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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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In re Application No. 079178 of) Docket TG-030831

) Volume I

4

BLAINE-BAY REFUSE, INC.) Pages 1-42

)

5

For Extension of Authority Under)

Certificate No. G-145, for a)

6

Certificate of Public Convenience)

and Necessity to Operate Motor)

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Vehicles in Furnishing Solid)

Waste Collection Service.)

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A prehearing conference in the

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above-entitled matter was held at 1:33 p.m. on

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Monday, October 6, 2003, at 1300 South Evergreen Park

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Drive, Southwest, Olympia, Washington, before

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Administrative Law Judge KAREN CAILLE.

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The parties present were as follows:

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BLAINE BAY REFUSE, INC., by Phillip Serka, Attorney at Law, 400 N. Commercial Street, Bellingham, Washington 98225 (Appearing via teleconference bridge.)

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COMMISSION STAFF, by Donald T. Trotter, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

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SANITARY SERVICE COMPANY, INC., by Polly McNeill, Attorney at Law, 300 Fifth Avenue South, Suite 1000, Seattle, Washington 98104.

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Barbara L. Nelson, CCR

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Court Reporter

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1 JUDGE CAILLE: Then we are on the record.
2 We are here today for a prehearing conference in
3 Docket Number TG-030831, which concerns an
4 application by Blaine Bay Refuse, Incorporated, for
5 extension of authority under Certificate Number
6 G-145, for a certificate of public convenience and
7 necessity to operate motor vehicles in furnishing
8 solid waste collection service.

9 My name is Karen Caille, and we are -- I'm
10 the Administrative Law Judge that's been assigned to
11 this proceeding. We are convened in a hearing room
12 in Olympia, Washington, and today is October the 6th,
13 2003.

14 The purpose of our conference today will be
15 to discuss any preliminary matters, the hearing
16 process, scheduling, and any discussion about --
17 preliminary discussion about issues. Let's begin
18 with taking appearances, and I will ask you to please
19 state your name, spelling your last name for the
20 court reporter, whom you represent, your street
21 address, your mailing address, your telephone number,
22 fax number, and e-mail address. And let's begin with
23 you, Mr. Serka.

24 MR. SERKA: Okay. My name's Phillip Serka
25 and I'm with Jim Sands. It's S-e-r-k-a, and we

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1 represent Blaine Bay, the Applicant. My address is
2 400 North Commercial Street, that's Bellingham,
3 Washington, 98225. And our fax is 360-647-8148. Our
4 e-mail address pserka@adelstein.com.

5 JUDGE CAILLE: Mr. Serka, could you please
6 repeat your fax number for me?

7 MR. SERKA: 360-647-8148.

8 JUDGE CAILLE: Thank you. And your zip is
9 98225?

10 MR. SERKA: Correct.

11 JUDGE CAILLE: Okay. Thank you. Ms.
12 McNeill.

13 MS. McNEILL: Thank you, Ms. Examiner. My
14 name is Polly McNeill, P-o-l-l-y M-c-N-e-i-l-l, with
15 Summit Law Group. My address is 300 Fifth Avenue
16 South, Suite 1000, Seattle, Washington, 98104. My
17 phone number is 206-676-7040. My fax number is
18 360-676-7041, and my e-mail address is
19 pollym@summitlaw.com.

20 JUDGE CAILLE: I seem to be --

21 MS. McNEILL: And I represent the
22 Protestant, Sanitary Service Company, Incorporated.

23 JUDGE CAILLE: Thank you. Did you say --
24 let's see. The phone number is area code 206 and the
25 fax number is 360, or is that --

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1 MS. McNEILL: No, it should be 206. I may
2 have misspoken.

3 JUDGE CAILLE: Okay. No, I probably heard
4 it wrong.

5 MS. McNEILL: It's interesting. I will note
6 for the record, the prefix 676 is actually both a
7 Seattle and a Bellingham prefix, oddly enough, so you
8 do need the area code or you'll get the wrong city.

9 JUDGE CAILLE: Okay. Mr. Trotter.

10 MR. TROTTER: For the Commission, my name is
11 Donald T. Trotter, Assistant Attorney General. My
12 address is 1400 South Evergreen Park Drive, S.W.,
13 P.O. Box 40128, Olympia, Washington, 98504-0128. My
14 phone number is 360-664-1189; fax is 360-586-5522;
15 and e-mail is dtrotter@wutc.wa.gov.

16 JUDGE CAILLE: Thank you. Let the record
17 reflect there are no other appearances. And there
18 appear to be no intervenors, as well. Are there any
19 preliminary or dispositive motions that we need to
20 deal with this afternoon?

21 MR. SERKA: Blaine Bay has no motions.

22 JUDGE CAILLE: All right. I do have a
23 question about the application. As I was reading
24 through it, are you asking for a temporary
25 certificate, as well as the permanent certificate?

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1 MR. SERKA: The temporary has been issued.

2 JUDGE CAILLE: Oh, a temporary has been
3 issued, okay.

4 MR. TROTTER: Your Honor, I might make a
5 brief preliminary statement of issues.

6 JUDGE CAILLE: That would be great.

7 MR. TROTTER: Okay. And I'm sure both
8 counsel will jump in at the end to point out anything
9 I have -- any oversights that I may make, but it's my
10 understanding that this application arose because the
11 language in Blaine Bay Refuse Company's certificate
12 was arguably, at least, more limited than the service
13 they were actually offering for solid waste
14 collection and disposal services. And there's an
15 issue as to what was granted this company or its
16 predecessor companies many, many years ago, and the
17 circumstances surrounding that docket.

18 The company was taking the position that
19 they were correctly operating under their authority
20 and, in order to tee up this issue, they agreed to
21 file an extension application to get this issue
22 before the Commission. They also applied for
23 temporary authority, which was granted, the temporary
24 being what they were doing already, and sort of as --
25 I think one could look at that as a way of

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1 maintaining the status quo until this issue is
2 resolved.

3 So that is why this application is here.

4 It's my understanding that both counsel have been
5 provided a copy of the pertinent application files,
6 transcripts and so on from prior hearings, relevant
7 hearings. If not, they're all -- all the documents
8 -- it's my belief all the documents are public
9 records and they can be provided if they haven't
10 already.

11 So that's the posture of this case and one of
12 the reasons why Staff is participating in it. One
13 offer I was going to make in this connection was to
14 present testimony of either one or two Staff
15 witnesses to describe the posture of the case, how it
16 got here and the nature of the controversy and how
17 Staff would interpret the permit and identifying some
18 of the key documents from the prior application file
19 and so on and so forth.

20 We would propose to do that in written
21 question and answer form so that the parties could
22 get it in advance with appropriate exhibits, similar
23 to what we do in major utility cases, which Mr. Serka
24 may not be intimately familiar with, but it's simply
25 a written testimony so that the parties can see

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1 exactly what the testimony is in advance and can ask
2 questions about it, if necessary, in advance.

3 We would offer to do that and, if the
4 parties or the Commission find it acceptable, in
5 mid-November. It would be about a month we would be
6 prepared to file that. So I'll just throw those two
7 comments out. One, my understanding of the posture
8 of the case, and two, my offer of teeing up the issue
9 by providing that testimony.

10 MR. SERKA: Mr. Trotter, can I ask a
11 question?

12 JUDGE CAILLE: You should direct your
13 questions to me, Mr. Serka, and yes, you may ask a
14 question.

15 MR. SERKA: Okay. Thank you.

16 JUDGE CAILLE: This is Karen Caille, by the
17 way, in case you don't recognize my voice.

18 MR. SERKA: Okay. Thank you. Mr. Trotter,
19 what I was wondering, is the written testimony in
20 lieu of actual testimony?

21 MR. TROTTER: No, I believe if we had a
22 hearing, we would sponsor it as the direct testimony,
23 so it would just be entered as an exhibit.

24 MR. SERKA: Okay.

25 MR. TROTTER: As opposed to being read live.

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1 MR. SERKA: Okay.

2 JUDGE CAILLE: Well, since we're talking
3 about that part of it, shall we -- does anyone want
4 to comment about Staff's proposal to provide some
5 prefiled testimony that would describe -- it sounds
6 to me like it will have some historical background to
7 it and describe documents that are related to this
8 that would be helpful to the parties.

9 MR. SERKA: Ms. Caille?

10 JUDGE CAILLE: Yes.

11 MR. SERKA: Your Honor, what I was
12 wondering, I think that's -- that would be
13 acceptable, but we were also suggesting, actually,
14 that the record of the proceedings, the prior
15 proceedings, that they be -- that they be submitted
16 as part of this record.

17 JUDGE CAILLE: Are you making that motion
18 now or have you already done that?

19 MR. SERKA: I mean, we're talking about --
20 this is related to what counsel has brought up, and
21 he's asking -- he's suggesting that maybe they'll
22 have testimony that may involve the excerpts or
23 portions of the record, and I'm suggesting that,
24 rather than just have that, that perhaps the actual
25 record itself be, by stipulation, a part of this

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1 proceeding.

2 MR. TROTTER: This is Don Trotter. I was
3 anticipating putting in every scrap of paper that was
4 part of the record in that docket. Another way to do
5 this would be to simply, if counsel and the
6 Commission are agreeable, to identify the record in
7 that prior docket, have it marked as an exhibit or a
8 series of exhibits, and simply have written argument
9 over the implications of those documents.

10 MS. McNEILL: This is Polly McNeill.
11 Whether the historical documents and records are made
12 a part of this proceeding by virtue of a report along
13 the lines of what Mr. Trotter is suggesting or
14 whether they be made by motion of counsel, we have --
15 we certainly support incorporating those records into
16 this proceeding in whatever form or fashion is
17 needed.

18 Mr. Trotter's offer to provide a written
19 statement of the Staff's analysis and historical
20 recounting, and I don't mean to put words in your
21 mouth, but whatever that report looks like I think
22 would be very helpful for both of the parties to have
23 that. It is along the lines of one of the thoughts
24 that I had, which was to suggest that the Applicant
25 also prepare prefiled testimony.

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1 that maybe this could be done -- is this a proceeding
2 conducive to being done as a brief adjudicative
3 proceeding where we do it on a paper record?

4 MS. McNEILL: I think potentially -- I'm
5 sorry.

6 JUDGE CAILLE: I have not been -- I must say
7 that I have not been involved in -- every time I've
8 had one of those, they've settled, so I haven't been
9 involved in one that has actually, you know, gone
10 through the entire process. I'm going to -- I'm
11 going to -- I see Mr. Trotter looking at the rules or
12 the statute, and I'm going to sort of wait for him to
13 pipe in.

14 MR. SERKA: Your Honor.

15 JUDGE CAILLE: Yes, Mr. Serka.

16 MR. SERKA: Well, we're just dealing with
17 one issue. I guess I see more issues here than Mr.
18 Trotter, so I don't want to limit -- I'm not thinking
19 we're limiting to the historical record. I mean, I
20 haven't had an opportunity -- if you want me to go
21 through the issues, I'm just dealing with what Mr.
22 Trotter's indicating. I assume I'm going to get an
23 opportunity to address what I think the issues are?

24 JUDGE CAILLE: Yes, as soon as we -- well,
25 maybe we should go on to you, Mr. Serka, and see what

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1 else -- what other issues are involved, and we can
2 get a better idea of how to handle them all.

3 MR. SERKA: Well, just first, in reference,
4 just to finish with Mr. Trotter, Your Honor, what he
5 suggested, from the State's stand -- I don't have an
6 objection if the state witnesses want to -- we have
7 to submit written prefiled testimony. All I was
8 suggesting, in lieu of excerpts, that we submit the
9 entire record, and I appreciate that Ms. McNeill
10 agrees that we can stipulate to that.

11 Be that as it may, I think the issues do
12 require testimony, and that's what we're intending on
13 providing at the hearing. And in regards to what we
14 think the issues are, the issues, as we see them, one
15 is there are historical issues, and that is whether
16 or not the order that was entered that extended the
17 boundaries of the service area for Birch Bay --
18 Blaine Bay did include on both sides of the road to
19 the water where the road was abutting the water body.

20 We also think -- the other issue we see,
21 this, again, is a historical issue that we would
22 discuss, whether that order intended to include, as
23 part of the service area, Birch Bay Village, Birch
24 Bay State Park and Drayton Harbor.

25 Those are historical issues, but there are

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1 others, as well, that we think should probably be
2 addressed, and that is whether the Birch Bay
3 applications to extend services to those areas
4 conforms to the criteria set forth in RCW 81.77.

5 And the other issue we see is that -- and
6 this is a mapping. I'll have to give you a little
7 bit of a brief introductory part on this. The order
8 itself forth sets, in a part of that order we think
9 has been interpreted or mapped incorrectly by the
10 Staff, and this is the issue, whether Order Number
11 646, which states, in part, that the boundaries
12 include thence west on the Grandview Road extended to
13 Point Whitehorn means that the boundary should have
14 been extended from Grandview Road directly to Point
15 Whitehorn to the water body, and the Staff is taking
16 a position that that language does not mean that, and
17 so we think they've advised it's the appropriate
18 place to also hear that issue.

19 And lastly, the last issue we think is
20 whether or not Blaine Bay Refuse's 29 years of
21 operating in the area accrues a right for Blaine Bay
22 Refuse to continue servicing this area.

23 So there are five issues, and I think two of
24 them are historical. One's a reference to the order
25 as it was entered, and of course one of the issues

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1 deals with the criteria in 81.77. We're prepared to
2 provide testimony in all of these various issues.

3 JUDGE CAILLE: Thank you, Mr. Serka. It
4 sounds to me like maybe it would be helpful to have
5 both Staff and the Applicant file testimony, prefile
6 testimony. It would seem to me that it would then
7 define the issues and hopefully either speed up the
8 cross-examination for the hearing or maybe result in
9 an ability for the parties to come to some sort of
10 resolution or maybe some partial resolution.

11 As far as -- I have one question, Mr. Serka,
12 about your list of issues. You listed the first two
13 historical issues, and then the issue after that, you
14 mentioned the -- did you mention a Birch Bay
15 application? Is that the original application?

16 MR. SERKA: Sorry. I meant Blaine Bay.

17 JUDGE CAILLE: Blaine Bay, okay.

18 MR. SERKA: These issues, I could submit
19 these to you in writing, as well, if you'd like, Your
20 Honor.

21 JUDGE CAILLE: That might be helpful,
22 because I'd like to include those in the prehearing
23 conference order, and I'd like to do that more
24 quickly than the two weeks it's going to take for me
25 to get the transcript. So if you would do that and

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1 copy --

2 MR. SERKA: I will copy everyone.

3 JUDGE CAILLE: -- everyone, that will be
4 great. Now, go ahead, Ms. McNeill.

5 MS. McNEILL: Ms. Caille, if you don't mind,
6 I think that's a great idea. Could you just run
7 through them real quickly again, though, Mr. Serka?
8 You mentioned five, and I only caught four of them.

9 MR. SERKA: Okay. Well, the first two were
10 the historical ones, dealing with the intent of the
11 Order 646, whether or not the intent of the
12 boundaries of the extended service area to be on both
13 sides to the road where the road was abutting a water
14 body.

15 Number two, whether or not Order 646 showed
16 -- was intended to include the areas of service from
17 those who testified in support, which included Birch
18 Bay Village, Birch Bay State Park, and Drayton Harbor
19 residents testified in need of service.

20 The third one was whether Blaine Bay
21 applications extend refuse collection service to the
22 area identified in conformance with the criteria set
23 forth in RCW 81.77.

24 And then the fourth one was one that dealt
25 with the nature of the language of the order itself,

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1 and that's Order 646, states in part, quote, Thence
2 west on the Grandview Road extended to Point
3 Whitehorn. Does that mean that the boundary should
4 have been extended taking Grandview Road to Point
5 Whitehorn, the water body.

6 Number five, whether or not Blaine Bay
7 Refuse 29 years of operating in these areas accrued a
8 right for Blaine Bay Refuse to continue to service
9 these areas.

10 MS. McNEILL: Thank you. I guess I still
11 wouldn't mind asking a question, if you don't mind --

12 JUDGE CAILLE: Go right ahead.

13 MS. McNEILL: -- Ms. Caille, about the
14 criteria number three. And by that, I assume you're
15 then moving to present tense, and the issue is
16 whether the application meets the standards that are
17 set forth in 81.77.040 for an extension of authority?
18 Is that what you mean by --

19 MR. SERKA: That's right. That's the
20 alternative argument. That's correct, Ms. McNeill.
21 We're saying that we've already been given this
22 authority, operating under it for 29 years, but in
23 the alternative, that would be the other issue.

24 MS. McNEILL: Okay. Thank you.

25 JUDGE CAILLE: Ms. McNeill, would you be

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1 filing testimony, too, or --

2 MS. McNEILL: Well, thank you for asking,
3 Ms. Examiner. It seems to me that, as I said in my
4 introductory or previous statement, it seems to me
5 that four of these issues, at least, are questions of
6 law, that the testimony in the historical record,
7 Staff's recounting of historical actions, as well as
8 the Applicant's recounting of historical actions
9 would provide sufficient factual support for, and we
10 would probably -- you know, I can't foreclose the
11 opportunity of presenting testimony or evidence on
12 those issues, but I don't know that we would have
13 very much to add factually to those.

14 The third criterion, and the one that I just
15 asked Mr. Serka a little bit more about for the
16 standards in 81.77.040, I suspect that we would have
17 rebuttal testimony and evidence on the issues that
18 would be raised, but until we have seen the
19 Applicant's case, I couldn't really predict what
20 those facts and evidence might consist of. I do see
21 those as potentially being subject to prefiled
22 testimony in rebuttal, but -- but until I see it, I
23 couldn't really say for sure.

24 JUDGE CAILLE: Okay.

25 MR. TROTTER: Your Honor, could I make an

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1 observation at this point? It does seem to me that
2 the issue of whether this application should be
3 granted under 81.77.040, that's an issue that usually
4 is presented to you without prefiled testimony. You
5 bring in your support witnesses, the protestant
6 brings in its witnesses. If that's all this case
7 was, we wouldn't be talking about prefiled testimony,
8 I don't expect.

9 So if it will streamline matters, if the
10 company -- I have no problem if the company wants to
11 put in their evidence on that issue in written form.
12 That's fine. But if they don't, then maybe that
13 could just be handled in a hearing down the line.

14 It does seem to me that these -- the factual
15 record on the other issues shouldn't be subject to
16 debate. The transcript says what it says, the order
17 says what it says, the permit says what it says, and
18 legal consequences will flow from that.

19 With respect to this other issue, treating
20 this as just a heads up, straight up application for
21 new authority, that issue is different.

22 MR. SERKA: Your Honor.

23 JUDGE CAILLE: I'm sorry, what did you say,
24 Mr. Serka?

25 MR. SERKA: May I respond to that, Your

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1 Honor?

2 JUDGE CAILLE: Certainly.

3 MR. SERKA: I agree with Mr. Trotter. I
4 think Blaine Bay would provide written prefiled
5 testimony on the issue of historical issues and defer
6 on the other issue, for hearing purposes, live
7 testimony. And that's what we would prefer to do.

8 And on the prefiled testimony, we don't have
9 any objection to prefiled testimony on historical
10 issues so long as, you know, the entire record is in.
11 And I assume, because we all agree on that, that
12 that's not going to be an issue, it is part of the
13 record. And we would have some prefiled testimony on
14 some of participants who were involved in the initial
15 hearing, providing it from them.

16 JUDGE CAILLE: Excuse me. Are we speaking
17 in the present tense now or --

18 MR. TROTTER: I think he's speaking of
19 bringing in witnesses that testified 30 years ago and
20 having them testify now. Is that what you're saying?

21 JUDGE CAILLE: Thirty years ago?

22 MR. SERKA: Yeah.

23 MR. TROTTER: I'm not sure that that --
24 obviously, any of this testimony that's filed is
25 going to be subject to objection, and to the extent

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1 that witnesses that testified 30 years ago say
2 something in addition to what they said back then,
3 that could be a problem as regards to whether it's
4 objectionable or not. But at this point, the
5 testimony hasn't been presented, so there's nothing
6 to object to.

7 MR. SERKA: That's -- as I mentioned, that's
8 what we're planning on doing. We're not just going
9 to submit or just have the record, but we have the
10 actual Applicant and we have other people that
11 participated. Now, what happens out of that
12 testimony, if someone wants to make an objection, I
13 won't speculate right now on where that's going to
14 go, but that's what we would intend on doing.

15 MR. TROTTER: This is Don Trotter. I just
16 want the Applicant to be aware that we'll reserve any
17 objection to that, because allowing an Applicant to
18 make a case 30 years after it had an opportunity to
19 make a case is inherently problematic, but I guess
20 we'll cross that road when we come to it.

21 JUDGE CAILLE: All right. This is Karen
22 Caille again, and it sounds to me like what we need
23 to do is schedule a time for the filing of prefiled
24 testimony by Commission Staff and the Applicant
25 relating to the historical issues. And Mr. Trotter,

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1 you had mentioned sometime in early November.

2 MR. TROTTER: Yeah, we would commit to a
3 filing date on or before November -- Monday, November
4 17th.

5 JUDGE CAILLE: How does that work for you,
6 Mr. Serka?

7 MR. SERKA: Well, I'm just checking.
8 November 17th?

9 JUDGE CAILLE: That's correct.

10 MR. SERKA: I believe that would be fine.

11 JUDGE CAILLE: Okay. Then why don't we
12 schedule that for the prefiled testimony, and then do
13 we want to wait a period of time to -- do you want to
14 build in a period of time for the parties to talk
15 before filing any rebuttal? Well, actually, the
16 rebuttal is connected to the other issue. I'm sorry.

17 MR. TROTTER: Well, I think Ms. McNeill did
18 reserve the right to file answering testimony in this
19 phase, so some provisions should be made for that
20 prospect.

21 JUDGE CAILLE: Okay. Maybe after that.

22 MS. McNEILL: I did, and I would want to
23 reserve the opportunity to provide rebuttal testimony
24 on this, but I was just trying to think through here.
25 It seems to me that, if I understand correctly, Mr.

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1 Serka is suggesting that the Applicant has two --
2 what I believe are independent prongs or bases for
3 its pursuit of this application.

4 JUDGE CAILLE: I see.

5 MS. McNEILL: One is, for the most part, I
6 guess I could characterize it for shorthand reference
7 as largely being a matter of law. There will be some
8 facts and evidence as perhaps more than I would
9 expect, but nonetheless is, I think, the large part
10 once the facts and evidence are into the record, that
11 the consequences of those facts in evidence can be
12 argued by counsel as a matter of law.

13 JUDGE CAILLE: Okay.

14 MS. McNEILL: The other prong, however, the
15 application under 81.77.040 is really, I think,
16 independent of the others. So I don't know whether
17 there might be -- I mean, I don't know -- I guess I'm
18 -- this is a long way of getting around to my point,
19 which is that I don't know in terms of time lines
20 that they need to be connected to each other. It
21 seems to me if the Applicant believes that it has a
22 case of merit under 81.77.040, that can be pursued at
23 the same time that the issues of whether there's a
24 case of merit under the historical and the
25 interpretation of historical evidence is also being

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1 pursued.

2 MR. TROTTER: This is Don Trotter. I agree
3 with Ms. McNeill in concept. There's no reason why
4 the company can't come forward with its case under
5 81.77, independent of the schedule that we're talking
6 about here, as far as I can tell.

7 JUDGE CAILLE: Mr. Serka, do you have
8 anything to -- do you want to comment on that?

9 MR. SERKA: Well, in terms of the November
10 17th, what I was preparing to do was just file the
11 prefiled written testimony in regard to the
12 historical issues. In regard to all the issues, I
13 assume we would be dealing with getting some hearing
14 dates to address all the issues.

15 JUDGE CAILLE: All right. So in other
16 words, we could do cross-examination of any witnesses
17 that you have on the historical piece of it, as well
18 as the application under 81.77.040, under RCW
19 81.77.040. Is that what everyone's thinking? I just
20 want to make sure I'm following.

21 MR. TROTTER: This is Don Trotter. That's
22 what I'm thinking.

23 MS. McNEILL: Polly McNeill. Again, you
24 know, I guess it strikes me that maybe what might
25 work here would be to have the prefiled testimony

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1 from the Applicant and the Staff on the historical
2 issue followed by a live hearing in which there can
3 be cross-examination of those potential witnesses, as
4 well as direct and cross-examination of witnesses
5 that have to do with the 81.77.040. So those two
6 prongs might be able to be consolidated.

7 JUDGE CAILLE: Okay. That's what I was --

8 MS. McNEILL: I mean, I'm kind of, you know,
9 just trying to think out loud here on this, because
10 I've never -- I don't think any of us have had a case
11 like this before, so --

12 MR. TROTTER: Well, this is Don Trotter. I
13 think having one set of hearing days is a good idea,
14 because chances are the hearings would be in
15 Bellingham, and that's out of town for many of us,
16 and we might as well try to do it in one trip, if
17 that's possible, subject to the convenience of the
18 witnesses.

19 MR. SERKA: Your Honor.

20 JUDGE CAILLE: Yes.

21 MR. SERKA: As far as -- I understand
22 basically that we'll be dealing -- we'll file the
23 testimony on the prefiled testimony on the
24 historical. I would suspect that we're going to have
25 a hearing date, and I have a potential forum for that

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1 here in Bellingham, and that hearing will be on
2 either both issues or one issue. Whether or not one
3 is disposed after by motion or -- we'll figure that
4 out, but potentially it could be on both issues.

5 JUDGE CAILLE: All right. Then, since we're
6 talking scheduling, why don't we go off the record
7 and look at the calendar for possible dates. I'm
8 going to probably need to get several dates so that I
9 can coordinate with your -- the potential forum you
10 mentioned, Mr. Serka. So let's go off the record.

11 (Discussion off the record.)

12 JUDGE CAILLE: Let's go back on the record.
13 We've had an off-record discussion concerning matters
14 leading up to the prehearing -- or leading up to the
15 hearing, and Staff has offered to file the official
16 file -- or actually, excuse me, let me back up.
17 Staff has offered to circulate the official file from
18 -- can someone help me with the old docket number?

19 MR. TROTTER: Just a moment.

20 JUDGE CAILLE: Okay.

21 MR. TROTTER: It was Hearing Number GA-405,
22 and that was also the application number.

23 JUDGE CAILLE: So the hearing number and the
24 application number were the same. So Mr. Trotter
25 will circulate those documents to the parties by

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1 October the 13th, and then any -- Mr. Serka will get
2 back to -- how are we going to handle that part of
3 it?

4 MR. SERKA: Response by October --

5 JUDGE CAILLE: Yeah, are you going to
6 respond back to Mr. Trotter, or do we need something
7 more formal?

8 MS. McNEILL: How about e-mail?

9 JUDGE CAILLE: That would be great. So can
10 you e-mail Mr. Trotter and all of us --

11 MR. SERKA: Yeah.

12 JUDGE CAILLE: -- on October 17th with the
13 results of your review?

14 MR. SERKA: Yes.

15 JUDGE CAILLE: Then prefiled testimony by
16 Commission Staff and the Applicant on the historical
17 portion of the docket will be filed on November the
18 17th. And I suppose I need to build in some time for
19 you, Ms. McNeill, to respond, to answer that if you
20 wish.

21 MS. McNEILL: And then we have motions when?

22 JUDGE CAILLE: Then motions on the
23 historical issues were going to be December 10th.

24 MR. TROTTER: Now, your Honor, you need not
25 just the filing time, but also a time for response to

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1 the motion.

2 JUDGE CAILLE: To the motions.

3 MR. TROTTER: If any.

4 JUDGE CAILLE: Yes. Okay.

5 MS. McNEILL: I guess what I would suggest
6 is that I think that the likelihood that we will have
7 rebuttal testimony on what we're calling the
8 historical case is fairly attenuated. It is more
9 likely that we'll have a legal position to make on
10 it. And I guess I would suggest that we go forward
11 with the schedule as we have outlined it with the
12 caveat that if I find my prediction is utterly
13 inaccurate, then I suppose I could make a motion to
14 continue, although I would be loath to do that, so --

15 JUDGE CAILLE: But as Mr. Trotter has
16 pointed out, I left out a time for response to
17 motions. Do parties believe that they could respond
18 to motions prior to the holidays? That's -- December
19 10th is the date for filing motions, and then two
20 weeks is December 24th. Maybe -- is it possible to
21 back it up some or shall we jump over to January?

22 MR. SERKA: Well, I don't know about --
23 that's a very busy time of the year. You're giving
24 the other parties I guess 23 days to file a motion,
25 to prepare a motion, to file it, and so we're going

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1 to need, you know, a similar time to respond.

2 MR. TROTTER: Well, I assume, Mr. Serka,
3 this is Don Trotter, that you're a possible moving
4 party, as well, but I don't have any problem. It
5 does appear that we should move the response time
6 over to sometime in January.

7 MR. SERKA: Well, it seems to me, with the
8 holidays and giving a somewhat similar time to
9 respond.

10 JUDGE CAILLE: All right. So sometime --
11 are we thinking sometime the first full week of
12 January?

13 MR. SERKA: Yes.

14 JUDGE CAILLE: Sometime the week of the 6th,
15 or the 5th. So how about the 8th?

16 MR. TROTTER: That's fine, Your Honor.

17 MR. SERKA: That would be fine, Your Honor.

18 JUDGE CAILLE: And meanwhile, I will -- I
19 will memorialize all this in a prehearing conference
20 order once we get it set here.

21 MR. TROTTER: Do you want to go off the
22 record now and discuss the hearing dates?

23 JUDGE CAILLE: Yes, let's go off the record.

24 (Discussion off the record.)

25 JUDGE CAILLE: Then let's go back on the

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1 record. We've had further discussion about
2 scheduling off record, and before I continue that, I
3 just want to explain, because I don't recall whether
4 this was on the record, that we are proceeding sort
5 of on two tracks here, but they are proceeding along
6 the same track. There's a historical part of this
7 that is being attended to at the outset, and then
8 we're sort of, depending on what happens, weaving
9 that into the ultimate hearing or the hearing that
10 would be on the application, the extension -- for the
11 extension of authority.

12 So to just reiterate, the Staff will
13 circulate the documents from the previous record
14 concerning this, which is docket -- or Hearing Number
15 and Application Number GA-407. Mr. Serka will review
16 the documents in that docket and e-mail the results
17 of his review to the parties by October 17th.
18 Prefiled testimony of Staff and the Applicant on the
19 historical portion of this case will be due on
20 November the 17th, motions on the historical portion
21 of the case will be due December 10th, and response
22 to motions January 8th, 2004, both of these close of
23 business.

24 I would ask the parties to please, if you
25 have access to electronic mail, to please use that in

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1 getting your motions and answers to one another.
2 This does not substitute for filing, our filing
3 rules, though. It's pretty much a courtesy.

4 Then we are scheduling -- we will schedule
5 two full days of hearing, preferably February 18th
6 and 19th, and that will be held in Bellingham. And
7 Mr. Serka, you are going to take the initial steps
8 for arranging that, and you will contact my support
9 staff to verify whether that has occurred.

10 Now, in connection with the hearing, I would
11 sort of like to hear from the parties about how many
12 witnesses they anticipate they will be bringing. So
13 Mr. Serka, can I begin with you? And why don't you
14 divide it up into historical and current.

15 MR. SERKA: This is still a little -- this
16 is tentative, Your Honor.

17 JUDGE CAILLE: Yes.

18 MR. SERKA: I'm thinking maybe four
19 witnesses historical and four to five witnesses on
20 the application.

21 JUDGE CAILLE: Okay. Staff.

22 MR. TROTTER: One or two witnesses on
23 historical, none on the application --

24 JUDGE CAILLE: Thank you.

25 MR. TROTTER: -- issues.

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1 JUDGE CAILLE: And Ms. McNeill.

2 MS. McNEILL: None on the historical, and
3 four to five on the application.

4 JUDGE CAILLE: So we have a potential of 16
5 witnesses. Could we do that in two days, with
6 cross-examination? You know what we've done in the
7 past when we've run over, where I have been on
8 location for a hearing, is to take the local
9 witnesses and then we can finish up in Olympia if we
10 run over. Or do you think that we should schedule
11 three days?

12 MR. TROTTER: Well, Your Honor, the
13 historical witnesses -- the witnesses on historical
14 issues will have predistributed the direct testimony,
15 so there is that.

16 JUDGE CAILLE: So just cross.

17 MR. TROTTER: I think it may be more to ask
18 the parties to -- at least the Applicant and the
19 Protestant the time for their direct case on the
20 application, how long they think their presentation
21 will take just in their direct case. That might help
22 us out, if you're so inclined to ask.

23 JUDGE CAILLE: Okay. Thank you. Mr. Serka,
24 how long do you think the presentation of your case
25 for the application will need? I'm talking hours.

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1 MR. SERKA: Tentatively, maybe three to four
2 hours.

3 JUDGE CAILLE: Ms. McNeill.

4 MS. McNEILL: Mine should not be more than a
5 half a day, I would think.

6 JUDGE CAILLE: All right.

7 MS. McNEILL: There is, of course, as Mr.
8 Trotter says, there's cross-examination. There will
9 be cross-examination of the historical witnesses, I
10 suspect, if we actually get there, and
11 cross-examination, then, by me of the Applicant's
12 witnesses and by the Applicant of my witnesses. And
13 I also would say I'm being fairly generous here with
14 my estimates, but still always end up underestimating
15 time.

16 JUDGE CAILLE: Well, and maybe we could go a
17 little later, depending on -- Mr. Trotter and I will
18 be up there, so we won't have anything else to do but
19 have this hearing, so -- let's see. Why don't we
20 just stick with the two days and hope for the best.

21 Is there anything else that anyone -- we
22 discussed off record that we would not invoke the
23 discovery rule at this point and we are not going to
24 need a protective order at this point.

25 MR. TROTTER: Just one --

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1 JUDGE CAILLE: On the discussion of issues,
2 Mr. Serka, were you going to distribute your issues?
3 I think I lost track of that.

4 MR. SERKA: Well, I offered to do that.

5 JUDGE CAILLE: Yes, would you please do
6 that, because I think I'll need that in order to
7 write my prehearing conference order.

8 MR. SERKA: Your Honor, I just have a
9 question, if I may.

10 JUDGE CAILLE: Yes.

11 MR. SERKA: We were getting a number of
12 phone calls from individuals who wanted to submit
13 letters or writings. How will that be viewed?

14 JUDGE CAILLE: I believe that if an
15 application is protested, we need to have the people
16 who are supporting you in person. The only time we
17 can do, like, affidavits is when there's no protest.
18 And I don't know if -- people are nodding their heads
19 around the table, but that's what I recall of the
20 law.

21 MR. SERKA: The only reason I mention, Your
22 Honor, I understand -- there was this --

23 JUDGE CAILLE: And that's why we would be
24 holding it in Bellingham, to make it convenient for
25 your witnesses to appear.

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1 MR. SERKA: I understand. There was some
2 reference in the Washington Administrative Code to
3 people submitting to the Commission any information
4 that would be considered in regards to the attitude
5 of the community, and I didn't know. Then there was
6 another section in there that discussed -- here it
7 is. It was under this. I just wanted some --
8 480-736.

9 JUDGE CAILLE: 480-09-736?

10 MR. SERKA: 736.

11 MS. McNEILL: 480 what, Mr. Serka? Sorry.
12 This is Ms. McNeill.

13 MR. SERKA: 480-09-736.

14 MS. McNEILL: Okay. This is Ms. McNeill.
15 I'm not familiar with the specific reference that
16 you're making, but I am familiar with the rule that
17 any supporting testimony has to be presented live and
18 subject to cross-examination.

19 MR. SERKA: Do you have that section there?

20 MR. TROTTER: Which subsection are you
21 referring to?

22 MR. SERKA: Number 19. Maybe you can take a
23 look at that. That's what I was referring to, the
24 second sentence there, and I was --

25 JUDGE CAILLE: Would someone please read

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1 that into the record so I know what we're --

2 MR. TROTTER: Well, it's the hearing
3 guidelines rule, and sub 19 says, When a witness
4 presenting testimony as a member of the public
5 presents a document in conjunction with his
6 testimony, the Commission may receive the document as
7 an illustrative exhibit. The Commission may receive
8 as illustrative of the opinions of correspondence any
9 letters that have been received by the Secretary of
10 the Commission and by Public Counsel from members of
11 the public regarding a proceeding.

12 MR. SERKA: That's what I was wondering
13 about, that section there.

14 JUDGE CAILLE: Well, I believe that section
15 would refer to a public hearing. When we have a
16 public hearing, for instance, we often have them on
17 rate cases, and the public comes in and testifies and
18 they bring exhibits with them. But, you know, I need
19 to probably look at that. I'm speaking --

20 MR. TROTTER: Yeah, Your Honor, I think this
21 does address a different context. As you mentioned,
22 in hearings where members of the public appear and
23 are allowed to testify without a sponsoring party,
24 they're just allowed to testify. That evidence is
25 taken as general evidence of public sentiment, but

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1 it's not dispositive evidence that could be used
2 for a decision on the merits, at least that's the
3 typical context for the application of this rule.

4 MR. SERKA: Your Honor.

5 MR. TROTTER: So I don't think it would
6 necessarily apply in this case. If letters were sent
7 in to the Commission, it's my understanding the
8 Commission keeps them as part of the file, but does
9 not rely on it as evidence in the case.

10 MS. McNEILL: And I guess -- this is Ms.
11 McNeill again. I would add, further, that the
12 witnesses that you're talking about, Mr. Serka, are
13 not, strictly speaking, public witnesses. They're
14 actually shipper witnesses.

15 MR. SERKA: They're not even witnesses, Ms.
16 McNeill. We're just getting people in the community
17 to send letters, and I was just trying to find -- I
18 see the section here, and that's -- they're not
19 witnesses of mine or -- necessarily, and so when I
20 read this, this is what I was trying to get at, Mr.
21 Trotter. I understand what you're saying. I read
22 this to mean that they send them to the Commission,
23 Secretary of the Commission.

24 MR. TROTTER: Yes, but they're not -- they
25 don't have the status of evidence, that's the

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1 problem. They're used as illustrative exhibits.

2 MR. SERKA: Well, the opinion --

3 MR. TROTTER: Well --

4 MR. SERKA: I didn't write the rule. Figure
5 it out.

6 MR. TROTTER: Right. May I suggest that if
7 you have a witness that you want to call for
8 substantive evidence, that you present them under
9 oath and at the hearing, and if you want to take your
10 chances on the status of letters that anyone may
11 write to the Commission in this docket, I think the
12 other parties are going to be free to argue the
13 evidentiary status of those letters and whether
14 they're subject to cross-examination or not.

15 This rule is intended to address a different
16 situation than what you presented. But any member of
17 the public can write a letter to the Commission at
18 any time and name a docket number, and it's very
19 likely it will be filed in that docket. Then the
20 issue becomes what is its evidentiary status. And
21 it's my belief that, unless it's offered as an
22 exhibit at a hearing or under some other motion
23 practice, it's not evidence.

24 You can take your chances with that, but
25 that's my understanding of the context of this rule.

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1 In major utility rate cases, we get tens of thousands
2 of letters, and the Commission treats them in this
3 matter. Does not use them as substantive evidence in
4 the case.

5 MR. SERKA: What are they used for?

6 MR. TROTTER: Well, to the extent they're --
7 they give rise to other issues, the parties can read
8 them and put evidence in on them, on the issues that
9 are being raised by them, but then it's on the
10 record, subject to cross-examination.

11 JUDGE CAILLE: Mr. Serka, what Mr. Trotter
12 has just discussed with you is what I am aware of, as
13 well, as how we use that particular rule that you're
14 referring to, 480-09-736, subsection 19. And I can
15 tell you that the Commission will not consider your
16 -- if you're having shippers that come in -- if any
17 of this is to be submitted in writing, the shipper
18 testimony, those folks need to be here in person.
19 There's plenty of case law that says that if they
20 aren't, the Commission won't consider it.

21 MR. SERKA: I had no -- I don't have, Your
22 Honor, any letters that I'm submitting. I'm just
23 saying we're getting -- people who are in the
24 community are wondering what they can once they write
25 letters. They're not shippers; they're just people

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1 in the community.

2 JUDGE CAILLE: Well, then, they can send
3 those to the Commission and they'll be put in the
4 file. But, as Mr. Trotter said, they won't be given
5 -- you know, they aren't evidence.

6 MS. McNEILL: Mr. Serka, this matter was
7 decided in the proceeding of which you make
8 historical reference. That's why there was a second
9 hearing date, you may recall, because your
10 predecessor in interest showed up with only written
11 statements in support of the --

12 MR. SERKA: I understand that, Ms. McNeill.
13 I'm just looking at this section, and you have to
14 agree it does seem to be a little bit ambiguous, what
15 it says. I just wanted to know what the
16 interpretation of that was.

17 JUDGE CAILLE: Well, you heard Mr. Trotter's
18 interpretation, and I agree with that interpretation.
19 That's how we have used it in the past. But you are
20 -- if folks in the community wish to write to the
21 Commission, those letters will be put into the file.

22 MR. TROTTER: One other matter, Your Honor.
23 I think, when you started off this segment of the
24 hearing, you referred to the prior docket as GA-407,
25 and I believe it should be GA-405, just so there's no

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1 --

2 JUDGE CAILLE: Okay.

3 MR. TROTTER: Just so there's no confusion.

4 JUDGE CAILLE: I stand corrected. I wrote
5 down 407, too.

6 MR. TROTTER: It should be 405.

7 JUDGE CAILLE: It should be 405.

8 MR. TROTTER: Thank you.

9 JUDGE CAILLE: Thank you. Is there anything
10 further from anyone? In the prehearing conference
11 order, I will also put the number of copies that you
12 would need to file with the Commission. I didn't
13 bring that in with me. So if there's nothing further
14 --

15 MR. TROTTER: Your Honor, you said you might
16 not issue your prehearing order for a while, but I
17 will be filing something next Monday, the record.
18 How many copies -- I'll send one to the parties, but
19 how many do you want me to file with the Commission?

20 JUDGE CAILLE: Let's go off the record just
21 a moment.

22 (Discussion off the record.)

23 JUDGE CAILLE: We are back on the record
24 after going off momentarily to discuss the first
25 filing, and that filing by Mr. Trotter is the --

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1 actually, it's a distribution to the other parties,
2 and that will not have the normal filing
3 requirements. Mr. Trotter will submit two copies.
4 Is that what we --

5 MR. TROTTER: Yeah, two copies to the Bench,
6 and then a copy to each of the parties.

7 JUDGE CAILLE: Thank you. All right.
8 Anything further?

9 MR. SERKA: Yes, Your Honor.

10 JUDGE CAILLE: Yes.

11 MR. SERKA: Mr. Trotter.

12 MR. TROTTER: Yes.

13 MR. SERKA: I just want to make sure I got
14 your e-mail address. Dtrotter@wutc -- what was the
15 rest?

16 MR. TROTTER: -- .wa.gov.

17 MR. SERKA: Wa. --

18 MR. TROTTER: -- gov.

19 MS. McNEILL: Dot-wa, dot-gov.

20 MR. SERKA: Thank you.

21 MR. TROTTER: You're welcome.

22 JUDGE CAILLE: All right. Is it a wrap,
23 ladies and gentlemen? Okay. Mr. Serka, anything
24 further?

25 MR. SERKA: No, Your Honor.

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1 JUDGE CAILLE: All right. Thank you very

2 much.

3 MR. SERKA: Thank you everybody.

4 MS. McNEILL: Thank you everybody.

5 (Proceedings adjourned at 3:03 p.m.)

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