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

2 JUDGE MACE: Let's be on the record in re
3 application No. GA-0789133 of Matthews, Trystan, also
4 known as Trystan Matthews, d/b/a Recycle Whidbey for a
5 certificate of public convenience and necessity to
6 operate motor vehicles in furnishing solid waste
7 collection service, Docket No. TG-030325.

8 We are convened pursuant to notice in hearing
9 room 108 of the offices of the Washington Utilities and
10 Transportation Commission in Olympia, Washington on May
11 30th, 2003. My name is Theodora Mace. I'm the
12 administrative law judge who has been assigned to
13 preside over this matter.

14 I want to take the appearances of counsel and
15 of the applicant now, and when I say appearances, what
16 I mean is you are basically going to introduce yourself
17 for the record, and everyone today is going to have to
18 give me what we call a long form of appearance, and
19 that means you give your name, address, phone, fax,
20 e-mail, all that contact information. So I'll begin
21 with you, Mr. Matthews, if you would give us your
22 appearance for the record.

23 MR. MATTHEWS: My name is Trystan Matthews.
24 I reside at 4907 Lakeside Drive. That's Langley,
25 Washington, 98260. Telephone number is (360) 321-4480.

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1 JUDGE MACE: Thank you.

2 MR. WILEY: Good morning, Your Honor. David
3 W. Wiley with the law firm of Williams, Kastner, and
4 Gibbs, Two Union Square, 601 Union Street, Suite 4100,
5 Seattle, Washington, 98101-2380. My direct phone
6 number is (206) 233-2895. My fax number is (206)
7 628-6611, and my e-mail address is dwiley@wkg.com. I'm
8 appearing today on behalf of protestant Island
9 Disposal, Inc.

10 MR. SELLS: If Your Honor please, James Sells
11 appearing on behalf of protestant Washington Refuse and
12 Recycling Association. The address is 9657 Levin Road
13 Northwest, Suite 240, Silverdale, 98383; telephone,
14 (360) 307-8860; fax, (360) 307-8865; e-mail,
15 jimsells@rsulaw.com.

16 MS. TENNYSON: Mary Tennyson, senior
17 assistant attorney general, for Commission staff. My
18 mailing address is PO Box 40128, Olympia, Washington,
19 98504-1012. Street address, 1400 South Evergreen Park
20 Drive Southwest; telephone, (360) 664-1220. Fax is
21 (360) 586-5522. My e-mail address is
22 mtennyson@wutc.wa.gov.

23 JUDGE MACE: As is obvious from the
24 appearances, there have been two protests filed, one on
25 behalf of Island Disposal and one on behalf of

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1 Washington Refuse and Recycling. So, Mr. Matthews, you
2 should be aware that there will be two parties who will
3 be challenging your application, and they are
4 represented by these counsel who have introduced
5 themselves today, and my understanding is that Staff
6 will participate as well, so we have Staff's appearance
7 today.

8 The next item I would like to discuss is --
9 well, typically in a prehearing conference, we would
10 talk about whether or not the parties would seek a
11 protective order. I'm not certain this is the type of
12 proceeding that would lend itself to that, but I will
13 ask the parties if any party seeks a protective order
14 in this case.

15 MR. MATTHEWS: I don't know what a protective
16 order is.

17 JUDGE MACE: A protective order means if you
18 have certain information that you know will need to be
19 brought forward in the hearing but you feel its
20 confidentiality needs to be protected because it's
21 sensitive to your business. You know, it would be
22 revealing secrets to your competitors. Typically,
23 these are entered in telecommunications and utilities
24 cases, not so typically in these types of case, but I'm
25 just offering it as a possibility.

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1 You don't need to make a decision now either.
2 If somehow down the road it appears you need to do
3 this, you can ask me and I can enter one. So does
4 anyone seek a protective order at this time? It
5 appears no one is interested in having that type of
6 order entered at this point.

7 The next item is the question of discovery.
8 This may be an issue in this case. There may be
9 questions that you want to ask the protestants or that
10 the protestants want to ask you. So in those
11 situations, what we would do if that's the case, we
12 would invoke the discovery rule, and it means you can
13 ask each other written questions, usually, about
14 certain aspects of each other's cases so you can get
15 information to prepare your cases. Are the parties
16 interested in my invoking the discovery rule?

17 MR. MATTHEWS: I don't think so.

18 MR. WILEY: My only concern about the
19 discovery rule would be if there is a voluminous
20 listing of prospective witnesses, then the discovery
21 rule might be useful in terms of limiting the testimony
22 and shortening the record, but at this point, I don't
23 see...

24 JUDGE MACE: My understanding from the
25 applicant, at least my review of your application is I

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1 thought you talked about bringing in possibly three
2 witnesses?

3 MR. MATTHEWS: At least.

4 JUDGE MACE: Who would those witnesses be?

5 MR. MATTHEWS: Potential clients. As I
6 understand, Jerry Mingo, the hazardous waste and
7 recycling coordinator, will be coming down. For me
8 though, they will be mostly community members, maybe a
9 business owner.

10 JUDGE MACE: So you would anticipate possibly
11 three witnesses then?

12 MR. MATTHEWS: I would hope to have at least
13 that many.

14 JUDGE MACE: You need to know that there will
15 be a time when you will have to advise me actually how
16 many witnesses you are going to bring, and we would
17 want to avoid the situation of duplicative testimony.

18 MR. MATTHEWS: Yes, definitely.

19 JUDGE MACE: Thank you. Do the protestants
20 have any idea of how many witnesses they would bring?

21 MR. SELLS: I would have one, Your Honor.

22 MR. WILEY: I think I would have probably
23 two, possibly three, depending on the testimony from
24 the generators.

25 JUDGE MACE: Will anyone from staff be

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1 testifying?

2 MS. TENNYSON: Staff does not plan to present
3 any witnesses.

4 JUDGE MACE: Thank you. At this point, I'm
5 not going to indicate the discovery rule will be
6 invoked. If it becomes an issue, the parties can
7 notify me and I can take appropriate action.

8 The next thing we need to address is a
9 schedule for the proceeding, and I would think that
10 this would be the point we would go off the record and
11 let the parties talk about what would be a good
12 schedule. Let's be off the record so we can discuss
13 the schedule.

14 (Discussion off the record.)

15 JUDGE MACE: Let's be back on the record.
16 The parties have discussed scheduling of this matter
17 and have agreed on hearing dates of July 15th and 16th,
18 2003. It's been suggested that perhaps we won't need
19 the 16th, but we will schedule that date just in case
20 there is some spillover to the next day.

21 I have asked the parties to supply me with a
22 witness list by July 10th, by noon on July 10th. We
23 have discussed that the hearing may take place in
24 Coupeville on Whidbey Island, but we are not 100
25 percent certain, and I have indicated that I will

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1 notify the parties as soon as possible as to the exact
2 location of the hearing.

3 Let me go over a couple of other items. One
4 has to do with documents that are filed. I will
5 indicate in the prehearing conference order how many
6 copies of documents you must bring with you to the
7 hearing. In other words, if you are going to have
8 exhibits for your witnesses, you will need to bring a
9 certain number of copies to the hearing, and I will
10 make sure you know in the prehearing conference order
11 how many that will be.

12 MR. MATTHEWS: Okay.

13 JUDGE MACE: If you intend to make any other
14 kinds of filings, motion filings or what have you, all
15 filings must be made through the Commission secretary
16 either by mail to the secretary at Washington Utilities
17 and Transportation Commission, PO Box 47250, and there
18 is an address here. What I will do is I'll include all
19 this information in the prehearing conference order.
20 It will include information about placing filings on
21 certain types of computer disks in a certain format.
22 Most of this pertains more to utility-type hearings,
23 but I will include the information in the prehearing
24 conference order so everyone is aware of it.

25 Finally, I want to make sure that the parties

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1 are aware that the Commission does encourage
2 stipulations or agreements, settlement agreements, so
3 if the parties are able to arrive at a solution, this
4 does not need to go to hearing. Mr. Matthews, as I
5 indicated to you, I strongly suggest that you contact
6 an attorney to represent you, and perhaps through some
7 form of negotiation, this matter can be settled. It
8 may not, but there is always that possibility, and we
9 usually ask the parties to explore that if it's
10 possible.

11 If you need any assistance to arrive at a
12 resolution of the situation, give me a call and I will
13 see if I can't direct you to someone at the Commission
14 who can help you with that, and again, it may not be
15 possible, but I'm just offering that as a possibility.

16 I think that that concludes the housekeeping
17 matters that I need to attend to at a prehearing
18 conference. Mr. Matthews, again, I've suggested that
19 you hire an attorney. If you don't, you certainly
20 would want to become familiar with the statutory
21 requirements that the Commission must consider in
22 determining whether they would give you a grant of
23 authority, and I think those are mentioned -- they are
24 mentioned in the notice of hearing, but I will mention
25 them again in the prehearing conference order. Do you

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1 have copies of the statute? Did you receive those?

2 MR. MATTHEWS: No.

3 JUDGE MACE: I'll attach a copy of the
4 statutory language that governs the granting of
5 applications of the type you've filed.

6 MR. MATTHEWS: Okay.

7 JUDGE MACE: Is there anything else that the
8 parties would like to address before we conclude?

9 MR. WILEY: One question and one comment,
10 Your Honor. The question is, will you be interested in
11 predistribution of exhibits ahead of time or not?

12 JUDGE MACE: Well, in this type of case, we
13 are not making allowance for an additional prehearing
14 conference. When you say "predistribution," do you
15 mean by mail?

16 MR. WILEY: Many judges recently have been
17 asking for the primary witness exhibits that will be
18 sponsored by the witnesses around the same time that
19 the witness lists are due, and I'm just wondering if
20 you were going to want that or not. It doesn't really
21 matter to me.

22 JUDGE MACE: Staff indicates --

23 MS. TENNYSON: I think it's an extra burden
24 on the parties.

25 JUDGE MACE: I would say not. Maybe I'm

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1 mistaken, but I'm not anticipating voluminous exhibits
2 in this case. If any party comes to July 10th and sees
3 that they are going to have over, let's say, 10
4 exhibits, let me know and I may make some provision for
5 predistribution, but other than that, I think as long
6 as you bring the number of copies that are required to
7 the hearing, we should be okay.

8 MR. WILEY: The other point, I want to
9 respond to your reference to counsel for the applicant
10 and I, of course, always encourage that. My concern
11 about that though, Your Honor, is past experience where
12 counsel is retained a few days before the hearing and a
13 continuance is requested almost automatically once
14 counsel is retained. If we could know one way or the
15 other by a date that we know we are going forward on
16 the hearing on 15th and 16th, it would help us. If by
17 June 30th, if counsel is retained and we know we are
18 going forward with the dates as scheduled, that would
19 be useful. What happens typically is that two days
20 beforehand, we get a continuance request. That's very
21 disruptive.

22 JUDGE MACE: Certainly. I had a case a week
23 or two ago where a pro se applicant came in and asked
24 for an adjournment right at that very point, and when
25 you get all the parties together and all the witnesses,

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1 it gets very -- it's prejudicial to ask for continuance
2 at that point, so I think that counsel's point is well
3 taken; that if you are going to hire an attorney, you
4 should do so immediately, and I want to hear -- you
5 should enter an appearance as soon as you hire him.

6 If you find out or he finds out or decides he
7 needs more time to prepare, I don't want to hear about
8 it on July 14th. I want to hear about it ahead of time
9 so we can deal with the question of gearing up for
10 hearing, because it takes a certain amount of
11 preparation to get ready for a hearing. You have to
12 get your witnesses ready. Whatever preparation your
13 counsel or you are going to do for this hearing, other
14 counsel have to do too, and it does take time and
15 effort and money, and let's try to do it in a way
16 that's professional and courteous. I guess by July
17 10th, certainly, I should hear from either you,
18 Mr. Matthews, or your counsel to know if there is going
19 to be any problem with going forward.

20 MR. MATTHEWS: Okay.

21 JUDGE MACE: Anything else? We are adjourned
22 until July 15th.

23 (Prehearing conference adjourned at 10:00 a.m.)

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