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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In re Application TG-081725 of)
)
 4 NORTHWEST INDUSTRIAL SERVICES,)
 LLC, d/b/a AMERICAN ON SITE) DOCKET NO. TG-081725
 5 SERVICES,) Volume I
) Pages 1 - 15
 6 For a Certificate of Public)
 Convenience and Necessity to)
 7 Operate Motor Vehicles in)
 Furnishing Solid Waste)
 8 Collection Service.)

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10 A prehearing conference in the above matter
 11 was held on December 3, 2008, at 1:33 p.m., at 1300
 12 South Evergreen Park Drive Southwest, Olympia,
 13 Washington, before Administrative Law Judge ADAM E.
 14 TOREM.

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16 NORTHWEST INDUSTRIAL SERVICES, LLC, by DAVID
 ALVARADO (via bridge), Manager, 2808 North Sullivan
 17 Road, Building 107-A, Spokane, Washington 99216;
 telephone, (509) 244-8404.

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19 B&N SANITARY SERVICE, by JAMES K. SELLS,
 Attorney at Law, Ryan, Sells, Uptegraft, 9657 Levin
 Road Northwest, Suite 240, Silverdale, Washington
 20 98383; telephone, (360) 307-8860.

21 WASHINGTON UTILITIES AND TRANSPORTATION
 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
 22 General, 1400 South Evergreen Park Drive Southwest,
 Post Office Box 40128, Olympia, Washington 98504;
 23 telephone, (360) 664-1225.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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

2 JUDGE TOREM: Good afternoon. My name is
3 Adam Torem, T-o-r-e-m. I'm an administrative law judge
4 for the Washington Utilities and Transportation
5 Commission. Today is Wednesday, December 3rd, 2008.
6 It's a little after 1:30 in the afternoon. This is
7 Docket No. TG-081725. It's the application of
8 Northwest Industrial Services, LLC, doing business as
9 American On Site Services. This is an application for
10 solid waste collection services.

11 I'm in the room here in Room 108 at the
12 Commission's headquarters in Olympia, Washington, and
13 we are conducting a prehearing conference in this
14 matter, and with me in the room are representatives of
15 Commission staff and a protestor, Mr. Robert Nichols,
16 who does business as B&N Sanitary Service, and on the
17 line representing the applicant are one of its
18 managers, David Alvarado. We will take formal
19 appearances in just a moment.

20 This is the application for a solid waste
21 certificate, also known a G-certificate, and it's to
22 take place in the general area of Pend Oreille County,
23 Washington. The application makes claims that the
24 current certificate holder does not offer certain
25 services, including a roll-off or compactor container

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1 service, and the application was filed on September
2 23rd, 2008. The Commission published the notice of the
3 application in its docket on October 2nd, 2008, and B&N
4 Sanitary was the sole protest to this application.
5 They filed a protest on October 22nd, 2008.

6 At this time I would like to take formal
7 appearances, and I will start with Mr. Jim Sells.

8 MR. SELLS: If Your Honor please, James
9 Sells, 9657 Levin Road Northwest, Suite 240,
10 Silverdale, Washington, 98383; telephone, (360)
11 307-8860; e-mail, jimsells@rsulaw.com; fax, (360)
12 307-8865, appearing on behalf of protestant, Robert L.
13 Nichols, d/b/a B&N Sanitary Service.

14 JUDGE TOREM: Appearing for Commission staff?

15 MR. THOMPSON: I'm Jonathan Thompson,
16 assistant attorney general. I'm appearing on behalf of
17 the Commission staff, which will be a party in the
18 case. My address is 1400 South Evergreen Park Drive
19 Southwest, PO Box 40128, and that's in Olympia,
20 98504-0128. My telephone number is (360) 664-1225. My
21 fax is same area code, 586-5522, and my e-mail is
22 jthompso@wutc.wa.gov.

23 JUDGE TOREM: Thank you, Mr. Thompson.

24 Mr. Alvarado, I understand you are going to represent
25 the company?

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1 MR. ALVARADO: Yes, Your Honor.

2 JUDGE TOREM: If you will state the full
3 appearance.

4 MR. ALVARADO: My name is Dave Alvarado. The
5 company is Northwest Industrial Services, LLC. My
6 address is 3808 North Sullivan Road, Building 107-A,
7 Spokane, Washington, 99216. Office phone number is
8 (509) 244-8404. My e-mail address is
9 dave_alvarado@air-pipe.com.

10 JUDGE TOREM: Thank you. I have a fax number
11 as (509) 244-8402. Is that correct?

12 MR. ALVARADO: That's correct.

13 JUDGE TOREM: Just so I'm clear,
14 Mr. Alvarado, are you an attorney for the company?

15 MR. ALVARADO: No, sir, I'm not.

16 JUDGE TOREM: It's not required that you be.
17 I just wanted to know if you were. As I told you
18 before, our agenda today is mainly to set a schedule
19 and determine any outstanding issues that have to be
20 heard in this case to evaluate the company's
21 application to obtain a G-certificate in Pend Oreille
22 County.

23 I want to ask if there are any petitions to
24 intervene. We have not received any here at the
25 Commission, and I'm not aware of anyone else on the

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1 bridge line today that wants to file a petition to
2 intervene verbally. Hearing none, then I think there
3 will be no other potential intervenors in the case, so
4 the parties will proceed with the applicant, the
5 protestor, and Commission staff.

6 Now, the notice that went out, Mr. Alvarado,
7 of today's prehearing conference had an Appendix A to
8 it, and I wanted to make sure you had reviewed that and
9 understood the references to the Revised Code of
10 Washington, Title 8177, as well as the WAC title
11 480-70. Those are the rules that govern these sorts of
12 applications.

13 At the bottom of the page listing, I believe,
14 seven different issues that we don't have to cover
15 today, there is a list of one through four, and then on
16 the backside five through seven, items that a solid
17 waste applicant needs to provide information on
18 regarding at hearing and carry the burden of proof on
19 these issues to obtain the certificate for which you've
20 applied.

21 So some of these things are just factual.
22 Others of them require you to show that the existing
23 company of Mr. Sells' client is not providing service
24 to the satisfaction of the Commission, and you also
25 have to demonstrate experience and fitness to provide

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1 the service that you are proposing.

2 I don't know if you've had an opportunity to
3 discuss the petition with Mr. Sells and the reason for
4 his protest and had any opportunity to see what the
5 nature of his protest was beyond the paper that was
6 filed on behalf of his client and see if there is a way
7 to settle this, so if there is room for both companies
8 to exist in the market, this case might settle. If
9 there are not, then we will have a hearing.

10 MR. ALVARADO: I have not spoken with
11 Mr. Sells at this point.

12 JUDGE TOREM: It wouldn't be appropriate to
13 conduct those discussions today during the prehearing
14 conference, but you have Mr. Sells' contact information
15 from the appearance made today and the protest.
16 Commission staff may also be looking at some of these
17 issues as we go forward and determining if they are
18 going to call witnesses in support or opposition to the
19 application or simply to give advice to me as the
20 representative of the commissioners for the Utilities
21 and Transportation Commission as I reach my initial
22 decision on the application if need be.

23 Let me see if you have any questions looking
24 at Appendix A and the issues, and then I will turn to
25 the other attorneys here in the room and see if they

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1 want to make any statements on behalf of their clients
2 on those issues.

3 MR. ALVARADO: I have no questions.

4 JUDGE TOREM: Any other comments on the
5 issues that are contained in the appendix?

6 MR. SELLS: I have none, Your Honor.

7 MR. THOMPSON: No, Your Honor. I would add
8 that in addition to those numbered one through seven on
9 the Appendix A, you could probably include as an eighth
10 the No. 3 over on Page 9, which is the necessity of
11 showing that the existing certificate holder doesn't
12 provide service to the satisfaction of the Commission.

13 JUDGE TOREM: So you are correct. At the
14 hearing it boils it down separately and it comes out.
15 Certainly, the prehearing conference lists those issues
16 that have to be in the application and then the other
17 items that are in the appendix, as Mr. Thompson points
18 out. I don't mean to leave them out or give them short
19 shrift, but if there are no questions on it today but
20 there is a easy modification to the application that
21 satisfies the protest, we will go forward and assume we
22 are going to have a full hearing.

23 Before we go off the record to discuss
24 potential dates or how long it takes to process the
25 application and get to hearing, let me ask all counsel

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1 present and you as well, Mr. Alvarado, if there is a
2 need for the discovery rules to be invoked in this case
3 and whether we need a protective order as well as part
4 of the proceedings today. Mr. Thompson, what does
5 Commission staff think about this sort of proceeding?

6 MR. THOMPSON: I think our view is that there
7 is not a statute that actually provides for protection
8 of, say, commercially sensitive information under
9 Title 81, which is the title of the Revised Code of
10 Washington that deals with transportation companies and
11 solid waste companies. Although, I suppose there may
12 be the possibility of crafting something, as I think is
13 sometimes done in transportation cases anyway. I'll
14 just give you my noncommittal statement there.

15 JUDGE TOREM: Any other suggestions,
16 Mr. Sells?

17 MR. SELLS: I, at this point, don't see the
18 need for the discovery rule. The application contains
19 a very thorough financial statement from the applicant,
20 which certainly provides us with the kind of financial
21 information that we need.

22 As far as a protective order, that is what
23 we've always viewed as an error, I guess, on somebody's
24 part that it's not within 81. I don't see any need for
25 a protective order. I doubt that I would seek anything

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1 other than what is in the application, and there are a
2 couple of files here at the Commission with
3 correspondence in them regarding the applicant and a
4 couple of the other certificate holders that certainly
5 are available as public record, so I don't see the need
6 for that.

7 JUDGE TOREM: Mr. Alvarado, I hope you've
8 been able to hear the discussion.

9 MR. ALVARADO: Yes, I have.

10 JUDGE TOREM: Did you have a position on
11 behalf of your company with regard to discovery, if you
12 needed to ask any questions in a legal format of the
13 Commission staff or of Mr. Sells' clients in
14 researching what you need to put forward at hearing or
15 the need for a protective order, other than what's
16 already been published in the application, if you have
17 any other financial data or commercially sensitive
18 information that needs to be protected from public
19 view.

20 MR. ALVARADO: No, I have none. I'm happy
21 with what we have so far.

22 JUDGE TOREM: If the need does arise for a
23 protective order, let me know later in the proceeding
24 and we can work things from there. You may
25 be knowledgeable of the fact that there is a prohibition

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1 on what they call ex parte contact me as the
2 decision-maker, meaning you and I can't have a phone
3 conversation about this, but you could call the other
4 parties if this comes up, and sometimes Mr. Thompson
5 ends up taking the laboring oar. He's just down the
6 hall in the next building, and can either send me an
7 e-mail or let me know the parties have agreed and he's
8 been delegated to be the messenger if something like
9 this comes up.

10 But feel free if you do need to call me
11 directly to indicate something like this came up, we
12 can schedule a conference call so everyone can be at
13 least virtually present as you are today and make sure
14 there is not any prohibited ex parte or outside the
15 view of the other parties' communication, and I can
16 maintain a neutral and unbiased stance here and get
17 information from everybody all at once and not from one
18 party in a one-at-a-time fashion or without the purview
19 of the other parties.

20 I think that takes us up to deciding how we
21 want to proceed with the schedule. It's about twelve
22 minutes to two. We will go off the record and give the
23 court reporter a break, and we can just come back and
24 summarize when we are back on the record what schedule
25 we might agree to and go forward from there. We are

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1 off the record.

2 (Recess.)

3 JUDGE TOREM: It's now 20 minutes after two.

4 We have discussed a variety of issues, including where
5 to hold the hearing, how long, and how soon to hold the
6 hearing, and we talked about witnesses and again
7 confirmed we are not going to have prefiled testimony.

8 So gentlemen, correct me if I'm wrong, but we've agreed
9 to hold the hearing in Spokane. That will be
10 convenient for all of the witnesses and none of the
11 attorneys, so that's the way they like it.

12 We will expect to have a witness and exhibit
13 list filed in advance of the hearing on Friday, January
14 30th, and I'll let you know in the prehearing
15 conference order how many copies have to accompany the
16 original filings, and certainly in the prehearing
17 conference order you will find all of the instructions
18 on filing and serving the other parties and can refer
19 to our rules in WAC 480-07, and I'll have citations in
20 the prehearing conference order explaining it all, how
21 our electric filing works and how many hard copies, and
22 everything will need to be at the Commission on Friday,
23 January 30th, before the close of business at five
24 o'clock.

25 The hearing itself will take place in

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1 February of 2009, Wednesday, the 18th, and as needed,
2 Thursday, the 19th of February. So we will be in
3 Spokane and start probably around nine o'clock in the
4 morning, and I'll specify the location once our
5 schedulers can identify one there in Spokane, and we
6 will try to get a room large enough to hold the three
7 parties, the judge, the court reporter, and a good
8 amount of witnesses at the same time, but I'm hoping we
9 will be able to get your witnesses to come in that
10 morning, Mr. Alvarado, and the protestor and staff
11 witnesses in the afternoon of the 18th, with the
12 flexibility for those witnesses to perhaps be presented
13 on the morning of the 19th, so those witnesses if they
14 are traveling from out of town and not commute distance
15 to Spokane might need to make overnight arrangements.
16 If there are any witnesses that need to testify on one
17 day over the other, please work that out in advance,
18 and we will talk about that as a status conference.

19 We haven't picked a date for a prehearing
20 status conference, but I'm going to pick out Thursday,
21 the 12th of February, and we will schedule a time
22 later, but it will only be about a half-hour telephone
23 conversation to make sure if there are any issues or
24 witness accommodation issues that need to be brought
25 up. Again, we will do that on Thursday, the 12th of

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1 February. If my arbitrary date choosing doesn't work
2 for anybody, let me know now or after the prehearing,
3 but we will pick an appropriate morning or afternoon
4 half hour and get everybody on the phone on this bridge
5 line.

6 The issue of posthearing briefs came up, and
7 my recommendation was that certainly could be
8 appropriate in a case like this. What I would like to
9 see happen is on the morning of the 18th of February,
10 the representatives -- Mr. Alvarado, if you hire an
11 attorney between now and then, make sure he or she
12 knows to be ready to proceed with an opening statement
13 on behalf of your company, and the other attorneys can
14 do that either at the close of that statement or at the
15 beginning of their cases in chief if they choose to
16 present one, but I would like on that morning to have
17 everybody's opening statement as to what they think the
18 evidence will show, and in lieu of verbal closing
19 arguments, we will give you the option of having a
20 closing brief that would be due several weeks later,
21 and we can talk about what's appropriate based on the
22 evidence that comes in on the 18th or 19th.

23 So those are the dates, the 30th of January
24 for the witness and exhibit list, the 12th of February
25 for a status conference, and the 18th and 19th of

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1 February for the hearing itself. We will pick any
2 further dates for posthearing briefs as it proves
3 necessary.

4 Between now and then, you have all agreed to
5 try to work out any discussions and settlement, whether
6 it's a full settlement or a partial settlement that can
7 be reached, and if you have anything you want to report
8 ahead of that 30th of January filing date, feel free to
9 appoint a messenger, and we will schedule something so
10 we can all discuss it and go from there. Were there
11 any dates or information that I left out in that
12 summary of what we did off the record?

13 MR. ALVARADO: I'm pretty clear. It was a
14 good summary of our off-the-record conversation.

15 JUDGE TOREM: Mr. Thompson and Mr. Sells are
16 nodding. I'm going to try to get that out all in
17 writing and get something out by Friday or Monday that
18 will have the hearing location and all the dates
19 restated.

20 We will go off the record and pick a time for
21 the status conference before we all let you hang up
22 today, but is there anything else we need to do on the
23 record today?

24 MR. SELLS: I don't think so, Your Honor.

25 JUDGE TOREM: The formal portion of this

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1 prehearing conference is adjourned at 2:25, and we will
2 be off the record.

3 (Prehearing conference adjourned at 2:24 p.m.)

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