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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 In re Application No.)
4 GA-079086 of) Docket No. TG-020856
5 J & M DISPOSAL, INC.) Volume II
6) Pages 18 to 95
7 For a Certificate of Public)
8 Convenience and Necessity to)
9 Operate Motor Vehicles in)
10 Furnishing Solid Waste)
11 Collection Service,)
12 _____)

9
10 A hearing in the above matter was held on
11 March 25, 2003, from 9:30 a.m to 11:35 a.m., at 1300
12 South Evergreen Park Drive Southwest, Room 108, Olympia,
13 Washington, before Administrative Law Judge KAREN
14 CAILLE.

15 The parties were present as follows:
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24
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 Court Reporter

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7 RABANCO LTD. & RABANCO RECYCLING, INC. d/b/a
8 RABANCO COMPANIES, TRI-COUNTY DISPOSAL; RABANCO
9 CONNECTIONS INTERNATIONAL, INC. d/b/a ISSAQUAH DIVISION,
10 MALTBY DIVISION; FIORITO ENTERPRISES, INC. and RABANCO
11 COMPANIES d/b/a KENT-MERIDIAN DISPOSAL CO.; MURREY'S
12 DISPOSAL COMPANY, INC.; and AMERICAN DISPOSAL COMPANY,
13 INC., by DAVID W. WILEY, Attorney at Law, Williams,
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0023

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

2 JUDGE CAILLE: We are here today for the
3 evidentiary hearing in Docket Number TG-020856. This
4 concerns an application by J&M Disposal, Incorporated
5 for a Certificate of Public Convenience and Necessity to
6 Operate Motor Vehicles in Furnishing Solid Waste
7 Collection Service consisting of construction and
8 demolition debris in King and Pierce Counties. My name
9 is Karen Caille, and I'm the presiding Administrative
10 Law Judge in this proceedings. We are convened today in
11 a hearing room in the Commission's headquarters in
12 Olympia, Washington, and the date today is March 25th.

13 Let's begin this morning by entering your
14 appearances. I believe everybody here has already
15 entered a full appearance with your address and fax and
16 E-mail, so at this point if you will just identify
17 yourself and whom you represent, and let's begin with
18 the Petitioner.

19 MR. BRAZILL: My name is Nat Brazill, and I
20 am with J&M Disposal, Inc.

21 JUDGE CAILLE: Mr. Wiley.

22 MR. WILEY: Yes, David W. Wiley, my address
23 as previously stated on the record, and I am here
24 representing Protestants Rabanco, Limited and Rabanco
25 Recycling, Inc., Rabanco Connections International,

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1 Inc., Murrey's Disposal, and American Disposal.

2 JUDGE CAILLE: Shall we just go Mr. Sells
3 next.

4 MR. SELLS: Thank you, James Sells
5 representing Washington Refuse & Recycling Association
6 and University Place Refuse.

7 JUDGE CAILLE: And for Staff.

8 MS. WATSON: Lisa Watson, Assistant Attorney
9 General for Commission Staff.

10 JUDGE CAILLE: And Intervener.

11 MS. MCNEILL: Polly McNeill, address and
12 information previously stated on the record,
13 representing Intervener Waste Management of Washington,
14 Inc.

15 And I will trade places with Mr. Sells since
16 Interveners go last. I will let the two protestants be
17 next to each other.

18 JUDGE CAILLE: All right, let the record
19 reflect there are no other appearances.

20 At this time, Mr. Brazill, let me, if you
21 will, you're going to be testifying, so if you will
22 stand and raise your right hand I will swear you in.

23

24

25

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1 Whereupon,

2 NAT BRAZILL,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 JUDGE CAILLE: Before you begin, Mr. Brazill,

7 I just wanted to make sure that you did receive the

8 pre-hearing conference order which had the attachment of

9 Appendix B to it.

10 MR. BRAZILL: That is correct.

11 JUDGE CAILLE: And did you read through

12 Appendix B?

13 MR. BRAZILL: Yes, I did.

14 JUDGE CAILLE: Okay. One of the things I

15 want to point out to you is on I believe it's on page 7

16 under the hearing portion that:

17 The Commission does not accept

18 statements of an applicant that the

19 authority is needed. The applicant must

20 support its application with independent

21 witnesses knowledgeable about the need

22 for service in the territory in which

23 the applicant seeks authority.

24 MR. BRAZILL: Yes.

25 JUDGE CAILLE: You're aware of that?

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1 MR. BRAZILL: That is correct.

2 JUDGE CAILLE: And you intend to proceed
3 without witnesses?

4 MR. BRAZILL: That is correct.

5 JUDGE CAILLE: Okay.

6 MR. WILEY: Your Honor.

7 JUDGE CAILLE: Yes.

8 MR. WILEY: At least for the Protestants I
9 represent, typically I would make a motion to dismiss
10 the application after the applicant presents his case
11 because of the statutory requirement for showing of
12 need. I notice in the pre-hearing conference order you
13 do underscore that requirement, and there are ample
14 Commission decisions that support a dismissal of a case
15 under Title 81 for failure to present evidence of public
16 convenience and necessity. We certainly can hear the
17 applicant's case in chief in terms of the fitness,
18 willingness, and ability issues, but I certainly will
19 make that motion if there aren't going to be any shipper
20 witnesses here today or generator witnesses as we would
21 say in a solid waste case.

22 JUDGE CAILLE: Thank you, Mr. Wiley, I will
23 entertain your motion to dismiss at the close of the
24 case, Mr. Brazill's case in chief. As you know, the
25 Commission does not, well, I can not dismiss the case.

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1 We will need to hear the whole, all the evidence that
2 Mr. Brazill presents and your case too. So it will be
3 taken under advisement. I'm just letting you know that
4 ahead of time, letting everybody know ahead of time.

5 Mr. Brazill, would you like to begin.

6 MR. BRAZILL: Yes, good morning. I just have
7 a few remarks that it's important, that we think is
8 important that the Court should hear, and we do
9 understand the procedures and the rules and evidentiary
10 procedures and those types of things. We have read the
11 various sections. We think we understand it. And after
12 reviewing some of the sections, particularly RCW
13 81.77.040, there's a clause in there that says,
14 "certificate declaring --

15 JUDGE CAILLE: Excuse me, could you just wait
16 until we all get that in front of us, 81.77.040.

17 Okay, go ahead.

18 MR. BRAZILL: There's a section in there that
19 basically says, "certificate declaring that public
20 convenience and necessity requires such operation". We
21 feel that this rule makes it almost impossible for a new
22 or small business to enter the industry.

23 JUDGE CAILLE: Mr. Brazill, could you or
24 someone else in the room direct me to where that is?

25 MR. WILEY: The first sentence.

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1 JUDGE CAILLE: It's the first sentence?

2 MR. WILEY: Of 81.77.040, the latter part of
3 the first sentence.

4 JUDGE CAILLE: Okay.

5 Go ahead, Mr. Brazill.

6 MR. BRAZILL: In a free enterprise system, we
7 think everyone should have the opportunity to compete.
8 Providing a service to the public in the best -- is best
9 served by open competition and not by closed and
10 controlled monopoly. The sentiment in the community is
11 only expressed by the existing haulers and not by the
12 public being served. Under the current rule, how can a
13 small business be given the opportunity to compete? How
14 are the goals of the State of Washington regarding small
15 business participation to be met if the other State
16 departments do not issue the required permits and
17 continue to let the current monopoly exist? Many
18 business -- how many business do we have to get to say
19 that they want to do business with a small company? Do
20 we need to have 1? Do we need to have 100? I mean
21 what's the guideline?

22 Based on the current rules that exist, one
23 company could provide all the needs for the total state
24 of Washington, one company owned and operate equipment
25 suitable to meet the public needs. Thus additional

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1 operators are not wanted, warranted, and it's not in the
2 public interest. That's part of a clause that we have
3 to try to defend against in order to try to establish
4 the fact that there ought to be an opportunity for small
5 haulers to participate. We can't do that. It's
6 impossible, we think, unless we went and expended
7 exorbitant numbers of dollars and hired high price
8 attorneys and spend an enormous period of time to try to
9 achieve that. We feel that J&M Disposal should have the
10 same right to compete as any of the existing haulers.

11 And why are the two largest haulers in the
12 United States protesting to have a small minority
13 business receive a permit? And that question is very
14 easily answered. That's because the existing laws
15 allows and dictate that that's -- that still occurs.
16 We're not asking for a garbage permit, but only a
17 construction debris permit. And as everyone knows, the
18 construction debris work only occurs as a result of
19 constructions on buildings, both new and rehab.

20 Some projects requires minority and other
21 small business participations. How are we to bid on
22 such projects if we can not get a permit? And how are
23 the owners of these projects to meet their goals and
24 commitments for involvement of small and/or minority
25 businesses? What process do the small minority business

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1 have in order to compete? And in terms of the minority
2 business participation in the state of Washington prior
3 to Prop 209, minority business were able to participate
4 in hauling construction debris as a subcontractor. But
5 since Prop 209, no work has been made available because
6 the large haulers are not required to share any of their
7 work. We have no problems with this as long as we have
8 some opportunity to obtain some work ourselves directly
9 from the owners.

10 Example, the Washington State Department of
11 Transportation has made a commitment for minority
12 business participation in the current project of the
13 Narrow Bridge projects. That's a multibillion dollar
14 projects that's going to last over the next seven years.
15 How are we, meaning J&M, to bid on some of the
16 construction being worked if we do not have a permit to
17 perform the work? How is the Department of
18 Transportation to meet its goals if other department --
19 if other State departments do not allow the minority
20 business to participate by not issuing permits? This
21 appears to us to be an injustice.

22 As a taxpayer, we should have equal rights to
23 have the opportunity to participate. And therein lies
24 the -- our position, and that is the reason why we are
25 requesting a hauler's permit for construction purpose.

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1 We realize that we're fighting an up-hill battle because
2 the rules that was laid out by the legislators as the
3 current exist makes it impossible for us to participate.

4 JUDGE CAILLE: The thing that you point out,
5 Mr. Brazill, is that, and unfortunately this is the law,
6 these are the statutes, and in order to make a change as
7 you are proposing, you need to go to the legislature.
8 And I understand your concerns, and I understand your
9 position.

10 If you don't mind, I would like to ask you
11 some questions, some more questions about your
12 application; is that all right?

13 MR. BRAZILL: Sure, go right ahead.

14

15 E X A M I N A T I O N

16 BY JUDGE CAILLE:

17 Q. Can you tell me how many employees you have?

18 A. There is --

19 Q. You listed this in Section 18, but I got
20 confused because I wasn't sure how many you had in
21 total.

22 A. There are three management levels, which are
23 the three owners, and then we have currently ten
24 drivers.

25 Q. And do all ten of those drivers operate the

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1 roll-off truck?

2 A. No, we have two that operate the roll-off
3 trucks.

4 Q. And the roll-off truck is what would be used
5 for the demolition and debris?

6 A. That's correct.

7 Q. Is there a maintenance agreement on the
8 roll-off truck?

9 A. Is there a what?

10 Q. A maintenance agreement on the roll-off
11 truck.

12 A. Yes.

13 Q. On your statement of income, you report that
14 there's general liability insurance of, well, year to
15 date \$51,780; is that inclusive of insurance on the
16 roll-off truck?

17 A. That is correct.

18 Q. Mr. Brazill, could you just give me for the
19 record a short statement about your experience so far in
20 the area.

21 A. I have been involved in the recycling hauling
22 business for approximately ten years. I am the
23 financial manager of the operation. Our company, J&M,
24 started in '96. Prior to that, I worked with another
25 minority hauling company that did both garbage and

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1 recycling, and that started in approximately 1992. The
2 fill operation manager of the company, Jesse C. Penny,
3 has been involved in the garbage and hauling industry
4 since approximately '85. So we have, we think,
5 qualifiable experience in this type of industry.

6 Q. Okay. And could you again describe the
7 service that you are applying for today?

8 A. We're applying for permit only for the
9 hauling of construction debris. The company that the
10 three owners, current owners, worked with previously did
11 some subcontracting for hauling of construction debris,
12 so we have had experience with hauling of construction
13 debris. We have had experience with other types of
14 hauling. But as J&M Disposal, Inc., we have not done
15 any construction debris. We have done recycling and
16 other types of compact hauling as a subcontractor. Our
17 primary work is as a subcontract with Waste Management
18 of Seattle, which we think we have a good working
19 relationship on the City project, and we think that we
20 perform as required by its contract.

21 Q. Could you describe your relationship with
22 Waste Management a little more?

23 A. We're on the City of -- we have been a
24 subcontractor performing work for the City, for Waste
25 Management, since the start of our existence in 1996

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1 primarily hauling, collection and hauling of residential
2 recyclable materials with the City of Seattle. We
3 perform other subcontracting work. And the roll-off
4 work that we have done is transfer station work for the
5 County through -- for King County through Waste
6 Management and also work at the University of
7 Washington. We have done some subcontracting work for
8 roll-off for recyclable containers for the school
9 district, City of Seattle. And we have done some other
10 small work with GSA and some other small work for
11 private entities.

12 Q. Okay.

13 A. We're a very small company, Your Honor. And
14 we are currently interested in wanting to participate in
15 the work on the Narrows Bridge project for the State of
16 Washington. We're not interested in doing the garbage
17 work; we're only interested in the recycle work that
18 we're currently doing and doing some -- being -- having
19 the opportunity to do some construction debris work.
20 And then there are certain types of projects that are
21 still out there where it is required by the owner to
22 have some small business and/or minority participation
23 involvement.

24 Q. Did you mention previously that the Narrows
25 Bridge was one of those projects --

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1 A. That we're interested --

2 Q. -- that requires small business or minority
3 involvement?

4 A. The State of Washington is the owner of the
5 project. The consortium that's building the project in
6 conjunction with the State Department of Transportation
7 for Washington has made a commitment to have a certain
8 percentage, their goal is to have a certain percentage
9 involvement of small and minority business, and they're
10 doing everything they possibly can to try to meet some
11 of those level of expectations. We would like to
12 participate in that process.

13 JUDGE CAILLE: Okay, I think that concludes
14 my questions on your application for right now.

15 Mr. Wiley, do you want to go next?

16 MR. WILEY: Yes, I have a few questions, Your
17 Honor.

18

19 C R O S S - E X A M I N A T I O N

20 BY MR. WILEY:

21 Q. Mr. Brazill, you list on your application
22 that the shareholders are Jesse C. Penny, yourself, and
23 Mozell Brazill. Is Mr. Penny or Ms. Brazill any
24 relation of yours?

25 A. Yes.

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1 Q. Could you state what that is for the record?

2 A. Mozell Brazill is my wife.

3 Q. Okay. And is Mr. Penny any relation of
4 yours?

5 A. No, he is not.

6 Q. Okay.

7 A. Business relationship only.

8 Q. You mentioned that you began this company in
9 1996; is that correct?

10 A. That's correct.

11 Q. Okay. Before that time you said you worked
12 for a prior company; what was that prior company,
13 please?

14 A. Northwest Recovery System.

15 Q. And is that the company that Nona Brazier
16 owned?

17 A. That is correct.

18 Q. Okay. And was she the 100% shareholder of
19 that company --

20 A. That is correct.

21 Q. -- or were you?

22 A. That is correct.

23 Q. Okay. You were not a shareholder of that
24 company?

25 A. That is correct.

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1 Q. What did that company do? You described it
2 as garbage and recycling; is that correct?

3 A. That is correct.

4 Q. Okay. Could you give us a little bit more
5 explanation; was it subcontracted to other haulers or --

6 A. No, they were -- they did subcontract work.

7 Q. Okay.

8 A. They were not a direct hauler.

9 Q. Okay. One of the aspects of applying for the
10 authority you talked about in your opening remarks was
11 an opportunity to participate in the solid waste or CDL
12 industry; is that correct, one of the --

13 A. I said my interest is only in the
14 construction debris portion.

15 Q. Okay. And in the construction debris
16 portion, is it correct that you can lease equipment and
17 drivers to other companies that hold G certificates and
18 perform work under their certificate through lease of
19 equipment and drivers?

20 A. Repeat that, please.

21 Q. Is it true that you can lease equipment and
22 drivers to G certificate holders and in that fashion
23 perform CDL service?

24 A. That's quite possible.

25 Q. Okay. And that's what you have done

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1 historically since 1996; is that correct?

2 Is that correct?

3 A. I haven't done any hauling of the
4 construction debris work.

5 Q. When you worked for Waste Management, you did
6 no CDL work?

7 A. That is correct.

8 Q. Are you still working for Waste Management?

9 A. That is correct. We are working with Waste
10 Management as a subcontractor, residential recyclable
11 program.

12 Q. In the City of Seattle?

13 A. City of Seattle only.

14 Q. And so that's under contract with the City of
15 Seattle --

16 A. Under contract --

17 Q. -- as far as you know?

18 A. -- with the City of Seattle.

19 Q. Unfortunately you've got to let me finish,
20 because she's getting it down. I do the same thing you
21 do, but if you could just let me get my question out.

22 Have you approached Waste Management about
23 performing any CDL service under that contract that
24 you're currently performing for them?

25 A. Repeat the statement.

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1 Q. Have you approached, under the contract that
2 you're currently performing for Waste Management within
3 the City of Seattle, have you approached them to see if
4 you could perform any CDL service?

5 A. The contract with the City of Seattle that we
6 perform work for does not involve any CDL work.

7 Q. Have you asked if you could expand your
8 service as a subcontractor for CDL?

9 A. Not that I recall.

10 Q. Okay. You have indicated in your application
11 that you're seeking authority to serve both King and
12 Pierce Counties; is that correct?

13 A. That's correct.

14 Q. And is it my understanding based on your
15 testimony that you asked for Pierce County under the
16 prospect of possibly participating in the Narrows
17 Bridge work?

18 A. That's part of it.

19 Q. Could you tell me what the other part is?

20 A. That we want to limit our visibility in the
21 local counties.

22 Q. You wanted to limit your visibility or expand
23 your visibility?

24 A. We wanted to limit it. We did not want to
25 get involved into a large area.

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1 Q. So is it true that your request for service
2 in Pierce County is solely directed at a possible bridge
3 project, or when you say you limit your --

4 A. No, it wasn't solely, because at the time
5 that we put in the request, we were not aware of the
6 opportunities on the Narrow's Bridge project.

7 Q. So when you put in your request, you wanted
8 to ask for Pierce County just because it was near your
9 home base in King County; is that correct?

10 A. Yes.

11 Q. Okay. Now when Judge Caille asked you about
12 the pre-hearing conference order that was served on
13 February 11th in this matter, you indicated that you had
14 seen that order, correct?

15 A. That is correct.

16 Q. And it's correct, is it not, that you have
17 been advised either in the pre-hearing conference order
18 or by the Staff of the Washington Utilities and
19 Transportation Commission that in order to establish
20 need under Washington law you must present witnesses who
21 attest to a need for service?

22 A. Yes.

23 Q. Is that correct?

24 A. That's correct.

25 Q. And have you -- why have you not brought

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1 witnesses here to address those important issues?

2 A. It's an up-hill battle, and I think I stated
3 previously that the way it's structured, it's impossible
4 in our opinion for a small company to get involved into
5 the process as the law currently exists.

6 Q. Okay, I understand your critique of the
7 existing law, and obviously you understand we can't deal
8 with that here at an administrative agency level,
9 correct? Do you understand that?

10 A. Oh, I understand it completely.

11 Q. My question, when you say -- my question went
12 to whether you were aware of the requirement to present
13 shipper witnesses, and you said you were. And you also
14 said you didn't present them because it was an up-hill
15 battle. My question as a follow up to that is, what
16 efforts did you make to identify witnesses who could
17 come here?

18 A. I have talked to various persons. We have
19 had contact with people that requested our services.

20 Q. And none of them have come here today; is
21 that correct?

22 A. I didn't ask them to come here.

23 Q. Okay.

24 A. I did not want to exert the dollars or the
25 cost involved in that process. We're a small company.

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1 We can not afford to spend a large sum of dollars on
2 legal issues.

3 Q. I understand that, sir, but my question only
4 went to whether you asked or secured any witnesses here.

5 A. I did not secure any witnesses. I did not
6 ask any witness to appear.

7 MR. WILEY: No further questions, Your Honor.

8 JUDGE CAILLE: Mr. Sells.

9 MR. SELLS: Thank you.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. SELLS:

13 Q. Mr. Mozell, my name is Jim Sells, and I'm
14 here to --

15 A. No, Brazill.

16 Q. Mo --

17 A. No, Brazill.

18 Q. Brazill, I'm sorry.

19 A. B-R-A-Z-I-L-L.

20 Q. Okay, well, I can't see here, I'm sorry.

21 I'm here representing the Washington Refuse
22 and Recycling Association. I just have a couple
23 questions. Are you aware that Harold Lemay Enterprises
24 provides service, garbage and refuse service, in a
25 portion of Pierce County?

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1 A. I am, sir.

2 Q. Do you have any indication that that service
3 is inadequate or unsatisfactory to the public?

4 A. I have no knowledge.

5 Q. Do you have any knowledge or any indication
6 that the service provided by Lemay Enterprises is
7 unacceptable or inadequate as far as the Washington
8 Utilities and Transportation Commission is concerned?

9 A. I have no information.

10 Q. Do you have -- have you personally received
11 any complaints concerning Lemay's service?

12 A. I don't recall. It doesn't mean I haven't,
13 but I just don't recall. I don't have -- I can't put my
14 hand and say anything.

15 Q. All right.

16 A. I don't have any documentation to prove
17 anything.

18 Q. All right. And I will ask you the same
19 questions about University Place Refuse. Do you have
20 any knowledge that their service is unsatisfactory to
21 the public?

22 A. No, I do not.

23 Q. Or to the Commission?

24 A. No, I do not have any knowledge to that
25 effect.

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1 Q. Are you operating at all in Pierce County at
2 the present time?

3 A. No, I am not.

4 Q. Have you in the past?

5 A. I have been in a company that did do work in
6 Pierce County.

7 (Cell phone interruption.)

8 BY MR. SELLS:

9 Q. Was that J&M Disposal, or was there a
10 different company?

11 A. No, it was not J&M Disposal.

12 MR. SELLS: All right, I have no further
13 questions. Thank you, Your Honor.

14 JUDGE CAILLE: All right, Ms. McNeill or
15 Staff.

16

17 C R O S S - E X A M I N A T I O N

18 BY MS. MCNEILL:

19 Q. Mr. Brazill, I'm Polly McNeill. I represent
20 Waste Management. I just have a couple of questions for
21 you about your equipment. Can you tell me specifically
22 what kind of trucks J&M Disposal owns?

23 A. Right now we own a couple old recycle trucks
24 referred to as Arrows.

25 JUDGE CAILLE: Could you spell that?

0045

1 THE WITNESS: A-R-R-O-W-S.

2 A. They're old recycle trucks that we own but
3 they're not -- we're not using them right now.

4 BY MS. MCNEILL:

5 Q. Okay. You own them, but you're not using
6 them?

7 A. Right.

8 Q. All right. And then what equipment --

9 A. We have a recycle -- we have a roll-off truck
10 that we are using.

11 Q. And you own that?

12 A. We own that. And then we have eight recycle
13 trucks that we're leasing from Waste Management to
14 perform the contract with the City of Seattle.

15 Q. Is there anything in your financial statement
16 that would include those, or are they excluded from your
17 financial statement?

18 A. They're excluded from our financial
19 statement. We don't show them as equipment that we own.

20 Q. Judge Caille asked you about a maintenance
21 agreement for your equipment.

22 A. Yes.

23 Q. Who is that maintenance agreement with?

24 A. Waste Management. They maintain the trucks
25 that we lease on the agreement. And then the truck that

0046

1 we own, we have an agreement that they maintain that one
2 also.

3 Q. That roll-off?

4 A. That's correct.

5 Q. But nobody maintains the Arrows because
6 nobody is using them?

7 A. Currently right now, that's correct.

8 MS. MCNEILL: I have no further questions.

9 JUDGE CAILLE: All right, Staff.

10

11 C R O S S - E X A M I N A T I O N

12 BY MS. WATSON:

13 Q. Good morning, my name is Lisa Watson, I'm
14 here on behalf of Staff. You had mentioned that with a
15 prior company you had done some subcontracting and that
16 did involve --

17 A. No, we performed work as a subcontractor.

18 Q. And that was with a prior company?

19 A. That is correct.

20 Q. Did that company have a certificate from the
21 WUTC?

22 A. Yes.

23 Q. Have you been contacted about work on the
24 Narrow's Bridge?

25 A. We have participated in some of their

0047

1 workshops. We received letters, yeah, we -- yeah, we
2 received notice, and then we went to the workshops.

3 Q. You had mentioned Proposition 209 in your
4 opening statement, and I'm a little confused. I thought
5 it was Proposition 200. Is that the one that you were
6 referring to?

7 A. It could be. I thought it was 209.

8 Q. Initiative 200?

9 A. It's 200?

10 Q. I guess it's Initiative 200.

11 A. Oh.

12 Q. Is it your understanding that Initiative 200
13 changed the permitting requirements?

14 A. No, no, it did not change the permitting
15 requirements.

16 Q. And I just have --

17 A. It just limit the opportunity for -- it just
18 removed the requirements for a large company to give
19 part of their work to small and minority businesses in
20 certain areas.

21 Q. Are you aware of Chapter 39.19 RCW by any
22 chance?

23 A. Not off the top of my head, but if you relate
24 some parts of it, I probably have the regulation on it.
25 I can't recite to you exactly what it says.

0048

1 Q. That's the one that created the Office of
2 Minority and Business, I'm sorry, Minority and Women's
3 Business Enterprises, and that has to deal with
4 government contracts with small or minority owned
5 businesses.

6 A. Okay.

7 Q. Are you familiar with that?

8 A. Yes, I'm familiar with it.

9 Q. And I just have one other question. Could
10 you describe your hiring policies that the company
11 follows for hiring new drivers?

12 A. Well, we use the regular DOT guidelines. We
13 use -- we have an application. We do an interview
14 process. We do a background check. And we make sure
15 that the drivers have the right certificates. And we
16 maintain the proper record of the personnel file in the
17 course of the DOT guidelines.

18 MS. WATSON: Thank you, I don't have any
19 further questions.

20 JUDGE CAILLE: All right. I don't have any
21 other questions right now either. Let's go off the
22 record for just a moment.

23 (Discussion off the record.)

24 (Brief recess.)

25 JUDGE CAILLE: Mr. Brazill, at this time I

0049

1 wanted to ask you if you had completed your case in
2 chief. That means that you have presented everything.

3 MR. BRAZILL: Yes, I have.

4 JUDGE CAILLE: Okay.

5 MR. BRAZILL: Yes.

6 JUDGE CAILLE: All right.

7 MR. WILEY: Your Honor, as you know, while we
8 were off the record, you indicated your preference
9 procedurally. I would restate my motion to dismiss and
10 in the form somewhat of a summary adjudication at
11 480-09-426(2). I do believe that there is substantial
12 precedent under Title 81 and the Commission's case law
13 for dismissing this application at this point. I would
14 cite -- I won't belabor the record with too many cites,
15 but I will give you a couple. The cite that in terms of
16 dismissal for lack of shipper evidence and the
17 appropriateness of a motion to dismiss is in order MV
18 Number 140304, in re Joseph Sakamano d/b/a Craig
19 Transfer and Storage, which is application P-72429,
20 November 1989. Other Commission precedent on the
21 requirement of live shipper witnesses on a protested
22 application are, for instance, C&C Transfer Company,
23 order MV Number 143632, Application E-74249, July 1991,
24 and the Gerald O --

25 JUDGE CAILLE: Excuse me, Mr. Wiley, what was

0050

1 the -- was there an MV Number on C&C that I missed?

2 MR. WILEY: It's order MV Number 143632.

3 JUDGE CAILLE: Thank you.

4 MR. WILEY: That's July 1991. And then also
5 the Gerald O. Williams, Application Number P-74878,
6 order MV Number 144104, October 1991, both cases of
7 which hallmark the requirement that for an application
8 for a new authority to be granted under Title 81, in
9 this case it was Title 81.80, there must be shipper
10 testimony to support a contested application. So on
11 those basis, Your Honor, bases, Your Honor, I would make
12 my motion, restate my motion to dismiss the application.

13 JUDGE CAILLE: Thank you, Mr. Wiley.

14 MR. SELLS: I will join in that motion, if
15 Your Honor please, and also add a second motion, that if
16 Your Honor is not inclined to dismiss the entire
17 application, that the application as it relates to
18 Pierce County be dismissed. The witness has testified
19 that they have no operations in Pierce County, they have
20 no equipment in Pierce County, and they have never
21 operated in Pierce County. And even if -- and further
22 that he has no indication nor will he present any
23 witnesses that the present service being offered by
24 Harold Lemay Enterprises and University Place Refuse is
25 in any manner unsatisfactory to either the Commission or

0051

1 the public. So at the very least, I think it's
2 appropriate under 480-09-426 that the Pierce County
3 portion be dismissed, and that would be I think the most
4 effective way of at least getting -- taking care of a
5 portion of this hearing.

6 And I say this understanding what the
7 applicant's position is and that there may be further
8 steps that he may want to take with the Commission or
9 with the Legislature, but we have the rules and the law
10 that we operate under now, and my clients are paying me,
11 and I'm one of these expensive lawyers too, and they're
12 paying me to sit here.

13 JUDGE CAILLE: Ms. McNeill.

14 MS. MCNEILL: Thank you, Judge Caille, I
15 would join Mr. Wiley's motion. And I won't belabor the
16 point any further, it's just both according to statute
17 and Commission orders. There is no support for an
18 application without a showing of need and without live
19 shippers. There's no showing of need, so I believe it
20 should be dismissed.

21 JUDGE CAILLE: All right.

22 Commission Staff.

23 MS. WATSON: Staff also supports the motion
24 to dismiss under WAC 480-09-426 based on that WAC and
25 Commission precedent. A couple more recent orders that

0052

1 might be interesting for you, I'm not entirely sure
2 exactly how to cite these, but the first one is from
3 1997, the order number is MVC Number 2210, Hearing
4 Number D-78596. The second one is from 2000 and --

5 MS. MCNEILL: Sorry, could you give the name.

6 MS. WATSON: Oh, I'm sorry, yes. The
7 applicant in that case was Alexander Millman and Walter
8 Kazak, and that's spelled K-A-Z-A-K. The second case is
9 from 2000. The order number is MVC Number 2270, Hearing
10 Number D-78826, and the applicant in that case was Alice
11 Modig, M-O-D-I-G, and Michael Peterson.

12 MR. WILEY: If the months could be provided,
13 that would help us find the case faster.

14 MS. WATSON: Sure, the one in 2000 was dated
15 February 1st, 2000, and the first one that I mentioned
16 was dated July 23rd, 1997.

17 MR. WILEY: Thanks.

18 JUDGE CAILLE: Okay, thank you. As I
19 explained to the parties before going back on the
20 record, while I will take your motions under advisement,
21 but since this is an administrative ALJ only case and I
22 will be submitting an order to the Commission, in the
23 event the Commission should disagree with me that this
24 should be dismissed, because at this point I agree with
25 you based on the law it appears that the applicant has

0053

1 not fulfilled the requirements he needs to, however, in
2 the event that for some reason the Commission would not
3 agree with that, it seems to me that we can get the rest
4 of the case done today and hopefully as efficiently as
5 possible to make a complete record for the Commission
6 and for the applicant, and we can go -- I just think
7 that that's probably a safer way to proceed.

8 So I acknowledge the arguments of Mr. Wiley
9 and Mr. Sells and Ms. McNeill and Commission Staff,
10 Ms. Watson, but since this is an administrative agency,
11 we are going to do things just a little differently.

12 So with that, Mr. Wiley, are you going to --
13 who's going to proceed first?

14 MR. SELLS: I am.

15 JUDGE CAILLE: Oh, Mr. Sells.

16 MR. WILEY: And then I will go after.

17 JUDGE CAILLE: Okay. As you present your
18 witness, are you going to present the exhibits, or do
19 you want to present them now or --

20 MR. SELLS: I have cut it down to one witness
21 and two exhibits, Your Honor.

22 JUDGE CAILLE: Okay.

23 (Discussion off the record.)

24 MR. SELLS: Call Harold Lemay if Your Honor
25 please.

0054

1 JUDGE CAILLE: All right. Mr. Lemay, if you
2 will please raise your right hand, I will swear you in.

3

4 Whereupon,

5

HAROLD LEMAY,

6 having been first duly sworn, was called as a witness

7 herein and was examined and testified as follows:

8

9 D I R E C T E X A M I N A T I O N

10 BY MR. SELLS:

11 Q. Mr. Lemay, state your full name and your
12 business address, please.

13 A. Norman Albert Lemay, 13502 Pacific Avenue,
14 Tacoma 98444.

15 Q. And who is your employer?

16 A. Harold Lemay Enterprises.

17 Q. What is your position with Harold Lemay
18 Enterprises?

19 A. I am the operations manager.

20 Q. And what are the duties of an operations
21 manager?

22 A. I oversee all of the collection and the
23 routes within Pierce County and the managers that are
24 outside of Pierce County.

25 Q. As such, are you familiar in general with the

0055

1 business of the collection of solid waste?

2 A. Yes, I am.

3 Q. Does Harold Lemay Enterprises hold a
4 certificate of public convenience and necessity from the
5 Washington Utilities and Transportation Commission?

6 A. Yes, it does, G-98.

7 I'm going to hand you what's been marked --

8 JUDGE CAILLE: Exhibit 1.

9 Q. -- Exhibit 1 and ask you to identify that
10 document, please.

11 JUDGE CAILLE: Excuse me, Exhibit 1 for
12 identification.

13 A. That's the certificate of the area that we
14 collect refuse in.

15 Q. In Pierce County in general terms, what area
16 does that certificate cover?

17 A. Everything except for the peninsula in Gig
18 Harbor and the Puyallup, Sumner, those areas, and it
19 includes, you know, Southwestern Pierce County.

20 Q. Do you operate in all of the territory
21 covered by this certificate?

22 A. Yes, we do.

23 Q. Do you hold yourself out to the public to
24 operate in all of this territory?

25 A. Yes, we do.

0056

1 Q. Do you provide advertisement and notices in
2 newspapers, telephone books, that sort of thing,
3 explaining your service?

4 A. Yes, we do.

5 Q. Are you familiar with the rules and
6 regulations of the Washington Utilities and
7 Transportation Commission?

8 A. Yes, I am.

9 MR. SELLS: Mark for identification, please.

10 JUDGE CAILLE: Okay, we will mark this as
11 Exhibit Number 2 for identification.

12 BY MR. SELLS:

13 Q. I'm handing you a copy of what's been marked
14 as Exhibit Number 2 for identification. Could you
15 identify that document, please.

16 A. This is the Pierce County equipment list.

17 Q. And is all of this equipment owned and
18 operated by Harold Lemay Enterprises?

19 A. Yes, it is.

20 Q. Do you have a regular maintenance schedule
21 that you adhere to as far as your equipment is
22 concerned?

23 A. Yes, we do.

24 Q. Approximately how many employees does Harold
25 Lemay Enterprises have in the Pierce County area?

0057

1 A. In the Pierce County area, about 80.

2 Q. As far as the drivers and the operators of
3 equipment are concerned, do you have a regular drug
4 testing policy?

5 A. Yes, we do.

6 Q. And do you have a regular training policy?

7 A. Yes, we do.

8 Q. Do you have training in ergonomics, for
9 example?

10 A. Yes, we do.

11 MR. SELLS: At this point, I will offer
12 Number 1 and Number 2, if Your Honor please.

13 JUDGE CAILLE: Is there any objections to the
14 admission of Exhibits 1 and 2?

15 Hearing none then, Exhibits 1 and 2 are
16 admitted into the record.

17 BY MR. SELLS:

18 Q. Does Harold Lemay Enterprises have the
19 financial ability to meet any new needs that may arise
20 within its G certificated territory?

21 A. Yes, it does.

22 Q. Are you financially solvent?

23 A. Yes, we are.

24 Q. Have you received -- are you aware of any
25 requests for service, in particular CDL service, that

0058

1 you have been unable to meet?

2 A. No, I am not.

3 MR. SELLS: Thank you, I have no further
4 questions, Your Honor.

5 JUDGE CAILLE: All right, thank you.

6 Do you have any cross-examination?

7 MR. BRAZILL: No.

8 MR. WILEY: No friendly cross.

9 JUDGE CAILLE: No friendly cross, okay.

10 Next, Mr. Wiley.

11 MR. WILEY: Yes, I call Mr. Westmoreland to
12 the stand.

13 JUDGE CAILLE: Thank you, you're excused.

14 MR. WILEY: Mr. Edward Westmoreland.

15

16 Whereupon,

17 EDWARD WESTMORELAND,

18 having been first duly sworn, was called as a witness

19 herein and was examined and testified as follows:

20

21 D I R E C T E X A M I N A T I O N

22 BY MR. WILEY:

23 Q. Good morning, Mr. Westmoreland.

24 A. Good morning.

25 Q. Could you please state and spell your last

0059

1 name and provide your business address for the record.

2 A. Edward L. Westmoreland,
3 W-E-S-T-M-O-R-E-L-A-N-D, business address is 2916 -
4 107th Street South, Lakewood, 98499.

5 Q. And by what company are you employed, please?

6 A. Waste Connections doing business in Pierce
7 County as Murrey's and American Disposal.

8 Q. And how long have you been employed by those
9 companies, please?

10 A. Roughly three years.

11 Q. And prior to that time, were you also
12 employed in the solid waste industry?

13 A. That's correct.

14 Q. And how long have you been in the Washington
15 solid waste industry?

16 A. Total of about 25 years.

17 Q. Could you please describe your job
18 responsibilities at Murrey's and American Disposal?

19 A. I'm the Division Vice President for Northern
20 Washington incorporating Murrey's and American Disposal
21 companies under my purview and responsible for the
22 financial fitness of the company as well as day-to-day
23 operations and day-to-day operating decisions.

24 Q. And where does Murrey's and American Disposal
25 have terminal facilities in Western Washington, please?

0060

1 A. Currently in Fife, Washington. The address
2 is I think 4622 - 70th Avenue East, and that's where
3 we're -- our Pierce County operations are currently
4 housed.

5 Q. And Pierce County is sort of the center of
6 operations in your responsible territory, is it?

7 A. Yes, it is.

8 Q. Okay. And how many employees do you have in
9 the Pierce County area?

10 A. Let's see, currently about 150.

11 Q. Okay. And how many of those, if you could
12 just roughly, are drivers, staff, you know,
13 administrative, that sort of thing?

14 A. About 115 drivers, probably around the
15 neighborhood of 16 shop personnel, and the rest
16 administrative people.

17 Q. And could you please describe just briefly
18 what sort of services Murrey's and American Disposal
19 provide to customers within Pierce County?

20 A. In Pierce County pretty much the full gamut.
21 We do residential garbage collection, commercial garbage
22 collection, as well as residential and commercial
23 recycling services as well.

24 Q. Does Murrey's and American Disposal hold
25 authority issued by the Washington Utilities and

0061

1 Transportation Commission?

2 A. We certainly do.

3 MR. WILEY: Your Honor, if I could have these
4 be marked as the exhibits next in line.

5 JUDGE CAILLE: I have marked for
6 identification Murrey's Disposal Company Certificate
7 Number G-9 as Exhibit Number 3 for identification and
8 American Disposal Company Certificate Number G-87 as
9 Exhibit Number 4 for identification.

10 BY MR. WILEY:

11 Q. Mr. Westmoreland, can you please identify the
12 exhibits that have been marked as Exhibits 3 and 4.

13 A. Yeah, Exhibit 3 is the Murrey's Disposal
14 Company Incorporated Certificate G-9, and that
15 incorporates pretty much Eastern Pierce County. And
16 Exhibit Number 4 is the American Disposal Company
17 Certificate G-87, and that incorporates the Gig Harbor
18 peninsula area as well as Heron Island and Fox Islands.

19 Q. Thank you. Does your company also have
20 equipment that it uses to collect and transport
21 construction and demolition debris in Pierce County?

22 A. Yes, we do.

23 MR. WILEY: Your Honor.

24 JUDGE CAILLE: All right, marked for
25 identification Exhibit Number 5, which is -- you gave me

0062

1 two.

2 MR. WILEY: Oh, thank you, that's why I'm one
3 short.

4 (Discussion off the record.)

5 BY MR. WILEY:

6 Q. Mr. Westmoreland, can you identify the
7 exhibit that's just been identified as Exhibit 5?

8 A. Exhibit 5 is a equipment list for the
9 companies incorporating Murrey's and American Disposal.

10 Q. And does that combine power units and
11 reference to other types of equipment that could be used
12 in the collection and transportation of CDL materials?

13 A. Yes, it does.

14 Q. Okay. Do you perform mechanical maintenance
15 on your equipment?

16 A. Yes, we do.

17 Q. And do you employ mechanics at your terminal
18 facility?

19 A. Yes, roughly 16 full time mechanics at our
20 Fife facility.

21 Q. Does Murrey's Disposal and American Disposal
22 comply with all applicable WUTC and federal safety
23 regulations regarding the operation of its equipment?

24 A. We most certainly do.

25 Q. Could you describe just briefly what sort of

0063

1 training procedures you have for drivers in handling
2 equipment and containers?

3 A. We hire, you know, fully qualified commercial
4 drivers that have CDL licenses, and then they also have
5 to pass a drug test to come to work for the company. We
6 have a random drug testing policy in place. We have a,
7 you know, a series of training opportunities that are
8 available. One of the most recent ones that we have
9 used is coaching the refuse driver. We have, you know,
10 monthly safety meetings, you know, tips on how to
11 perform their job safely and efficiently. You know, we
12 perform training to make sure that each driver that is
13 hired can safely perform their jobs. We usually have a
14 like a very experienced driver in the solid waste
15 industry driving for up to two weeks or longer, if
16 necessary, with new drivers to acclimate them to the
17 vehicles that they will be entrusted with.

18 Q. Could you, looking at Exhibit 5, which is the
19 equipment list, can you quantify just for the record how
20 many power units for roll-off operations and how many
21 containers you have available in Pierce County?

22 A. Currently under Murrey's and American operate
23 eight full-time roll-offs. And in regard to containers,
24 we have in the neighborhood of 650 roll-off containers
25 to provide service in our G certificated areas.

0064

1 Q. And would those be the types of equipment and
2 containers that would be utilized in the transportation
3 of CDL waste in Pierce County?

4 A. Yes, they would.

5 Q. Okay. Are you, based on your 25 years of
6 experience in the industry and 3 years at Murrey's and
7 American, are you familiar with the transportation of
8 CDL waste in your service territory?

9 A. Yes, I am.

10 Q. Is your company attempting to expand its
11 service capabilities in the transportation and
12 collection of CDL waste?

13 A. Yes, we are.

14 Q. Does your company have available capacity and
15 existing equipment to meet any requirement that you're
16 aware of for CDL waste transportation and collection in
17 Pierce County?

18 A. Yes, we do.

19 Q. Is this the type of business in which your
20 company is presently engaged?

21 A. Yes.

22 Q. Does your company transport CDL waste in
23 Pierce County on a daily basis?

24 A. Yes, we do.

25 MR. WILEY: Your Honor, if I could have this

0065

1 marked.

2 JUDGE CAILLE: Marked for identification
3 Exhibit Number 6, which is advertising in the Qwestdex.

4 BY MR. WILEY:

5 Q. And calling your attention to the exhibit
6 that's been identified as 6, Mr. Westmoreland, could you
7 tell us what this is, please.

8 A. These are our Yellow Page ads that we have
9 taken out in the Qwestdex Yellow Pages.

10 Q. And by those ads, you attempt to hold out to
11 perform CDL type service in your service territory; is
12 that correct?

13 A. Yes, we do.

14 Q. Are you presently soliciting new accounts in
15 the CDL area in Pierce County?

16 A. Yes, we are.

17 Q. Do you have sales personnel that are directed
18 to generation of new business in the CDL area?

19 A. Yes, we do.

20 Q. How much of their time would you say is
21 devoted to soliciting new accounts, and who are they,
22 please, for the record?

23 A. They market our services. Their names are
24 Gordy Wheeler or Gordon Wheeler and Dale Esterbrook, and
25 they roughly spend about 80% of their time marketing and

0066

1 another 20% of their time doing administrative
2 functions.

3 Q. And do you as a supervisor or I believe you
4 said a region vice president or district vice president.

5 A. Division vice president.

6 Q. Division vice president, do you interact with
7 salespeople occasionally to find out what their leads
8 are, what their goals are, that sort of thing?

9 A. I do on occasion. I get the opportunity to
10 sit in on sales meetings and operational meetings with
11 my district manager and his staff, so I do keep track of
12 the day-to-day activities there.

13 Q. And based on those meetings and that
14 interaction, could you state whether your company is
15 desirous of expanding its authorized service
16 capabilities in the CDL area within its authorized
17 territory?

18 A. Yes, we are.

19 Q. If the need arose, would your company invest
20 in additional equipment, personnel, and materials in
21 order to expand its service in that area?

22 A. Yes, we would if the need arose. We
23 constantly monitor our service area and the necessity
24 for adding equipment and labor and people to perform
25 those tasks, and we certainly add those needed pieces of

0067

1 equipment and people as necessary.

2 Q. Are you aware of any complaints that your
3 companies have had with respect to the provision of its
4 regulated CDL service in the recent past?

5 A. No, I am not.

6 Q. And if there were such complaints, would they
7 typically filter up to you eventually?

8 A. Yes, they would.

9 Q. Okay. Can you tell us why, Mr. Westmoreland,
10 you're opposing this application today?

11 A. We're currently regulated under Chapter 81 of
12 the RCW, and, you know, this is the bread and butter of
13 our business. We have made significant investments in
14 infrastructure and equipment and resources to serve this
15 marketplace. And, you know, we feel it would be a
16 degradation of our customer base if there was an
17 overlapping authority issued, and that would relate to
18 increased rates for our existing customers. So I think
19 it's very important that we maintain the system as it is
20 today.

21 Q. And again, that system as it is today with
22 respect to CDL service in Pierce County with respect to
23 your company is no complaints; is that correct?

24 A. That's correct.

25 MR. WILEY: No further questions, Your Honor.

0068

1 I tender Exhibits 3 through 6 and offer the witness for
2 cross-examination.

3 JUDGE CAILLE: Is there any objection to the
4 admission of Exhibits 3 through 6?

5 Hearing none, then Exhibits 3 through 6 are
6 admitted into the record.

7 Is there any cross-examination of
8 Mr. Westmoreland?

9 MR. BRAZILL: No.

10 JUDGE CAILLE: Okay, then you are excused,
11 thank you.

12 Your next witness, Mr. Wiley.

13 MR. WILEY: Yes, I call Mr. West.

14

15 Whereupon,

16

JEFFREY WEST,

17 having been first duly sworn, was called as a witness

18 herein and was examined and testified as follows:

19

20 D I R E C T E X A M I N A T I O N

21 BY MR. WILEY:

22 Q. Good morning, Mr. West.

23 A. Good morning, Mr. Wiley.

24 Q. Thank you for your patience, perseverance,

25 and attendance. Would you state your name and business

0069

1 address for the record.

2 A. Yes, my name is Jeffrey West, 1600 - 127th
3 Avenue Northeast in Bellevue, Washington.

4 Q. And by what company are you employed, please?

5 A. Rabanco, Limited.

6 Q. And how long have you been employed by
7 Rabanco Limited?

8 A. Approximately three years.

9 Q. Okay. And prior to that time, do you have
10 any experience in the Washington solid waste collection
11 industry?

12 A. Yes, I do.

13 Q. And could you tell us just briefly how long
14 that is and with whom, please.

15 A. It's a total of about 16 years with a variety
16 of companies, Bremmer Disposal, USA Waste, Waste
17 Management, and now Rabanco.

18 Q. Okay, thank you. Could you tell us what your
19 title is and what you do at Rabanco, please?

20 A. Division General Manager responsible for all
21 of the Eastern King County, Snohomish County, and Skagit
22 County operations. As such, I'm responsible for all of
23 the daily operational as well as financial needs of the
24 company.

25 Q. And in that capacity, do you also interact

0070

1 with other operating divisions of Rabanco, Limited?

2 A. I do.

3 Q. And Rabanco, Limited holds authority where
4 pertinent to this application, please?

5 A. Throughout King County, I believe the
6 northern portions of Pierce County, as well as portions
7 of Snohomish County.

8 Q. Where are your terminal operations in King
9 County located, please?

10 A. They're operated out of two locations, one at
11 Bellevue, which is 1600 - 127th Avenue Northeast. The
12 second one is in Kent at 22010 - 76th Avenue South.

13 Q. How many employees approximately does
14 Rabanco, Limited and Rabanco Companies have in King
15 County?

16 A. In King County we have approximately 245.

17 Q. And could you please describe the type of
18 services just generally that Rabanco, Limited, Fiorito,
19 Rabanco Connections collectively provide within King
20 County?

21 A. Well, we offer the full spectrum of
22 non-hazardous waste handling under our regulated
23 authorities from residential, commercial, and industrial
24 solid waste as well as recycling for each of those
25 service sectors as well.

0071

1 Q. You mentioned authorities, does your company
2 hold operating authority from the Washington Utilities
3 and Transportation Commission?

4 A. It does.

5 MR. WILEY: Your Honor, I'm going to have
6 marked, please, three separate certificates, and I put
7 them in order for you.

8 JUDGE CAILLE: All right, I will mark for
9 identification as Exhibit Number 7 for identification
10 the Rabanco Limited and Rabanco Recycling Certificate
11 Number G-12. That's the Tri-County Disposal. And as
12 Exhibit Number 8 for identification is the Rabanco
13 Connections International Permit Number G-41. That's
14 the Issaquah Division, Maltby Division. And Exhibit
15 Number 9 for identification is the Fiorito Enterprises
16 and Rabanco Companies Permit Number G-000060.

17 BY MR. WILEY:

18 Q. Mr. West, you have now heard identified,
19 marked for identification Exhibits 7 through 9. Can you
20 please identify our just tell us what those briefly are.

21 A. They are the Utilities and Transportation
22 Commission G certificated boundaries for our operating
23 divisions.

24 Q. And it's under these certificates that you
25 operate in portions of King County; is that correct?

0072

1 A. Correct.

2 Q. Does your company own equipment, own and
3 operate equipment in -- that would be suitable for the
4 collection and transportation of CDL waste in King
5 County?

6 A. It does.

7 Q. And have you caused to be prepared for this
8 hearing a listing of operating equipment that are
9 pertinent to your territories?

10 A. I have.

11 Q. Okay. And were they prepared as schedules
12 from the annual report?

13 A. Yes.

14 MR. WILEY: Your Honor, if I could have those
15 marked, please.

16 JUDGE CAILLE: Mr. Wiley, I'm going to need
17 some help reading these.

18 MR. WILEY: Okay. The top one I think says
19 Kent-Meridian, and that would be the first or second
20 exhibit, it doesn't matter. It's up in the upper
21 left-hand corner. We all need bifocals.

22 JUDGE CAILLE: I've got it, okay.

23 MR. WILEY: Those of us over 40.

24 JUDGE CAILLE: Kent I will mark for
25 identification mark Exhibit Number 10 for identification

0073

1 is the Kent-Meridian Disposal equipment list, and
2 Exhibit Number 11 for identification is the Eastside
3 Disposal Company equipment list.

4 BY MR. WILEY:

5 Q. And, Mr. West, could you tell us, please, for
6 the exhibits that have been marked for identification as
7 10 and 11 what they really are?

8 A. Well, they're fixed asset lists for the two
9 companies involved or the permitted areas.

10 Q. And do those include equipment that is
11 suitable, roll-off type equipment that is suitable for
12 the collection and transportation of CDL waste?

13 A. Yes, it does.

14 Q. And have you attempted to quantify at least
15 informally how many roll-off type equipment and
16 containers you have available in the various regulated
17 service territories that Rabanco in King County to serve
18 CDL needs?

19 A. Yes, I have.

20 Q. And how, could you state what those are,
21 please?

22 A. Well, approximately just over 1,000 boxes or
23 containers as well as 27 vehicles or power units.

24 Q. That would be suitable for the transportation
25 of CDL waste?

0074

1 A. Yes.

2 Q. Does your company perform maintenance on its
3 equipment?

4 A. Yes, it does.

5 Q. And does it attempt to comply with all state
6 and federal safety regulations including driver drug
7 testing and other maintenance procedures on equipment?

8 A. Yes, it does.

9 Q. Okay. Could you describe a little bit
10 briefly the type of training you do of your drivers in
11 handling of CDL equipment. I mean is that something you
12 look at and explain to them?

13 A. Certainly. Much like the earlier testimony,
14 we provide an initial screening. The driver once it is
15 or once he has passed through that is put through an
16 orientation, which includes a variety of different types
17 of training, whether it be the Smith system or coaching
18 the refuse driver, as well as daily over a period of
19 time depending on the type of equipment involved some
20 direct coaching by a senior driver, and then they go
21 through an evaluation process as part of that training
22 to ensure that they're fully qualified.

23 Q. And through that training process, do you
24 attempt to make them thoroughly familiar with CDL
25 service requirements in your regulated territory?

0075

1 A. Yes, we do.

2 Q. Are you generally familiar with the
3 collection and transportation of CDL waste personally?

4 A. Yes.

5 Q. Okay. Does your company seek out and solicit
6 work in that field?

7 A. Yes, it does.

8 Q. Have you made any efforts at expanding your
9 service capabilities in the collection and
10 transportation of CDL waste?

11 A. Yes, we have.

12 Q. And does your company, in fact, advertise its
13 services to attract business in that field?

14 A. Yes, it does.

15 MR. WILEY: Your Honor, I think this is our
16 last set of exhibits.

17 JUDGE CAILLE: Mark for identification
18 Exhibit Number 12, which is Yellow Page ad for Rabanco
19 Companies.

20 MR. WILEY: There's two, Your Honor, so it
21 doesn't matter. One says 413 and one says 736. Do you
22 want to identify them that way?

23 JUDGE CAILLE: Oh, okay, thank you.

24 MR. WILEY: Whichever.

25 JUDGE CAILLE: Let's mark that as 12.

0076

1 MR. WILEY: Which one, Your Honor?

2 JUDGE CAILLE: 736.

3 MR. WILEY: Okay.

4 JUDGE CAILLE: As 12, and we'll mark 413 as
5 13, and the remaining one which is page 112 as 14.

6 MR. WILEY: So the listing is 14?

7 JUDGE CAILLE: The listing is 14.

8 MR. WILEY: And 12 is 736?

9 JUDGE CAILLE: Yes.

10 MR. WILEY: And 13 is 413?

11 JUDGE CAILLE: Yes.

12 MR. WILEY: Great, thank you.

13 BY MR. WILEY:

14 Q. Mr. West, calling your attention to those
15 exhibits that have been now identified as 12 through 14,
16 what are those, please?

17 A. Those are Yellow Pages advertisements that we
18 have employed to generate new business.

19 Q. Okay. And does your company pay to make that
20 advertising investment every year?

21 A. Oh, yeah.

22 Q. And do you employ -- do you have containers
23 that are available to serve a shipper who calls in who
24 you haven't previously served and said, you know, I need
25 a box at my location, can you currently do that?

0077

1 A. Yes, we can.

2 Q. And do you also have available roll-off
3 equipment that could serve that?

4 A. Yes, we do.

5 Q. Do you have available existing capacity,
6 excess capacity in current equipment that is shown in
7 Exhibit 11 that could be deployed to the use of shippers
8 should they call you today?

9 A. Yes, we do.

10 Q. Is your company engaged in a daily business
11 in the transportation and collection of CDL waste in
12 King County?

13 A. Yes, it is.

14 Q. Do you have salespeople who solicit business
15 in this area?

16 A. Yes, we do.

17 Q. And do they do that pursuant to the exhibits
18 that have been identified as 12 through 14?

19 A. Yes, they do.

20 Q. Do you also have people going out and
21 knocking on doors or making cold calls for that type of
22 business?

23 A. Yes.

24 Q. How much of your salespeople's time would you
25 estimate is relegated to the area of generating new

0078

1 business in the CDL area?

2 A. About 80%.

3 Q. Is your company currently desirous of
4 expanding its solid waste collection services based on
5 its existing authority and available equipment?

6 A. Yes, it is.

7 Q. If the need arose, would your company also
8 invest in additional capital equipment to serve the CDL
9 marketplace?

10 A. Yes, it would.

11 Q. With regard to your position at Rabanco,
12 Limited and your knowledge of the day-to-day operations
13 of your service territories, are you aware of any
14 complaints with respect to the lack of equipment or
15 availability of your company to serve generator's needs
16 in the collection and transportation of CDL waste?

17 A. No, I am not.

18 Q. Can you tell us, Mr. West, why you're here
19 today opposing this application?

20 A. Well, as testified earlier, our company has
21 made significant investments into the infrastructure to
22 be able to provide these services in the regulated
23 environment we have historically operated under. A
24 degradation of our customer base would put those
25 investments in jeopardy.

0079

1 Q. And in your view, would that be consistent
2 with the public interest if Rabanco Company's operations
3 in King County were jeopardized financially?

4 A. Yes, it would.

5 Q. Excuse me?

6 A. Yes, it would.

7 Q. It would not be consistent with the public
8 interest is my --

9 A. It would be consistent with the public
10 interest.

11 Q. Let me restate that. If your investments
12 were placed at risk, would that be consistent with the
13 public interest?

14 A. No, it would not.

15 MR. WILEY: Okay, thank you.

16 I have no further questions, Your Honor, and
17 I tender the witness and offer Exhibits 9 through was it
18 13?

19 JUDGE CAILLE: 7 through 14.

20 MR. WILEY: 7 through 14, thank you.

21 JUDGE CAILLE: Is there any objection to the
22 admission of Exhibits 7 through 14?

23 Hearing none, then exhibits 7 through 14 are
24 admitted into the record.

25 Is there any cross-examination for Mr. West?

0080

1 MR. SELLS: I wanted to go through that
2 equipment list in a little bit more detail, but I will
3 wait.

4 MR. WILEY: Object to friendly cross, Your
5 Honor.

6 MR. BRAZILL: Are you sure which way you
7 answered that last question?

8 THE WITNESS: Yes.

9 JUDGE CAILLE: All right, then no questions?
10 Thank you, Mr. West, you're excused.

11 Ms. McNeill.

12 MS. MCNEILL: I would like to call Dan
13 Bridges.

14 JUDGE CAILLE: Mr. Bridges, before you sit,
15 let me swear you in.

16

17 Whereupon,

18 DAN BRIDGES,
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21

22 D I R E C T E X A M I N A T I O N

23 BY MS. MCNEILL

24 Q. Could you state your name and business
25 address for the record, please, Dan.

0081

1 A. Dan Bridges, 8111 First Avenue South,
2 Seattle, Washington.

3 Q. And what's your position or who do you work
4 for?

5 A. I work for Waste Management.

6 Q. And what's your position there?

7 A. I'm the District Manager for Seattle and for
8 the South King County hauling operations.

9 Q. How long have you been employed by Waste
10 Management?

11 A. I have been employed with Waste Management
12 since 1987, and I was with the previous companies that
13 they acquired since 1980.

14 Q. And how long have you been in the solid waste
15 business?

16 A. 25 years.

17 Q. Can you give us a brief description of the
18 scope of your responsibilities in your current position?

19 A. Yes, I manage the daily operations of the
20 Seattle hauling facility, and I represent the Auburn
21 hauling facility. I also manage the Eastmont transfer
22 station, which is a CDL recycling facility and solid
23 waste transfer station.

24 Q. You mentioned three different locations;
25 could you tell us a little bit about each of them

0082

1 specifically?

2 A. Yes, the RST, I'm representing that firm,
3 that company today. That company is located in Auburn,
4 Washington. It services City of Federal Way, City of
5 Auburn, City of Kent, and the UTC certificated area
6 surrounding the City of Auburn.

7 Q. Okay.

8 A. And the Seattle operations.

9 Q. Sure.

10 A. Which service the City of Seattle, the doing
11 business as under the G-237 certificate of Nick Raffo
12 Disposal and Rainier Disposal.

13 Q. Okay. Can you tell us how many employees you
14 have, drivers and what kind of staff that is relevant to
15 providing CDL service?

16 A. At the Seattle facility we have approximately
17 200 employees there. We have 145 drivers, 25 mechanics,
18 7 supervisors, and the rest are administrative people.

19 Q. And that's in Seattle, does the Seattle
20 office serve King County --

21 A. Yes, it does.

22 Q. -- unincorporated areas?

23 A. Yes, it does under Waste Management, Rainier,
24 and Nick Raffo.

25 Q. And RST, is that what --

0083

1 A. RST is an Auburn facility. We employ about
2 75 employees there, approximately 60 drivers, 6 or 7
3 mechanics, 4 operational supervisors there.

4 Q. Does the Auburn facility for RST, is that
5 what services your Pierce County operations?

6 A. Yes, it does.

7 Q. Okay. Can you describe for us generally, and
8 if there's any difference between those two offices
9 could you point that out, but can you describe how you
10 handle CDL operations, customer calls in, regular --

11 A. Yeah, customer calls in basically to our
12 customer service center or is solicited by our sales
13 force. They place a container order or a service order
14 of some sort, and we deliver the equipment and service
15 the equipment as needed.

16 MS. MCNEILL: Okay, I'm going to hand you an
17 exhibit that is marked as I believe Number 15.

18 JUDGE CAILLE: Exhibit Number 15 for
19 identification is Certificate Number G-00237 for Waste
20 Management, et al.

21 MS. MCNEILL: All those d/b/a's.

22 JUDGE CAILLE: Yes.

23 BY MS. MCNEILL:

24 Q. Mr. Bridges, could you please take a look at
25 what's been marked Exhibit Number 15 and tell us what

0084

1 that is?

2 A. Yeah, this is our G-237 permit that has been
3 issued us by the Washington Utilities and Transportation
4 Commission. It's issued to our parent company, Waste
5 Management of Washington, Inc., and it lists the
6 description of service territory for all of our d/b/a's
7 that are in this permit.

8 Q. And what kind of authority is contained in
9 G-237 for King County?

10 A. We have residential and commercial wet
11 garbage services and dry rubbish services.

12 Q. And for Pierce County?

13 A. We have dry rubbish services only.

14 Q. And what is rubbish?

15 A. Basically dry -- that's an old term,
16 basically a dry type garbage or CDL construction type
17 items. Anything outside of basically restaurants that
18 produce some sort of wet type material.

19 Q. So CDL is a kind of rubbish?

20 A. CDL is considered rubbish, yes.

21 Q. Okay, thanks. Let's see, Mr. Bridges, can
22 you explain or describe for us what kind of equipment
23 you have to provide CDL services. Let's talk about your
24 rolling stock first.

25 A. At our Seattle operation we have about 25

0085

1 roll-off trucks, and we have a fleet of about 15 front
2 load services which we use about two of our front load
3 services for CDL. In our Auburn location, we have
4 another 25 roll-off trucks and a fleet of front loaders
5 as well.

6 Q. Okay. And are those equipment identified in
7 the annual report that's on file with the WUTC?

8 A. Yes, they are.

9 Q. How about containers?

10 A. Containers, we have three container yards,
11 one in Auburn, Washington, one in Tukwila, Washington,
12 and one in Seattle, Washington.

13 MS. MCNEILL: Presenting another exhibit for
14 identification. Actually, these are -- we could do
15 these as three separate exhibits or one together at your
16 preference.

17 JUDGE CAILLE: Let's do it as one.

18 MS. MCNEILL: Yeah, that's what I was
19 thinking.

20 JUDGE CAILLE: This is an equipment list and
21 a picture of the container yard, and it's, let's see, is
22 this for King County only or --

23 MS. MCNEILL: Well, there are two of them.

24 JUDGE CAILLE: Why don't you identify them.

25 MS. MCNEILL: Okay, why don't I have

0086

1 Mr. Bridges identify it. That would be even better.

2 BY MS. MCNEILL:

3 Q. Mr. Bridges, handing you what has been marked
4 as Exhibit 16 for identification, can you tell us what
5 is comprised in that exhibit?

6 A. Yes, I have two inventory sheets here. One
7 is listed container inventory in King County RST, which
8 is our Auburn facility. And this lists the containers
9 that we have available for will call type services or
10 for new set-ins. This container inventory lists
11 everything from one yard, well, actually 64 gallon carts
12 to 40 yard roll-off containers.

13 Q. Okay. And what's the last one?

14 A. And then the second one is the Waste
15 Management of Seattle daily inventory sheet, which has a
16 list of our containers that are in our Seattle facility
17 and the Tukwila yard as well.

18 Q. Okay. And then the third page?

19 A. Well, actually, I don't have that in front of
20 me.

21 Q. I'm sorry.

22 A. But that picture, that is a picture of our
23 Seattle container yard for our roll-off containers only,
24 which is in particular CDL. Way too many sitting in
25 that yard.

0087

1 Q. Okay. So in a general fashion then, do you
2 have sufficient equipment to provide CDL services when
3 you're called to provide them?

4 A. Yes.

5 Q. If you were called by a new service customer,
6 would you be able to respond to that need?

7 A. Yes.

8 Q. Okay. Can you tell us a little bit about
9 what your maintenance programs are for your trucks and
10 equipment?

11 A. Basically our equipment, our trucks are
12 serviced every 100 hours.

13 Q. Okay.

14 A. And there's PM's every 200 hours. There's
15 another level of preventative maintenance that's done.

16 Q. And, of course, we can see what good looking
17 containers you have.

18 You mentioned your driver employees at the
19 two locations. Do the two locations have the same
20 training and safety operations with regard to drivers?

21 A. Yes, we do.

22 Q. And can you describe that briefly?

23 A. Yeah. Basically after we have hired a
24 qualified employee, we have 16 hours orientation time
25 and then a minimum of 120 hours worth of training to the

0088

1 particular piece of equipment that they're assigned to.

2 Q. Are you familiar with the WUTC's rules?

3 A. Yes.

4 Q. And are you familiar with the Washington
5 State Department of Transportation rules?

6 A. Yes, I have to live by those every day.

7 Q. Well, I guess that answers my question. Does
8 your company take efforts to ensure that those rules are
9 complied with?

10 A. Yes.

11 Q. Let's see, does your company take efforts to
12 solicit new business?

13 A. Yes, we do.

14 Q. Okay. And what kind of efforts are entailed?

15 A. Well, we obviously run a ad in the Yellow
16 Pages, but we also employ a sales force that does direct
17 marketing. We have some pamphlets and other items that
18 we use to solicit.

19 Q. Tell us about your sales force and what kind
20 of efforts they make to do solicitation?

21 A. Well, we have a sales force of approximately
22 five people. They spend probably 85% of their time
23 working on CDL type marketing, which is a will call, and
24 a lot of it's temporary type work, so they spend a
25 substantial amount of their time.

0089

1 Q. How does Waste Management as a company
2 prioritize CDL in today's current market?

3 A. Right now CDL is a very, very high priority,
4 mostly because there's not as much out there to get
5 right now, so we're putting a big effort in CDL.

6 Q. Does the company have specific programs and
7 efforts directed at soliciting CDL service?

8 A. Yes, we do.

9 Q. Handing you what's been marked as Exhibit 17,
10 could you tell us what each of these pages is?

11 A. The first page is just our Yellow Page ad in
12 the Qwestdex, which lists the Seattle operation, Nick
13 Raffo, and the RST companies.

14 MS. MCNEILL: Excuse me, would you like these
15 marked separately, or again would you like it as one
16 packet?

17 JUDGE CAILLE: I think we could do one
18 packet.

19 MS. MCNEILL: Okay.

20 (Exhibit 17 marked for identification.)

21 BY MS. MCNEILL:

22 Q. Go ahead then, the next one?

23 A. The next one is just a handout that we use in
24 our marketing efforts, just lists the type of systems
25 that we have and some phone numbers and how to contact

0090

1 us directly.

2 Q. So this is something that your customers or
3 that your customer service people or your sales people
4 would give to a prospective customer?

5 A. Yeah, sales people or -- I mean customer
6 service would provide on request, and our sales people
7 use it in direct marketing.

8 Q. Is this particularly tailored for the
9 construction industry?

10 A. Yes.

11 Q. And what is the last document then?

12 A. The last one is an article that we published
13 in the Northwest Construction, just alludes a little bit
14 about what we're doing in the CDL recycling under the
15 business, and we publish articles in there every so
16 often.

17 Q. Okay. You didn't bring everything I know
18 with you that you have in terms of written materials.
19 Could you briefly describe what other kind of written
20 materials the company has?

21 A. Oh, we have other pamphlets that show sizes
22 and dimensions of containers, different colors that we
23 have, and other type of services that we provide.

24 Q. Okay. Let's see, are you familiar with the
25 authority that the applicant is seeking here today?

0091

1 A. Yes.

2 Q. Are you familiar with the applicant?

3 A. Yes.

4 Q. Does Waste Management subcontract with the
5 applicant for recycling services?

6 A. Yes, we do.

7 Q. And where is that?

8 A. That's in the City of Seattle.

9 Q. And is that only in the City of Seattle?

10 A. Yes.

11 Q. Does Waste Management subcontract with the
12 applicant any services in its WUTC territory?

13 A. No, we do not.

14 Q. In your relationship with the applicant,
15 Mr. Brazill mentioned a maintenance agreement; can you
16 tell me about that?

17 A. I can tell you what I know. I have actually
18 just become manager of that facility. That maintenance
19 agreement is under the contract that we have that
20 subcontracts them to the City of Seattle residential
21 contract.

22 Q. So you actually do the maintenance of the
23 equipment that Mr. Brazill's company operates?

24 A. Yes, the ones that he owns and leases as
25 well.

0092

1 Q. Okay. With regard to the market for CDL
2 collection in the King and Pierce County areas, is your
3 company interested in expanding its services?

4 A. Yes, absolutely.

5 Q. Are you aware of any complaints that you have
6 had from customers with regard to CDL services?

7 A. No, I am not.

8 Q. If you were to receive a request today, would
9 the company be able to respond to it?

10 A. Yes, we would.

11 Q. Are you here in opposition to this
12 application?

13 A. Yes.

14 Q. And can you briefly explain what damage it
15 would do to your company were this application to be
16 granted?

17 A. Well, we have made a huge investment into the
18 infrastructure with the guidelines to this permit, and
19 as most people know, a rate that is rendered by the UTC
20 is rendered by a collective customer base, and any
21 erosion of that customer base would cause the rates to
22 go up.

23 MS. MCNEILL: Okay, I have no further
24 questions.

25 JUDGE CAILLE: Is there any cross-examination

0093

1 for Mr. Bridges?

2 MR. BRAZILL: No.

3 JUDGE CAILLE: Then you're excused, thank
4 you.

5 THE WITNESS: Thank you.

6 MR. WILEY: Your Honor, before the record is
7 closed, I have one more page to Exhibit 6. I can put
8 the witness on or just with stipulation.

9 JUDGE CAILLE: Perhaps we could just
10 stipulate that.

11 MR. WILEY: Thank you. So this is the fourth
12 page of Exhibit 6 that wasn't provided when
13 Mr. Westmoreland was on the stand. Actually, that would
14 be the fifth page. There's a cover page.

15 JUDGE CAILLE: That is page 471 of the Yellow
16 Pages added to Exhibit 6.

17 All right, Commission Staff, do you have
18 anything?

19 MS. WATSON: No.

20 JUDGE CAILLE: Mr. Brazill, do you want to
21 state anything in rebuttal to any of the information
22 that has been presented by the protestants?

23 MR. BRAZILL: No. I just have a copy of my
24 statement for you, that's all, if you want it.

25 JUDGE CAILLE: Would you like to mark that as

0094

1 an exhibit?

2 MR. BRAZILL: Not necessarily, I just want to
3 make sure that the Court had it.

4 JUDGE CAILLE: Is that what you read earlier?

5 MR. BRAZILL: Yes, right.

6 JUDGE CAILLE: Then it will be in the record.

7 MR. BRAZILL: Okay.

8 JUDGE CAILLE: But, you know what, why don't
9 you just -- if you have an extra, I will just take it
10 for my own.

11 MR. BRAZILL: Yes.

12 JUDGE CAILLE: All right, at this point I've
13 got all the record that I need, I believe, and I'm not
14 sure, were the parties going to brief the issue of
15 dismissal? Or I probably have enough information.

16 MS. MCNEILL: If you want us to, we would be
17 happy to.

18 JUDGE CAILLE: I'm trying to save your
19 clients some money. I think we can avoid that.

20 MR. WILEY: Yeah, we like that.

21 MR. SELLS: It takes me hours.

22 JUDGE CAILLE: Thank you.

23 And, Mr. Brazill, would you like to submit
24 anything in a written form other than your statement?

25 MR. BRAZILL: No, I have no additional

0095

1 information to bring before the hearing.

2 JUDGE CAILLE: All right. Well, then the
3 matter will be taken under advisement, and I thank
4 everyone for participating today, and have a nice
5 afternoon.

6 (Hearing adjourned at 11:35 a.m.)

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