

A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

RAYNE PEARSON
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive
P.O. Box 47250
Olympia, Washington 98504
(360) 664-1136
rpearson@utc.wa.gov

FOR ECOMED SERVICES, LLC:

ALEX SQUALLI
DAVID SQUALLI
EcoMed Services, LLC.
1400 Hubbell Place, Suite 1206
Seattle, Washington 98101
(206) 427-6641
asqualli@ecomedservices.com

FOR WASHINGTON REFUSE &
RECYCLING ASSOCIATION:

JAMES K. SELLS
ROD WHITTAKER
Washington Refuse & Recycling
Association
PMB 22, 3110 Judson
Gig Harbor, Washington 98335
(360) 981-0168
jamesells@comcast.net
rod@wrra.org

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

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

FOR COMMISSION STAFF:

JULIAN H. BEATTIE
SUZANNE STILLWELL
MICHAEL YOUNG
Assistant Attorney General
P.O. Box 40128
Olympia, Washington 98504
(360) 664-1225
jbeattie@utc.wa.gov
stillwell@utc.wa.gov
myoung@utc.wa.gov

FOR STERICYCLE:

STEPHEN B. JOHNSON
Garvey Schubert Barer
1191 Second Avenue
Seattle, Washington 98101
(206) 816-1309
sjohnson@gsblaw.com

FOR WASTE MANAGEMENT:

POLLY L. McNEILL
ANDREW KENNETH
SARA KELLY
Summit Law Group
315 Fifth Avenue South, Suite 1000
Seattle, Washington 98104
(206) 676-7040
pollym@summitlaw.com

1 OLYMPIA, WASHINGTON; JUNE 30, 2016

2 9:33 A.M.

3 --000--

4
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.

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.

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 WRRRA.

6 MR. SELLS: Thank you, Your Honor. James
7 Sells, General Counsel WRRRA. I am appearing on behalf
8 of proposed intervenor WRRRA. 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 WRRRA'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. WRRRA is a trade
24 association that has been operating in the state since
25 1947. We represent virtually every garbage company in

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

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 WRRRA
24 has demonstrated substantial interest in the subject
25 matter of this proceeding, so I will grant their

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

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

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

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

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

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

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

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.

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

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

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

1 adjourned.

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

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Russell, 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 Russell, CCR