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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3	WASHINGTON UTILITIES AND	)	
	TRANSPORTATION COMMISSION	)	
4		)	
	Complainant,	)	
5		)	
	vs.	)	DOCKET NO. TG-091769
6		)	Volume I
	HAROLD LEMAY ENTERPRISES, INC.,	)	Pages 1 - 13
7	d/b/a JOE'S REFUSE SERVICE,	)	
		)	
8	Respondent.	)	

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10 A prehearing conference in the above matter  
11 was held on June 14, 2010, at 1:30 p.m., at 1300 South  
12 Evergreen Park Drive Southwest, Olympia, Washington,  
13 before Administrative Law Judge DENNIS MOSS.

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The parties were present as follows:

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16 WASHINGTON UTILITIES AND TRANSPORTATION  
17 COMMISSION, by ROBERT D. CEDARBAUM, Assistant Attorney  
18 General, 1400 South Evergreen Park Drive Southwest,  
19 Post Office Box 40128, Olympia, Washington 98504;  
20 telephone, (360) 664-1188.

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19 HAROLD LEMAY ENTERPRISES, INC., by DAVID W.  
20 WILEY, Attorney at Law, Williams, Kastner, 601 Union  
21 Street, Suite 4100, Seattle, Washington 98101;  
22 telephone, (206) 233-2895.

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22 WASHINGTON REFUSE AND RECYCLING ASSOCIATION,  
23 by JAMES K. SELLS, Attorney at Law, Ryan, Sells,  
24 Uptegraft, 9657 Levin Road Northwest, Suite 240,  
25 Silverdale, Washington 98383; telephone, (360)  
307-8860.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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

2 JUDGE MOSS: Good afternoon, everyone. We  
3 are convened in the Washington Utilities and  
4 Transportation Commission in a joint prehearing  
5 conference. The two proceedings are WUTC against  
6 Harold LeMay Enterprises, Inc., doing business as Rural  
7 Garbage Service, TG-091774, and WUTC versus Harold  
8 LeMay Enterprises, Inc., doing business as Joe's Refuse  
9 Service, TG-091769.

10 This is a joint conference. We haven't  
11 considered whether they should be consolidated or not.  
12 We will do that this afternoon. My name is Dennis  
13 Moss. I'm an administrative law judge at the  
14 Commission and have been delegated the responsibility  
15 of handling this case for you, so we will begin with  
16 our appearances, and we should start with the Company.

17 MR. WILEY: Good afternoon, Your Honor, Dave  
18 Wiley. I'm appearing today on behalf of Harold LeMay  
19 Enterprises, Inc., d/b/a Joe's Refuse and Rural Garbage  
20 in both separate dockets.

21 JUDGE MOSS: Mr. Cedarbaum?

22 MR. CEDARBAUM: Robert Cedarbaum, assistant  
23 attorney general, representing Commission staff. Your  
24 Honor, do you need our address and phone numbers and  
25 that kind of stuff?

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1                   JUDGE MOSS: I think we can probably get  
2 along without it since we know where to find you.  
3 Mr. Sells?

4                   MR. SELLS: Thank you. If Your Honor please,  
5 James Sells appearing on behalf of proposed intervenor,  
6 Washington Refuse and Recycling Association.

7                   JUDGE MOSS: Why don't we take up first your  
8 petition to intervene. Is there any objection?

9                   MR. CEDARBAUM: Your Honor, it's not clear to  
10 Staff whether to object right now, the reason being  
11 that Staff and the Company have filed stipulations in  
12 both dockets addressing the work paper exemption issue.  
13 Mr. Sells on behalf of his client filed to intervene  
14 with respect to that issue.

15                   If the issue is resolved by stipulation, at  
16 least based on the written petition to intervene, it  
17 appears that his client's interest has been addressed,  
18 so I guess Staff has sort of a contingent objection if  
19 it's based on your decision on the stipulation.

20                   JUDGE MOSS: Let's hear from you, Mr. Sells.

21                   MR. SELLS: That's true, Your Honor. I just  
22 became aware of the stipulation over the weekend, and  
23 actually wasn't aware it was a stipulation because I  
24 didn't see both signatures. If the stipulation is  
25 accepted down the road somewhere and if our petition is

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1 granted, we probably would not take part in any further  
2 proceedings, but at the moment, we would like to at  
3 least get a foot in the door so we can keep an eye on  
4 it and see where it goes. We probably will not take a  
5 very active role though.

6 JUDGE MOSS: We've had the WRRRA participate  
7 in many of these proceedings over the years, and I'm  
8 sure we are going to take care of your interests very  
9 shortly, Mr. Sells. Why don't we carry this for the  
10 moment and we can talk a little bit about the  
11 stipulation, and perhaps I can just give you a  
12 preliminary indication about that.

13 I have had a chance to read it. I will say  
14 that the details are lost on me because there is  
15 obviously information that's behind all of this that I  
16 know nothing about at this point, but the part of the  
17 stipulation that got my attention and that I think I  
18 can make a preliminary determination as a result of is  
19 I believe Staff makes a statement, or perhaps the  
20 parties jointly make the statement that the information  
21 is sufficient to allow Staff's analysis and  
22 presentation in such a way that the Commission will  
23 have the information it needs to reach a decision. Is  
24 that essentially correct?

25 MR. CEDARBAUM: It is, Your Honor. What

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1 Staff did was try to utilize the standards that the  
2 Commission addressed in its Order 04 and 03 in Docket  
3 TG-091933 involving Waste Management in which the  
4 Commission recently indicated its requirement of the  
5 types of things it would find necessary for it to be  
6 able to do its public interest work and determine that  
7 rates are just, fair, reasonable and sufficient with  
8 respect to the allocation of joint cost and that sort  
9 of thing, so that was really our model and why Staff  
10 was able to support the stipulation if not for the  
11 reasons stated in the stipulation.

12 JUDGE MOSS: Based on what I've read and what  
13 I have been able to gather about the case, I can say as  
14 a preliminary matter that I would be inclined to grant  
15 the stipulation and allow it to go forward on the basis  
16 of Staff's needs being satisfied.

17 The only caveat I would enter to that is if  
18 we got to the end of the case and I felt there was  
19 something more that was needed, then I might need to  
20 get that into the record somehow, probably by means of  
21 a records request to the appropriate parties. I don't  
22 see any barrier to approving the stipulation at this  
23 point in time and just going forward.

24 MR. CEDARBAUM: We appreciate that, Your  
25 Honor. Just one clarification. The stipulation

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1 addresses the initial work papers that are filed by the  
2 Company along with its tariff filing at the beginning  
3 of the case. This does not address discovery through  
4 data requests and has Bench requests and the usual  
5 practices, so Staff would inevitably follow up with a  
6 request for more information as the work papers will  
7 not constitute the entire basis for Staff's review.

8 JUDGE MOSS: I believe the language of the  
9 stipulation is such that it carefully reserves Staff's  
10 position on this for future cases. It might be a  
11 different position in the future case.

12 MR. CEDARBAUM: That's correct.

13 JUDGE MOSS: Anything further? If not, then  
14 I will say I will include something in a prehearing  
15 order; although, I will consider whether to do it by  
16 separate order, approving the stipulation as presented,  
17 and with that, Mr. Sells, perhaps the appropriate thing  
18 to do would be to put you down on the interested  
19 persons list, and if things change, then you can come  
20 back and we will entertain your petition at that time,  
21 and of course that will be a changed circumstance so  
22 you will have basis for that.

23 MR. SELLS: That will be fine, Your Honor.

24 JUDGE MOSS: Mr. Cedarbaum, you mentioned the  
25 subject of discovery. It's clear from what you said

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1 that discovery will be needed and should go forward  
2 under the appropriate procedural rules. Do you all see  
3 any need for a protective order; Mr. Wiley?

4 MR. WILEY: Your Honor, the Respondent's  
5 would request one, the form order.

6 JUDGE MOSS: Probably have some financial  
7 data going back and forth?

8 MR. WILEY: Yes.

9 JUDGE MOSS: Just do the standard form of  
10 order then. What about the question of consolidation?  
11 At this point, I'm not leaning one way or the other.  
12 As a practical matter, I think it makes little  
13 difference because the rules reserve the Commission's  
14 opportunity to issue separate orders or go on separate  
15 tracks or whatever anyway, but does anybody have a  
16 strong feeling about it one way or the other or even a  
17 moderate feeling?

18 MR. CEDARBAUM: Your Honor, it's Staff's  
19 position that the cases not be consolidated. Although  
20 they are two pieces of the same company, we are still  
21 going to be looking at the cost revenues and expenses  
22 of the separate companies, so there are different  
23 factual records.

24 Also, just for purposes of potentially  
25 settling issues in perhaps one case and not another, or

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1 maybe not -- we don't know at this point in time -- I  
2 think it would be administratively easier to keep them  
3 separate.

4 JUDGE MOSS: Does that preclude proceeding on  
5 a common schedule then?

6 MR. CEDARBAUM: With respect to scheduling,  
7 what the Staff would propose, and I think Mr. Wiley  
8 agrees, is that the companies have not yet filed all  
9 the work papers in compliance with the stipulation.  
10 What our proposal would be is that we set up a second  
11 prehearing conference, and we have some scheduling  
12 conflicts for doing that which I can get into, and that  
13 that be done a certain period of time after the work  
14 papers come in.

15 At that point in time, then Staff and the  
16 Company will have a better idea going forward as to  
17 what kind of schedule each case would require, so we  
18 are not asking for a particular schedule today other  
19 than setting a second prehearing conference.

20 JUDGE MOSS: That's consistent with the  
21 Company's wish?

22 MR. WILEY: That is, Your Honor.

23 JUDGE MOSS: I don't have a problem  
24 proceeding in that way. I think it makes sense so  
25 that's what we will do. So that already covers the



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1 next item on my agenda, which is process and procedural  
2 schedule. We are going to await developments in terms  
3 of work papers coming in, and you will get back to me  
4 in terms of scheduling a prehearing conference?

5 MR. CEDARBAUM: I can make a proposal now. I  
6 don't know if you want us to do that off the record.

7 JUDGE MOSS: If it's going to be a brief  
8 exchange, we can do it on the record. Go ahead.

9 MR. CEDARBAUM: Staff does have some  
10 conflicts with respect to people being out of the  
11 office, and the Company still needs a few more days,  
12 perhaps up to a week, with the Rural case to get the  
13 work papers in. Just as a practical matter, the  
14 earliest possible date we were looking at for a second  
15 prehearing conference is July 19th. If that's amenable  
16 to the Company, we can set that right now. It could be  
17 later.

18 MR. WILEY: I have a daughter getting married  
19 on the 17th, so I think maybe the 20th would be a  
20 little bit -- for the out-of-town guests sort of. The  
21 20th would be fine.

22 JUDGE MOSS: I think I can do the 20th. What  
23 day of the week is that?

24 MR. WILEY: It's a Tuesday.

25 JUDGE MOSS: I'm thinking about my own

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1 vacation plans, and I'm leaving on the 21st, so the  
2 20th will work. Do you all have a preference morning  
3 or afternoon? We will set it for July 20th at 1:30.  
4 Do we need to establish any other procedural dates or  
5 any other matters we need to take up in terms of  
6 process, procedure?

7 MR. CEDARBAUM: The only matter I'm thinking  
8 of is that during the course of the proceedings, the  
9 Company when it filed its petition for the partial  
10 exemption, I believe Mr. Wiley indicated that the  
11 companies were waiving the suspension period to  
12 accommodate delays in the procedure, especially since  
13 we have an ALJ, and I believe this is an ALJ-only case,  
14 that extends the time even longer with respect to  
15 petitions for administrative review. It's my  
16 understanding that the suspension period has been  
17 waived, but I think it might be a good idea to have  
18 that confirmed.

19 MR. WILEY: I think we are on record having  
20 done that, Your Honor, and I think the Commission's  
21 Order No. 2 addressed that as I recall. We are, as  
22 Your Honor may be aware of, on somewhat uncharted  
23 waters for solid waste rate cases because we are kind  
24 of bifurcating process when people ask for a petition  
25 for exemption, and I think we are the first active

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1 waste management company in the chute on that, so we  
2 are all kind of trying to figure out what this means in  
3 terms of schedule, but as far as the waiver of the  
4 statutory period, I think we've done that.

5 We clearly are going to suggest if we come to  
6 negotiated positions with the Staff for expedited  
7 handling just because the Company can never recover the  
8 rates, as you are aware. So as we go along here, I  
9 think we are going to be talking specifics.

10 JUDGE MOSS: There are some an opportunities  
11 for that sort of thing. If you all do achieve a  
12 settlement, then we can have the labor of the  
13 administrative review process which moves things along  
14 more quickly in the end game. I'm usually pretty  
15 quick, so I don't think we will see any delay in the  
16 case, but that's on record now as Mr. Cedarbaum  
17 suggested he would like to have it. With that,  
18 anything else?

19 MR. WILEY: No, Your Honor.

20 JUDGE MOSS: I did check with the records  
21 center, and apparently this time we need original plus  
22 11 copies for internal distribution. I will check and  
23 see if that can be reduced. If so, I will let you  
24 know.

25 If you do end up filing papers that have

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1 confidential information in them, we only need one copy  
2 of any redacted versions. Just file the requisite  
3 number of copies, 11 in this case, of the fully  
4 unredacted copies because any distribution will be to  
5 people who are entitled to that under the protective  
6 order, and of course, you all are familiar with the  
7 process of filing through the records center to the  
8 Commission's secretary.

9 I will enter a prehearing conference order.  
10 If I don't get to that tomorrow, it may be a few days  
11 because I have hearings in another matter that will  
12 delay me by a few days.

13 MR. WILEY: Your Honor, one point of  
14 clarification on your original and 11, typically in  
15 solid waste rate cases, we don't provide that many  
16 copies. You are talking about any filing in these  
17 dockets now from this point on?

18 JUDGE MOSS: I would anticipate if you file a  
19 settlement or you have prefiled testimony -- do we file  
20 work papers at all or just provide them directly? I  
21 don't get them.

22 MR. WILEY: They are not docketed, Your  
23 Honor, so they go directly to the auditors typically,  
24 and that's actually what I want to see if we don't have  
25 to provide 11 copies of those, because they off of

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1 Excel spreadsheets and huge documents.

2 JUDGE MOSS: Will you work with Mr. Cedarbaum  
3 and see what his client's needs are, and that will be  
4 satisfactory there. Anything else? Thank you all very  
5 much.

6 (Prehearing conference adjourned at 1:47 p.m.)

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