

# **WUTC v. Waste Management of Washington, Inc.**

**Docket No. TG-240189 - Vol. I**

**June 21, 2024**



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Page 1

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	
vs.	)	DOCKET NO. TG-240189
	)	
WASTE MANAGEMENT OF	)	
WASHINGTON, INC.,	)	
	)	
Respondent.	)	PAGES 1-22
	)	

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PREHEARING CONFERENCE - VOL I

June 21, 2024

BEFORE ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

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Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, Washington 98504

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TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY, WA CCR 2731

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Page 3

1 June 21, 2024 - 1:30 p.m.

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4 JUDGE HOWARD: Let's be on the record. The  
5 time is 1:30 p.m. My name is Michael Howard, and I'm an  
6 administrative law judge for the Washington Utilities and  
7 Transportation Commission.

8 We're here today for a prehearing conference  
9 in Docket TG-240189, which is captioned Washington  
10 Utilities and Transportation Commission versus Waste  
11 Management Washington, Incorporated.

12 We are recording this prehearing conference  
13 right now and transcribing it later. If you remain on  
14 the call, then we're presuming you consent to being  
15 recorded as part of that.

16 Let's start by taking appearances, beginning  
17 with the company.

18 ATTORNEY STANOVSKY: Good afternoon, your  
19 Honor. Walker Stanovsky with Davis Wright Tremaine,  
20 representing Waste Management.

21 And with me virtually is Ame Lewis, inhouse  
22 counsel for the company.

23 JUDGE HOWARD: Thank you.

24 And could we have an appearance for staff?

25 ATTORNEY GAFKEN: Yes, good afternoon, Judge

1 Howard. My name is Lisa Gafken. I'm an assistant  
2 attorney general appearing on behalf of staff.

3 JUDGE HOWARD: Thank you.

4 And public counsel?

5 ATTORNEY SYKES: Good afternoon, your Honor.  
6 My name is Rob Sykes. I'm an assistant attorney general  
7 with the public counsel unit.

8 JUDGE HOWARD: All right. Thank you.

9 And we can certainly address this later. I'm  
10 just noting, though, that if the company's inhouse  
11 counsel would also like to be added to the main service  
12 list, we can certainly do that. I'm not seeing Lewis on  
13 it.

14 ATTORNEY STANOVSKY: Yes, please, your Honor.  
15 She was included on the entry of appearance that was  
16 submitted on my letterhead. But yes, we'd like her on  
17 the service list, and a couple of staff folks as well.  
18 We can address later or now as you prefer. Now?

19 JUDGE HOWARD: Are they noted on your notice  
20 of appearance?

21 ATTORNEY STANOVSKY: I don't think so as  
22 requested recipients. But they're not attorneys. So no.

23 But I think they may have been included on  
24 some emails to this point.

25 In any case, my legal assistant, Nancy Foley,

Page 5

1 so that's N-A-N-C-Y-F-O-L-E-Y@dwt.com, and Sabrina  
2 Goodwin with Waste Management, who -- give me just moment  
3 to find her e-mail address. I apologize. I should have  
4 had that up. But two seconds.

5 ATTORNEY LEWIS: I can jump in, Walker, if  
6 you --

7 ATTORNEY STANOVSKY: Sure.

8 ATTORNEY LEWIS: Yes. It's  
9 S-G-O-O-D-W-I-1@wm.com.

10 JUDGE HOWARD: All right. Thank you.

11 And feel free to e-mail me with any  
12 corrections or additions after our conference today.

13 ATTORNEY STANOVSKY: Thank you.

14 JUDGE HOWARD: All right. Now, do we have  
15 anyone on the call who wishes to intervene in this  
16 proceeding?

17 All right. Hearing none, we'll -- I imagine  
18 most of our discussion today is going to be about the  
19 schedule for this proceeding. Have the parties had a  
20 chance to discuss the procedural schedule, or should I go  
21 offline and let the parties discuss? That's our  
22 customary practice here.

23 ATTORNEY GAFKEN: We have had an opportunity  
24 to discuss the schedule, and we have an agreed schedule  
25 that we can present. So no need to go off the record.

1 JUDGE HOWARD: That would be great. Please  
2 go ahead.

3 ATTORNEY GAFKEN: Okay. So it starts with  
4 the prehearing conference, which is today.

5 The next item is the settlement conference,  
6 which we've agreed to July 19, 2024.

7 Staff testimony will be due on October 22,  
8 2024.

9 Company and public counsel response will be  
10 due November 22, 2024. And at that point, discovery  
11 response deadlines will reduce to seven business days.

12 Staff rebuttal and cross-answering testimony  
13 will be due on December 20, 2024. At that time,  
14 discovery responses will be due in five business days.  
15 It will ratchet down again.

16 The discovery deadline will be January 27,  
17 2025.

18 Cross estimates, exhibits, and I think errata  
19 is usually done. There's a number of things that usually  
20 happen on that date. That is February 10, 2025.

21 Hearing would be February 18, 2025.

22 And simultaneous briefs would be due on March  
23 18, 2025.

24 JUDGE HOWARD: All right.

25 ATTORNEY GAFKEN: And I can e-mail those

Page 7

1 dates out as well to make it easier.

2 JUDGE HOWARD: That might be good just to  
3 confirm. I think I have all of them correctly, but if  
4 you could e-mail me and CC the other parties, I'd  
5 appreciate that.

6 ATTORNEY GAFKEN: Absolutely.

7 JUDGE HOWARD: Did any party have any  
8 clarifications or additions to that?

9 All right. Hearing none, I would plan on  
10 including a requirement in the prehearing conference  
11 order essentially requiring all the data requests and  
12 responses to be shared with each other party to the  
13 proceeding. Is there any objection to my including that  
14 in this prehearing conference order?

15 ATTORNEY GAFKEN: No objection from staff.  
16 We would support that.

17 ATTORNEY SYKES: No objection from public  
18 counsel.

19 ATTORNEY STANOVSKY: No objection from Waste  
20 Management.

21 JUDGE HOWARD: All right. Great. Thank you.

22 Seeing if there's anything else we should  
23 discuss. I will double check the notices of appearances  
24 that have already been filed in the docket and make sure  
25 the service list reflects everyone included there. I've



1 made a note of the additional individuals we were  
2 discussing at the start of our conference today.

3 If anyone would need to submit additional  
4 staff or courtesy service requests, feel free to e-mail  
5 me at Michael.Howard@utc.wa.gov.

6 And in terms of circling back to the  
7 procedural schedule -- I'm sorry; I don't anticipate  
8 there being any difficulties with this schedule. I would  
9 say this as being an ALJ only proceeding. And it does  
10 appear that that hearing date would work. So I don't  
11 have any concerns from that end.

12 Is there anything else that we should address  
13 before we adjourn?

14 ATTORNEY STANOVSKY: Yes, a couple things  
15 from the company, your Honor.

16 As far as -- I mean, just according to the --  
17 you know, the commission's rules on prehearing  
18 conference, one of the topics for discussion is  
19 identifying and simplifying the issues.

20 And we just wanted to flag that, you know,  
21 consistent with the company's answer, we don't anticipate  
22 any substantial, you know, material factual dispute as to  
23 the nature or number of the violations. But I just  
24 thought we'd take the opportunity to -- and particularly  
25 given that the service issue was resolved as we answered

Page 9

1 over a year ago.

2 So I wanted to take the opportunity to just  
3 put that out there and see if either public counsel or  
4 staff is in a position, if they feel differently, to sort  
5 of let us know what we might expect as far as factual  
6 disputes. It seems to us that penalty is probably the  
7 main issue.

8 JUDGE HOWARD: Any comments from staff or  
9 public counsel?

10 ATTORNEY GAFKEN: The company has admitted to  
11 violations in their response, and so that certainly does  
12 narrow the issues. We don't have to argue about whether  
13 there were violations.

14 And so I agree with the company in terms of  
15 the scope of the hearing being related to the level of  
16 penalties.

17 ATTORNEY SYKES: And your Honor, public  
18 counsel concurs with both staff and company. The amount  
19 of issue is the amount of penalty.

20 ATTORNEY STANOVSKY: Thank you. I recognize  
21 you all didn't have to do that, so I appreciate just  
22 getting cards on the table. And yes. Thank you.

23 So another topic or two, if that's all right?

24 JUDGE HOWARD: Certainly.

25 ATTORNEY STANOVSKY: One is discovery. I

1 think we would propose the commission's normal discovery  
2 rules unless anybody had objections or other thoughts?

3 JUDGE HOWARD: Any response from the  
4 parties? Sorry.

5 ATTORNEY GAFKEN: Just a point of  
6 clarification. Certainly the normal discovery rules is  
7 what staff had anticipated. But we had also talked about  
8 ratcheting down the discovery response dates along with  
9 the testimony dates.

10 If that's not something that the parties want  
11 to do, then we're certainly open to just leaving them at  
12 ten days. We'll need to --

13 ATTORNEY STANOVSKY: No, I'm sorry about  
14 that.

15 ATTORNEY GAFKEN: -- look at the procedural  
16 schedule, though.

17 ATTORNEY STANOVSKY: Apologies. I didn't  
18 mean to talk over that. But no, I agree. I missed that  
19 point. Yes, subject to those agreed changes in the  
20 turnaround times.

21 ATTORNEY SYKES: Public counsel agrees.

22 JUDGE HOWARD: All right. Great.

23 I also understood the proposed schedule as  
24 including the formal discovery, so with those adjustments  
25 in response times. And that understanding of the issues

Page 11

1 is certainly how I would understand the issues following  
2 the company's answer.

3           And although this is a -- essentially appears  
4 to be a question of determining the amount of any penalty  
5 and mitigation and other things of that nature, I would  
6 definitely -- I was definitely looking to see what the  
7 party's views were on the schedule. And I think the  
8 parties have arrived at kind of what I would consider a  
9 more full schedule with the prefiled testimony and things  
10 of that nature.

11           But that certainly seems -- it's certainly  
12 agreeable to all the parties who have stipulated to it,  
13 and also seems reasonable given the maximum hypothetical  
14 amount of the penalty that staff could request given the  
15 complaint. So I don't have any concerns there.

16           Anything further?

17           ATTORNEY STANOVSKY: Yes. We would propose  
18 entry of a protective order, just to sort of keep  
19 discovery clicking along. You know, obviously there are  
20 matters of locating individual customers.

21           And so I would propose a slight tweak to the  
22 commission's standard protective order. And this -- I'm  
23 trying to remember, your Honor. I don't think it was  
24 you. I think it was Judge Pearson who handled a case  
25 several years ago that I was involved with.

1           But we had a standard protective order in  
2 place, and we circled back later during discovery for an  
3 additional waiver of the commission's rules for  
4 protection of customer's information because there's no  
5 exception in that WAC for discovery to a party other than  
6 the commission.

7           So just to completely make sure the company  
8 is covered on including customer information in discovery  
9 responses to public counsel, we would request that the  
10 standard protective order be modified to include waiver  
11 of WAC 480-70-421 to the extent necessary to permit  
12 confidential discovery of protected customer information  
13 or otherwise personally identifiable information that  
14 might be protected by that -- you know, general privacy  
15 laws that the company is subject to.

16           And to point the commission, your Honor, to  
17 the order that -- the add-on order from the previous  
18 time, that was Order 03 in Docket TG-18023 issued July  
19 17, 2019, according to my records. So that would have an  
20 example of sort of the rationale and the ALJ's  
21 acceptance.

22           So we figured we'd just get that on the  
23 initial order, rather than have to come back if it  
24 becomes an issue.

25           But I haven't discussed that with the

Page 13

1 parties, so open to responses or objections if they have  
2 any.

3 ATTORNEY GAFKEN: I do have a question about  
4 the request in terms of whether the personally  
5 identifiable information about customers would still be  
6 marked confidential. I think that would be my  
7 preference. And then anybody who is signing the  
8 protective order would certainly have access to the  
9 confidential information.

10 But I believe that the company can mark  
11 customer information, identifiable information, as  
12 confidential.

13 ATTORNEY STANOVSKY: Yes, that would be our  
14 intent, to mark it confidential, or, I mean, simplest  
15 would be to the extent, you know, identifiable  
16 information isn't needed, you know, maybe we can have  
17 random identifiers or something. But we can work that  
18 out. If there were protected information we would mark  
19 that confidential, yes.

20 JUDGE HOWARD: And I will turn to public  
21 counsel in a moment. But just given how the Public  
22 Records Act is read in Washington -- and I will certainly  
23 go back and read that order you referred to -- is there  
24 an exemption that would apply to the commission that  
25 would justify us withholding this data if we received a

1 public records request for it?

2 That's typically a situation where we'd be  
3 compelled to hand something over. And then we have that  
4 statute allowing for the protective orders in utility and  
5 solid waste cases. But off the top of my head, I'm not  
6 sure that applies to customer information. I don't  
7 believe it does.

8 So is there another provision that would  
9 cover us for a Public Records Act issue?

10 ATTORNEY STANOVSKY: Well, your Honor, I  
11 didn't check the Public Records Act specifically.

12 Obviously, your order can't change the, you  
13 know, requirements or exemptions of the Public Records  
14 Act as far as I'm aware. So we just presume that it  
15 would apply, you know, by its terms.

16 But the commission's own regulations do  
17 provide that the company -- an exception for the  
18 company's requirement not to share customer information  
19 in the case of responding to the commission's  
20 investigation requests. So it's certainly information of  
21 a type that regularly passes between the company and the  
22 commission.

23 And we don't have any problem -- I suppose if  
24 that's disclosable under the PRA in that circumstance,  
25 the same would be true of it in discovery here. It was

Page 15

1 more concern that that exception doesn't expressly cover  
2 sharing with it public counsel or with anybody else, and  
3 so just making sure that we don't run afoul of the  
4 customer protection information protection rule of the  
5 commission. It's not so much a PRA requirement.

6 JUDGE HOWARD: All right. That -- go ahead.

7 ATTORNEY STANOVSKY: No, sorry. Separate  
8 thought, please.

9 JUDGE HOWARD: Well, this is helpful for me  
10 to think through, and I'll go read about it more. I'll  
11 ask staff and public counsel to weigh in in a moment.

12 I wonder if this might justify referring to  
13 these affected customers by identifiers, like you were  
14 suggesting earlier.

15 Any thoughts -- well, first I'll turn to  
16 public counsel because I skipped you before. Sykes?

17 ATTORNEY SYKES: Yes, first of all, thank  
18 you, Ms. Gafken, for getting the clarifications. I  
19 wanted to have that clarification on the order.

20 Mr. Stanovsky, can you read me off that order  
21 number one more time?

22 ATTORNEY STANOVSKY: Sure. It's docket  
23 TG-181023. And it's Order 03. And it was a little  
24 different. In that case, both Waste Management and the  
25 other party -- the only other party were private parties.



1 So the concern was a little heightened there.

2 But nevertheless, there's on the face of WAC  
3 480-70-421 no exception for sharing information with  
4 public counsel or in the context of discovery comparable  
5 to what there is for responding to commission  
6 investigations.

7 So maybe we're being overly cautious. But  
8 you know, we take protection of customer information  
9 seriously, as well as, you know, the commission's  
10 regulations.

11 And we're not trying to withhold any  
12 information. We just want to make sure we've got any  
13 waiver in place to the extent there could be an argument  
14 that sharing information needed in discovery is  
15 inconsistent with another rule of the commission.

16 ATTORNEY SYKES: Your Honor, public counsel  
17 would request some time to read that order before we  
18 agree to waive the WAC provision.

19 ATTORNEY STANOVSKY: The company wouldn't  
20 object. I'm happy to discuss offline if helpful.

21 JUDGE HOWARD: All right. I think the  
22 parties can certainly discuss more amongst themselves.

23 If -- I think if any party would like to  
24 submit a response on this issue, I would request that  
25 maybe within one week of today, filed in the docket in a

Page 17

1 letter format, I believe would be suitable.

2           And I am just glancing at this regulation  
3 right now. I can appreciate the company wanting to be on  
4 the safe side. I think, though, the Section 3 does seem  
5 to cover the situation where it's being released to  
6 resolve complaints filed by the commission.

7           I wouldn't -- I think it's fair, though to  
8 address that in the protective order to resolve any  
9 potential ambiguity.

10           And then I think there's a further question  
11 that I have about how the Public Records Act might affect  
12 either the commission's receipt of this information, or  
13 staff or public counsel. And perhaps the parties could  
14 work out an arrangement to just use identifiers for the  
15 affected customers so we don't make records of private  
16 individual information to resolve this issue. That's  
17 just a suggestion.

18           ATTORNEY GAFKEN: If I might add just  
19 briefly, under the Public Records Act, the company would  
20 receive notice if the commission did receive a public  
21 records request. And there's confidential information  
22 that has been identified in the filing.

23           And then, of course, the commission has  
24 obligations with respect to other types of information as  
25 well.

1           But certainly anything that's marked  
2 confidential under the protective order, the company  
3 would receive a notice from the commission, and then they  
4 could seek a protective order through the superior court  
5 within ten days.

6           The other point that I wanted to just note is  
7 that public counsel does have access to confidential  
8 information similar to the commission. Certainly the  
9 commission has the investigatory powers, and the  
10 companies must provide the information. But certainly in  
11 an adjudication, or even outside of an adjudication,  
12 under the statute 80-04-095, public counsel is also able  
13 to access the confidential information and would have to  
14 abide by the same rules and protections as the  
15 commission.

16           So there's a couple of things -- couple of  
17 issues kind of swirling around together in this request.

18           You know, I think it would be sufficient to  
19 have, you know, nonidentifying information in terms of  
20 customer information for purposes of this docket. Or if  
21 customer information is part of what the company  
22 provides, it could certainly be marked confidential and  
23 protected that way.

24           ATTORNEY STANOVSKY: Thank you for that  
25 citation. I'm just checking. That's not a public

Page 19

1 counsel specific statute, right? That's --

2 ATTORNEY GAFKEN: It refers to the attorney  
3 general's office.

4 ATTORNEY STANOVSKY: Oh, the attorney  
5 general. There it is. Yes, thank you.

6 ATTORNEY GAFKEN: And the commission.

7 ATTORNEY STANOVSKY: Okay. That's helpful.

8 To your Honor's point a moment ago about  
9 Subsection 3 of the WAC I cited, I mean, it only refers  
10 to release of information to the commission. And it --  
11 it's not clear to me whether "to the commission" includes  
12 to public counsel. Is public counsel regarded as part of  
13 the commission?

14 I didn't frankly check the definition of  
15 commission in the WAC for that purpose. So I may be  
16 creating an issue where there is none. If so, I  
17 apologize. But it's --

18 JUDGE HOWARD: No, that --

19 ATTORNEY STANOVSKY: -- just something that  
20 came up in a previous case.

21 JUDGE HOWARD: That's perfectly fine.

22 ATTORNEY STANOVSKY: Slightly different  
23 posture.

24 JUDGE HOWARD: No, I'm glad we're discussing  
25 this now. And if any of the parties would like to submit

1 additional comments in a letter to the docket over the  
2 next week, that would be perfectly fine.

3 And I'm going and looking right now at RCW  
4 81.77.210, which is what I think of as the ten-day letter  
5 statute. And also possibly the statute would be intended  
6 to -- would intend to cover any customer specific  
7 information. It refers to customer's specific usage  
8 information. So I just wanted to raise that.

9 I will -- go ahead.

10 ATTORNEY STANOVSKY: It appears that it would  
11 require notice to the individual customers that would be  
12 covered by the information as well. So even just  
13 providing that notice seems like it would be quite a  
14 hassle for the commission. So that seems like it might  
15 be something to try and avoid too, even if the  
16 information were ultimately protected.

17 JUDGE HOWARD: I imagine they would prefer  
18 not to get that letter.

19 All right. Well, thanks everyone. And I  
20 will take this under advisement. And I will look for any  
21 further responses from the parties.

22 And I will likely plan on issuing the  
23 prehearing conference order the first week of July,  
24 because I will be out of the office next week. But that  
25 will give me enough time to receive these responses and

Page 21

1 to look through this.

2 Is there anything else that we should address  
3 before we adjourn?

4 ATTORNEY STANOVSKY: I'm just checking my  
5 list, your Honor, but I think that's it for the company.

6 ATTORNEY GAFKEN: Nothing more for commission  
7 staff.

8 ATTORNEY SYKES: And there's nothing more  
9 from public counsel.

10 ATTORNEY STANOVSKY: Nor from the company,  
11 unless Ame is remembering something I have forgotten or  
12 something has occurred to her.

13 ATTORNEY LEWIS: Nothing here. Thank you.

14 JUDGE HOWARD: All right. Great. Well,  
15 thank you all. I appreciate the parties conferring  
16 beforehand on this. And we are adjourned. Thank you.

17 (Proceedings concluded at 1:55 p.m.)

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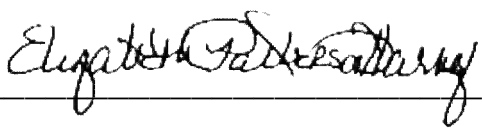

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STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

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IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of July, 2024.

ELIZABETH PATTERSON HARVEY, WA CCR 2731