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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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4 In re Application No. GA-078938 )Docket No. TG-001786

of )Volume II

5 )Pages 24-35

Grandero Management, Inc., for )

6 a Certificate of Public )

Convenience and Necessity to )

7 Operate Motor Vehicles in )

Furnishing Solid Waste )

8 Collection Service. )

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A hearing in the above matter was

13 held on May 17, 2001, at 9:41 a.m., at 1300 Evergreen

14 Park Drive Southwest, Olympia, Washington, before

15 Administrative Law Judges WILLIAM HENDRICKS and

16 MARJORIE R. SCHAER.

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The parties were present as

18 follows:

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GRANDERO MANAGEMENT, INC., by Don

Greear, President, 13213 N.E. Kerr Road, #110,

20 Vancouver, Washington 98682. (Via teleconference

bridge.)

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22 WASHINGTON REFUSE AND RECYCLING  
ASSOCIATION, by James Sells, Attorney at Law, 9657  
Levin Road, N.W., Suite 240, Silverdale, Washington  
23 98383.

24 WASTE CONNECTIONS OF WASHINGTON,  
INC., by David W. Wiley, Attorney at Law, Williams,  
Kastner & Gibbs, Two Union Square, 601 Union Street,  
25 Seattle, Washington 98101. (Via teleconference  
bridge.)

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1                                   CLARK COUNTY PUBLIC WORKS, by  
2 Kathy Kiwala, Attorney at Law, P.O. Box 9810,  
3 Vancouver, Washington 98666-9810.

4                                   THE COMMISSION, by Donald Trotter,  
5 Assistant Attorney General, 1400 Evergreen Park  
6 Drive, S.W., P.O. Box 40128, Olympia, Washington  
7 98504-0128.

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Barbara L. Nelson, CSR  
Court Reporter

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1                   JUDGE HENDRICKS: Let's be on the record.  
2 We're here this afternoon for a prehearing conference  
3 in Docket Number TS-001786. This matter arises from  
4 Application Number GA-078938, filed by Grandero  
5 Management, Inc. for a certificate of public  
6 convenience and necessity to operate motor vehicles  
7 in furnishing solid waste compacting service.

8                   Today is May 17th, 2001, and we're  
9 appearing in Room 108 in the Commission headquarters  
10 building in Olympia, Washington. I am Tre Hendricks,  
11 and Marjorie Schaer and I, who is sitting to the  
12 right of me, will be presiding at this prehearing  
13 conference today.

14                   I'd like to start this morning by taking  
15 appearances from all parties, and why don't we just  
16 begin with Mr. Trotter, who is sitting on my left,  
17 for Commission Staff. Please state for the record  
18 your name, who you represent, your address,  
19 telephone, and I believe we --

20                   JUDGE SCHAER: We don't need to do all  
21 that.

22                   JUDGE HENDRICKS: And telephone, and that's  
23 fine.

24                   MR. TROTTER: Yeah, my name is Donald T.  
25 Trotter. I'm an Assistant Attorney General for the

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1 Commission, and my address and phone number have  
2 already been stated on the record.

3 JUDGE HENDRICKS: Thank you. And Mr.  
4 Sells.

5 MR. SELLS: Thank you. James Sells,  
6 Attorney, representing Protestant Washington Refuse  
7 and Recycling Association, and nothing has changed on  
8 my -- I take that back. My e-mail may have changed  
9 since last time. Would you like that on the record?

10 JUDGE HENDRICKS: Yes, please.

11 MR. SELLS: Correct e-mail is  
12 jimsells@rsulaw.com. Everything else is correct.

13 JUDGE HENDRICKS: Thank you. Mr. Greear.

14 MR. GREEAR: Yes. Don Greear, Grandero  
15 Management, Inc., and all the information is still  
16 current.

17 JUDGE HENDRICKS: Thank you. And Mr.  
18 Wiley.

19 MR. WILEY: Dave Wiley. I represent Waste  
20 Connections of Washington, Inc., and all the address  
21 and e-mail information is the same.

22 JUDGE HENDRICKS: Thank you. Ms. Kiwala.

23 MS. KIWALA: My name is Kathy Kiwala, and I  
24 represent Clark County Public Works, and all of my  
25 information is the same as before.

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1                   JUDGE HENDRICKS: Thank you very much. Are  
2 there any preliminary matters to come before the  
3 Commission at this time? Then, as I understand it,  
4 Waste Connections and Grandero Management, Inc. have  
5 been engaged in some discussions, settlement  
6 discussions, and I'd just like to begin by asking Mr.  
7 Grandero (sic) if you could just give a brief summary  
8 of what's happened since the last prehearing  
9 conference and since you refiled your application.

10                   MR. GREEAR: Basically, decided to drop the  
11 application because Waste Connections decided they  
12 weren't going to contest me anymore.

13                   JUDGE HENDRICKS: Mr. Wiley.

14                   MR. WILEY: Yes.

15                   JUDGE HENDRICKS: Could you elaborate on  
16 that at all?

17                   MR. WILEY: And I should mention that we've  
18 also had discussions with the county and the WRRRA.  
19 We have not left any of those parties out. To  
20 elaborate briefly, the agreement that was reached is  
21 that Mr. Greear will withdraw his application and we  
22 will not contest his operation as currently  
23 configured, because we believe that, on further  
24 review and discussion with Mr. Greear, it fits the  
25 definition of private carriage in its current

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1 operation.

2 JUDGE HENDRICKS: Thank you. Mr. Sells,  
3 could you respond?

4 MR. SELLS: That's my understanding, Your  
5 Honor. I have been part of those discussions. And  
6 as far as WRRRA is concerned, as it currently exists,  
7 we consider this operation to be private carriage, as  
8 well. And we will withdraw our protest, as well.

9 JUDGE HENDRICKS: Are there any objections  
10 to proceeding in this manner?

11 MS. KIWALA: No. This is Kathy Kiwala.  
12 No.

13 MR. TROTTER: Your Honor, this is Don  
14 Trotter, for the Commission Staff. We understand  
15 that the result here is that the application will be  
16 withdrawn and that neither of -- none of the  
17 protestants object to that.

18 In my discussions with Commission Staff, I  
19 think it's fair to say that we've come to no firm  
20 conclusion on whether this particular operation  
21 requires a certificate or not. I think it's fair to  
22 say that it's a close question that we haven't  
23 resolved. We don't object to this being withdrawn,  
24 the application being withdrawn, as long as it's  
25 without prejudice to any party, or at least without

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1 prejudice to the Commission, because we're not in a  
2 position today to agree that this operation is  
3 private carriage or not.

4           Should the Commission Staff decide that  
5 it's not, we'd certainly advise the parties  
6 accordingly and then decide what appropriate course  
7 of action ought to be taken, whether it's a  
8 classification proceeding by the Commission or  
9 whether Mr. Greear would be encouraged to reapply in  
10 lieu of that, but there would be procedural steps,  
11 and we'd certainly communicate with the parties  
12 accordingly.

13           But we're not in a position today to agree  
14 that this is -- that his activity is or is not exempt  
15 or does or does not require a permit, but we think we  
16 don't need to reach that question. He can withdraw  
17 it without prejudice to the Commission and other  
18 parties, and then we'll take a hard look at it and  
19 see if further action is necessary. We just didn't  
20 want to be on record as agreeing that this particular  
21 activity did not require a certificate.

22           JUDGE HENDRICKS: I understand, and we'll  
23 take that under advisement. Mr. Trotter, how would  
24 you foresee the Commission proceeding, then, at this  
25 point, as a procedural matter?

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1                   MR. TROTTER: Well, I think what I would  
2 foresee is the Commission permitting the application  
3 to be withdrawn without prejudice to the Commission  
4 or any other party. The Staff would just internally  
5 review the facts as they understand them and do more  
6 research than has been accomplished to date, and  
7 then, if it determines that there is a real issue  
8 here, it could institute a classification proceeding  
9 or contact Mr. Greear and invite him to reapply.  
10 That reapplication would be probably the more  
11 efficient way of going about it. And then it would  
12 be up to him. If he didn't want to apply, then the  
13 classification proceeding could go forward.

14                   But when this case was disbanded earlier  
15 for a settlement kind of process, we were not  
16 involved in that, and I thought at least there was a  
17 chance that something could be resolved on an  
18 operational level, and rather, it was resolved by the  
19 parties that they didn't think a certificate was  
20 required. So we just learned about that yesterday.  
21 So -- but given the early stage of this case, we  
22 didn't see any prejudice to anyone of just having it  
23 withdrawn without prejudice.

24                   JUDGE HENDRICKS: What would Grandero  
25 Management need to do procedurally to withdraw the



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1 application, or has something already been put in  
2 motion to do that? Has a request been made or -- I'm  
3 not aware of any. Maybe Commission Staff knows the  
4 answer to that question.

5 MR. TROTTER: I haven't seen anything,  
6 other than his statement today that he's going to  
7 drop his application, so if he makes an oral -- if  
8 that constitutes an oral motion to withdraw and he  
9 understands that it's without prejudice to the  
10 parties, Staff won't object to that.

11 JUDGE HENDRICKS: Mr. Greear.

12 MR. GREEAR: Yes.

13 JUDGE HENDRICKS: Is this, in fact, what  
14 you're asking today?

15 MR. GREEAR: Yes, it is.

16 JUDGE HENDRICKS: And do you have any  
17 comment on the withdrawal without prejudice?

18 MR. GREEAR: No, I don't.

19 JUDGE HENDRICKS: Okay. I'll just ask, and  
20 maybe you all could briefly answer, I'm curious why  
21 Commission Staff wasn't included in the negotiations.  
22 If anybody knows or has an idea about why they were  
23 left out, I'd be curious to know.

24 MR. WILEY: Maybe I could respond to that.  
25 I think that initially the idea for sparking the

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1 consideration of the exemption came from settlement  
2 discussions that we had at the first prehearing  
3 conference, and I believe Mr. Trotter was one of the  
4 people enlisting certain perspectives on this  
5 operation, recognizing it was misdocketed, suggested  
6 the possibility that it might be exempt. He  
7 certainly didn't advocate one way or the other.

8           But I don't think that -- you know, Judge  
9 Hendricks, I don't think the Staff, in typical  
10 settlement discussions, is involved, other than  
11 saying try to work it out.

12           JUDGE HENDRICKS: Mr. Sells, do you have  
13 any recollection of what happened, or is it --

14           MR. SELLS: Well, that's my recollection,  
15 and that's been my experience, is that unless there's  
16 some specific reason, as a general rule, the parties  
17 try to work it out and bring a settlement back to the  
18 Commission and present it and either have it accepted  
19 or rejected.

20           JUDGE HENDRICKS: I think the way things  
21 happened here, it was a little strange. I received a  
22 second-hand voice mail, and that was how I learned of  
23 the settlement discussions. And so, you know,  
24 Counsel may or may not be right about how the  
25 Commission has typically -- Commission Staff has

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1 typically been involved. I think it's probably  
2 helpful if the Commission Staff and the Commission  
3 knows at least that settlement discussions are  
4 ongoing or is updated on the status of those a little  
5 more regularly.

6 MR. TROTTER: Yeah, I'll just note for the  
7 record I did receive a call yesterday from Mr. Wiley,  
8 and we finally actually got to talk, so I understood  
9 what was going on, but I wasn't contacted before  
10 then.

11 JUDGE HENDRICKS: Yes.

12 MR. TROTTER: I don't necessarily view this  
13 as a settlement that the Commission needs to approve  
14 the terms of.

15 JUDGE HENDRICKS: Right, sure.

16 MR. TROTTER: I view this as simply a  
17 withdrawal without prejudice, and we'll see if  
18 there's anything that will need to come before the  
19 Commission in the future. But we did get the ball  
20 rolling at the last hearing date, and I did not hear  
21 from anyone after that until yesterday.

22 JUDGE HENDRICKS: Okay. Well, it sounds as  
23 though what we have right now is an oral motion to  
24 withdraw without prejudice, at least as to Commission  
25 Staff, and the Commission will take the motion under

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1 advisement, a prehearing conference order will be  
2 entered, and any objection to the provisions of that  
3 order must be filed within 10 days after the entry of  
4 the order. And absent such objections, that order  
5 will control any further proceedings, if they're  
6 necessary in this matter, and subject to Commission  
7 review.

8           Are there any other matters to come before  
9 the Commission at this time? Hearing nothing, this  
10 prehearing conference is adjourned. Thank you all.

11           MR. WILEY: Thank you.

12           MR. TROTTER: Thank you.

13           (Proceedings adjourned at 9:55 a.m.)

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