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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND) DOCKETS TG-120840, TG-120842
TRANSPORTATION COMMISSION,) and TG-120843
) Pages 29-47
v.)
)
Complainant,)
)
WASTE MANAGEMENT OF WASHINGTON,)
INC. D/B/A WASTE MANAGEMENT OF)
THE NORTHWEST, WASTE MANAGEMENT)
OF SEATTLE AND SOUTH SOUND, AND)
WASTE MANAGEMENT OF SNO-KING,)
G-237,)
)
Respondent.)

PREHEARING CONFERENCE, VOLUME II
Pages 29-47
ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

10:02 A.M.

JULY 18, 2013

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest, Room 206
Olympia, Washington 98504-7250

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OLYMPIA, WASHINGTON, JULY 18, 2013

10:02 A.M.

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P R O C E E D I N G S

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6 JUDGE FRIEDLANDER: Good morning. Let's get started.

7 I'm Marguerite Friedlander, the administrative law
8 judge, appearing on behalf of the Washington Utilities and
9 Transportation Commission today.

10 Waste Management of Washington, Inc., and Rabanco LTD
11 filed tariff revisions with the Commission to address missed
12 solid waste pickups due to weather conditions and labor
13 disputes. Waste Management's tariffs revisions have already
14 gone into effect by operation of law. The suspension period for
15 Rabanco's revisions ends on August 1st.

16 The purpose of today's hearing is to discuss the
17 procedural path these complaints will take, and the first order
18 of business is to take appearances. You do not need to give
19 your full appearances since we've already met before.

20 Appearing today on behalf of Waste Management?

21 MS. McNEILL: Thank you. Good morning. Polly
22 McNeill, representing Waste Management of Washington, Inc.

23 And with me today is Andrew M. Kenefick, general
24 counsel of Waste Management of Washington, Inc.

25 JUDGE FRIEDLANDER: Thank you.

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1 Appearing today on behalf of Rabanco LTD?

2 MR. WILEY: Yes, Your Honor. David Wiley, at the
3 address and contact location previously filed, appearing today
4 on behalf of Rabanco Limited, d/b/a Republic Services and Allied
5 Waste.

6 JUDGE FRIEDLANDER: Thank you.

7 Appearing today on behalf of Staff?

8 MR. FASSIO: Michael Fassio, Assistant Attorney
9 General, appearing on behalf of the UTC Staff.

10 JUDGE FRIEDLANDER: Thank you.

11 And appearing today on behalf of Washington Refuse
12 and Recycling Association?

13 MR. SELLS: Thank you. If Your Honor please, James
14 Sells, attorney, appearing on behalf of Intervenor, Washington
15 Refuse and Recycling Association. Same information on file.

16 JUDGE FRIEDLANDER: Okay. Thank you. I appreciate
17 that.

18 Is there anyone else who wishes to make an appearance
19 today?

20 Okay. Hearing nothing, we'll go forward.

21 I understand before we get into the procedural
22 schedule, that there may be some other procedural matters that
23 we should address.

24 And I believe Ms. McNeill with Waste Management would
25 like to raise at least two.

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1 MS. McNEILL: Thank you. I can't this see light.
2 I'm sorry. There. Okay. Thank you, Your Honor.

3 JUDGE FRIEDLANDER: We can hear you.

4 MS. McNEILL: Yes, Polly McNeill for Waste
5 Management.

6 We have a couple of procedural consternations and
7 issues that we would like to bring forward today, and the first
8 one, I suppose, is that we are -- both of them relate to the
9 fact that we are confused and befuddled about what we are here
10 to accomplish in this adjudication.

11 We have been whipsawed by Staff in terms of first, we
12 were invited to file tariff language in May 2012. We worked
13 with Staff, we filed language that was approved by Staff then
14 that was presented to the Commission, but there had already been
15 the occurrence of a strike, so the Commission refrained from
16 acting.

17 When the tariff was presented formally in the
18 occurrence of time, the Commission refrained from acting, and
19 then we were told that this issue related to tariff language
20 addressing work stoppage situations was going to be accomplished
21 in a stakeholder process in a Staff-initiated docket that
22 paralleled this proceeding. We participated in that.

23 It needs to be said, then, we were named in a penalty
24 action by the Commission for failure to have tariff language in
25 effect when the work stoppage occurred in July 2012. Then we

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1 were told that things were going to be resolved on an
2 industry-wide basis, so when we reached the end of our
3 suspension period, we did not know quite how to proceed at that
4 point.

5 We were told then that the Commissioners themselves
6 were supportive of allowing the tariff to go into effect, the
7 tariff did go into effect, and now we are being asked to
8 litigate a tariff that has already gone into effect.

9 And we don't understand where the justiciable
10 controversy exists, so the first preliminary procedural matter
11 is to make an oral motion to dismiss this complaint against
12 Waste Management for failure to have a justiciable controversy
13 and for failure for there to be anything for us to litigate.

14 The language that is the subject of this tariff
15 docket was a result of negotiations with Staff. It was
16 recommended by Staff to Waste Management, and so it went into
17 effect by operation of law, and that, I think, is the end of the
18 tariff proceeding.

19 The related requests, then, that we have is if this
20 is something other than a tariff proceeding, and if the
21 Commission Staff believes that they have some sort of a grounds
22 to pursue a complaint against Waste Management for having that
23 tariff language into effect, we would request not only leave to
24 answer a complaint, but actually that Staff be put to the test
25 of specifying what it is that the grounds of the further

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1 adjudication might be.

2 I believe Mr. Kenefick would like to supplement my
3 oral argument with some remarks.

4 MR. KENEFICK: Good morning, Judge Friedlander. And
5 just a point of clarification, and that is I'm actually not the
6 general counsel -- not the general counsel for Waste Management
7 of Washington, but its senior legal counsel, so I appreciate
8 the --

9 MS. McNEILL: Promotion?

10 MR. KENEFICK: -- promotion, but I don't think that
11 that will carry very far.

12 Initially, I had not intended to come down to this
13 proceeding. I was under the impression, based on the prior
14 proceeding -- the proceedings really, that this particular
15 matter would, in effect, go away.

16 As Ms. McNeill explained, we were under the
17 impression that the fact that the tariff went into effect by
18 operation of law, that the language in the tariff itself was
19 language that had been proposed to us by Staff, that the
20 Commissioners several weeks ago indicated that they thought it
21 made most sense for the tariff to go into effect by operation of
22 law, put this into a posture where this prehearing conference
23 would be aimed at kind of wrapping this up, closing out this
24 particular docket number, and then moving on to deal with the
25 tariff issues, however they were going to be dealt with, on an

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1 industry-wide basis or differently.

2 The reason I did come down here is I got the
3 indication that it was not going to end up that way, and in
4 particular, the Company is extremely concerned because the
5 amount of money, resources, and legal time we spend on WUTC
6 matters dwarfs pretty much everything else that I manage here in
7 Washington State. I looked at the billings and realized that,
8 you know, just this year alone, we're 2 1/2 times our expense,
9 for all other matters combined is accounted for by WUTC matters.

10 So it's very frustrating for us when we see a
11 proceeding that's going to continue and will continue to cause
12 us to incur attorneys' fees and devotion of Staff and my
13 resources to proceed with a matter that I don't understand why
14 it needs to move forward.

15 So I, you know, certainly understand that if it has
16 to proceed -- we don't really control whether it proceeds, but I
17 do want to make sure it moves forward expeditiously and that
18 it's clear what the parties are aiming for.

19 But as a preliminary matter -- I mean, as Ms. McNeill
20 just mentioned, you know, we think that this matter is over and,
21 therefore, that's why I have asked Ms. McNeill to move to
22 dismiss this matter with respect to Waste Management.

23 JUDGE FRIEDLANDER: Thank you.

24 Mr. Wiley?

25 MR. WILEY: Yes, Your Honor. Without going over much

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1 of the same ground, I certainly share the sentiments of
2 Ms. McNeill and Mr. Kenefick. I've had the privilege of
3 practicing before this Commission for 34 years now, which is
4 aging me, but I have never been as flummoxed as I am by the
5 procedural posture of a matter as I am right now.

6 I do not understand why we are here, and I do join
7 Ms. McNeill's recitation of the facts with respect to our
8 client, who was also informed in May of 2012 that they needed to
9 address gaps in their tariff with respect to what would happen
10 if there was a work stoppage.

11 Since that time, we have unfortunately had what's, in
12 effect, as I understand in labor law -- and I'm no labor
13 lawyer -- a sort of secondary boycott incident where a sympathy
14 strike from 2500 miles away took place in this area in terms of
15 a one-day work stoppage.

16 So we've had the mechanics that trigger -- we've
17 already had the unfortunate mechanics that trigger this whole
18 issue, and it's a very important issue to us. It has been
19 pending at the Commission for well over a year.

20 And as you are well aware, under Docket No. 01374,
21 there's been substantial process, including two separate
22 stakeholder sessions with the Commissioners, two rounds of
23 written comments, industry participation, county government
24 participation, and all sorts of other interested parties where
25 we developed quite an extensive record.

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1 And for us now to be -- basically be ignoring that
2 process and progress and focusing on tariffs that were filed
3 over a year ago before the benefit of that kind of dialogue and
4 interchange and process, seems to me to be counterproductive and
5 inefficient.

6 In addition, while I understand that the Staff
7 apparently have some and has had objections to one of the
8 proposed sentences in our particular tariff filing that
9 cross-referenced Item 17 and used terms like "prolonged work
10 stoppage" that they thought were vague, that doesn't mean that
11 we haven't advanced the ball far past that in the stakeholder
12 meetings and in the proposals that were circulated.

13 And when we were last here in June, we were on the
14 verge of resolving that through an open meeting session at the
15 end of June that, in my absence on a two-week vacation, got
16 scratched, and then I got a hearing notice from you in Italy.

17 So I'm just -- I guess, again, I come back to the
18 word "flummoxed." I don't understand why we're here. And I
19 think there's a far more efficient vehicle that we were
20 proceeding under, and now we're back to square one, so the
21 process has come a full 360 degrees.

22 And we just question why this is viewed as the
23 beneficial approach, particularly since this won't have an
24 industry-wide application, which the Commission's tariff
25 template for solid waste collection companies has always

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1 envisioned, and now we're going separately on some companies
2 and, as you heard from Ms. McNeill in Waste Management's case,
3 it doesn't even cover all of their tariffed area.

4 So, again, I question this procedure. I think
5 there's much more efficient and productive ways to resolve this,
6 and I'm sorry we're here.

7 JUDGE FRIEDLANDER: Let me just ask a clarifying
8 question.

9 Mr. Wiley, when you say there's a more efficient
10 process, are you referring to the 010374 docket?

11 MR. WILEY: I certainly am. And having those, the
12 template adopted industry-wide, now we're basically going to
13 litigate this with every single company that's affected. And
14 there are far more union companies that Ms. McNeill referred to
15 in her e-mail to you of two days ago that they won't be covered
16 whatever the resolution is.

17 JUDGE FRIEDLANDER: And so, am I to understand,
18 Mr. Wiley, that the language that's in your proposed tariff,
19 because it hasn't become effected --

20 MR. WILEY: Correct.

21 JUDGE FRIEDLANDER: -- by operation of law, was that
22 language that you drafted?

23 MR. WILEY: That was language that we drafted with
24 the Staff, but the Staff objected to the additional sentence
25 that was added that cross-referenced Item 17, and it still does

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1 object to that provision.

2 JUDGE FRIEDLANDER: So Rabanco has no objection to
3 these tariffs going into effect, I assume?

4 MR. WILEY: No, although we would prefer that the
5 language that was negotiated to the 11th hour between the Staff
6 and the Company that the Commissioners addressed in the last
7 open meeting, where they addressed this issue, were to be
8 substituted because it was far more detailed in addressing
9 various conditions. And we thought that the industry and Staff
10 have made substantial progress in articulating and anticipating
11 circumstances that were not included in the initial filings. We
12 have learned a lot over the last year, Your Honor.
13 Unfortunately, we've had two work stoppages. Two separate
14 companies. We've had a lot of opinions being vetted and
15 considered and evaluated.

16 JUDGE FRIEDLANDER: Thank you.

17 MS. McNEILL: May I respond to your question briefly
18 also?

19 JUDGE FRIEDLANDER: Yeah.

20 MS. McNEILL: The other point that I think Mr. Wiley
21 is alluding to -- not only is it frustrating in the sense that
22 we were persuaded that an industry-wide approach was the way to
23 go, and for that reason allowed our tariffs to languish while
24 that process went forward -- we also learned a great deal during
25 that process. I think all of the parties who participated in

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1 the stakeholder workshops acquired some more detailed
2 understanding, and the tariff language that was being proposed
3 and circulated, while it had not reached a consensus, was
4 nonetheless pretty close to consensus and was far more detailed
5 and far more specific.

6 So the further frustration that I think we have and
7 Mr. Kenefick has, in terms of expending resources to litigate
8 about a tariff, that actually, if we knew then what we know now,
9 we would have filed different language. So defending language
10 that we now really are not enamored of is -- exacerbates our
11 frustration.

12 And we said to you, I think at the prehearing
13 conference, that this language was not what we would ask for if
14 we were allowed to ask for anything, but it's better than
15 nothing. It gives us a little bit of cover if there were some
16 sort of a work stoppage only in the three tariffed areas, but,
17 nonetheless, in those three.

18 So that's another element of why we just do not
19 believe that this proceeding should be perpetuated. Thank you.

20 JUDGE FRIEDLANDER: Mr. Fassio?

21 MR. FASSIO: I wonder if before Staff responds --
22 because the parties have brought a motion today -- if I could
23 have a couple of minutes with my client to reflect on what's
24 been said before explaining Staff's position as to that
25 question?

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1 JUDGE FRIEDLANDER: That's fine. We'll go off the
2 record for a couple of minutes.

3 MR. FASSIO: Thank you.

4 (Discussion off the record.)

5 JUDGE FRIEDLANDER: Okay. We'll go back on the
6 record.

7 When we last left off, there were at least a couple
8 of procedural matters that Waste Management had raised.

9 My understanding is that most, if not all of those,
10 have been resolved, and a procedural schedule has been arrived
11 at.

12 So, Ms. McNeill?

13 MS. McNEILL: Thank you, Judge Friedlander. That is
14 correct. Waste Management would like to withdraw its motions to
15 the extent that they are characterized as motions. We no longer
16 need an opportunity to file an answer, nor does Staff have to
17 submit a more detailed complaint, and our motion to dismiss is
18 withdrawn.

19 JUDGE FRIEDLANDER: Thank you.

20 MS. McNEILL: Thank you.

21 JUDGE FRIEDLANDER: Who would like to present the
22 proposed procedural schedule? Mr. Fassio?

23 MR. FASSIO: I can certainly do that.

24 The parties propose to simultaneously file on August
25 16, 2013, a statement of their proposed language for the tariff

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1 and highlighting any differences that may exist between the two
2 between proposals, but for each party to file, present their
3 case as it were, on August 16th.

4 And then the parties also have a date of August 30th,
5 2013, wherein they would file responsive comments or briefing to
6 the filings of the 16th.

7 Okay. Great. Thank you.

8 JUDGE FRIEDLANDER: Mr. Wiley, did you have
9 something?

10 MR. FASSIO: The parties can add to that as they
11 should.

12 MR. WILEY: I just had a technical motion that I
13 think I mentioned off record, Your Honor.

14 I would ask that the Bench take official notice of
15 Docket No. TG-010374 so that the parties can make selective
16 references to that in their submissions.

17 JUDGE FRIEDLANDER: Okay. And does anybody object to
18 taking official notice of Docket TG-010374?

19 MR. FASSIO: No.

20 MS. McNEILL: No.

21 JUDGE FRIEDLANDER: Okay. Thank you. The Commission
22 will take official notice of that proceeding.

23 All right.

24 MS. McNEILL: I have one more procedural matter.

25 JUDGE FRIEDLANDER: Yes.

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1 MS. McNEILL: On behalf of Waste Management, we're
2 prepared to waive the initial order.

3 MR. WILEY: Rabanco would join that, Your Honor.

4 JUDGE FRIEDLANDER: Okay. Staff?

5 MR. FASSIO: Staff will provide its -- has no comment
6 at this time on that, but we'll indicate whether it agrees to
7 waive the initial order at some future date.

8 JUDGE FRIEDLANDER: Okay. "At some future date"?
9 You mean soon?

10 MR. FASSIO: Yes. We're not prepared at this time to
11 waive the initial order, but we will definitely apprise the
12 Commission of our waiver before all the filings are in.

13 JUDGE FRIEDLANDER: Okay. Why don't we make it a
14 date certain in a week.

15 Can you get me whatever you need to get me, your
16 position, I guess, in a week?

17 MR. FASSIO: Yes, we can do that, Your Honor.

18 JUDGE FRIEDLANDER: Okay. And I would ask Mr. Sells
19 his response before letting you know what my thoughts are.

20 Mr. Sells?

21 MR. SELLS: Just like any other Intervenor, I'm not
22 going to mess anything up. It makes perfect sense to waive the
23 initial order to us, and we would support that.

24 JUDGE FRIEDLANDER: All right. Thank you.

25 And certainly Staff is free to take the position that

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1 it so chooses, but I would note that it may help all the parties
2 to waive the initial order simply because this process has been
3 going on for quite a while, and you'll have other opportunities
4 to appeal should you disagree with the final order.

5 All right. Is there anything else before we adjourn?

6 MS. McNEILL: No, Your Honor.

7 JUDGE FRIEDLANDER: Okay. Thank you.

8 All right. We are adjourned. Thank you.

9 (Proceeding concluded at 11:01 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)) ss
COUNTY OF KING)

I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter and Notary Public 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.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29th day of July, 2013.

SHELBY KAY K. FUKUSHIMA, CCR

My commission expires:
June 29, 2017