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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 the
3 Application No. GA-079289 of Russell Vanderveen, d/b/a
4 Vanderveen Family Transport, for a certificate of
5 public convenience and necessity to operate motor
6 vehicles in furnishing solid waste collection service.
7 This is Docket No. TG-041186.

8 Today is the day November 8th, 2004, that has
9 been scheduled for a prehearing conference on this
10 application. My name is Theodora Mace, and I'm the
11 administrative law judge who has been assigned to hold
12 the hearings in this case.

13 I would like at this point to take
14 appearances from everybody. When I say that, what I
15 mean is I want you to state your name, your business
16 address, phone number, fax number, and e-mail address
17 so that we have your full contact information if we
18 need it, and I'm going to ask you to begin,
19 Mr. Vanderveen.

20 MR. VANDERVEEN: Russell Vanderveen,
21 Vanderveen Family Transport, 5446 Allison Road,
22 Bellingham, Washington, 98226. My number is area code
23 (360) 592-5446. My fax number is area code (360)
24 354-2239, and I have no e-mail.

25 JUDGE MACE: Mr. Scheffer?

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1 MR. SCHEFFER: My name is Dennis Scheffer
2 with Sumas Transport, and my address is 2340 East
3 Sunset Drive, Bellingham, 98226, and the phone number
4 is (360) 733-3415. Fax is (360) 671-5982.

5 JUDGE MACE: Do you have an e-mail address?

6 MR. SCHEFFER: No.

7 JUDGE MACE: So for the record, are you
8 affiliated with a business?

9 MR. LYONS: Affiliated with Sumas Transport.

10 JUDGE MACE: Are you in in any sort of
11 official capacity?

12 MR. LYONS: I'm the general manager of the
13 company.

14 JUDGE MACE: And your name is?

15 MR. LYONS: Robert Lyons, L-y-o-n-s.

16 JUDGE MACE: Mr. Scheffer, on our sheet here,
17 it shows you have a Post Office Box 32177; is that
18 right?

19 MR. SCHEFFER: That's correct.

20 JUDGE MACE: For Commission staff?

21 MS. WATSON: My name is Lisa Watson. I'm an
22 assistant attorney general appearing on behalf of the
23 Commission staff. My address is 1400 South Evergreen
24 Park Drive Southwest, PO Box 40128, Olympia,
25 Washington, 98504-0128. My telephone number is

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1 (360) 664-1186. My fax number is (360) 586-5522, and
2 my e-mail address is lwatson@wutc.wa.gov.

3 JUDGE MACE: Thank you. At a prehearing
4 conference like this, there is several items of
5 business that I need to cover. Among them is
6 scheduling, but there are a few others as well. My
7 understanding, Mr. Scheffer, is that you duly filed a
8 protest to this application; is that correct?

9 MR. SCHEFFER: Mr. Lyons will be my
10 spokesman.

11 JUDGE MACE: So, Mr. Lyons, I will just
12 address my questions to you then. So you did file a
13 protest?

14 MR. LYONS: Yes, we did.

15 JUDGE MACE: As the Applicant, do you have
16 any objection to the protest at this point in terms of
17 whether or not it was legally filed or met the legal
18 requirements, etcetera?

19 MR. VANDERVEEN: I personally don't know what
20 the legal requirements are, but no, I would say that it
21 seems fair to me.

22 JUDGE MACE: Thanks.

23 MS. WATSON: Staff does have one thing to
24 note about that. In this case, it doesn't appear that
25 Sumas has the authority that overlaps or matches the

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1 authority that Vanderveen Transport is seeking. There
2 are two carriers that hold the same authority that --
3 well, there is one that holds the exact same authority,
4 and that's LTI Incorporated, and then Sanitary Service
5 Company also holds authority to transport solid waste
6 in Whatcom County. Neither one of those certificate
7 holders have protested.

8 Sumas holds a certificate to transport
9 between Inman Landfill to the wastewater treatment
10 facilities in Burlington, Mt. Vernon, and Anacortes,
11 and the area that's being applied for by Vanderveen is
12 from the Cedarville Landfill to the city of Ferndale
13 wastewater treatment plant in Whatcom County, so there
14 is a mismatch there.

15 JUDGE MACE: Can you repeat for me what Sumas
16 authority is again?

17 MS. WATSON: That one is from Inman Landfill
18 to the wastewater treatment facilities in Burlington,
19 Mt. Vernon, and Anacortes. That may be a reason to
20 deny the protest. Under WAC 480-07-370, subsection
21 "f," a person who can protest is one who asserts that
22 its interests would be adversely affected if the
23 application were granted.

24 In the protest, Sumas says that they had the
25 contract with Whatcom County to transport the trade

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1 over the same routes that Vanderveen would like to at
2 this point, but it appears if they did do this, they
3 didn't do it with a valid certificate, so Staff just
4 wanted to bring that to your attention.

5 JUDGE MACE: Thank you. Do you happen to
6 have a copy of that authority, Sumas authority that you
7 could provide to the Bench?

8 MS. WATSON: We don't have a copy of the
9 certificate itself. We can get one, I'm sure, from the
10 records center. We have a printout from the Commission
11 computer system if you would like to have that for the
12 time being.

13 JUDGE MACE: Sure. Mr. Lyons?

14 MR. LYONS: We do have a permit for the "G"
15 permit for that haul going from Cedarville to Ferndale.
16 I don't have that with me, but I can also provide you
17 with a copy of it. I did not know I needed to bring
18 that with me, and probably we should have. And that is
19 why we are protesting is because we do have that
20 permit.

21 So there is another company, which we don't
22 feel there was a reason to have a fourth company in
23 Whatcom County doing the same thing when we have plenty
24 of vehicles, as does LTI have plenty of vehicles to do
25 this work.

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1 JUDGE MACE: I'm curious why your authority
2 would not have shown up on the Commission's computer
3 records if you had such authority?

4 MR. LYONS: I don't know. All I know is we
5 do have the permit for that, and we've had it for the
6 last five years. That's kind of baffling to me to hear
7 that statement that Lisa had just made as well.

8 JUDGE MACE: Ms. Watson, do you have any idea
9 why this wouldn't have shown up on Commission's
10 records?

11 MS. WATSON: If I may have just a moment to
12 confer.

13 (Discussion off the record.)

14 MS. WATSON: Staff is baffled as well. We
15 will check the files and the records center, or I guess
16 it would be the licensing staff, but we will definitely
17 check up on that and provide copies of what we find.

18 JUDGE MACE: Well, that certainly is an issue
19 that we have to address, and I think probably a good
20 idea is for us to make some provision of the schedule
21 so that can be dealt with up front. If it turns out
22 that the protest is not a valid protest, then that
23 would probably lessen the burden on the Applicant to
24 present proof, so we want to address that first, but we
25 may still schedule a proceeding just so we have that

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1 taken care of in case the protest is valid.

2 MS. WATSON: I wanted to let you know that
3 Ms. Allen has gone to check, and she should be able to
4 uncover something shortly, hopefully, before the
5 prehearing is concluded.

6 JUDGE MACE: Thank you. Let me turn to some
7 of the other items we need to address. Do the parties
8 wish to pursue discovery in this proceeding? Discovery
9 is a way that people can ask, parties can ask each
10 other for information that they might need in order to
11 formulate their case. It's often times not something
12 that's necessary in a case of this type, but I need to
13 ask the question anyway.

14 If you don't feel at this time that you need
15 to have the discovery rule invoked, we can just wait
16 until it comes up. I would like to take some input
17 from you about what your position is on that;
18 Mr. Vanderveen?

19 MR. VANDERVEEN: I see at this time no need
20 for it.

21 JUDGE MACE: Mr. Lyons?

22 MR. LYONS: No, we don't have any further
23 discovery either.

24 JUDGE MACE: Staff?

25 MS. WATSON: Staff has no need for discovery.

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1 JUDGE MACE: I would imagine then, but I'm
2 not going to assume, that you would not have a need for
3 a protective order. Usually, a protective order is
4 entered by the Commission when the information that is
5 sought in discovery is such that it would jeopardize
6 commercial information that needs to remain private.
7 Since discovery, it appears, is not going to be an
8 issue here, it doesn't seem like a protective order
9 would be required. Anybody have any problems with my
10 not entering a protective order at this point?

11 MR. VANDERVEEN: I do not.

12 MR. LYONS: We don't either.

13 MS. WATSON: Neither does Staff.

14 JUDGE MACE: If it becomes important, we can
15 address it at that time if we need to. So the issues
16 in dispute here are primarily those that relate to an
17 application for solid waste collection and authority,
18 and so I don't think we need to address those.

19 The additional issue, of course, is the
20 question of whether or not Sumas actually has
21 overlapping authority, and that's something we'll try
22 to resolve first. If not today, then I will resolve it
23 after looking at the authorities and consider the
24 matter.

25 So what we need to do is we need to establish

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1 a schedule, by which time I would resolve the issue of
2 overlapping authority, and then let's assume that the
3 protest is, quote, a good protest. Then we would need
4 to have a date by which time the Applicant would file
5 its proofs by means of, maybe not file its proofs
6 but -- let me start again. I'm on a different
7 wavelength here.

8 We need to have a date for a hearing, but
9 prior to that hearing, we need to have a date by which
10 the Applicant and the Protestant advise me and each
11 other of what witnesses are going to be called during
12 the hearing, and if possible, what documents are going
13 to be brought to the hearing as exhibits. When you
14 bring documents to a hearing, you have to bring them in
15 sufficient quantities so there is a copy for everybody
16 that needs a copy, and I advise you of that number in
17 the prehearing conference order.

18 So we need to have a hearing date, and we
19 need to have that date ahead of time by which time you
20 can advise me of your witnesses and exhibits. Have you
21 had a chance to talk amongst each other about what
22 would be a good date for that?

23 MS. WATSON: We did not discuss it ahead of
24 time.

25 JUDGE MACE: What I would like to have you do

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1 is all look at your calendars and see if there is a
2 date that's appropriate, and taking into consideration
3 I'm going to need at least two weeks to address that
4 overlapping authority issue. Based on my current
5 caseload, I don't have additional time.

6 MR. VANDERVEEN: I can pretty well go with
7 what Sumas wants to go with. I'm pretty well open.
8 What's the best for you, Robert?

9 JUDGE MACE: Let's be off the record.

10 (Discussion off the record.)

11 JUDGE MACE: Let's be back on the record. We
12 spent some time talking about scheduling and other
13 issues. I believe it's going to take me approximately
14 two weeks at least to address the issue of whether or
15 not the Protestant has authority to provide this
16 service. I have asked the Protestant and Staff to
17 provide me with whatever documentation they have that
18 shows or doesn't show that the Protestant has this
19 authority, and the deadline for that is November 12th.
20 That's Friday of this week.

21 In the event the protest is a valid protest,
22 I have asked that witness lists and exhibit lists be
23 provided to me and to the other parties by December
24 6th. We will have a hearing in the week of December
25 13th. I've not confirmed the date yet, and I will do

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1 that in the prehearing conference order, which I'll
2 serve on the parties hopefully in the next few days.
3 My understanding is that the Applicant may present
4 approximately three witnesses, the Protestant two
5 witnesses, and the Staff will not present witnesses.

6 I believe that if the protest is not a valid
7 protest and the Protestant is dismissed from the
8 proceeding, there is a possibility that this may
9 proceed on a paper record, but I will advise the
10 parties about that when I enter my decision on the
11 protest. We are on the record now. Is there anything
12 else that we need to address at this point?

13 MR. LYONS: I have one question about where
14 to send the permit or the documents showing that we
15 have a reason to protest.

16 JUDGE MACE: You should send that to the
17 Commission's secretary. If you see Page 3 of your --
18 the secretary. Make sure that you indicate what the
19 docket number is and what the case caption is, and I'll
20 make sure that I get a hold of it. I'm sure that it
21 will be sent to me. Then the hearing is concluded.
22 Thank you very much. I appreciate your cooperation.

23 (Prehearing concluded at 1:57 p.m.)

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