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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) DOCKET NO. TG-091933
WASTE MANAGEMENT OF WASHINGTON,) Volume I
INC., d/b/a WASTE MANAGEMENT) Pages 1 - 16
OF SNO-KING,)
Respondent.)

In the Matter of the Petition of)
WASTE MANAGEMENT OF WASHINGTON,)
INC., d/b/a WASTE MANAGEMENT OF) DOCKET NO. TG-091945
SNO-KING) Volume I
For Rule Interpretation or) Pages 1 - 16
Alternatively For Modification or)
Exemption of WAC 480-07-520(4))

A prehearing conference in the above matter
was held on January 22, 2010, at 9:36 a.m., at 1300
South Evergreen Park Drive Southwest, Olympia,
Washington, before Administrative Law Judge ADAM TOREM.

The parties were present as follows:

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
telephone, (360) 664-1225.

Kathryn T. Wilson, CCR
Court Reporter

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1 WASTE MANAGEMENT OF WASHINGTON, INC., by
2 POLLY L. MCNEILL, Attorney at Law, Summit Law Group,
3 315 Fifth Avenue South, Suite 1000, Seattle, Washington
4 98104; telephone, (206) 676-7000.

5 WASHINGTON REFUSE AND RECYCLING ASSOCIATION,
6 by JAMES K. SELLS, Attorney at Law, Ryan, Sells,
7 Uptegraft, 9657 Levin Road, Suite 240, Silverdale,
8 Washington 98383; telephone, (360) 307-8860.

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

2 JUDGE TOREM: Good morning. Let's be on the
3 record in this consolidated docket of TG-091933 and
4 TG-091945. These cases were consolidated by order last
5 week, and we will be focusing on the 945 docket, which
6 is a petition for a rule interpretation or perhaps
7 alternatively a modification or an exemption for Waste
8 Management of Washington and its Waste Management of
9 Sno-King entity.

10 My understanding is that the open meeting
11 last Thursday, January 14th, had referred this matter
12 to an ALJ for a resolution of the petition in as
13 expedited a manner as possible, so here we are today on
14 Friday, the 22nd of January, 2010. It's a little after
15 9:30 in the morning, and today we are going to try to
16 set a schedule for, I understand, filing of briefs so I
17 can understand both Staff and Waste Management and
18 perhaps the WRRRA's positions on how to interpret WAC
19 480-07-520 in conjunction with not only the words on
20 the page but the Commission's recent emphasis on making
21 sure anybody filing a rate case complies with the
22 Commission's rules for all regulated companies, and
23 today, I that rule only applies to solid waste
24 companies.

25 So let me take appearances. I exchanged some

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1 e-mails yesterday as to the commissioners' availability
2 to hear this case having waived parties' rights to an
3 initial order, so we can do that formally on the record
4 today and see how quickly a final order interpreting
5 this rule can be achieved. For the petitioner, please.

6 MS. MCNEILL: Thank you, Your Honor. Polly
7 L. McNeill of Summit Law Group, 315 Fifth Avenue South,
8 Suite 1000, Seattle, Washington, 98104; phone number,
9 (206) 676-7040; fax, (206) 676-7041; e-mail,
10 pollym@summitlaw.com, representing the petitioner,
11 Waste Management of Washington, Inc., d/b/a Sno-King.

12 JUDGE TOREM: Mr. Thompson?

13 MR. THOMPSON: Jonathan Thompson, assistant
14 attorney general representing Commission staff. My
15 street address is 1400 South Evergreen Park Drive
16 Southwest, Olympia, 98504. Phone number is (360)
17 664-1225, and my e-mail is jthompo@utc.wa.gov.

18 JUDGE TOREM: Mr. Sells?

19 MR. SELLS: Thank you. James Sells appearing
20 on behalf of proposed intervenor Washington Refuse and
21 Recycling Association, 9657 Levin Road Northwest, Suite
22 240, Silverdale, 98383; phone, (360) 307-8860; fax,
23 (360) 307-8865; e-mail, jimsells@rsulaw.com.

24 JUDGE TOREM: Our first order of business
25 should be the parties' reaction to Mr. Sells' petition

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1 to intervene. Mr. Sells, I think the petition speaks
2 for itself. Did you want to add anything to it at this
3 time before I see if there are objections?

4 MR. SELLS: No. I will reply if there is any
5 objections, Your Honor.

6 JUDGE TOREM: Ms. McNeill, any objections?

7 MS. MCNEILL: I have no objections as long as
8 there isn't any delay in the schedule from the
9 intervention. I have Mr. Sells's assurance there won't
10 be, so I have no objection.

11 JUDGE TOREM: Mr. Thompson?

12 MR. THOMPSON: Staff has no objection.

13 JUDGE TOREM: Seeing as the WRRRA has
14 intervened in just about every case, as Mr. Sells has
15 pointed out, since the dawn of the UTC, we don't want
16 to break that trend now, so petition granted.

17 Let's turn to the other business at hand
18 then. I believe, Ms. McNeill, I've already reviewed
19 your petition and the other paper that's in the case,
20 and as you know, I've now listened to the majority of
21 the open meeting recording, so it's not a need to
22 rehash today your statements to the commissioners and
23 your company's concerns with what you see the solid
24 waste division here making a change in how its
25 enforcement rule, not just a ratcheting up of its

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1 demands for compliance with the niceties. We can deal
2 with that on brief. I think that's now already a part
3 of the record and can be referred to.

4 Let's focus on how quickly we can get this
5 accomplished. Yesterday I gave you a very optimistic
6 and ambitious schedule with briefs coming in perhaps as
7 soon as a week from today, if we are going to have a
8 responsive date, with a second filing being Wednesday
9 the 3rd of February, with a hope that the week of the
10 8th of February, the Commissioners and I can meet, have
11 a decision conference, and perhaps have an order
12 drafted, if not issued, as soon as the 12th of
13 February.

14 I'll say that I can't promise you will get a
15 result by then, but that's the most optimistic and
16 aggressive schedule I can see given that the
17 Commissioners will be out of town for the NARUC
18 meetings the following week. There is probably a most
19 realistic chance that the order won't be issued until
20 they get back from NARUC if they don't feel they've had
21 a sufficient time to consider everything they need to
22 in setting this rule interpretation straight for not
23 only your company but the entire industry.

24 So what is your reaction to that proposed
25 schedule?

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1 MS. MCNEILL: Thank you. My reaction is that
2 I think it's ambitious, but it is doable, and
3 Mr. Thompson, I will let him speak for himself, but we
4 have discussed this, and I believe we are amenable to
5 meeting those scheduled demands with Mr. Thompson
6 filing.

7 I'm willing to say that our petition can
8 stand as the opening brief. Mr. Thompson then would
9 file a reply with perhaps affidavits or declaration on
10 a paper record by Friday the 29th, or a response by
11 Friday the 29th, and then we would do our reply by
12 February 3rd. We are very interested in getting a
13 decision on this petition so our rates are not held in
14 abeyance any longer than they need to be.

15 I really, really appreciate Mr. Thompson's
16 willingness to abide by that. I know how demanding
17 that is, but I think my reply is also pretty demanding,
18 so I think we are both willing to make this work.

19 JUDGE TOREM: Mr. Thompson, what's your
20 thoughts on how many affidavits or factual-based items
21 you might have to dredge up in the next week?

22 MR. THOMPSON: On the strict legal question
23 of how to interpret the requirements of the rule,
24 which I would boil down to basically does "Company"
25 mean corporation or legal entity, or can it mean

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1 business units within a corporation, doesn't really
2 require any factual basis at all. It's a legal
3 argument, but then the second issue of what exemption
4 might be appropriate from the filing requirement does
5 get into facts some.

6 Since the Company is relying on its initial
7 filing in which there are some kind of assertions of
8 fact that aren't really based on affidavits or
9 anything, I would appreciate some leeway in that regard
10 to sort of treat this more like a brief adjudicative
11 proceeding where we are giving a statement of the case
12 and have some leeway to state the facts without having
13 any sworn testimony behind it. That would be my
14 proposal.

15 JUDGE TOREM: I think Chairman Goltz in the
16 open meeting addressed the flexibility of the
17 administrative adjudicative process. I'm more than
18 happy to adjust that as long as the factual basis on
19 which the Commissioners make the decision is fully
20 fleshed out, not only to the parties' satisfaction but
21 to the Commission, so if we need more time to hammer
22 out those facts, then we have to extend the schedule.

23 There may be that there can be a stipulation
24 of fact between you and Ms. McNeill to better support
25 what's in the initial filing, and maybe that would come

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1 in at the same time as your brief next week so that
2 everybody will have the table set fully with all the
3 agreed facts and anything else you are bringing to the
4 table that might be disputed facts.

5 MR. THOMPSON: I don't think there are going
6 to be any disputes in fact. I think it's going to be
7 more of a matter of argument over what type of
8 information is required from a company and why for
9 purposes of auditing a company, so it's not really
10 specific to this particular situation. It's kind of
11 universal rate-making concepts.

12 JUDGE TOREM: I see from reading
13 Ms. McNeill's petition and listening to the open
14 meeting though that there was also a question of the
15 Commission's past practice and the enforcement of this
16 rule and its previous interpretations perhaps that
17 setting a precedential custom of how it would not only
18 treat Ms. McNeill's client but all other companies
19 depending on how that would be defined.

20 So I don't know if there will be a factual
21 dispute or a stipulation as to previous rate cases for
22 Sno-King or other divisions within waste management
23 that all sides could agree it's past history. How it's
24 being interpreted now -- to all the solid waste
25 companies regarding the new approach to enforcing the

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1 rule more strictly. Whether that should be part of the
2 factual record in this case I don't know, but it seems
3 as though that's been one of the relevant points to
4 dispute.

5 MR. THOMPSON: I think Staff conceives that
6 it has operated differently in the past, but I don't
7 think there is any argument on the Company's part that
8 Staff is somehow estopped or something from --

9 JUDGE TOREM: You have that little disclaimer
10 that past performance is no guarantee of future
11 results?

12 MR. THOMPSON: I just don't think we will be
13 appearing, but I don't think necessarily getting into
14 that aspect.

15 MS. MCNEILL: I do agree. I don't actually
16 think that there is any dispute about the way this rule
17 has been applied in the past, and we can be sure to
18 perhaps come up with some stipulation that could be
19 included with Mr. Thompson's submittal on the 29th to
20 package that up, but I don't think there were any
21 statements we made in our petition that would be the
22 subject of controversy, and no, we aren't arguing
23 estoppel. The only argument we would have is that past
24 practice may be shared interpretation, but we are not
25 arguing that they are estopped from changing that.

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1 JUDGE TOREM: Exactly. That's the angle I
2 was suggesting. I didn't think you would bring a case
3 that the Commission was estopped from correctly
4 enforcing the regulations. I got the impression that
5 the industry wanted to be sure that it wasn't just
6 better compliance being demanded but not in its place a
7 new interpretation of the rule or a modification of the
8 words to mean something than they have in the past.

9 Asking for dotting the i's and crossing the
10 t's would be one thing, but having you change what's
11 required for that change in the rule is another, and I
12 thought that was the thrust of the Company's petition.

13 MS. MCNEILL: That's correct. That's part of
14 our position, and again, we simply feel that the past
15 practice is reflective of a legitimate and supportable
16 interpretation of the regulation, and as you said at
17 the beginning, not just a ratcheting up of enforcing
18 the stated and clearly unambiguous requirements but
19 actually a change in terms of what the regulation is
20 being interpreted to mean.

21 But again, I'm sure that John would point out
22 that doesn't foreclose them. It's just because we
23 didn't stop you from going 90 the last week and a half
24 doesn't mean we can't stop you from going 90 now. He
25 would make some sort of an argument like that, I

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1 assume, and I would not oppose that. That's a
2 legitimate argument to make.

3 JUDGE TOREM: So if I understand correctly,
4 the Company as the petitioner and Staff will work
5 together to have some filing on any stipulated facts
6 that you deem necessary; that Staff will file its own
7 response to the petition a week from today. Mr. Sells,
8 did you want to file a response to the petition or wait
9 to join in the reply?

10 MR. SELLS: We would wait until the reply,
11 and if we file anything, it will be a reply to the
12 response.

13 JUDGE TOREM: I took it from your petition to
14 intervene that you were supporting Ms. McNeill's
15 approach to this.

16 MR. SELLS: As I understand it at the moment.
17 Our situation is we do, in fact, have some members who
18 have similar, not identical, business structures on a
19 much, much smaller scale, and we are here to make sure
20 that we know what the rules are too. That's basically
21 it.

22 JUDGE TOREM: Excellent. So we will set
23 January 29th as the response date for the petition and
24 any stipulation that is necessary, because it may prove
25 to be none, so I don't want to set a deadline for a

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1 stipulation that will never appear, but if there is
2 going to be stipulation on or at the same time as the
3 Staff's response, the date then for the reply will be
4 February 3rd, and I'm hoping that if you can hold up
5 that end of the schedule, then I will be able to get a
6 memo to Commissioners by later that week, and our
7 internal decision process can get started earlier on
8 the week of the 8th as early as possible and hopefully
9 be well in the works by the end of the week, and if
10 everything lines up and other things don't leap out of
11 the woods at us, then perhaps as soon as by the 12th.

12 If you want to check in with me on the
13 afternoon of the 12th if you haven't seen something as
14 to what the predictions are when it might be published,
15 feel free, but I won't make any promises. I'll tell
16 you it's either in the works or a decision conference
17 has or hasn't occurred, but I can't tell you how it's
18 going to come out, but I can try to tell you when. At
19 that point, it will be a question of the Commissioners
20 being on one end of the country and me being in another
21 time zone that week of President's Day, so we will be
22 getting things across the Internet to get things signed
23 and not have to wait until everyone is back. That's
24 the best prediction I can tell you on schedule.

25 When you file the response, Mr. Thompson, if

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1 you could make sure you not only address the rule
2 interpretation but also Staff's position if the rule
3 interpretation is held up and Staff might argue whether
4 or not you would support an exemption or some sort of
5 modification as was requested in the petition.

6 MR. THOMPSON: Right, and I plan to do that.
7 I think I can even give you a little information in
8 advance that Staff would support at least a partial
9 exemption. There are two subparts of the rule, D and
10 H, that are at issue, and I'm getting them confused,
11 but we've already agreed that one of them ought to be
12 exempt, the detailed depreciation schedule, which I
13 think is H, so I think the dispute is really in the
14 details where the devil resides in D.

15 JUDGE TOREM: Is there any other issues we
16 need to take up this morning then? We've agreed on
17 this overly-ambitious schedule.

18 MS. MCNEILL: The only other thing I would
19 point out is I would certainly work and take the lead
20 on the stipulation for drafting that for us to have an
21 agreement to provide with Staff's response, but until
22 we see Staff response, I don't know whether there may
23 be any additional facts that we would want to put into
24 the record by either affidavit or declaration, and I
25 will do my best to run them by Staff before they are

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1 actually filed so that we can minimize any dispute
2 about anything that we may say in our reply that is
3 factually based, but I wouldn't want to foreclose the
4 opportunity to actually add additional facts to the
5 reply if they are important to respond to what Staff
6 files.

7 JUDGE TOREM: Sounds good, and Mr. Thompson,
8 in that regard if additional facts do come in and
9 Commission staff wants to quickly file a surrebuttal or
10 reply at that time, you will know Wednesday afternoon
11 the 3rd when you see it if that's the case. I would
12 hope, given the schedule, you would be able to file a
13 petition requesting as much and maybe an agreed
14 petition from the other parties that the Commission
15 should consider Staff's second filing and hopefully try
16 to get that in by the 5th so that it's all in hand when
17 I hope to meet with the Commissioners on the 8th or
18 9th. If additional facts do present themselves for
19 some reason after next Friday, that we've anticipated
20 that as well.

21 My hope is that the record will be complete
22 enough on the facts and the argument that there won't
23 be a need for Bench requests after the decision
24 conference, but if we need to use that tool, we will
25 try to give you about a 48-hour turnaround after

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1 reading all the materials. Is there anything else to
2 do today?

3 MR. THOMPSON: I don't think so.

4 MS. MCNEILL: I think we've addressed
5 everything we've purported to address.

6 JUDGE TOREM: We will adjourn this
7 prehearing conference.

8 (Prehearing conference adjourned at 9:57 a.m.)

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