

**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

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 )

TELEPHONE PREHEARING CONFERENCE, VOLUME II Pages 19 - 33 ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

September 25, 2020 1:33 P.M.

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

REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028

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

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LACEY, WASHINGTON, SEPTEMBER 25, 2020 1:33 P.M. -OOO- P R O C E E D I N G S

JUDGE HOWARD: Good afternoon, everyone. Let's be on the record. The time is 1:33 p.m. My name is Michael Howard, and I'm an administrative law judge with the Washington Utilities and Transportation Commission. We are here today for a second prehearing conference in Docket TG-200250, which is captioned In the Matter of the Application of ADE Dumpsters -- I'm sorry -- ADE Dumpsters, LLC, for Authority to Operate as a Solid Waste Collection Company in Washington.

We had a prehearing conference in this case when ADE Dumpsters was proceeding pro se. The company has now retained counsel and filed a motion for continuance of the procedural schedule. Waste Management has filed an opposition to that motion.

I will be granting the motion for continuance. Given the particular circumstances here, I'm going to exempt ADE from the requirement that such a motion must be filed at least five business days before 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 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 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 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

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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?

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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

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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

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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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1 CERTIFICATE

2  
3 STATE OF WASHINGTON  
4 COUNTY OF KING

5  
6 I, Shelby Kay K. Fukushima, 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.

10 IN WITNESS WHEREOF, I have hereunto set my hand  
11 and seal this 1ST day of OCTOBER, 2020.  
12  
13

14 *Shelby Kay K. Fukushima*



15 SHELBY KAY K. FUKUSHIMA, CR #2028  
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