Then we have rebuttal testimony due
19 November 13th, 2020; a settlement conference on
20 November 18th, 2020, from 10:00 a.m. to 12:00 p.m.; and
21 then a deadline for cross-examination, exhibits, exhibit
22 lists, cross-examination time estimates, and witness
23 lists on December 1st; and then a hearing date --
24 proposed hearing date of December 8th.

25 And I will -- with the exception of deleting

1 that first discovery cutoff date on September 18th, this
2 appears to be a workable schedule from the Commission's
3 perspective, but I will confirm those dates and that
4 suggested hearing date work, and I will include that in
5 the order, but I anticipate it will work.

6 Would the parties prefer closing arguments
7 at the end of the hearing or to file posthearing briefs?
8 Could we get the position from Mr. Wiley first?

9 MR. WILEY: Yes, Your Honor. I'd prefer
10 posthearing briefs if -- if you want them.

11 JUDGE HOWARD: Okay.

12 MR. WILEY: With a page limitation of (phone
13 interference.)

14 JUDGE HOWARD: Would ten pages be too strict
15 or would it be --

16 MR. WILEY: I think that's -- I think that's
17 doable, Your Honor, from my standpoint.

18 JUDGE HOWARD: And thoughts from Waste
19 Management?

20 MR. STANOVSKY: Well, this is Walker
21 Stanovsky. Off the top of my head, 10 pages, you know,
22 double-spaced and all seems tight. I -- the last one we
23 filed was in the superior case late last year, and I
24 don't remember what the case count was on that, but I
25 think it was between 15 and 20. That had a lot of

1 factual issues going on, but I would think, you know, 15
2 perhaps.

3 Andrew, what do you think?

4 MR. KENEFICK: You know me, I like to keep
5 it shorter so...

6 MR. STANOVSKY: I mean, if it's ten, we can
7 work with ten.

8 JUDGE HOWARD: I -- I think 15 is probably
9 sufficient. I was -- I was perhaps getting too -- too
10 aggressive on page limits.

11 Any response from WRRRA on this issue?

12 MR. WHITTAKER: We're good with what the
13 other parties agree on, Your Honor.

14 JUDGE HOWARD: Okay. Mr. Douglas, what
15 is -- what are -- what are your thoughts?

16 MR. DOUGLAS: The more the better, but I
17 don't have to read 20 pages, so 15 would be -- would be
18 fine.

19 JUDGE HOWARD: Okay. So just to finish our
20 conference today, unless there's any -- are there any
21 other concerns with the procedural schedule?

22 MR. WILEY: Not at this time.

23 MR. DOUGLAS: None.

24 JUDGE HOWARD: Okay. Just to finish, I want
25 to touch on electronic filing and electronic service. I

1 want to remind the parties that documents should be
2 filed online through the electronic filing link on the
3 Commission's web page. If the parties intend to submit
4 exhibits, there will be requirements for filing exhibits
5 and exhibit lists in advance of the hearing, and this
6 will also be done electronically, and the prehearing
7 order will have details on this topic.

8 Also, the Commission's rules provide for
9 electronic service of documents. The Commission will
10 serve the parties electronically and the parties will
11 serve each other electronically.

12 If you have any corrections or updates to
13 our master service list in the docket, please file a
14 written notice of appearance or email me at
15 michael.howard@utc.wa.gov.

16 Is there anything else that we should
17 address today? Okay. Hearing no responses, I will
18 issue an order shortly containing the schedule and the
19 other guidelines for the disposition on this case. We
20 are adjourned. Thank you.

21 (Adjourned at 2:48 p.m.)
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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand 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.

Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358



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