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 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 4 In the Matter of the )

 Application of )

 5 )

 )

 6 ECOMED SERVICES, LLC )

 ) Docket No. TG-152373

 7 For Authority to Operate as a )

 Solid Waste Collection )

 8 Company in Washington or )

 Alternatively for Exemptions )

 9 from Commission Rules )

 Governing Regulated Collection)

10 of Medical Waste )

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12 PREHEARING CONFERENCE, VOLUME I

13 Pages 1-21

14 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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16 9:33 a.m.

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 June 29, 2016

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 1 A P P E A R A N C E S (continued)

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 1 OLYMPIA, WASHINGTON; JUNE 30, 2016

 2 9:33 A.M.

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 5 JUDGE PEARSON: All right. Well, then let's

 6 be on the record in Docket TG-152373, which is an

 7 application filed by EcoMed Services, LLC for authority

 8 to operate as a solid waste collection company in

 9 Washington or alternatively for exemptions from

10 Commission-ruled governing regulated collection of

11 medical waste.

12 Today is Wednesday, June 29th, 2016, at a

13 little after 9:30 a.m., and we are here for a

14 prehearing conference to discuss scheduling and other

15 procedural issues.

16 My name is Rayne Pearson. I am the

17 Administrative Law Judge presiding over this case. So

18 let's get started by taking short appearances beginning

19 with Commission Staff.

20 MR. BEATTIE: Julian Beattie, Assistant

21 Attorney General, and I am here representing Commission

22 Staff, and I will just introduce Mike Young and Suzanne

23 Stillwell from Commission Staff.

24 JUDGE PEARSON: Thank you.

25 And for the applicant. Mr. Squalli.

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 1 MR. SQUALLI: Yes, my name is Alex Squalli

 2 and I am with EcoMed Services.

 3 JUDGE PEARSON: Okay. And you're the owner

 4 of the company?

 5 MR. SQUALLI: Yes, I am.

 6 JUDGE PEARSON: Okay. And for Waste

 7 Management.

 8 MS. McNEILL: Good morning. This is

 9 Polly L. McNeill with Summit Law Group representing

10 Waste Management d/b/a WM Healthcare Solutions of

11 Washington. And on the bridge line with me today is --

12 also for appearances -- go ahead. Why don't you on the

13 bridge line introduce yourselves.

14 MR. KENNETH: I am sorry, were you talking

15 to me, Polly? This is Andrew Kenneth, and I am in-house

16 counsel with Waste Management. Thank you.

17 JUDGE PEARSON: Ms. Kelly, are you on the

18 bridge line?

19 MS. McNEILL: Well, she is, but she has a

20 very junior associate with her. So for purposes of the

21 record, Sara A. Kelly, also with Summit Law Group, and I

22 believe Jeff Norton, who is our client is on the line

23 with us as well.

24 JUDGE PEARSON: Okay. Thank you.

25 And for Stericycle.

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 1 MR. JOHNSON: This is Stephen B. Johnson,

 2 attorney with Garvey Schubert Barer representing

 3 Stericycle of Washington, Inc.

 4 JUDGE PEARSON: Okay. Thank you.

 5 And for WRRA.

 6 MR. SELLS: Thank you, Your Honor. James

 7 Sells, General Counsel WRRA. I am appearing on behalf

 8 of proposed intervenor WRRA. Along with me is associate

 9 counsel. We promise we won't try to tag-team anybody or

10 any of that, but Mr. Whittaker will probably be

11 appearing at some points here.

12 JUDGE PEARSON: Okay. Thank you.

13 So let's first address the Washington Refuse

14 & Recycling Association's petition to intervene. Does

15 anyone have an objection to the WRRA's petition?

16 MR. SQUALLI: I do.

17 JUDGE PEARSON: On what basis?

18 MR. SQUALLI: So I want an explanation why

19 they are intervening. We would like just more

20 information why.

21 JUDGE PEARSON: Sure.

22 Would you like to speak to that?

23 MR. SELLS: Yes. WRRA is a trade

24 association that has been operating in the state since

25 1947. We represent virtually every garbage company in

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 1 the state, all of whom --

 2 JUDGE PEARSON: Mr. Sells, can you speak

 3 more directly into the microphone?

 4 MR. SELLS: -- all of whom have authority to

 5 collect and transport medical waste. Over the years, we

 6 have been an intervenor, I believe, in each and every

 7 action involving solid waste before the Commission

 8 beginning in 1961. We do not intend to borrow on the

 9 issues. Most likely, we will not call a witness, but we

10 think that since this involves permit authority and it

11 also involves what seemed to be some serious procedural

12 issues that are going to have to be done, which, in

13 fact, the entire solid waste community as well as the

14 public. That's who we are.

15 MR. SQUALLI: Your Honor, that is exactly

16 what was in the letter, but that's not indication

17 exactly how to intervene with our solution. We would

18 like to know exactly the reason. I don't believe

19 that's -- it's not specific. It doesn't tie it in to

20 see how our solution interfere with that association.

21 JUDGE PEARSON: Mr. Sells, do you want to

22 respond to that?

23 MR. SELLS: I am not sure I caught all that

24 but let me try.

25 JUDGE PEARSON: He said that he thinks that

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 1 the reason that you gave was vague.

 2 MR. SQUALLI: So and also, we want more

 3 specific how the on-site solution is interfering with

 4 your membership or with your association. I mean, it's

 5 for medical waste. I don't see any interrelationship at

 6 all.

 7 MR. SELLS: Well, the issue of on-site

 8 treatment or whatever, is evidential, evidentiary issue,

 9 and you're right, we don't carry garbage. We are a

10 trade association. We are a person within the WAC and

11 the type of person who can file a petition to intervene

12 and take part. But we certainly are not taking part as

13 a transporter or -- or a treatment facility. Obviously,

14 we don't do that. What we do is represent the garbage

15 and solid waste industry as a whole within the state.

16 JUDGE PEARSON: Thank you.

17 MR. SQUALLI: So, Your Honor, if I might

18 add, I do believe Stericycle and Waste Management

19 already have their own attorneys in court. So I think

20 it's redundant here to have another party that already

21 is presented by your expert.

22 THE COURT: Okay. I will note your

23 objection, Mr. Squalli. However, I do find that WRRA

24 has demonstrated substantial interest in the subject

25 matter of this proceeding, so I will grant their

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 1 petition to intervene.

 2 So next, Mr. Squalli, I want to address your

 3 petition for exemption from Commission rules. And on

 4 its face, the petition fails to identify which rule from

 5 which the Company is requesting an exemption, so I am

 6 going to deny the petition. You are welcome to file

 7 another petition under the Commission's procedural rules

 8 if you decide that's necessary, but it must comply with

 9 our filing requirements. And that being said, I do

10 believe that the issues that you've identified will be

11 adequately addressed in the hearing on the solid waste

12 application.

13 So next is the discovery rules. Do the

14 parties want those to be available in this case?

15 MR. JOHNSON: Your Honor, on behalf of

16 Stericycle, I believe we do need discovery rules.

17 There's substantial factual matters presented in the

18 application that I think both the Commission and

19 protestants would want to inquire into.

20 JUDGE PEARSON: Okay.

21 Mr. Squalli?

22 MR. SQUALLI: Well, more specifics. All of

23 these things I do not see the specifics. I mean, can

24 you be more specific on which facts?

25 MR. JOHNSON: Your Honor, if I could speak a

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 1 little bit to that.

 2 JUDGE PEARSON: Sure.

 3 MR. JOHNSON: This is very early days, of

 4 course, but we would like to be able to direct data

 5 requests to the applicant with respect to the

 6 applicant's relationship with Multicare and the

 7 relationship of Multicare through its -- I think there's

 8 97 clinics and facilities that are sort of identified as

 9 potential customers for Mr. Squalli's company, and so we

10 would like to plumb those to understand the potential

11 regulatory issues that are associated with his

12 application. Those are at least a couple of examples.

13 JUDGE PEARSON: Okay.

14 Mr. Squalli?

15 MR. SQUALLI: Your Honor, I think it's

16 well-stated in my application that Multicare has six

17 medical clinics and medical centers, and that's the

18 facilities that generate the most waste, which means we

19 are going to process 92 percent of the waste on-site.

20 So now the remaining facilities, those are small

21 waste-generator clinics, and only 8 percent would

22 transport to our on-site localized solution --

23 JUDGE PEARSON: Okay. I am going to stop

24 you right there because this is not a forum for

25 discussing the facts of the case. I just want to know

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 1 if you have an objection to the discovery rules being

 2 available in this case.

 3 MR. SQUALLI: So, Your Honor, the MultiCare

 4 doesn't provide a lot of information because of

 5 nondisclosure. So the only information on my

 6 application is that the only thing that I can provide to

 7 our own customer, and according to nondisclosure on a

 8 claimant.

 9 JUDGE PEARSON: Okay.

10 Ms. McNeill?

11 MS. McNEILL: Thank you. I think my

12 microphone is on. Waste Management is interested in

13 invoking some discovery because we're very interested in

14 finding out more details about the actual equipment that

15 you use, services that you provide, how the operational

16 relationships interact with the Multicare facilities.

17 And as Judge Pearson said, you know, the

18 kinds of things that you were actually enumerating are

19 the exact kinds of facts that we would like to be able

20 to explore, you know, under circumstances where people

21 are sworn in and making statements, it's done by written

22 discovery. So at least that would be -- or I would want

23 to start, and I don't know whether there would be

24 consideration of a two-step discovery process in terms

25 of -- and that may not be efficient. I have been

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 1 thinking about the pros and cons of this as I was coming

 2 down here today, but I don't know whether we would want

 3 to have a first stage of discovery with regard to the

 4 kinds of assertions that -- is it EcoMed or EcoMed?

 5 MR. SQUALLI: Yes.

 6 MS. McNEILL: Okay. That EcoMed has made

 7 with regard to the potential for its private carrier

 8 operations. We're very interested in finding out more

 9 about that before we launch into a great deal of

10 discovery about the need for the service in the public

11 need.

12 But those would be areas that we really

13 would like to find out more factual support for -- you

14 know, your application has a lot of sort of -- don't

15 take this wrong, but certain gratuitous statements about

16 how it's innovative and it's going to reduce greenhouse

17 gas emissions. And so we'd like to know well, what are

18 your calculations for that, what is it that makes you

19 innovative.

20 Thank you.

21 MR. SQUALLI: Your Honor, so this is in

22 response to Steve. There is a letter from Mr.

23 (inaudible). The kind of relationship that we are going

24 to establish. So this can go on the record, too, so --

25 JUDGE PEARSON: Okay. We are really not

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 1 addressing that today, though. We are just talking

 2 about discovery going forward and I would like to hear

 3 from Commission Staff.

 4 MR. BEATTIE: Thank you, Judge Pearson.

 5 Well, I believe at this stage, Staff sees itself more as

 6 a consumer rather than a producer of discovery. So I

 7 will just say this, then. Staff would not have an

 8 objection to discovery rules being invoked.

 9 JUDGE PEARSON: Okay. Thank you. I will

10 make the discovery rules available in this case, and if

11 during the break when you're discussing scheduling,

12 Ms. McNeill, if you want to discuss with the parties how

13 you want to proceed with that and come to some sort of

14 agreement, that would be my preference.

15 So do each of you consent to electronic

16 service if the Commission decides to serve documents in

17 that manner via email?

18 MR. SQUALLI: We do.

19 JUDGE PEARSON: Okay.

20 Ms. McNeill?

21 MS. McNEILL: Yes.

22 JUDGE PEARSON: Okay.

23 MR. SELLS: Yes, Your Honor.

24 JUDGE PEARSON: Okay.

25 MR. JOHNSON: For Stericycle, yes, Your

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 1 Honor.

 2 JUDGE PEARSON: Okay. Thank you.

 3 MR. BEATTIE: And for Staff, yes,

 4 absolutely.

 5 JUDGE PEARSON: Okay. Thank you.

 6 So that brings us to the schedule. I don't

 7 believe that the parties have had an opportunity to

 8 discuss the schedule amongst themselves, so I will call

 9 a recess at this point. And I will just let you know in

10 advance that I will be out of the office from July 18th

11 through July 29th, but otherwise, my calendar is up to

12 date, and I believe Mr. Beattie has a copy of both my

13 calendar and the calendar for the hearing room here that

14 you can all refer to.

15 So I will step out of the room and allow you

16 to do that and, Mr. Beattie, will you come get me in my

17 office when you're done?

18 MR. BEATTIE: I will. And before you leave,

19 may I inquire as to whether you have any preference as

20 presiding officer as to what kind of dates we should be

21 having, if there is to be written testimony, how many

22 rounds, et cetera?

23 JUDGE PEARSON: My preference is for there

24 to be written prefile testimony. It's up to the parties

25 how many rounds. I would go probably with the typical

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 1 prefiled response rebuttal.

 2 MR. BEATTIE: Okay.

 3 JUDGE PEARSON: Okay.

 4 MR. BEATTIE: Thank you.

 5 JUDGE PEARSON: So we will go off the record

 6 and be on recess.

 7 (Recess taken from 9:46 a.m. to 10:30 a.m.)

 8 JUDGE PEARSON: Okay. So we will be back on

 9 the record following a brief recess, and I understand

10 the parties have agreed to a procedural schedule?

11 MR. BEATTIE: The parties have agreed to a

12 schedule of sorts, Your Honor.

13 JUDGE PEARSON: Okay.

14 MR. BEATTIE: And this is Julian Beattie

15 from Commission Staff, and I have been elected to speak

16 on behalf of the group. While we were in recess, the

17 parties came to an agreement that if the applicant

18 wishes to get a legal ruling on the issue of whether the

19 service it proposes is or is not subject to regulation

20 under Title 81, that the proper way to bring that

21 Commission -- or excuse me, to bring that issue before

22 the Commission is a petition for declaratory order under

23 RCW 34.05.240, which is the Washington Administrator

24 Procedure Act.

25 And after that discussion concluded, the

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 1 applicant advised us that it wishes to, I will say,

 2 explore that process before moving on to the protest

 3 phase of this docket. And so given that -- given that a

 4 petition for declaratory order could resolve or obviate

 5 the need for an application if it's resolved in the

 6 applicant's favor, it seems that the best way to handle

 7 this is to give the applicant sufficient time to put

 8 together that application -- or excuse me, the petition

 9 for declaratory order and then continue this proceeding

10 that we are currently in until after the applicant has

11 been given sufficient time to get that filed.

12 And so the proposal that we have is that the

13 applicant would be given until Friday, September 2nd to

14 file its petition for declaratory order under the APA

15 and that the parties are in agreement and stipulate that

16 this prehearing conference should be continued until

17 Friday, September 9th. And as a backup in case that

18 doesn't work for Your Honor's schedule, the parties

19 would also suggest the morning of Wednesday, September

20 2nd as an alternate --

21 MR. JOHNSON: 7th.

22 MR. BEATTIE: Excuse me, 7th.

23 JUDGE PEARSON: Well, that is my daughter's

24 first day of kindergarten, so it would have to be after

25 I dropped her off.

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 1 MS. McNEILL: It's a big day.

 2 JUDGE PEARSON: Yeah, the 7th is her first

 3 day of school.

 4 MS. KELLY: I will say it is also my

 5 daughter's first day of school. I would be okay with a

 6 slightly later start.

 7 JUDGE PEARSON: Let's see. So --

 8 MR. BEATTIE: And then the final element of

 9 this is that no discovery on the protest would take

10 place until at least after the continuance of this

11 prehearing conference.

12 JUDGE PEARSON: Sure. We would revisit the

13 procedural schedule at the second prehearing conference.

14 MR. BEATTIE: Right.

15 JUDGE PEARSON: Okay. I am fine with the

16 9th. I will just leave the 7th alone. What time are

17 you looking at on the 9th? Anytime that day or is

18 morning preferable?

19 MR. JOHNSON: In the morning is more

20 preferable, Your Honor.

21 JUDGE PEARSON: I think with traffic that is

22 probably the best idea.

23 MS. McNEILL: That's true.

24 JUDGE PEARSON: Okay. So let's set it for

25 10:00 a.m. on Friday, September 9th, and we can revisit

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 1 the schedule at that time. However, does that only give

 2 the Commission seven days to make a decision on the

 3 declaratory order?

 4 MS. McNEILL: No.

 5 I am sorry, go ahead.

 6 No, whether the applicant pursues a petition

 7 for declaratory order is still I think to all of us a

 8 little uncertain.

 9 JUDGE PEARSON: I see.

10 MS. McNEILL: SO they said by the end of

11 August they would -- that was their request and then we

12 said, well, okay. Let's have a date certain for the

13 continuance.

14 JUDGE PEARSON: Okay.

15 MS. McNEILL: So that's all we really have

16 right now. But would you include in the prehearing

17 conference order a statement that if they are going to

18 file a petition for declaratory order that it should be

19 done so by September 2nd?

20 THE COURT: Yes, since that's the date the

21 parties agreed on, yes.

22 MS. McNEILL: Thank you.

23 JUDGE PEARSON: And then --

24 MR. BEATTIE: And I suppose it's possible

25 that once the declaratory order petition is filed, if it

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 1 is filed, there could be a question as to whether the

 2 prehearing conference should take place.

 3 JUDGE PEARSON: That's what I was wondering.

 4 MR. BEATTIE: And whether it would be

 5 docketed separately. I think I would suggest that it

 6 would be docketed separately from this adjudication.

 7 JUDGE PEARSON: Yes.

 8 MR. BEATTIE: But, you know, these are

 9 issues that could be taken up if indeed it is filed.

10 JUDGE PEARSON: So it's possible if a

11 petition for declaratory order is filed, that we may

12 want to continue the prehearing conference at that time?

13 It's more something that you are putting in place in

14 case the petition does not get filed --

15 MR. BEATTIE: Precisely.

16 JUDGE PEARSON: -- is that my understanding?

17 Okay. So we will go ahead and schedule it

18 for now, and then we can always revisit that if we need

19 to and reschedule it down the road.

20 Okay. Is there anything else that we need

21 to address this morning? Okay. So I will issue an

22 order reflecting what was discussed here today, and,

23 again, we can always change the date for the prehearing

24 conference if we decide that we need to at a later date.

25 So thank you all for coming today. We have

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 1 adjourned.

 2 (Hearing adjourned at 10:36 a.m.)

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 3 STATE OF WASHINGTON

 4 COUNTY OF THURSTON

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 6 I, Tayler Russell, a Certified Shorthand Reporter

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

 8 that the foregoing transcript is true and accurate to

 9 the best of my knowledge, skill and ability.

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 Tayler Russell, CCR

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