

**Docket No. TG-200250 - Vol. II**

**In the Matter of the Application of: ADE Dumpsters, LLC**

**September 25, 2020**



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Application of ) DOCKET TG-200250  
ADE DUMPSTERS, LLC, )  
For Authority to Operate as a )  
Solid Waste Collection Company )  
in Washington )

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TELEPHONE PREHEARING CONFERENCE, VOLUME II

Pages 19 - 33

ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

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September 25, 2020

1:33 P.M.

Washington Utilities and Transportation Commission  
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A P P E A R A N C E S (Cont.)

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1 LACEY, WASHINGTON, SEPTEMBER 25, 2020

2 1:33 P.M.

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

5

6 JUDGE HOWARD: Good afternoon, everyone.

7 Let's be on the record. The time is 1:33 p.m.

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

9 administrative law judge with the Washington Utilities

10 and Transportation Commission. We are here today for a

11 second prehearing conference in Docket TG-200250, which

12 is captioned In the Matter of the Application of ADE

13 Dumpsters -- I'm sorry -- ADE Dumpsters, LLC, for

14 Authority to Operate as a Solid Waste Collection Company

15 in Washington.

16 We had a prehearing conference in this case

17 when ADE Dumpsters was proceeding pro se. The company

18 has now retained counsel and filed a motion for

19 continuance of the procedural schedule. Waste

20 Management has filed an opposition to that motion.

21 I will be granting the motion for

22 continuance. Given the particular circumstances here,

23 I'm going to exempt ADE from the requirement that such a

24 motion must be filed at least five business days before

25 the deadline at issue. As a general matter, though, I

1 do expect that all parties, including ADE, will adhere  
2 to the Commission's rules going forward.

3 So this prehearing conference is going to be  
4 a chance for the parties to discuss a new procedural  
5 schedule. I anticipate that we will modify the  
6 procedural schedule from Order 01 and the first  
7 prehearing conference with each of those deadlines, and  
8 the hearing date extended by approximately two months  
9 depending on the parties' schedules.

10 After today's conference, I'll enter an  
11 order setting out a new procedural schedule and  
12 resetting the date for the hearing. I do not plan on  
13 revisiting the other issues already resolved in the  
14 first prehearing conference.

15 Let's start by taking short appearances.

16 Could we have an appearance for ADE  
17 Dumpsters?

18 MS. JOHNSON: Yes, Cindy Johnson.

19 JUDGE HOWARD: Thank you.

20 And could we have an appearance for Murrey's  
21 Disposal?

22 MR. WILEY: Yes, Your Honor. Dave Wiley.

23 JUDGE HOWARD: Thanks, Mr. Wiley. And  
24 you're representing Harold LeMay Enterprises and Rabanco  
25 as well?

1 MR. WILEY: That's correct, Your Honor.

2 Thank you.

3 JUDGE HOWARD: Thank you.

4 Could we have an appearance for Waste  
5 Management of Washington?

6 MR. KENEFICK: Yes. This is Andrew  
7 Kenefick, and then also, Walker, you can enter your  
8 appearance.

9 MR. STANOVSKY: Sure. Walker Stanovsky at  
10 Davis Wright Tremaine representing Waste Management.

11 JUDGE HOWARD: Great. And I'm sorry.  
12 Do we have WRRRA on the line?

13 MR. WHITTAKER: Yes, Judge Howard. WRRRA,  
14 Rod Whittaker here for WRRRA.

15 JUDGE HOWARD: Thank you, Mr. Whittaker.  
16 Sorry for overlooking you earlier.

17 So on the issue of the procedural schedule,  
18 have the parties had an opportunity to discuss a new  
19 schedule since that motion for a continuance was filed?

20 MR. KENEFICK: No, Your Honor. No, we have  
21 not. And that's partly because -- I'm getting  
22 somebody's feedback. That's partly because we didn't  
23 know how this -- how the motion to -- for the  
24 continuance would go. But we could -- I suppose we  
25 could easily discuss that now with you on the line or

1 independently.

2 I did want to (phone feedback) moment  
3 understand sort of the two-month issue. I think we're  
4 three weeks after the deadline that was continued, so  
5 I'm not sure we're looking at two months to -- for all  
6 of the deadlines to be extended.

7 JUDGE HOWARD: Well, I would -- that's  
8 understandable the parties did not have a chance to  
9 discuss this issue yet. I would expect that the parties  
10 could discuss it with me off the line, and then we come  
11 back on the record.

12 Ms. Johnson, what does your timetable look  
13 like for having the direct pre-filed testimony ready?  
14 So it would have been due on September 4th.

15 If we did, essentially, a 30-day extension  
16 of time, that would put it in early October; would that  
17 be sufficient?

18 MS. JOHNSON: I guess my question for that  
19 would be if that's going to include the discovery that  
20 we obtain. I don't think that's going to be enough  
21 time.

22 JUDGE HOWARD: Yeah. That is a concern I  
23 have as well. I think just due to how this is working  
24 out, this is going to end up being approximately a  
25 60-day extension of each of those deadlines in the



1 procedural schedule. So just one moment here. Sorry.

2 So along those lines, I would suggest a  
3 hearing likely occurring in January. I'm not available  
4 on January 20th. Otherwise, January is fairly flexible  
5 for me right now and extending each of those deadlines.

6 And I would anticipate that we keep the  
7 pre-filed testimony deadlines, the structure of that the  
8 way it is now, so why don't we take a brief recess.

9 Would one of the attorneys be willing to  
10 call or text me on my work cell phone to let me know  
11 when I should come back on the call?

12 MR. WHITTAKER: This is Rod Whittaker for  
13 WRRRA. I did that last time and help write down the  
14 procedural schedule. And I can volunteer for that  
15 again.

16 JUDGE HOWARD: I'd appreciate that,  
17 Mr. Whittaker. I can give you my number again.

18 MR. WHITTAKER: Yeah, please do.

19 JUDGE HOWARD: It's (360) 791-0715.

20 MR. WHITTAKER: Okay. Thank you, Judge  
21 Howard.

22 MR. KENEFICK: Judge Howard, it's Andrew  
23 Kenefick.

24 Could you just maybe clarify for us before  
25 we can go offline as to what you're suggesting in terms

1 of how far we move things?

2 So by looking at a deadline of September the  
3 4th for the Applicant's direct testimony, obviously,  
4 that's being pushed back.

5 How far back are you pushing that because we  
6 can then use that date to sort of recalculate the other  
7 dates.

8 JUDGE HOWARD: I would expect -- I think  
9 that this is partly for the parties to discuss, but I  
10 would expect that just due to the nature of preparing  
11 the testimony and having discovery that this would be --  
12 that that first deadline for the Applicant's direct  
13 testimony would be possibly around November 4th, like a  
14 60-day continuance. Let me look at my calendar here.

15 So, approximately, November 4th, and the  
16 deadlines, the following deadlines, could also be moved  
17 back approximately two months.

18 MR. STANOVSKY: So, Your Honor, a full two  
19 months, I think, would put the hearing into early  
20 February -- or January.

21 JUDGE HOWARD: That's correct. So early  
22 February would also work for the hearing.

23 MR. STANOVSKY: Okay.

24 (Simultaneous cross-talk)

25 MR. WILEY: Your Honor?

1 JUDGE HOWARD: Yes?

2 MR. WILEY: I have a full week arbitration,  
3 AAA arbitration, the first week in February. This is  
4 Dave Wiley. It would have to be after that first full  
5 week, okay?

6 JUDGE HOWARD: That is perfectly fine to  
7 have it after that first week of February.

8 MR. WILEY: And I assume this will be a  
9 virtual hearing as far as everything we know right now?

10 JUDGE HOWARD: I think it's very likely.

11 MR. WILEY: Yeah.

12 JUDGE HOWARD: In this order I would  
13 probably include language that the Commission will  
14 determine that issue going forward. And it is hard to  
15 say, but it's likely it would be a virtual hearing.

16 MR. WILEY: Okay. Thank you.

17 JUDGE HOWARD: Do we have any other  
18 questions or concerns before I go off the line  
19 temporarily?

20 MS. JOHNSON: Yes, this is Cindy Johnson. I  
21 have a trial February 22nd, so maybe we could do it  
22 between the two dates.

23 JUDGE HOWARD: Okay. I think that would be  
24 a good topic for the parties to discuss.

25 So let's be off the record, and I will leave

1 the call.

2 And, Mr. Whittaker, I will wait for your  
3 call or text.

4 MR. WHITTAKER: Okay. Thank you, Judge  
5 Howard.

6 JUDGE HOWARD: Thank you.

7 (A break was taken from  
8 1:43 p.m. to 1:56 p.m.)

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

10 And, Mr. Kenefick, has told me that the  
11 parties have reached agreement on the procedural  
12 schedule which he may now read into the record.

13 MR. KENEFICK: I saw someone was trying to  
14 join the conference.

15 MR. WHITTAKER: I think it was me. I got  
16 back on.

17 MR. KENEFICK: Okay. It's relatively  
18 straightforward in terms of the revisions. For the most  
19 part, it is simply changing the month to two months  
20 later, but I'll read through it.

21 Applicant direct testimony and exhibits  
22 would be due on September -- I'm sorry -- on November  
23 4th; response testimony from Protestants and Intervenors  
24 on December 9th. Discovery deadline. The deadline for  
25 propounding discovery would be December 23rd. Rebuttal

1 testimony, and we're also adding cross-answering  
2 testimony, would be January 13th. Settlement  
3 conference, of course, subject to your availability,  
4 would be January 18th, if that's a time that's  
5 available. Exhibit list, cross-examination exhibits,  
6 witness list, time estimates, and exhibit errata would  
7 be February 1st. And the hearing would be set for  
8 February 10th, and, if necessary, Thursday February 11.

9 JUDGE HOWARD: Okay. Thank you,  
10 Mr. Kenefick.

11 Was someone about to speak there?

12 Okay. I will confirm those dates work.  
13 They should work very well. Thank you everyone for  
14 negotiating on that schedule, and I will incorporate  
15 that into the order following our conference today.

16 MR. KENEFICK: I would suggest this. With  
17 respect to the settlement conference, if that date  
18 becomes a date or that time is an issue, obviously, you  
19 know, just let us know. And I would think that, you  
20 know, plus or minus a few days is probably absolutely  
21 fine since that's more of a conference than a deadline  
22 for submitting a document.

23 JUDGE HOWARD: Certainly. On some occasions  
24 when we include the settlement conference in these  
25 procedural schedules, that refers to the parties meeting

1 amongst themselves. That's how I would normally read  
2 such a deadline in the schedule.

3 As the ALJ hearing the case, if it's going  
4 to, you know, an adjudication on the merits, if it  
5 doesn't resolve, I would be somewhat concerned about  
6 trying to act as mediator at the settlement conference  
7 earlier.

8 MR. KENEFICK: Of course, yeah. I wasn't  
9 thinking that through.

10 JUDGE HOWARD: Oh, no. No problem. It's  
11 just one thing that occurred to me, so I would  
12 understand the settlement conference to be a meeting  
13 among the parties.

14 MR. WILEY: Judge Howard? Dave Wiley. I  
15 agree particularly in application or a certificate case  
16 versus a rate case, it's kind of an up-or-down issue,  
17 typically, so I don't think we'd need a third-party  
18 mediator to attempt to resolve that. It's either going  
19 to happen or it isn't.

20 JUDGE HOWARD: Yes, I agree.

21 Okay. If that resolves the issue of the new  
22 schedule, I would just point the parties again to Order  
23 01, which has instructions on electronic filing,  
24 electronic service, and other issues, such as discovery.  
25 And, then, of course, we have the protective order in

1 Order 02.

2 If any party has corrections or updates to  
3 the master service list, please file a written notice of  
4 appearance or email me at michael.howard@utc.wa.gov.

5 Is there anything else that we should  
6 address today?

7 All right. Hearing nothing, I will issue an  
8 order shortly containing this new schedule. We are  
9 adjourned.

10 Thank you.

11 MR. KENEFICK: Thank you.

12 MR. WILEY: Thank you.

13 MS. JOHNSON: Thank you.

14 (Adjourned at 2:01 p.m.)

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STATE OF WASHINGTON  
COUNTY OF KING

I, Shelby Kay K. Fukushima, 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.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1ST day of OCTOBER, 2020.

*Shelby Kay K. Fukushima*



SHELBY KAY K. FUKUSHIMA, CCR #2028