

0001

1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,) DOCKET TG-111813
5 Complainant,) (consolidated)
6)
7 v.)
8)
9 WASTE MANAGEMENT OF WASHINGTON,))
10 INC., d/b/a WASTE MANAGEMENT -))
11 NORTHWEST,))
12 Respondent.))

13 WASHINGTON UTILITIES AND)
14 TRANSPORTATION COMMISSION,) DOCKET TG-111814
15 Complainant,) (consolidated)
16)
17 v.)
18)
19 WASTE MANAGEMENT OF WASHINGTON,))
20 INC., d/b/a WASTE MANAGEMENT -))
21 SNO-KING,))
22 Respondent.))

23 WASHINGTON UTILITIES AND)
24 TRANSPORTATION COMMISSION,) DOCKET TG-111815
25 Complainant,) (consolidated)
26)
27 v.)
28)
29 WASTE MANAGEMENT OF WASHINGTON,))
30 INC., d/b/a WASTE MANAGEMENT -))
31 SOUTH SOUND, WASTE MANAGEMENT))
32 OF SEATTLE,))
33 Respondent.))

34 PREHEARING CONFERENCE, VOL. I
35 Pages 1-12

36 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

37 February 6, 2012 10:32 a.m. - 10:55 a.m.

38 Washington Utilities and Transportation Commission
39 1300 South Evergreen Park Drive Southwest
40 Olympia, Washington 98504-7250

41 REPORTED BY: SHERRILYN SMITH, CCR# 2097
42 Buell Realtime Reporting, LLC
43 www.buellrealtime.com

0002

1

A P P E A R A N C E S

2

ADMINISTRATIVE LAW JUDGE:

3

GREGORY J. KOPTA
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504
360.664.1136

7

8

FOR THE COMMISSION STAFF:

9

GREGORY J. TRAUTMAN
Assistant Attorney General
1400 South Evergreen Park Drive SW
P.O. Box 40128
Olympia, Washington 98504-0128
360.664.1187

10

11

12

13

FOR WASTE MANAGEMENT OF WASHINGTON, INC.:

14

POLLY L. McNEILL
Summit Law Group
315 Fifth Avenue South
Suite 1000
Seattle, Washington 98104
206.676.7040

15

16

17

18

19

* * * * *

20

21

22

23

24

25

0004

1 JUDGE KOPTA: Let the record reflect
2 there is no response.

3 The next item is intervention. Since no one
4 else has appeared, I am assuming no one wants to
5 intervene. I have not received any petitions to that
6 effect, but I will ask. Is there anyone who wishes to
7 intervene in this proceeding?

8 (Pause in the proceedings.)

9 JUDGE KOPTA: Again, let the record
10 reflect that there is no response.

11 Discovery is the next item of business. Is
12 there a need for discovery that any party foresees?

13 MS. McNEILL: No. For Waste Management,
14 no, Your Honor.

15 MR. TRAUTMAN: No, Your Honor.

16 JUDGE KOPTA: Okay. Then we won't worry
17 about that.

18 That leaves us last but not least to the
19 schedule. I understand the parties have had some
20 discussions about a schedule. Have you agreed on a
21 procedural schedule for this matter?

22 MS. McNEILL: We have, Your Honor. We
23 have determined, having talked through the various
24 issues that are presented by this case, that although
25 there are some that are unique to our situation, in

0005

1 terms of administrative efficiencies and the parties'
2 resources, it doesn't make any sense to brief those
3 isolated fact-specific issues until we can brief the
4 whole package together. And the more substantive
5 issues related to the revenue sharing plans that are
6 presented in our filing, are going to be subject of
7 some discussion at workshops related to the
8 implementation of the revenue sharing litigation in
9 concept. Not, of course, specific to this case, but
10 in concept.

11 And so we feel that it really just doesn't
12 make any sense for us to do any briefing until after
13 the policy is issued. I think we all came a little
14 reluctantly to that conclusion, because we are not big
15 fans of delaying things or perpetuating, but it just
16 does seem like that's what we should do.

17 What we have proposed for our schedule is to
18 have our opening briefs filed -- and this is subject
19 to discussion with you, Your Honor -- but have them
20 filed three weeks after the policy guidance is
21 published, and then response briefs ten days following
22 that date.

23 JUDGE KOPTA: Well, I understand wanting
24 to key off of action that the Commission is
25 anticipating taking in that generic proceeding. My

0006

1 only problem is, whenever we do something like that,
2 it's generally easier to establish a date certain.
3 One possibility would be to have a status conference
4 after the order is issued, and then set specific
5 deadlines. I'm just a little leery about trying to do
6 that while we are not sure when the Commission would
7 be issuing that interpretive policy statement, so we
8 wouldn't have anything definitive.

9 I guess the other issues, too, is making
10 sure -- and I hope we are not getting close to that,
11 that we are not running up close to the suspension
12 deadline, which is when?

13 MS. McNEILL: I'm not sure. I'm sorry,
14 I didn't calculate what nine months would be from the
15 date of the --

16 JUDGE KOPTA: Ten months from the order
17 suspending it, which was November 30th. So we have
18 until the end of September to issue a decision.

19 Let's be off the record for a minute while we
20 discuss this further.

21 (Discussion off the record.)

22 JUDGE KOPTA: Let's be back on the
23 record.

24 After having some initial discussions, why
25 don't, Ms. McNeill, you let us know what was

0007

1 discussed.

2 MS. McNEILL: Thank you, Your Honor.

3 So we discussed having a schedule that
4 involves some dates certain, rather than keying the
5 briefing off of an unknown end date. When we marched
6 out the prospective dates for that, it bumps us up
7 against some deadlines.

8 Let me start by saying that we have
9 tentatively agreed to a briefing schedule that is
10 subject to being revisited if the policy statement
11 wildly varies from our expected deadline, or issuance,
12 which is sometime probably in the month of May, is
13 what we are thinking about. If that impact is the
14 case, then we would have our opening briefs due on
15 June 15th, and reply briefs due on June 25th. These
16 are simultaneous briefs of the parties. If the policy
17 guidance comes out much earlier or much later, then we
18 will reconvene for a status conference to reconsider
19 those dates. We will make a request to Judge Kopta
20 that we reconvene and look at those dates.

21 In addition, in order to facilitate a decision
22 before the statutory suspension deadline, Waste
23 Management is willing to waive an initial order in
24 this case and go straight to a final order.

25 JUDGE KOPTA: Is Staff also willing to

0008

1 waive it?

2 MR. TRAUTMAN: Yes, Your Honor.

3 JUDGE KOPTA: Thank you, Ms. McNeill.

4 Just to clarify, these briefs are
5 cross-motions for summary determination, and there is
6 no need, the parties foresee at this point, to have an
7 evidentiary hearing; is that correct?

8 MS. McNEILL: That is correct.

9 MR. TRAUTMAN: Yes, Your Honor.

10 JUDGE KOPTA: I believe there was
11 another point that you wanted to make, Ms. McNeill.

12 MS. McNEILL: Thank you.

13 The other point that we wanted to make is that
14 in addition to the statutory deadline for suspension,
15 there are some practical deadlines that are at play in
16 this proceeding.

17 The prospective plan that is the subject of
18 litigation in terms of the recycling commodity credit
19 calculation, is set to expire at the end of August.
20 Under sort of a standardized practice approach, that
21 would mean that the new plan would need to be
22 submitted, or should be submitted with the new --
23 certainly the new recycling commodity credit
24 calculation is due 45 days prior to its expiration
25 date. It currently will expire on August 31st, so the

0009

1 recycling commodity credit would need to be presented
2 June 15th.

3 Under current practice, which may be somewhat
4 at play in terms of outcomes of the policy
5 workshops -- but nonetheless, under current practice,
6 Staff's preference, all parties' preference, would be
7 to actually include in that June 15th, the plan for
8 the next period, the next 12-month period that would
9 commence on September 1st. We can foresee that there
10 are going to be some difficulties with being able to
11 anticipate what the next plan should look like, until
12 we all have the guidance that comes out of the policy.

13 We have recognized in our discussions off the
14 record, and desire that the record also reflect
15 discussions that we have had about anticipating the
16 need for a motion. And it would likely be a joint
17 motion from Staff and the companies, requesting an
18 extension of the existing revenue sharing plan and an
19 extension of the expiration date of the existing
20 recycling commodity credit. We cannot make that
21 motion or make that request without the support of our
22 counties, who are the parties to the revenue sharing
23 agreements that implement the plans.

24 But we do anticipate having that cooperation,
25 and just wish the record to reflect the likelihood of

0010

1 there being a need for Commission approval to
2 perpetuate those plans and those recycling commodity
3 credits.

4 JUDGE KOPTA: Thank you, Ms. McNeill. I
5 think that seems to make sense in terms of procedure.
6 Go ahead, and when you are prepared to do so, file
7 that motion. And certainly to the extent possible,
8 include some representation from the counties as to
9 their position. If you want to make it a joint
10 motion, have Staff join in, and that would make it
11 that much easier to expedite consideration. We will
12 take that up at such time as you file it.

13 The other thing that I would like to have from
14 you is a letter confirming waiver of the initial
15 order.

16 MS. MCNEILL: Okay.

17 JUDGE KOPTA: Just so that we have
18 something in writing that's docketed. If we could
19 have that from both parties, I think that would be
20 helpful.

21 I think, unless anybody has anything else,
22 that should pretty much wrap things up for today.

23 Any other issues that we need to address?

24 MR. TRAUTMAN: Hold on a second.

25 (Pause in the proceedings.)

0011

1 MR. TRAUTMAN: Could we go off the
2 record for just a second?

3 JUDGE KOPTA: Sure. Off the record.

4 (A brief recess.)

5 JUDGE KOPTA: Let's be back on the
6 record.

7 After additional discussions, we are certain
8 that there are no additional issues, so we are
9 adjourned. Thank you.

10 (Prehearing conference concluded 10:55 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0012

1

C E R T I F I C A T E

2

3 STATE OF WASHINGTON

4 COUNTY OF KING

5

6

I, Sherrilyn Smith, a Certified

7

Shorthand Reporter and Notary Public in and for the

8

State of Washington, do hereby certify that the

9

foregoing transcript is true and accurate to the best

10

of my knowledge, skill and ability.

11

IN WITNESS WHEREOF, I have hereunto

12

set my hand and seal this 23rd day of February, 2012.

13

14

15

16

17

18

SHERRILYN SMITH

19

20

21

22 MY COMMISSION EXPIRES:

23

JUNE 2012

24

25