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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 In the Matter of the ) DOCKET TG-190653

Application of )

5 )

WESTSIDE WASTE, LLC, )

6 )

For Authority to Operate )

7 as a Solid Waste Collection )

Company in Washington )

8 )

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TELEPHONIC PREHEARING CONFERENCE, VOLUME I

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Pages 1-21

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ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

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April 13, 2020

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1:30 p.m.

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16 Washington Utilities and Transportation Commission

621 Woodland Square Loop Southeast

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1 LACEY, WASHINGTON; APRIL 13, 2020

2 1:30 P.M.

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

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6 JUDGE HOWARD: Good afternoon. Let's go

7 ahead and be on the record. The time is 1:32 p.m.

8 My name is Michael Howard, and I'm an

9 administrative law judge with the Washington Utilities

10 and Transportation Commission.

11 We're here today for a prehearing conference

12 in Docket TG-190653, which is captioned In the Matter of

13 the Application of Westside Waste, LLC for Authority to

14 Operate as a Solid Waste Collection Company in

15 Washington.

16 This conference is a chance for the parties

17 to take their positions on the petition for intervention

18 and to discuss the procedural -- procedural schedule.

19 After today's conference, I will enter an order setting

20 out a procedural schedule ruling on the petition for

21 intervention and setting a date for the hearing itself.

22 Let's start by taking short appearances, and

23 can we start with Staff?

24 MR. ROBERSON: Good afternoon, Judge Howard.

25 My name is Jeff Roberson, R-o-b-e-r-s-o-n. I'm an

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1 assistant attorney general representing Staff.

2 JUDGE HOWARD: Thank you.

3 And could we have an appearance for Westside

4 Waste?

5 MR. DIETRICH: Yeah, this is Steve Dietrich.

6 I'm with the firm Smith & Dietrich Law Offices in

7 Olympia, representing Westside Waste, LLC.

8 JUDGE HOWARD: Thank you.

9 And for Rabanco and Rubatino?

10 MR. WILEY: Yes, Your Honor. Dave Wiley at

11 the law firm of Williams Kastner representing Rubatino

12 Refuse -- Refuse Removal and Rabanco Limited, d/b/a

13 Lynnwood Disposal in this proceeding.

14 JUDGE HOWARD: Okay. Could we have an

15 appearance for Waste Management?

16 MR. STANOVSKY: Yes, this is Walker

17 Stanovsky with Davis Wright Tremaine LLC. I'm based in

18 our Seattle office, and I'm representing Waste

19 Management of Washington, Inc. And I believe Andrew

20 Kenefick, who's in-house counsel at Waste Management,

21 planned to be on the call, but I haven't heard him yet.

22 Andrew, are you there?

23 MR. KENEFICK: Yes, I am, but all -- all we

24 need is for you to enter the appearance. I won't --

25 thank you.

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1 JUDGE HOWARD: Okay. Thank you.

2 And do we -- can we have an appearance for

3 Washington Refuse and Recycling Association?

4 MR. SELLS: Yes, Your Honor. This is James

5 Sells, attorney appearing for WRRA, proposed intervenor,

6 along with Rod Whittacker who is already -- or I think.

7 Rod, are you there?

8 MR. WHITTACKER: Yes, this is Rod

9 Whittacker, associate counsel for WRRA, also here.

10 JUDGE HOWARD: Great, thank you.

11 So we -- the first issue I'd like to start

12 with today is that we have a petition to intervene from

13 the WRRA. Do we have anyone else on the call who wishes

14 to intervene in the case?

15 Okay. Hearing none, let's discuss the

16 petition to intervene from WRRA. I would like to give

17 each party a chance to respond here to the petition, but

18 I'd first like to ask WRRA if they wanted to make any

19 brief argument here in support of its position in

20 addition to what is stated in -- in the written

21 materials.

22 MR. SELLS: Thank you, Your Honor. We

23 really have nothing to add other than in the petition.

24 We have, for well over 30 years, taken part as a --

25 application for solid waste and representing the

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1 industry as a -- as a whole as opposed to the individual

2 companies who have a direct responsibility to their

3 customers here. And we will not enlarge the issues at

4 all, probably will not call any witnesses, but I think

5 it's important for the regulated industry to be heard as

6 a whole.

7 JUDGE HOWARD: Okay. Thank you.

8 So I'd like to hear the positions of the

9 parties on this petition. Could we have Staff's

10 position?

11 MR. ROBERSON: Staff has no objection to

12 allowing WRRA to intervene, Your Honor.

13 JUDGE HOWARD: Okay. How about Westside

14 Waste's position?

15 MR. DIETRICH: Westside Waste has no

16 objection to the petition.

17 JUDGE HOWARD: Thank you.

18 For Rabanco and Rubatino?

19 MR. WILEY: No objection, Your Honor.

20 JUDGE HOWARD: Thank you.

21 For Waste Management?

22 MR. STANOVSKY: No objection.

23 JUDGE HOWARD: And for the WRRA?

24 MR. SELLS: No objection.

25 JUDGE HOWARD: Thank you.

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1 Well, hearing no objections to the petition

2 to intervene and considering the written petition and

3 the comments today, I'm going to go ahead and grant that

4 petition to intervene due to their substantial interest

5 in the proceeding as an association of solid waste

6 carriers throughout the state. And I'll provide more

7 detail in my coming order on the prehearing conference.

8 MR. SELLS: Thank you, Your Honor.

9 JUDGE HOWARD: The next issue I'd like to

10 address today would be discovery. Would the parties --

11 and -- and whether the parties would like to have the

12 discovery rules available to them.

13 Mr. Roberson, would Staff be interested in

14 discovery in this case?

15 MR. ROBERSON: No, Your Honor, and actually

16 I've -- I've spoken with all the parties, and no one is

17 interested in evoking discovery rules.

18 JUDGE HOWARD: Okay. Thank you.

19 Does anyone wish to add to that or disagree

20 with it? Okay. Hearing none, I'll make a note of that.

21 Is -- Mr. Roberson, did the parties discuss

22 the issue of any protective order? Or I suppose that's

23 a nonissue.

24 MR. ROBERSON: Well, it's premature. I -- I

25 don't know if any of the incumbent carriers are going to

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1 file testimony that requires a protective order. I

2 would suggest that we would deal with it at that time if

3 it's necessary.

4 JUDGE HOWARD: Thank you.

5 So on the issue of the procedural schedule

6 in the case, Mr. Roberson, have the -- you indicated

7 that you were speaking with the other parties, what is

8 the state of the discussions on the procedural schedule?

9 MR. ROBERSON: I think we have a procedural

10 schedule, but could we have about three minutes just to

11 confirm something?

12 JUDGE HOWARD: Certainly. I will put the

13 call on hold from my end, and, Mr. Roberson, if you

14 could just IM me through Skype when the parties are done

15 conferring?

16 MR. ROBERSON: Absolutely.

17 JUDGE HOWARD: Okay. Just give me a moment

18 here. Okay. I'll be putting it on hold, and let us go

19 off the record while the parties confer. Thank you.

20 (Pause in the proceedings.)

21 JUDGE HOWARD: Let's go back on the record.

22 And, Mr. Roberson, do we have an agreement among the

23 parties as to a procedural schedule?

24 MR. ROBERSON: We do.

25 JUDGE HOWARD: Great. Could you read that

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1 proposed schedule into the record?

2 MR. ROBERSON: Absolutely. It's slightly

3 modified from I think how you suggested the hearing

4 might -- or the matter might proceed at the last

5 go-around in your last email, but I'll just give it to

6 you and I think it'll make sense.

7 So the applicant's testimony would be due

8 May 22nd; response testimony from Staff, the co-defense,

9 and the intervenors would be due June 19th; the

10 applicant's rebuttal testimony would be due July 10th;

11 cross-examination exhibits, cross-examination estimates,

12 witness list, exhibit list would be due July 17th; July

13 17th would also be the cutoff for dispositive motions;

14 and the hearing would be July 24th.

15 JUDGE HOWARD: Okay. Thank you for -- for

16 the proposed procedural schedule here. Could I just

17 confirm -- I mean, we are making a record, of course,

18 but just on my own notes, can I just confirm the

19 proposed date for the applicant's rebuttal testimony was

20 July 10th?

21 MR. ROBERSON: It was, yes.

22 JUDGE HOWARD: Okay. I'm just going to

23 glance at my own notes here for a moment.

24 Did the parties set aside any time or

25 discuss the issue of setting aside a time to discuss

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1 settlement?

2 MR. ROBERSON: We have not actually, Your

3 Honor.

4 JUDGE HOWARD: I may include that in the

5 prehearing order as a to be determined date.

6 MR. WILEY: Your Honor, if I could just say

7 something about that. In application cases, typically

8 settlements are not very fruitful unless we're talking

9 about restrictive amendments to be applied for

10 authority. So it's not like a rate case or a more

11 conventional proceeding at the UTC. I think my

12 colleagues will chime in on this, but -- but it's either

13 a restrictive amendment or we're going to hearing as

14 protestants.

15 JUDGE HOWARD: Certainly, and was this

16 Mr. Wiley speaking?

17 MR. WILEY: Yes, it was, Your Honor.

18 JUDGE HOWARD: Okay. Thank you. Just since

19 we're on a telephonic conference, just wanted to make

20 that clear.

21 And certainly, I -- I was aware of that

22 issue. I just wanted to make sure we were considering

23 all the possibilities here, but -- but thank you for

24 pointing -- for noting that.

25 I will certainly take this proposed schedule

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1 into consideration. I certainly don't have any concerns

2 with it as it's set forth. I will have to check on the

3 hearing date itself and make sure that that works for

4 the Commission, but I will take this certainly all into

5 advisement and include this in the prehearing conference

6 order.

7 So thank you, everyone, for -- for working

8 that out in advance of the telephonic conference, and it

9 certainly makes it easier for us holding this over the

10 phone.

11 MR. STANOVSKY: And -- and --

12 JUDGE HOWARD: Yes?

13 MR. STANOVSKY: Sorry, your Honor. If I

14 could add one thing when -- when you're -- wrapped up

15 your thought. I didn't mean to talk over you.

16 JUDGE HOWARD: That's not a problem, and

17 could you identify yourself?

18 MR. STANOVSKY: Yes, Walker Stanovsky.

19 JUDGE HOWARD: Yes.

20 MR. STANOVSKY: I just wanted to add, and I

21 mentioned this to all the parties by email, but I should

22 have discussed it with them while we were off record as

23 well, but just to clarify, Waste Management's

24 understanding of this proposed schedule and procedure

25 would be that the rebuttal testimony would be limited to

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1 the scope -- to the scope of the responsive testimony.

2 And to the extent that it exceeds that scope, I think

3 Waste Management and potentially the other parties might

4 consider moving for surrebuttal possibly live at

5 hearing.

6 So just wanted to -- to mention that

7 possibility and make sure you were aware and make sure

8 all the parties were on the same page about the scope of

9 the testimony.

10 JUDGE HOWARD: Thank you. I think that's --

11 that's -- fair points are raised.

12 Would Westside Waste like to comment on that

13 at all?

14 MR. DIETRICH: No, I mean, that's how I

15 understand the rules typically work. So we don't have a

16 problem with that and -- not at all.

17 JUDGE HOWARD: Okay. Thank you. I just

18 wanted to give you that chance in case you wanted to

19 comment further.

20 And on the hearing date itself, July 24th,

21 of course hopefully we're able to all be in person then

22 at that time. If, for some reason, due to the Covid-19

23 pandemic, we're not, do the parties -- have the parties

24 considered whether a telephonic -- since that testimony

25 would be prefiled, have the parties considered whether a

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1 telephonic hearing would be acceptable or if they would

2 want to continue it if we're still in a shutdown mode?

3 And maybe we just get positions from Staff first on

4 that?

5 MR. ROBERSON: Staff is fine with a

6 telephonic hearing, but I know some of the other parties

7 are concerned about it. If -- if we need to continue

8 for a live hearing, Staff has no problem with that.

9 JUDGE HOWARD: How about for Westside Waste,

10 what is your position on that possibility?

11 MR. DIETRICH: We agree with -- you know,

12 with Staff's positions on that, and we're -- we're

13 flexible.

14 JUDGE HOWARD: Okay. Would any other party

15 like to comment on the -- just the possibility that we

16 would still be in shutdown and considering a telephonic

17 hearing?

18 MR. STANOVSKY: Yes, Your Honor. This is

19 Walker Stanovsky for Waste Management, and we tend to

20 oppose a telephonic hearing or even a video conference.

21 As we thought about it, you know, and we realized, you

22 know, it's challenging under these circumstances of the

23 pandemic because live in-person cross-examination in --

24 in -- well, first of all, you know, it's important to

25 the examiner to be able to sort of see in realtime how

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1 the witness is reacting and that can shape how the

2 examination goes. So it's important, you know, for the

3 examining attorneys.

4 We also think it's important for the

5 decision-maker, yourself in this case, to -- to have

6 that visibility for credibility determinations. And

7 that's particularly hard over the phone, but we think

8 video would be sort of problematic in that regard as

9 well.

10 And then with respect to video, which we do

11 think would be better than phone if it had to be remote,

12 there's also just the concern that it's impossible to

13 know exactly what is going on in the background or out

14 of the frame. So it's -- you know, there's just a lot

15 of unknowns in the environment. It's not as controlled

16 or transparent, even through video.

17 So those are Waste Management's concerns,

18 and I think on that basis, we feel somewhat strongly in

19 favor of a live hearing if at all possible. I think

20 Dave Wiley may feel similarly, but I'll let him speak

21 for himself.

22 MR. WILEY: Thank you, Your Honor. This is

23 Dave Wiley. I think, you know, this is a brave new

24 world, and I understand that we're all having to kind of

25 adjust our expectations for the indefinite future. My

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1 preference would be for live testimony not just because

2 that's what I'm used to, but because I think demeanor

3 assessment is very important on the part of the finder

4 of fact and, you know, it's just hard to -- to replicate

5 that, particularly in a phone call.

6 JUDGE HOWARD: Thank you, Mr. Wiley.

7 I -- I certainly can see both sides of this

8 issue, and I don't think we need to make any decisions

9 about this now, but I appreciate everyone commenting on

10 and just kind of giving that feedback on the possibility

11 that we're in a continued shutdown then. So we will

12 keep that in mind, and certainly if -- if we are in that

13 position, then we will cross that bridge when we come to

14 it.

15 MR. SELLS: Judge, this is Jim Sells. If I

16 may just ask one other question. Is the Commission

17 going to, assuming we have the live hearing, set aside

18 just the one day or is it going to be two days or --

19 just for scheduling purposes?

20 JUDGE HOWARD: I will -- and thank you,

21 Mr. Sells. I will have to check our calendar for -- the

22 main hearing room for July 24th. We -- I think our

23 normal practice would be that it'd be the 24th

24 continuing to the 25th if needed, so I will just see if

25 that is -- if that's possible with our -- with our

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1 schedule.

2 The -- I didn't see the parties' estimates

3 for their presentation time, but I think we will have to

4 look at -- I will have to consider that, given the fact

5 that we're going to be filing most of the testimony

6 directly and we're going to be focussing on cross at the

7 hearing.

8 MR. SELLS: Sure.

9 JUDGE HOWARD: On that issue, would the

10 parties prefer to do oral closing statements or written

11 closings following the hearing?

12 Mr. Roberson, do you have a position on

13 that?

14 MR. ROBERSON: I think I always prefer a

15 brief, but I can offer an oral close if it's preferable.

16 JUDGE HOWARD: Does Westside Waste have a

17 preference?

18 MR. DIETRICH: I typically prefer to do it

19 in writing as well.

20 JUDGE HOWARD: Mr. Wiley, do -- do the

21 parties you represent have a preference?

22 MR. WILEY: I typically prefer briefing as

23 well.

24 JUDGE HOWARD: Okay. Waste Management, do

25 you have a preference?

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1 MR. STANOVSKY: We would also prefer written

2 briefing. And I would just note, I believe July 24th is

3 a Friday, so if we were -- if that were going to be day

4 one of a hearing that needed to continue, the next

5 hearing day I guess would be the following Monday, over

6 the weekend. So -- and my understanding was we went

7 with a Friday for purposes of the applicant's

8 scheduling.

9 So I don't have a proposed solution, but I

10 just wanted to flag that as an issue that we may need to

11 consider. But we do prefer written briefing.

12 JUDGE HOWARD: Okay. Just to follow up on

13 that, Mr. Dietrich, it -- the impression I was given was

14 that -- that twenty -- July 24th works best for you and

15 your client for a hearing date. Is the 23rd a

16 possibility if the 24th is not, just if -- if we want to

17 move it there to have more room?

18 MR. DIETRICH: Well, let me -- so the

19 client, he's a long-haul trucker and he is on the road

20 Monday through Thursday, and so that's -- that's where

21 we came up with the Friday date for the hearing. I'm

22 currently scheduled to be in a trial starting on the --

23 the Monday -- the Monday of that week, but, you know,

24 whether that will happen is anybody's guess.

25 So I guess, currently I'm scheduled -- I

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1 currently am scheduled to be at another trial on the

2 23rd of July, and my client is scheduled to be out of

3 the state as we sit right now. So I guess that would

4 not work for us.

5 JUDGE HOWARD: Let me just look at my own

6 notes here for a moment.

7 Well, thank you, everyone. I'm -- I'm going

8 to take all this under advisement, but my tentative

9 position on this is going to be that this is likely to

10 be a one-day hearing because of all the testimony that's

11 going to be prefiled. We could start at 8:00 a.m. if

12 necessary on July 24th and we can continue if -- if need

13 be.

14 So does anyone have any remaining concerns

15 with the procedural schedule or with the hearing dates

16 that we've been discussing?

17 Okay. Hearing none, I just wanted to touch

18 on the issue of electronic filing and electronic

19 service. I think just to remind the parties, the

20 documents should be filed online through the electronic

21 filing link on the Commission's web page. If the

22 parties intend to submit exhibits, there will be

23 requirements for filing exhibits and exhibit lists in

24 advance of the hearing, which will also be done only

25 electronically in this case, and the prehearing order

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1 will contain further details on this topic.

2 The Commission's rules also provide for

3 electronic service of documents. The Commission will

4 serve the parties electronically and the parties will

5 serve each other electronically.

6 If you have any corrections or updates to

7 our master service list in this docket, please file a

8 written notice of appearance or email me at

9 michael.howard@utc.wa.gov.

10 Is there anything else that we should

11 address today before we adjourn?

12 MR. DIETRICH: Not from the applicant's

13 perspective.

14 JUDGE HOWARD: Okay. Hearing no further

15 issues, I will issue an order shortly containing the

16 procedural schedule and the other issues we've been

17 discussing. We are adjourned. Thank you.

18 (Adjourned at 1:58 p.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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6 I, Tayler Garlinghouse, a Certified Shorthand

7 Reporter in and for the State of Washington, do hereby

8 certify that the foregoing transcript is true and

9 accurate to the best of my knowledge, skill and ability.

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13 Tayler Garlinghouse, CCR 3358

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