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1           BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2                                   COMMISSION  
3 In Re Application No. GA-079086   )  
   of J&M DISPOSAL, INC.           )  
4 For a Certificate of Public        ) DOCKET NO. TG-020856  
   Convenience and Necessity to    ) Volume I  
5 Operate Motor Vehicles in         ) Pages 1 - 17  
   Furnishing Solid Waste           )  
6 Collection Service.                )  
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8                   A prehearing conference in the above matter  
9 was held on February 4, 2003, at 9:34 a.m., at 1300  
10 South Evergreen Park Drive Southwest, Olympia,  
11 Washington, before Administrative Law Judge KAREN  
12 CAILLE.

13                   The parties were present as follows:  
                  THE WASHINGTON UTILITIES AND TRANSPORTATION  
14 COMMISSION, by LISA WATSON, Assistant Attorney General,  
15 1400 South Evergreen Park Drive Southwest, Post Office  
   Box 40128, Olympia, Washington 98504.

16                   J&M DISPOSAL, INC., by NAT BRAZILL, Owner,  
17 599 Industry Drive, Building 5, Tukwila, Washington  
   98188.

18                   RABANCO COMPANIES, MURREY DISPOSAL, INC.,  
19 AMERICAN DISPOSAL, INC., by DAVID W. WILEY, Attorney at  
   Law, Williams, Kastner & Gibbs, 601 Union Street, Suite  
   4100, Seattle, Washington 98101.

20                   WASHINGTON REFUSE & RECYCLING ASSOCIATION,  
21 UNIVERSITY PLACE REFUSE, by JAMES K. SELLS, Attorney at  
   Law, Ryan, Sells, Uptegraft, 9657 Levin Road Northwest,  
22 Suite 240, Silverdale, Washington 98383.

23                   WASTE MANAGEMENT OF WASHINGTON, INC., by  
24 POLLY L. MCNEILL, Attorney at Law, Summit Law Group,  
   315 Fifth Avenue South, Suite 1000, Seattle, Washington  
   98104.  
25 Kathryn T. Wilson, CCR, Court Reporter

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

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3 JUDGE CAILLE: Let's go on the record. We  
4 are here today for a prehearing conference in Docket  
5 No. TG-020856. This concerns an application by J&M  
6 Disposal, Incorporated, for a certificate of public  
7 convenience and necessity to operate motor vehicles in  
8 furnishing solid waste collection service, consisting  
9 of construction and demolition debris in King and  
10 Pierce County.

11 My name is Karen Caille, and I'm the  
12 administrative law judge assigned to this proceeding.  
13 Today is February the 4th, 2003, and we are convened in  
14 a hearing room in Olympia, Washington. The purpose of  
15 our conference today is to discuss any preliminary  
16 matters, the hearing process, scheduling, and touch on  
17 the issues that need to be resolved.

18 Let's begin by taking appearances from all  
19 the parties, and by that, I will ask you to state your  
20 name, spelling your last name, who you represent, your  
21 street address, mailing address, telephone number, fax  
22 number, and if you have one, an e-mail address, and  
23 let's begin with the applicant.

24 MR. BRAZILL: Yes. My name is Nat Brazill,  
25 N-a-t, B-r-a-z-i-l-l. Address is 599 Industry Drive,

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1 Building 5. That's Tukwila, Washington, 98188.  
2 Telephone number is (206) 575-4913. Fax number is  
3 (206) 575-6315. Our e-mail address is jmdinc@gte.net.

4 JUDGE CAILLE: Thank you. Mr. Brazill, will  
5 you be the only person speaking today? I know your  
6 partners are with you. Shall we just introduce them?

7 MR. BRAZILL: Unfortunately, they have  
8 designated me as the spokesman, but my two copartners  
9 and owners are Jesse Penny, Senior, and Mozell Brazill.

10 JUDGE CAILLE: Thank you. Mr. Wiley?

11 MR. WILEY: Yes, Your Honor, David W. Wiley,  
12 W-i-l-e-y. I'm an attorney at Williams, Kastner and  
13 Gibbs, Two Union Square, 601 Union Street, Suite 4100,  
14 Seattle, Washington, 98101-2380. My direct line is  
15 (206) 233-2895. Fax number is (206) 628-6611, and  
16 e-mail is dwiley@wkg.com. I'm appearing today on  
17 behalf today of Protestants The Rabanco Companies,  
18 Murrey Disposal, Inc, and American Disposal, Inc.

19 JUDGE CAILLE: Mr. Sells?

20 MR. SELLS: Your Honor, please, James Sells  
21 appearing upon behalf of Protestants Washington Refuse  
22 and Recycling Association and University Place Refuse.  
23 My address is 9657 Levin, L-e-v-i-n, Road Northwest,  
24 Suite 240, Silverdale, Washington, 98383; telephone,  
25 (360) 307-8860; fax, (360) 307-8865; e-mail,

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1 jimsells@rsulaw.com.

2 JUDGE CAILLE: Ms. McNeill?

3 MS. MCNEILL: Thank you, Your Honor. Polly  
4 McNeill, M-c-N-e-i-l-l, representing Intervenor Waste  
5 Management of Washington, Inc. My new address is 315  
6 Fifth Avenue South, Suite 1000, Seattle, Washington,  
7 98104. Phone number still is the same, (206) 676-7040;  
8 fax, (206) 676-7041. E-mail address is  
9 pollym@summitlaw.com.

10 JUDGE CAILLE: Staff?

11 MS. WATSON: Good morning. My name is Lisa  
12 Watson, and I'm an assistant attorney general  
13 representing Commission staff. My street address is  
14 1400 South Evergreen Park Drive Southwest, PO Box  
15 40128, Olympia, Washington, 98504. My phone number is  
16 (360) 664-1186; fax, (360) 586-5522, and e-mail is  
17 lwatson@wutc.wa.gov.

18 JUDGE CAILLE: Thank you very much. Are  
19 there any other appearances to be made?

20 MS. MCNEILL: Excuse me, Your Honor. I don't  
21 believe he intends to speak today, but I did want to  
22 have the record reflect that I have a company  
23 representative with me today, Rod Rosatto.

24 JUDGE CAILLE: Thank you. The gentleman  
25 that's seated further away, who are you with?

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1           MR. SELLS: That's Mr. Brad Lovaas, who is  
2 the executive director of WRRRA.

3           JUDGE CAILLE: Let the record reflect there  
4 are no other appearances. I will mention that the  
5 Commission has received timely protest from the  
6 following companies: Washington Refuse and Recycling  
7 Association, The University Place Refuse Service,  
8 Rabanco Companies, Murrey Disposal Company, and  
9 American Disposal Company. Is that correct?

10           My next question is, we received a petition  
11 to intervene from your company, the company you  
12 represent, Ms. McNeill. Your petition reads like a  
13 protest, so I guess I need an explanation as to why you  
14 didn't protest on time, because according to our rules,  
15 480-70-106, if you are eligible to file protests but  
16 you fail to do so within the 30-day protest period, you  
17 may not participate further, so I'm wondering.

18           MS. MCNEILL: First of all, let me say I used  
19 the Commission's form to file my petition to intervene.  
20 It's the one on the Web Site, so if it bears a  
21 resemblance to a protest, I guess I can't take any  
22 credit for that.

23           It is true that our interests are similar to  
24 and certainly no broader than the protestants'. The  
25 companies actually have a working relationship in the

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1 City of Seattle, and I think there are two reasons we  
2 are petitioning to intervene. Waste Management of  
3 Washington and J&M Disposal work together in the City  
4 of Seattle, and we were hopeful that we were going to  
5 be able to work on this issue outside of the  
6 formalities of the hearing process.

7 In addition, I will confess there has been  
8 some turnover of personnel in Waste Management just at  
9 the point in time that probably the decision would have  
10 been critical to make. Given, however, that we do not  
11 have any desire to broaden the interests, I felt the  
12 rules would permit us to file a petition to intervene  
13 as long as it was timely filed.

14 JUDGE CAILLE: I'm wondering, Ms. McNeill,  
15 does that docket sheet go to you, the attorney  
16 representing the company, or does it go directly to the  
17 company?

18 MS. MCNEILL: I believe it goes to both in  
19 this case. There are company representatives that  
20 receive it, although not at the operating offices.  
21 There is a central individual, Bob Schille, who  
22 receives the WUTC dockets, and I also receive them as a  
23 matter of course for all my clients.

24 JUDGE CAILLE: As the rule reads, and I will  
25 gladly accept any help from Staff, it's pretty emphatic

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1 if you don't file a protest -- now, I do see --

2 MS. MCNEILL: I'm sorry; which rule are you  
3 referring to, Your Honor?

4 JUDGE CAILLE: I'm referring to WAC  
5 480-70-106, and I'll give it to you. It's 2(b).

6 MS. MCNEILL: Again, I guess I interpret this  
7 rule to reflect the Commission policy that intervenors,  
8 if there isn't a protest made that you can't create a  
9 hearing by coming in after the protest period has  
10 expired and then try to push the matter to a hearing.

11 My understanding again of the intervenor  
12 rules is that if there is no intent to broaden the  
13 issue or duplicate any of the testimony that is being  
14 provided by protestants, then you are not precluded  
15 from participating. That's certainly been the way  
16 intervention has been handled.

17 JUDGE CAILLE: So there have been  
18 interventions by folks who normally would have  
19 protested in the past?

20 MS. MCNEILL: In my experience, there has  
21 been, yes.

22 JUDGE CAILLE: Do you have the statute?

23 MS. WATSON: I think you are right that under  
24 WAC 480-70-106 2(b) there is a pretty emphatic  
25 statement that protestants are barred from coming in at

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1 a later time, but under 480-70-106, Subsection 3, it  
2 does allow for a general intervention, and it doesn't  
3 appear that Waste Management is broadening the issues  
4 in this case, and when we get into the issues, we will  
5 be looking at all the companies that are serving the  
6 particular area, and Waste Management appears to be one  
7 of those companies, so Staff doesn't have any  
8 objections to Waste Management intervening.

9 MS. MCNEILL: Your Honor, I would also add  
10 that I would say that 2(b) is a modification to  
11 Subsection 2, which deals with protests, and as  
12 Ms. Watson points out, Subsection 3 independently seems  
13 to address intervention rights, so I think that 2(b) is  
14 just a clarification to protestants that if you don't  
15 file within the 30-day period, you can't protest after  
16 that, but that does not necessarily preclude  
17 intervention, which under WAC 480-09-430, again, this  
18 is a general intervention with no desire to broaden the  
19 issues, and that is permitted up until the prehearing  
20 conference.

21 MS. WATSON: On another note, I think Your  
22 Honor also has the authority to limit the scope of the  
23 intervention as well.

24 JUDGE CAILLE: Mr. Brazill, do you want to  
25 speak on this at all?



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1 MR. BRAZILL: No. I have no objection.

2 JUDGE CAILLE: Mr. Sells or Mr. Wiley?

3 MR. SELLS: I have no objection.

4 MR. WILEY: No objection.

5 JUDGE CAILLE: Ms. McNeill, could I have my  
6 rule back?

7 MS. MCNEILL: (Complies.)

8 JUDGE CAILLE: Just so I'm clear about the  
9 terms of your intervention, could you again explain?  
10 You have worked with J&M Disposal.

11 MS. MCNEILL: Excuse me, Your Honor, to  
12 answer that, in an unregulated environment but within  
13 the jurisdiction that is sought. In other words,  
14 they've applied for authority within King and Pierce  
15 County, but within King County, Waste Management of  
16 Washington works with J&M Disposal in the City of  
17 Seattle, and I believe they have a history of working  
18 together for some time now, and for that reason, the  
19 company, my client, had some reluctance to appear as if  
20 it was antagonistic or confrontational to a company  
21 with whom it has a positive service relationship, but  
22 as I say, then there was a turnover of personnel right  
23 at the time of the protest period, and so that  
24 combination of circumstances caused us to then revert  
25 to the intervention mode.

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1                   JUDGE CAILLE: I'm going to allow the  
2 intervention under WAC 480-70-106 (3), and I think  
3 Ms. McNeill has stated the reasons why Washington  
4 Management, their participation will be helpful in this  
5 proceeding, and I have heard no objections from any of  
6 the parties, so I will allow the intervention.

7                   MS. MCNEILL: Thank you, Your Honor.

8                   JUDGE CAILLE: Are there any preliminary or  
9 dispositive motions that I need to hear from anyone?  
10 All right. I guess my next question is going to be, is  
11 there any possibility of amicably resolving the issues  
12 of service and territories sought with the application?  
13 No one is jumping in, so I just will say that the  
14 Commission encourages parties to consider the use of a  
15 settlement process or other means of alternative  
16 dispute resolution, if you can, to resolve the issues.

17                   Next, since it sounds like we will be going  
18 to hearing, is there a need to invoke the discovery  
19 rule? Will there be a need for discovery in this case  
20 or just cross-examination?

21                   MR. WILEY: I don't think there would be a  
22 need from protestants' standpoint to invoke discovery.  
23 However, we would like some idea of the number and  
24 scope of witnesses in order to prepare our cases.

25                   JUDGE CAILLE: We will get to that. Staff,

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1 any need to invoke the discovery rule?

2 MS. WATSON: No, Your Honor.

3 JUDGE CAILLE: Mr. Brazill, are you going to  
4 need to try to get any information from the  
5 protestants?

6 MR. BRAZILL: No, Your Honor. To me, it's  
7 fairly cut and dried. We're here to submit an  
8 application as a small company, and we think we should  
9 have the right to participate in the process.

10 JUDGE CAILLE: Oh, yes. As the applicant,  
11 you are participating in the process. I wanted to make  
12 sure that --

13 MR. BRAZILL: No, I mean that I think we  
14 should have the right to have a permit in order to be  
15 involved in the hauling of construction and waste, pure  
16 and simple.

17 JUDGE CAILLE: That's what this proceeding is  
18 about, so this is the initial proceeding for scheduling  
19 a hearing so that you can bring in evidence and  
20 establish your position that you are entitled to a  
21 certificate of public convenience and necessity.

22 These folks here are protesting that, and  
23 they will be bringing in evidence and witnesses to  
24 support their position, and Commission staff is here to  
25 make sure that the record is complete and that I don't

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1 make any mistakes because I haven't done that much  
2 solid waste. Every solid waste case I've had so far  
3 has settled, so I was hoping you wouldn't break my  
4 record. Anyway, so we won't be needing the discovery  
5 rule. I take it we won't be needing a protective order  
6 either.

7           Let's go to the general information we will  
8 be needing in order to establish a schedule, and that  
9 would be the number of witnesses each of the parties  
10 intend to present and the time estimates that you  
11 think. I will not hold you to time estimates, but I  
12 need at least an idea of how many days to schedule this  
13 for. Again, let's begin with you, Mr. Brazill. How  
14 many people will be testifying for you?

15           MR. BRAZILL: It's just going to be the  
16 owners.

17           JUDGE CAILLE: So three of you?

18           MR. BRAZILL: Maximum. Half an hour total is  
19 maximum amount of time that we would need all together,  
20 even if we were to call some outside witness, which we  
21 don't see at this time as appropriate.

22           JUDGE CAILLE: So a half an hour presentation  
23 by you?

24           MR. BRAZILL: At maximum. It probably can be  
25 done in five minutes.

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1 JUDGE CAILLE: Mr. Wiley?

2 MR. WILEY: At this point, I think I would be  
3 presenting a minimum of four witnesses, two from each  
4 of the separate companies that I'm representing, with a  
5 possibility of five total.

6 JUDGE CAILLE: And how much time do you  
7 anticipate?

8 MR. WILEY: I would think that we would need,  
9 probably, based on -- Mr. Brazill's time allotments, of  
10 course, did not include cross-examination, and I do  
11 think that there will be cross-examination of my  
12 witnesses, so I would think at least half a day.

13 JUDGE CAILLE: Mr. Sells?

14 MR. SELLS: Obviously, Mr. Brazill has never  
15 been in a hearing with Mr. Wiley if he thinks he's  
16 going to be out of there in half an hour. Your Honor  
17 please, we would have at this time three witnesses, one  
18 witness for WRRRA, one on behalf of University Place  
19 Refuse, and one directly on behalf of the other  
20 carrier, LeMay Enterprises, the other carrier from  
21 Pierce County. Probably depending on  
22 cross-examination, probably a half day.

23 JUDGE CAILLE: Ms. McNeill?

24 MS. MCNEILL: We would have one to two  
25 witnesses, and I would say each of them would be 45

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1 minutes. With cross-examination and breaks, that's  
2 probably another half a day.

3 JUDGE CAILLE: Ms. Watson?

4 MS. WATSON: Staff doesn't intend to have any  
5 witnesses. We may conduct cross-examination as need  
6 be. I'm not sure how to give an estimate for that.

7 JUDGE CAILLE: That's fine. Thank you. So  
8 it looks like we have about 12 witnesses, and it looks  
9 like it may take more than a day. I would like to see  
10 it be accomplished in a day, but I think we should look  
11 at two days just to be on the safe side. I guess maybe  
12 the other thing I need to know is are there usually a  
13 number of exhibits in this kind of proceeding?

14 MR. WILEY: Yes.

15 JUDGE CAILLE: The reason I'm asking is that  
16 if we have a large number of exhibits, we have those  
17 cross-exhibits submitted earlier than -- we should go  
18 off the record for this.

19 (Discussion off the record.)

20 JUDGE CAILLE: Pursuant to an off-record  
21 discussion, we have selected hearing dates of March  
22 25th and 26th. What time would you folks like to begin  
23 on those days? Is 9:30 all right? I have the room  
24 booked for the full day each day.

25 In these types of cases, do you folks do

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1 briefing?

2 MR. WILEY: If there are legal issues raised.

3 MS. MCNEILL: Posthearing.

4 JUDGE CAILLE: Let's talk a little bit about  
5 issues, I think just partly to inform the applicant and  
6 myself what the issues would be in this proceeding.  
7 Are there any threshold, jurisdictional, or procedural  
8 issues, any factual issues? Would it be possible to  
9 stipulate to any of the facts?

10 MS. MCNEILL: Your Honor, it's a little  
11 difficult to respond. I actually think that the  
12 applicant needs to discuss a little bit what their  
13 general case is going to be like and whether there are  
14 facts or legal issues that need or could be subject to  
15 stipulation, and we would be able to say that better.

16 JUDGE CAILLE: Mr. Brazill, can you give us  
17 an idea of what your case is going to be like?

18 MR. BRAZILL: Very simple; that it's a free  
19 enterprise. We ought to have the right to participate.

20 JUDGE CAILLE: Well, I wish it were that  
21 simple. Unfortunately, we have statutes and rules, and  
22 are you familiar with those, the RCW's and the WAC's?

23 MR. BRAZILL: Unfortunately, yes, I am. I  
24 think I understand the issue. I think I understand  
25 what the regulation says.

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1                   JUDGE CAILLE:  So in order for the Commission  
2  to grant you a certificate of public convenience and  
3  necessity, you are going to have to show either that  
4  these folks are not providing service sufficiently or  
5  that you are going to provide some service that they  
6  don't currently provide.  Those are the two things that  
7  come to mind.  The most important thing would probably  
8  be for you to read the RCW 81.77.  That's the solid  
9  waste chapter, and then we have rules, and the rules  
10 are WAC 480-70, and you can get those from the records  
11 center.

12                   MR. BRAZILL:  We have those already, and I  
13 understand those rules.  I understand it's an uphill  
14 battle, and we understand that the way that the law is  
15 written, it protects the existing haulers.  I'm not  
16 requesting any particular stipulation.

17                   JUDGE CAILLE:  A stipulation would be an  
18 agreement of facts that everyone could come -- it  
19 doesn't look like there is going to be an agreement  
20 reached here.  A stipulation to the facts would be an  
21 agreement to what those facts are.

22                   MR. BRAZILL:  The purpose of the haulers,  
23 they are going to be here trying to establish the fact  
24 that there is no need for anybody else to come in and  
25 provide services.  That's what they are supposed to do,



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1 and the issues of how many witnesses, how many people  
2 do I have to bring here to convince the Commission that  
3 there is a need for one more additional hauler, and I  
4 don't think anyone in this room can give me that answer  
5 as to how many people we have to bring before this  
6 hearing to say maybe there is an issue and maybe we  
7 need to have more.

8 JUDGE CAILLE: Okay. I don't think that we  
9 need to talk anymore about issues. Is there any other  
10 business that we need to discuss this morning? Okay.  
11 If you should file anything with the Commission, I'm  
12 going to be preparing a prehearing conference order  
13 that will be mailed out to you, served on you, and it  
14 will have what we have discussed today, the hearing  
15 schedule, and various other things, like the number of  
16 copies of exhibits or documents that you would need to  
17 submit at the hearing; if you are filing any motions or  
18 anything, how many copies of that that you would need  
19 to file with the secretary. It will also provide how  
20 you file with the secretary. I think that covers it.

21 If anyone doesn't have anything else to add,  
22 we concluded all the business I intended to cover  
23 today. Thank you, everyone. I will see you March  
24 25th.

25 (Hearing adjourned at 10:30 a.m.)