

0001

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3   In the Matter of                    )  
4   Blaine-Bay Refuse, Inc.            ) DOCKET NO. TG-031817  
5   Motion to Amend Commission        ) Volume I  
6   Order M.V.G. No. 656,             ) Pages 1 to 17  
7   \_\_\_\_\_ )

8                   A hearing in the above matter was held on  
9   January 8, 2004, from 1:35 p.m to 2:10 p.m., at 1300  
10   South Evergreen Park Drive Southwest, Room 108, Olympia,  
11   Washington, before Administrative Law Judge KAREN  
12   CAILLE.

13                   The parties were present as follows:

14                   THE COMMISSION, by DONALD T. TROTTER, Senior  
15   Assistant Attorney General, 1400 South Evergreen Park  
16   Drive Southwest, Olympia, Washington 98504-0128,  
17   Telephone (360) 664-1189, Fax (360) 586-5522, E-mail  
18   dtrotter@wutc.wa.gov.

19                   BLAINE-BAY REFUSE, INC., via bridge line by  
20   PHILIP A. SERKA, Attorney at Law, Adelstein, Sharpe &  
21   Serka LLP, 400 Commercial Street, Bellingham, Washington  
22   98225-5158, Telephone (360) 671-8148, Fax (360)  
23   647-8184, E-mail pserka@adelstein.com.

24                   SANITARY SERVICE COMPANY, via bridge line by  
25   POLLY L. MCNEILL, Attorney at Law, Summit Law Group, 315  
26   Fifth Avenue, Suite 1000, Seattle, Washington 98104,  
27   Telephone (206) 676-7040, Fax (206) 676-7041, E-mail  
28   pollym@summitlaw.com.

29

30

31

32   Joan E. Kinn, CCR, RPR  
33   Court Reporter

0002

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

2 JUDGE CAILLE: We are here today for the  
3 first pre-hearing conference in the proceeding in Docket  
4 Number TG-031817, which concerns a motion filed by  
5 Blaine-Bay Refuse, Incorporated, to amend order M.V.G.  
6 Number 656 entered on January 21st, 1974. Specifically  
7 this motion requests that the legal description of the  
8 solid waste collection service area in that order be  
9 changed.

10 This docket is related to the other matter  
11 scheduled for pre-hearing conference today, and that is  
12 Docket Number TG-030831. That docket concerns an  
13 application by Blaine-Bay Refuse, Incorporated, for  
14 Extension of Authority Under Certificate Number G-145 to  
15 Furnish Solid Waste Collection Service. The procedural  
16 schedule in Docket Number TG-030831 was suspended to  
17 allow for the resolution of the issues in the motion to  
18 amend to be resolved before proceeding with the issues  
19 in the TG-031817 docket. Oh, no, I said that wrong, I  
20 thought I wrote that wrong, I just said it wrong, let's  
21 see. That's correct, so we would be addressing the  
22 issues in the motion to amend, which is TG-031817 before  
23 going on to those issues in TG-030831. Among other  
24 matters, today's pre-hearing conference will consider  
25 whether those two dockets should be consolidated.

0003

1                   With that introduction, I will just mention  
2 my name is Karen Caille, and I am the presiding  
3 Administrative Law Judge for this proceeding. Today is  
4 January the 8th, 2004, and we are convened in a hearing  
5 room in the Commission's offices in Olympia, Washington.

6                   I would like to start this afternoon by  
7 taking the appearances. I think I will just go ahead  
8 and take a full appearance from everyone just to make  
9 sure that my contact information is correct. It appears  
10 that the parties are the same in each of the dockets, so  
11 why don't we begin with the company, Blaine-Bay Refuse.

12                   So, Mr. Serka, if you would go ahead and give  
13 me -- you know what, I think we can dispense with that,  
14 because I have full information on everybody. If you  
15 will just state your name and whom you represent.

16                   MR. SERKA: My name is Phil Serka, I'm here  
17 on behalf of Blaine-Bay, and in the room with me is Jim  
18 Sands, a principal in the company.

19                   JUDGE CAILLE: Thank you.

20                   Ms. McNeill.

21                   MS. MCNEILL: Polly McNeill representing  
22 Sanitary Service Company. I would like to state my  
23 address, because I did not state it correctly in the  
24 prior proceeding.

25                   JUDGE CAILLE: Oh, okay.

0004

1 MS. MCNEILL: And it is 315 Fifth Avenue  
2 South, Suite 1000, Seattle, 98104, again representing  
3 Sanitary Service Company. And on the line with me is Ed  
4 Nikula, the Chief Financial Officer for the company.

5 JUDGE CAILLE: Thank you.

6 And Mr. Trotter.

7 MR. TROTTER: Donald T. Trotter for the  
8 Commission.

9 JUDGE CAILLE: All right, thank you.  
10 Let the record reflect there are no other  
11 appearances.

12 Maybe we should just go directly to  
13 scheduling. Well, maybe first we should consider  
14 whether to consolidate these dockets. Let me just share  
15 my thoughts with you on this. As I was preparing for  
16 the pre-hearing conference, I started thinking about  
17 that I would have to probably transfer the exhibits to  
18 the new docket and extend the suspension in the old  
19 docket, and I can still do those things, I would just  
20 like to hear from the parties what they think would be  
21 the most efficient way to go ahead and proceed with  
22 this. I know we talked about that this would be  
23 resolved first, the motion to amend would be resolved  
24 first, and perhaps even that would take care of the  
25 following docket, but does anyone have any great

0005

1 objections about consolidating this?

2 MR. SERKA: Can I speak?

3 JUDGE CAILLE: Go ahead. Would you please  
4 identify yourself before you speak.

5 MR. SERKA: The name is Phil Serka.

6 JUDGE CAILLE: Thank you.

7 MR. SERKA: And a couple things here. One is  
8 if consolidation means that we have a consolidated  
9 hearing and decisions at the same time, then I probably  
10 wouldn't be in favor of that. I think this particular  
11 docket, the issue here before us, has different issues  
12 and probably doesn't need, you know, if any, very much  
13 live testimony. And the other part of that is that I  
14 think a decision on this, as we mentioned, could have  
15 some bearing on whether or not the other docket number  
16 even goes forward. Either it may be a moot issue or,  
17 you know, parties may choose not to go forward, I'm not  
18 sure. But so anyway, I think from Blaine-Bay's  
19 standpoint and perspective, we're in favor of having  
20 this particular docket number resolved first. So if  
21 consolidate -- so I would be against consolidation if it  
22 meant that we had to proceed ahead and have a, you know,  
23 a hearing on all these issues at one time.

24 JUDGE CAILLE: Okay, I understand. That was  
25 not what I was envisioning.

0006

1 Ms. McNeill, do you have any comments?

2 MS. MCNEILL: This is Polly McNeill. I  
3 really have no preference on this question to tell you  
4 the truth. I think as long as all of the parties I  
5 think are in agreement that the issues raised by this  
6 docket matter need to be resolved first, and I agree  
7 then at that point in time that the Applicant should be  
8 given the option of deciding whether it wants to pursue  
9 the older docket item and proceed with a hearing which  
10 would then require witnesses and testimony and exhibits  
11 and things like that. And as long as there's a clear  
12 demarcation of the decision of the issues in this docket  
13 matter before proceeding with the next docket matter or  
14 with the previous docket matter, I don't really care  
15 whether they are consolidated or not. I would hate to  
16 see us have to, you know, copy all of the exhibits that  
17 were prepared for the older docket matter just for this  
18 formality of having the two separate dockets, but I  
19 don't know whether you could incorporate those exhibits  
20 by reference and save yourself the trouble of doing  
21 that. But ultimately I really have no position on this.

22 JUDGE CAILLE: All right.

23 And Mr. Trotter.

24 MR. TROTTER: Well, I agree that the issues  
25 in the two dockets are substantially different, but by

0007

1 the same token, the set of exhibits that are in the  
2 other docket are already being referenced in the motion  
3 in this docket, and we would intend to also refer to  
4 those exhibits. So if some accommodation can be made to  
5 make that efficient, then that's fine. It may be in the  
6 long run if we are to have a hearing, it's at least  
7 thinkable that we would have one hearing, one set of  
8 hearing days in which both dockets are addressed.  
9 That's at least thinkable, but I don't think we need to  
10 cross that bridge now. I think if we can come up with a  
11 way to efficiently refer to the exhibits in the other  
12 docket, the Commission can reserve the issue of  
13 consolidation for a later date just depending on whether  
14 the equities favor it at that time.

15 JUDGE CAILLE: I agree. I think after  
16 listening to folks talk, I can see the benefits to  
17 keeping them separate. It's just they are very similar,  
18 there is confusion even in trying to talk about them.  
19 But I probably am going to have to -- I would assume  
20 that all I need to do is incorporate those exhibits into  
21 this docket.

22 MR. SERKA: We certainly have no objection to  
23 that, Phil Serka, to doing that.

24 JUDGE CAILLE: All right.

25 MR. TROTTER: Neither does Staff.

0008

1 MS. MCNEILL: Neither does Sanitary Service.

2 JUDGE CAILLE: Okay, then that will be my  
3 ruling, and I will state that in the pre-hearing  
4 conference order.

5 Let's see, so actually then if we're going to  
6 keep them separately, I had suspended the procedural  
7 schedule to today just to kind of keep on top of both  
8 dockets, the procedural schedule in 030831, so have the  
9 parties thought about how we're going to handle that?  
10 Will we extend it, just extend it further to a date  
11 certain and pick up the procedural schedule or just  
12 continue to just kind of hold the procedural schedule in  
13 abeyance until after we have a ruling on the motion to  
14 amend?

15 MR. SERKA: This is Phil Serka, I would --  
16 whatever would be the simplest and aware of judicial  
17 economy, I guess, you know, if you just want to hold it  
18 in abeyance, would that -- if there's a way you can do  
19 that so you don't have to keep revisiting it and  
20 extending it and extending it, that would be fine with  
21 Blaine-Bay.

22 MS. MCNEILL: That would also be acceptable  
23 to Sanitary Service. I don't know if you're comfortable  
24 just suspending it until there's a decision in 031817,  
25 this docket. If you can do something like that, I guess



0009

1 that's what I would recommend.

2 JUDGE CAILLE: Okay, I will see how  
3 comfortable I am about that. Generally we want at least  
4 a status date or something. We could push a status date  
5 out that would, somehow, would be far enough out that it  
6 would accommodate the schedule that we're going to talk  
7 about next. Well, I'm not hearing any big --

8 MR. TROTTER: This is Don Trotter, I think if  
9 the Applicant is willing to defer the application  
10 docket, then so be it. They do have a temporary  
11 authority in place, so the status quo operationally,  
12 operational status quo is being preserved, so we don't  
13 have any problem with that.

14 JUDGE CAILLE: All right. I'm going to  
15 discuss this particular matter with the head ALJ to see  
16 if I can just extend it to the time we have a ruling on  
17 the motion to amend or a short time period after that.  
18 Otherwise, I will probably extend it to a date that  
19 would be beyond the date that we would expect a ruling  
20 in the motion to amend.

21 MR. SERKA: That's good.

22 JUDGE CAILLE: That pretty much on my agenda  
23 brings us to the schedule for the motion to amend.

24 And, Ms. McNeill, I thought I heard you say  
25 that Mr. Serka was going to, for lack of a better

0010

1 phrase, freshen up his motion to amend; is that correct?

2 MR. SERKA: I didn't think it was stale.

3 JUDGE CAILLE: Well, I couldn't remember her  
4 exact words, so that's --

5 MS. MCNEILL: I think I said repackage.

6 JUDGE CAILLE: Repackage, all right.

7 MS. MCNEILL: So I don't know that, Judge  
8 Caille, I guess I just wondered if I, you know, I guess  
9 I just assumed that, but that's not necessarily  
10 accurate.

11 MR. SERKA: I'm just giving you a bad time.  
12 But I think from our standpoint we have filed, you know,  
13 a considerable motion and considerable information. All  
14 I'm saying is I would like probably an opportunity, if  
15 possible, to supplement that.

16 JUDGE CAILLE: Okay.

17 MR. SERKA: And the other part I want to keep  
18 in mind for our part of it, I'm going to be gone for the  
19 next three weeks, so I will be back on February 3rd, and  
20 so thereafter I would like an opportunity to revisit and  
21 if necessary supplement.

22 JUDGE CAILLE: Okay.

23 MR. SERKA: That's all I was saying. It may  
24 be stale in three weeks.

25 JUDGE CAILLE: Okay, why don't we go off the

0011

1 record to discuss scheduling.

2 (Discussion off the record.)

3 JUDGE CAILLE: We are back on the record  
4 after a brief discussion regarding a timeline for the  
5 filing of supplemental information on the motion to  
6 amend and responses and replies. Blaine-Bay will file  
7 any supplements to his motion, to the motion to amend,  
8 by February 3rd, 2004. Oops, I'm sorry.

9 MR. SERKA: February 23rd.

10 JUDGE CAILLE: February 23rd, I misspoke,  
11 February 23rd, 2004. And Staff and Sanitary Service  
12 will file their responses by March 15, 2004. And then  
13 Blaine-Bay will file its reply by March 30th, 2004.

14 Based on that schedule, I'm thinking that the  
15 Commission would maybe -- well, strike that.

16 While we were off the record, I did notice  
17 that I had not inquired for this particular docket  
18 whether the parties wanted to conduct discovery, and I  
19 will let the parties speak for themselves beginning with  
20 Mr. Trotter.

21 MR. TROTTER: Your Honor, at this point Staff  
22 does not see a reason to invoke the discovery rule, but  
23 we would reserve our ability to ask for that later  
24 should the need arise.

25 JUDGE CAILLE: All right, thank you.

0012

1 Ms. McNeill.

2 MS. MCNEILL: Your Honor, I agree with  
3 Mr. Trotter, we have no present intention or knowledge  
4 of any reason to invoke the discovery rule, and we would  
5 reserve the right to, but I don't foresee it.

6 JUDGE CAILLE: All right, thank you.

7 Mr. Serka.

8 MR. SERKA: Your Honor, we would not be  
9 invoking the discovery rule and would similarly want to  
10 reserve the right to invoke it at a later date.

11 JUDGE CAILLE: All right, thank you.

12 All right, I think I have covered everything  
13 I intended to. Is there anything further from the  
14 parties, any other procedural matter that I may have  
15 overlooked?

16 MR. SERKA: I don't know if this is the place  
17 to discuss it, this is Phil Serka again, but dealing  
18 with the hearing, is a hearing, my question is, is a  
19 hearing necessary, you know, whether witnesses are even  
20 necessary on this motion? I guess I will ask you, Your  
21 Honor.

22 JUDGE CAILLE: You know, I had just been  
23 proceeding on the idea that this would be sort of like  
24 just decided on the pleadings. Is there a need for --

25 MR. SERKA: I agree. The only issue or

0013

1 question I have is whether or not Blaine-Bay needs to  
2 establish that they have the financial wherewithal to  
3 service the additional area that would be subject to the  
4 amendment. Obviously we have been servicing, Blaine-Bay  
5 has been servicing it for the last, you know, 30 years,  
6 so I guess I'm wondering, that would be the only issue.  
7 I don't want to go through this process and not -- and  
8 have the -- have Your Honor state that we haven't  
9 provided the information on financial condition. I mean  
10 we can do that by stipulation if the parties are  
11 agreeable. And so that's the only question I have.  
12 Otherwise I can see where it would be able to be handled  
13 on the pleadings.

14 JUDGE CAILLE: That's a very good question.

15 Mr. Trotter.

16 MR. TROTTER: Well, my personal take on this  
17 case is that the motion goes to the record that was  
18 built in 1974, warts and all, which would imply no  
19 hearing would be required. And whatever information was  
20 presented, there was no challenge as I read the order  
21 and the record in that case, there was never any  
22 challenge to the financial fitness of the company, of  
23 the Applicant at that time, so that's not my concern.

24 I can foresee a need for, a potential need  
25 for live testimony if there are certain things about the

0014

1 record that need to be explained by live testimony. My  
2 sense in reading the record is that it is a cold record,  
3 and I think there were some things that might have been  
4 assumed by the parties and the judge in that case that  
5 were never made explicit on the record. So what I  
6 perceive is that this case will move forward on this  
7 schedule with the paper record, as you said. If as a  
8 result of those pleadings some issues surface that  
9 require a hearing, I don't foresee us foreclosing that  
10 possibility.

11 So hopefully that's not too vague, but I  
12 think we should -- my proposal is to proceed on this  
13 schedule. If any party requires a hearing and the judge  
14 agrees, then I think we're not foreclosing that by this  
15 schedule.

16 JUDGE CAILLE: Does anyone else wish to be  
17 heard?

18 MS. MCNEILL: Well, I would just sort of add  
19 to what Mr. Trotter stated. Well, first of all, on  
20 Mr. Serka's point, I don't think there is any question  
21 about financial fitness, and if it ultimately gets to  
22 that issue, I think we can probably stipulate to it.  
23 The financial fitness may become, if we proceed with the  
24 previous docket matter number, then we have to go to a  
25 hearing, and I don't know whether we would stipulate to

0015

1 it in that regard or not, we can deal with that issue  
2 when we get to it. But certainly in this proceeding, I  
3 don't see that being an issue, and if it were, I would  
4 stipulate to it.

5 The issue that Mr. Trotter raises about  
6 whether there may be things that need to be clarified  
7 because of the age of the record, I would also like to  
8 hold that as a possibility. I view this a little bit  
9 like a motion for summary judgment, and what I think  
10 just to maybe use legal terminology, I think the issue  
11 would be whether there were material issues of fact in  
12 dispute. I don't see any at this point in time. I mean  
13 I think that the motion should be able to be resolved by  
14 reference to that record. And, you know, Mr. Serka has  
15 included an affidavit, I can see the need for things  
16 like that to supplement the motion on the legal points.  
17 But if they raise issues of material fact, then perhaps  
18 that would need to be clarified by live testimony.

19 Does that make sense?

20 JUDGE CAILLE: That makes sense to me.

21 Mr. Serka, do you have anything further?

22 MR. SERKA: Well, no. I appreciate that  
23 Sanitary Service has indicated that, you know, in terms  
24 of the financial condition, it sounds like that won't be  
25 an issue. Either it's determined at the time, or I

0016

1 think all parties then can agree. That was my main  
2 issue that I thought might need live testimony if  
3 someone made a -- objected to that. But it sounds like  
4 we can overcome that issue. Otherwise I agree with the  
5 other parties. I guess we don't know exactly what will  
6 come out from our briefing, but I guess there may be an  
7 issue that needs to be explained further, so I  
8 appreciate that. So it looks like more than likely  
9 we'll be on the pleadings, and we can -- we're not going  
10 to have an issue in terms of the financial condition of  
11 this Applicant on this amendment, which is what I was  
12 wanting to get clarified.

13 JUDGE CAILLE: All right. And I do think it  
14 is wise not to preclude a hearing in the event that  
15 there are material issues of fact in dispute or if there  
16 is something that the Commission is seeking some  
17 clarification on as Mr. Trotter alluded to earlier.

18 So anything else from anyone?

19 Okay.

20 MS. MCNEILL: Not from me, I can't think of  
21 anything else. I appreciate everybody's contribution to  
22 the clarity of this proceeding though.

23 JUDGE CAILLE: All right, thank you, too.

24 Anything further, Mr. Trotter?

25 MR. TROTTER: I have nothing.



0017

1                   JUDGE CAILLE: Okay, then this meeting is  
2 adjourned, thank you very much.

3                   (Hearing adjourned at 2:10 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25