

Docket No. TG-190653 - Vol. I

In the Matter of the Application of: Westside Waste, LLC

April 13, 2020



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the) DOCKET TG-190653
 Application of)
)
 WESTSIDE WASTE, LLC,)
)
 For Authority to Operate)
 as a Solid Waste Collection)
 Company in Washington)
)

TELEPHONIC PREHEARING CONFERENCE, VOLUME I

Pages 1-21

ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

April 13, 2020

1:30 p.m.

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

Buell Realtime Reporting, LLC
1325 Fourth Avenue, Suite 1840
Seattle, Washington 98101
(206) 287-9066 | Seattle
(360) 534-9066 | Olympia
(800) 846-6989 | National
www.buellrealtime.com

A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

MICHAEL HOWARD

FOR COMMISSION STAFF:

JEFF ROBERSON
Assistant Attorney General
PO Box 47250
Olympia, Washington 98504
(360) 664-1188
jeff.roberson@utc.wa.gov

FOR WESTSIDE WASTE:

STEVEN DIETRICH
Smith & Dietrich Law Offices PLLC
3905 Martin Way East, Suite F
Olympia, Washington 98506
(360) 915-6952
steved@smithdietrich.com

FOR WASTE MANAGEMENT:

ANDREW KENEFICK
720 - 4th Avenue, Suite 400
Kirkland, Washington 98033
(425) 825-2003
akenefick@wm.com

WALKER STANOVSKY
Davis Wright Tremaine LLP
920 - 5th Avenue, Suite 3300
Seattle, Washington 98104
(206) 757-8259
walkerstanovsky@dwt.com

1 A P P E A R A N C E S (Cont.)

2
3 FOR RABANCO LTD/REPUBLIC
4 & RUBATINO REFUSE REMOVAL:

5 DAVID W. WILEY
6 Williams, Kastner & Gibbs PLLC
7 601 Union Street, Suite 4100
8 Seattle, Washington 98101
9 (206) 233-2895
10 dwiley@williamskastner.com

11 FOR WRRRA:

12 JAMES SELLS
13 ROD WHITTACKER
14 3110 Judson Street
15 Gig Harbor, Washington 98335
16 (360) 981-0168
17 jamesells@comcast.net
18 rod@wrrra.org

19 * * * * *

1 LACEY, WASHINGTON; APRIL 13, 2020

2 1:30 P.M.

3 --o0o--

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

5

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

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.

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 WRRRA, 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 WRRRA, 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 WRRRA. 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 WRRRA. I would like to give
17 each party a chance to respond here to the petition, but
18 I'd first like to ask WRRRA 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

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 WRRRA 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 WRRRA?

24 MR. SELLS: No objection.

25 JUDGE HOWARD: Thank you.

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

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

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

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

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

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

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

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

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

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?

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

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

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.)

19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter 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.

Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25