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VIA MESSENGER

March 29, 2004

Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Response of Sanitary Service Company, Inc. to Blaine Bay Refuse, Inc.'s Motion to Amend and Motion to Supplement the Record (Docket No. TG-031817)

Dear Secretary Washburn:

Enclosed for filing in the above-identified matter is an original and nine copies of Sanitary Service Company, Inc.'s Memorandum in Opposition to Blaine-Bay Refuse's Motion to Amend Order M.V.G. No. 656 and Motion to Supplement the Record.

Thank you for your attention to this matter.

Sincerely,

SUMMIT LAW GROUP PLLC

Polly L. McNeill

Enclosures
cc: Judge Karen M. Caille
Philip A. Serka
Don Trotter
Paul Razore
Ed Nikula

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of BLAINE-BAY REFUSE, INC. Motion to Amend Commission Order M.V.G. No. 656	DOCKET NO. TG-031817 SANITARY SERVICE COMPANY, INC.'S MEMORANDUM IN OPPOSITION TO BLAINE-BAY REFUSE'S MOTION TO AMEND ORDER M.V.G. NO. 656 AND MOTION TO SUPPLEMENT THE RECORD

COMES NOW Sanitary Service Company, Inc., holder of Certificate of Public Convenience and Necessity No. G-14, by and through its attorney, Polly L. McNeill of Summit Law Group, and respectfully requests that the Commission deny Motion to Amend Order M.V.G. No. 656, for reasons set forth below:

I. IDENTITY OF RESPONDENT

Respondent Sanitary Service Company, Inc. ("SSC") has its offices at 1001 Roeder Avenue, Bellingham, WA 98227, and is holder of Permit No. G-14.

II. RULES AND STATUTES INVOLVED

The statutes involved in this matter include those with chapter 34.05 RCW, chapter 81.04 RCW, and chapter 81.77 RCW. Rules involved include those within chapters 480-70 WAC, chapter 480-07 WAC, former chapter 480-09 WAC and CR 59.

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III. STATEMENT OF FACTS

SSC operates solid waste collection services pursuant to a certificate of public convenience and necessity issued by this Commission. Certificate No. G-14 authorizes services throughout much of Whatcom County, and SSC's certificated area includes the seaward perimeter of Birch Bay Drive, Point Whitehorn, the area known as Birch Bay Village, the coast of the Georgia Strait and the southern coast of Drayton Harbor, which is the territory sought by the Applicant.

Over thirty years ago, on October 8, 1971, the predecessor in interest to Petitioner Blaine Bay Refuse ("Petitioner"), Gary D. Gifford ("Gifford") applied for an extension of Certificate of Public Convenience and Necessity No. G-145 for territory in the Birch Bay area. Exhibit No. 1, Application and Related Documents, pp. 2 and 2a ("Territory to be served"). The application was for a specific territory using named roads "that bound the area Being applied for." *Id.*, p. 2a (sic). The application excluded the seaward perimeter of those named roads, excluded Birch Bay Village, and excluded the area southward of Semi-a-moo Resort, both to the west between Semi-a-moo Drive and Semi-a-moo Bay and to the east between Drayton Harbor Road and Drayton Harbor (referred to herein as the "Semi-a-moo Area"). *See* also Exhibit No. 4, First Hearing Notice and Hearing Documents, p. 78 (Exhibit 1, Excerpt of Applicant's map of requested territory) ("Applicant's Map").

On January 21, 1974, after granting a rehearing to allow live testimony of shipper witnesses, the Commission issued Final Order M.V.G. No. 646, which granted the extension of Certificate No. G-145 with precisely the same metes and bounds as requested in the "Territory to be served" and "Applicant's Map." Exhibit No. 8, Proposed and Final Order and Related Documents, p. 11.

The resulting certificated area overlaps with SSC's inland certificated area, but omits lands located seaward of the roads used to establish the perimeter of the applied-for authority.

In September 1999, motivated in part by the Commission's mapping project, SSC took a hard look at the boundaries of its certificated territory and became aware that Petitioner was

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operating within SSC's exclusive territory, specifically, in the seaward perimeter and Birch Bay Village. Nikula Decl., ¶ 1. Understandably, drivers in the area were accustomed to seeing Petitioner's trucks in the area, because of the overlapping territory in the Birch Bay area. Nikula Decl., ¶ 2. However, immediately upon learning of that Petitioner was illegally operating within SSC's exclusive territory, SSC advised Petitioner of the overlap area's boundary and requested that Petitioner cease operations in SSC's exclusive territory. Nikula Decl., ¶3 and Exhibit A (Letter from P. McNeill to L. McCarter dated 9/14/99). SSC asked Petitioner to coordinate the transfer of its customers in the exclusive territory to SSC. *Id.* at ¶ 4. From September 1999 forward, SSC repeatedly renewed its request that Petitioner cease operations in SSC's exclusive territory and transfer the customers on that territory to SSC, and again sent a letter notifying Petitioner of its unauthorized operations in February 2000. Nikula Decl., ¶ 5 and Exhibit B (Letter from P. McNeill to L. McCarter dated 9/14/99). Despite SSC's notice, Petitioner continued to serve outside its authorized territory. Nikula Decl., ¶ 6.

On February 28, 2003, the parties met with Commission staff for the purpose of reviewing draft territory maps. Nikula Decl., ¶ 7. At that meeting staff confirmed that the boundary lines had not changed from the original order and that Petitioner was on notice of the correct boundaries. Nikula Decl., ¶ 8. Despite the Commission's notice, Petitioner continued operating in Petitioner's exclusive area, and to date has not transferred to Petitioner its customers in the exclusive territory. Nikula Decl., ¶ 9.

Instead, in an attempt to obtain after-the-fact approval for its unauthorized operations, Petitioner filed an application asking the Commission to approve an extension of its certificated authority beyond what it had originally requested. *See* Docket No. TG-030831. Apparently recognizing the difficult burden of proof in obtaining its requested extension, Petitioner then filed a motion to amend its thirty-year old application, which was separately docketed so that the parties could address issues related to the original application separately from those associated with an extension into territory already being served by a certificate holder.

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IV. ARGUMENT

Thirty years is too late. The Commission should not exercise its discretion to permit an amendment at this point in time, especially when the applicant received precisely the authority it sought. Whether Petitioner's motion is viewed as a request to amend the application, to amend the order, or a request for rehearing, for the Commission to approve it now thirty years after the order was issued granting applicant's request in exactly the terms it sought will establish a dangerous precedent.

Evidence is now too stale to rely upon, and cannot be cured by Petitioner's Motion to Supplement the record. The Motion to Supplement must be denied, and instead the evidence should be presented in the application for extension filed by Petitioner.

Finally, even if Petitioner's Motion to Supplement the Record were granted, and the evidence relied upon in Petitioner's Motion to Amend were viewed in the light most favorable to it, at most it supports amending the original application and/or order to allow service to the seaward side of Birch Bay Drive between Point Whitehorn and Shintaffer Road. There is simply no factual support whatsoever for permitting an expansion into the territories of Birch Bay Village and the Semi-a-moo Area by way of an amendment. Petitioner has the option of pursuing its application for expansion if it wishes to obtain authority for those territories.

It is uncertain what the nature of development was in that seaward territory in 1971, but today it includes significant residential development in Birch Bay Village and near the Semi-a-moo Resort, which remains SSC's exclusive territory. Thirty years ago, SSC's management may have been insufficiently attentive to the area to protect its territory rights. Today is a different story. SSC has an investment-backed expectation in the exclusive certificate right to provide service in the area. Unless Petitioner can meet its burden of proving that a mistake was made that could not otherwise have been corrected at the time of the original proceeding, then its motion must be denied.

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A. Petitioner's Motion to Amend Should be Denied Because the Applicant Received Precisely the Authority Requested

In reality, what Petitioner seeks is to amend its original application to expand beyond the territory sought. Such an amendment thirty years after-the-fact must be denied. The evidence could not be clearer regarding what territory, exactly, the applicant sought to serve. Petitioner's original application used "Named Roads" to "bound the area Being applied for." Exhibit No. 1, Application and Related Documents, p. 2a ("Territory to be served"). Apparently, staff worked with the applicant to redraft the territory description so that it comported with standard certificate language. *Id.*, p. 2. This provided an opportunity for the applicant to clarify the extent of the territory, and yet still it did not do so. There was a map attached to the application, as well. *Id.*, p. 2a ("Attached is Whatcom County map"). Although that map is not attached to the record version of the application, it is presumably the same as the map that was introduced into evidence at the hearing itself. *See* Exhibit No. 4, First Hearing Notice and Hearing Documents, p. 78 (Exhibit 1, Excerpt of Applicant's map of requested territory) ("Applicant's Map"). That map clearly excludes the territory outside the "Named Roads," and was never revised at any time that it was used and re-used again the entire two years the application was considered and heard. The applicant had several opportunities to correct the territory, and yet it chose not to.

The Commission has previously expressed reluctance to allow an application to be amended after-the-fact. *See* Order M.V.G. No. 1533, *In re Sure-Way Incineration, Inc.*, Hearing No. GA-868 (1992). In that case, it held that as a general rule, an amendment expanding the scope of the authority sought must be republished in the Commission docket.

> An applicant is presumed to know what it wants to haul and is presumed to know what it has requested authority to haul. If the two do not match, it is the applicant who, in fairness, must accept the inconvenience of correcting the language. In general, there need not be a specific showing that any person was confused about or misunderstood the application. Instead, the burden is on the applicant to show that no one could have reasonably misunderstood the application.

Id. at p. 6. While the confusion in that case related to the commodity applied-for, the principle here is the same. Where, as here, the applicant had multiple opportunities to catch any error that

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it now alleges, permitting an application to be amended would undermine the certainty established by the Commission's administrative process. Especially when the amendment is sought thirty years later, granting Petitioner's motion would establish dangerous precedent. There is an adequate remedy through the application process. Petitioner has not met its burden of showing that no one could have misunderstood its application as intending to exclude the seaward territory. Because it expands the scope of Petitioner's authority, Petitioner must seek this extension through application and republishing on the Commission docket.

B. Petitioner's Motion to Amend Should be Denied Because it is Untimely, and Allowing Its Certificate to be Amended Based on a Proceeding that Occurred Thirty Years Ago is Blatantly Inequitable

The final order, M.V.G. No. 646, was issued on December 20, 1973. Although RCW 81.04.200 by its literal terms does seem to allow a petition for rehearing after the expiration of two years from the date of the order, Petitioner's attempt to amend the final order thirty years after its issuance is truly unheard-of. It should come as no surprise that no precedent exists in the Commission's statutes, rules or decisions addressing a request for amendment after so much time has passed. To create such a precedent now would be very troubling, and granting Petitioner's motion would be contrary to the interests in finality found in the policy of chapter 480-07 WAC (formerly chapter 480-09 WAC), the State Administrative Procedure Act at chapter 34.05 RCW, and Civil Rule 59, which address rehearing and reconsideration. It would open a Pandora's Box for applicant's seeking expansions through revisionist views of history.

The Commission's rules allow several opportunities for an applicant to remedy an order if it believes a mistake has been made. It can file a motion for reconsideration. WAC 480-07-850(1) (former WAC 480-09-810(1)). It can request clarification. WAC 480-07-835. Both of these procedures allow for a correction of an outcome if the applicant wishes. Obviously, in this case, no such relief was sought.

Instead, Petitioner relies on the extraordinary relief of requesting that the Commission rehear Order M.V.G. No. 656. However Petitioner has not met the standards for a rehearing under RCW 81.04.200. The Commission has discretion to permit a rehearing when a petitioner

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can show either changed conditions since the order or by showing a result injuriously affecting petitioner which was not considered or anticipated at the former hearing or the effect of such order was not contemplated by the Commission at the former hearing or the petitioner. RCW 81.04.200. The legal description contained in the original application was submitted by the applicant. Indeed, in this case the applicant was the beneficiary of a liberal decision to grant a motion for rehearing, and received two opportunities to be heard – and thus was given two opportunities to realize and repair any mistake in the language in the application. The applicant did not do so. Rather, on direct examination in the second hearing, the applicant testified that he was asking for the same territory he requested in his first application. Exhibit 7, Second Hearing Notice and Hearing Documents ("Transcript"), p. 117, lines 6-12. It is difficult to countenance Petitioner's claim that the limitations to the territory approved result in an injury that could not have been considered, anticipated or contemplated in the face of such unambiguous evidence.

While the Petitioner seeks an "amendment" of the final order, it is essentially asking the Commission to exercise its discretion under RCW 81.04.210. Because Petitioner seeks to change the outcome of the final order granted thirty years ago, the motion is appropriately analogous to a motion for reconsideration. The Commission has previously taken guidance from Civil Rule 59 in stating grounds for reconsideration in which reopening the record is requested. In the cases where the Commission has done so, it has recognized the strong public policy for denying requests to reopen when there is no showing whatever to support the reopening other than the mere statement that the result might be different if the applicant had a chance to put on more evidence. S.B.C. Order No. 398, *In re Application B-277 of Island Ferry, Inc.*, Hearing No. B-277 (1982) (quoting language from Cause No P-65613, an application of Washington Air Taxi Express, Inc. d/b/a WATE, Inc.).

Petitioner can satisfy none of the nine grounds set forth in CR 59 in this case. There is no allegation of an irregularity in the proceeding which prevented the applicant from having a fair trial, and indeed a motion for rehearing was liberally granted which afforded the applicant more process than it had a right to expect. Nor is misconduct of any party alleged. Given the several

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opportunities to articulate and clarify the territory applied-for, there can be no claim of accident or surprise which ordinary prudence could not have guarded against. There is no newly discovered evidence, as demonstrated by the fact that Petitioner's Motion to Supplement the Record is directed entirely at elaborating the evidence presented in 1973. Damages are not at stake, so the two standards in CR 59 related to the amount of recovery are not relevant. There is ample evidence in the original record to justify the extent of authority granted. No error of law was committed, for which objection was raised. Finally, the only claim Petitioner would be able to make under CR 59 is that "substantial justice has not been done." But, as noted previously by the Commission, this is tantamount to an implicit representation that the result might have been different if the applicant had a second chance, and those grounds are simply not enough to warrant reopening the record or amending the order.

An essential concept with Petitioner's motion is the need for finality, because otherwise quasi-judicial decision by administrative agency would never be final or certain. While the Commission clearly has the discretion to correct a mistake, it should only exercise that discretion when the error is obvious and when the correction can be done promptly. *See In re Quackenbush*, 142 Wn. 2d 938, 937 16 P.3d 638 (2001). *See also LeJeune v. Clallam County*, 64 Wash. App. 257, 272, 823 P.2d 1144 (1992) ("As a matter of law, reconsideration after nearly three years is not reconsideration within a reasonable time.") Regardless of whether Petitioner's petition is for "amendment" or "rehearing" or "reconsideration, granting it after thirty years will leave all Commission orders vulnerable to second-guessing by applicants who know something now that they should have known then.

C. Petitioner Should Not be Permitted to Supplement the Record by Motion or Otherwise, Given That Thirty Years Has Passed Since the Original Proceeding

Petitioner has moved to supplement the record, attaching deeds and a map alleging the locations of the shippers from the initial application. Respondent hereby moves to strike the evidence contained in the Motion to Supplement the Record. The evidence relied on in the initial applications and hearings is now thirty years old and therefore stale. The Commission will

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not consider stale evidence in considering the need for Petitioner's services, and should not grant authority without a review of the circumstances as they exist today. Order M.V.G. No. 1533, *In re Sure-Way Incineration, Inc.*, Hearing No. GA-868 (1992). Rehashing a prior application and the stale evidence therein infests the application process with irrelevant matters and diverts effort from currently relevant issues. *Id.*

The evidence presented in the Motion to Supplement the Record is itself suspect, and cannot be relied upon. For example, Petitioner provided a deed to property owned by Fred Yates, a 1973 shipper. However, the deed provided does not locate the property which Yates testified about, rather it shows property within Birch Bay Village, where Yates testified he was satisfied with his service from Sanitary Service Company. Exhibit 7, Second Hearing Notice and Hearing Documents ("Transcript"), p. 79, line 14. The map provided as Exhibit A to Petitioner's Supplemental Memorandum purportedly reflects a limitation on Petitioner's authority in Point Whitehorn, but the line indicating the "Proposed Boundary per WUTC staff" is not the boundary actually on the Commission's draft map.

Because the supplemental evidence provided by Petitioner is erroneous, misleading, or simply has not been the subject of close scrutiny, the Motion to Supplement the Record must be denied. Even if the evidence presented in the Motion to Supplement is accepted the Commission must allow Respondent an opportunity to verify the accuracy of the evidence by undertaking its own investigation before considering it at face value.

D. The Supplemental Evidence, if Considered at All, Provides Only Limited Support to Petitioner's Claims

If the Commission does admit Petitioner's supplemental evidence to the record, it still must deny the motion to amend because Petitioner's evidence, both old and supplemental, fails to support its contention that its services were required in the area not granted in its certificate. Although the original applicant served many resorts, those locations were based on the inland side of the road, with the properties including only limited access rights to the tidelands.

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Petitioner has provided no evidence, new or old, that it actually provided service on the water-ward side where actual development exists.

At most, the evidence confirms that the locations for which shipper support was provided were on Birch Bay Drive, where the road ran right along the beach. Nothing in the original record or the supplemental materials shows service in Birch Bay Village or Semi-a-moo Area. The only evidence of service provided in Point Whitehorn is Petitioner's own erroneous map. There is simply no factual support for granting an expansion into the territories of Birch Bay Village and the Semi-a-moo Area by way of an amendment. Petitioner should be required to pursues its application for expansion if it wishes to obtain authority for those territories. Even if the Petitioner's Motion to Amend were considered in light of the evidence produced in the Motion to Supplement the Record, the amendment would have to be limited to that portion of Birch Bay Drive between Point Whitehorn Road and Shintaffer Road.

E. Petitioner's Motion to Amend Should be Denied Because Petitioner Has Been Intentionally Violating Commission Regulations by Operating Outside of Its Certificated Area

Petitioner's Motion to Amend must be denied because Petitioner is not fit, willing and able to serve the area it seeks. Petitioner has been operating in blatant violation of Commission regulations by serving outside of its certificated area. SSC asked Petitioner to cease operations in SSC's exclusive territory over four years ago. SSC, on its own and through counsel requested several times that Petitioner stop operating in the territory and coordinate the transfer of its customers in the territory to Respondent. SSC attempted many times to reconcile the issue cooperatively and to the satisfaction of both parties and the Commission, but Petitioner maintained that it was entitled to operate in the territory. Furthermore, instead of confirming the boundary with the Commission, it continued operating in Respondent's territory for three and one half years, not applying for an extension until after the Commission confirmed the boundary.

The Commission encourages voluntary compliance with the applicable statutes and rules. Petitioner's continued operation outside of its certificated area, even after SSC and the

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Commission advised it of the boundary is a failure to voluntarily comply with the applicable statutes and rules.

V. PRAYER FOR RELIEF

For the foregoing reasons, therefore, SSC requests that this Commission:

1. Deny Petitioner's Motion to Amend Order M.V.G. No. 656; and

2. Deny Petitioner's Motion to Supplement the Record.

In the alternative, SSC prays that the Commission grant the Motion to Amend Order M.V.G. No. 656 only to the portion of Birch Bay Road between Point Whitehorn and Shintaffer Road.

DATED this 24th day of March, 2004.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

By: _____
Polly L. McNeill, WSBA # 17437

Attorneys for Petitioner Sanitary Service Company, Inc.

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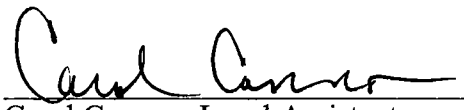
CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of March, 2004, served the foregoing *Sanitary Service Company, Inc.'s Memorandum in Opposition to Blaine-Bay Refuse's Motion to Amend Order M.V.G. No. 656 and Motion to Supplement the Record* upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to the Applicant through its counsel at 400 N. Commercial, Bellingham, Washington 98225.



Carol Cannon, Legal Assistant

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of BLAINE-BAY REFUSE, INC. Motion to Amend Commission Order M.V.G. No. 656	DOCKET NO. TG-031817 DECLARATION OF ED NIKULA IN SUPPORT OF SANITARY SERVICE COMPANY, INC.'S MEMORANDUM IN OPPOSITION TO BLAINE-BAY REFUSE'S MOTION TO AMEND ORDER M.V.G. NO. 656 AND MOTION TO SUPPLEMENT THE RECORD

I, Ed Nikula, am over the age of 18, have personal knowledge of all the facts stated herein and declare as follows:

1. In September 1999, motivated in part by the Commission's mapping project, Sanitary Service Company, Inc. ("SSC") took a hard look at the boundaries of its certificated territory and became aware that Petitioner Blaine Bay Refuse ("Petitioner") was operating within SSC's exclusive territory, specifically, in the seaward perimeter and Birch Bay Village.

2. Understandably, drivers in the area were accustomed to seeing Petitioner's trucks in the area, because of the overlapping territory in the Birch Bay area.

3. However, immediately upon learning of that Petitioner was illegally operating within SSC's exclusive territory, SSC advised Petitioner of the overlap area's boundary and requested that Petitioner cease operations in SSC's exclusive territory.

4. SSC asked Petitioner to coordinate the transfer of its customers in the exclusive territory to SSC.

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5. From September 1999 forward, SSC repeatedly renewed its request that Petitioner cease operations in SSC's exclusive territory and transfer the customers on that territory to SSC, and again sent a letter notifying Petitioner of its unauthorized operations in February 2000.

6. Despite SSC's notice, Petitioner continued to serve outside its authorized territory.

7. On February 28, 2003, I and a representative of Petitioner, Jim Sands, met with Commission staff for the purpose of reviewing draft territory maps.

8. At that meeting staff confirmed that the boundary lines had not changed from the original order and that Petitioner was on notice of the correct boundaries.

9. Despite the Commission's notice, Petitioner continued operating in Petitioner's exclusive area, and to date has not transferred to Petitioner its customers in the exclusive territory.

10. Attached, as Exhibit A, is a true and correct copy of a letter dated September 14, 1999 from Polly McNeill to Larry McCarter regarding Sanitary Service Company's exclusive service territory.

11. Attached, as Exhibit B, is a true and correct copy of a letter dated February 11, 2000 from Polly McNeill to Larry McCarter regarding clarification of position with regard to the extent of authority held by Blaine-Bay Refuse, Inc.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Bellingham, Washington this 29th day of March, 2004.

Ed Nikula

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of March, 2004, served the foregoing *Declaration of Ed Nikula in Support of Sanitary Service Company, Inc.'s Memorandum in Opposition to Blaine-Bay Refuse's Motion to Amend Order M.V.G. No. 656 and Motion to Supplement the Record* upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to the Applicant through its counsel at 400 N. Commercial, Bellingham, Washington 98225.

Carol Cannon, Legal Assistant

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Exhibit A

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E-MAIL: *pollym@summitlaw.com*

FILE

September 14, 1999

Larry McCarter
4916 Labounty Place
Ferndale, Washington 98248

Re: Sanitary Service Company's Exclusive Service Territory

Dear Larry:

I understand you and Paul have talked recently about the situation involving the exclusive service territory of Sanitary Service Company in the Birch Bay Village area and around the joint service territory area. I suggested that it might be helpful if I sent you a letter documenting the gist of those conversations.

As you know, SSC and Blaine Bay Refuse both hold certificates (or, as we call them, "G Permits") issued by the Washington Utilities and Transportation Commission. Within a certain specified territory described by metes and bounds in their respective G Permits, both companies are authorized to provide solid waste collection service. This is one of those rare instances where the WUTC authorized overlapping service by two companies. We don't see it happen very often.

In any event, during a recent housekeeping, SSC discovered that BBR has been collecting solid waste from customers that are located within SSC's exclusive territory. The area is outside the metes and bounds description of the overlapping territory. I've enclosed a map for your assistance. It is meant to show you generally the area we are talking about, and is not intended to be a specific representation.

EXHIBIT A

1505 WESTLAKE AVE N SUITE 300
SEATTLE, WASHINGTON 98109
telephone 206 281-9881
facsimile 206 281-9882

Paul wanted you to know about this as soon as possible, and called you right away as soon as we learned of it. Obviously, BBR must remove its containers and cease collecting solid waste in SSC's area as soon as possible. Of course, Paul and the folks at SSC will work with you to facilitate the transition. I suggest you give Ed Nikula a call to work out the details.

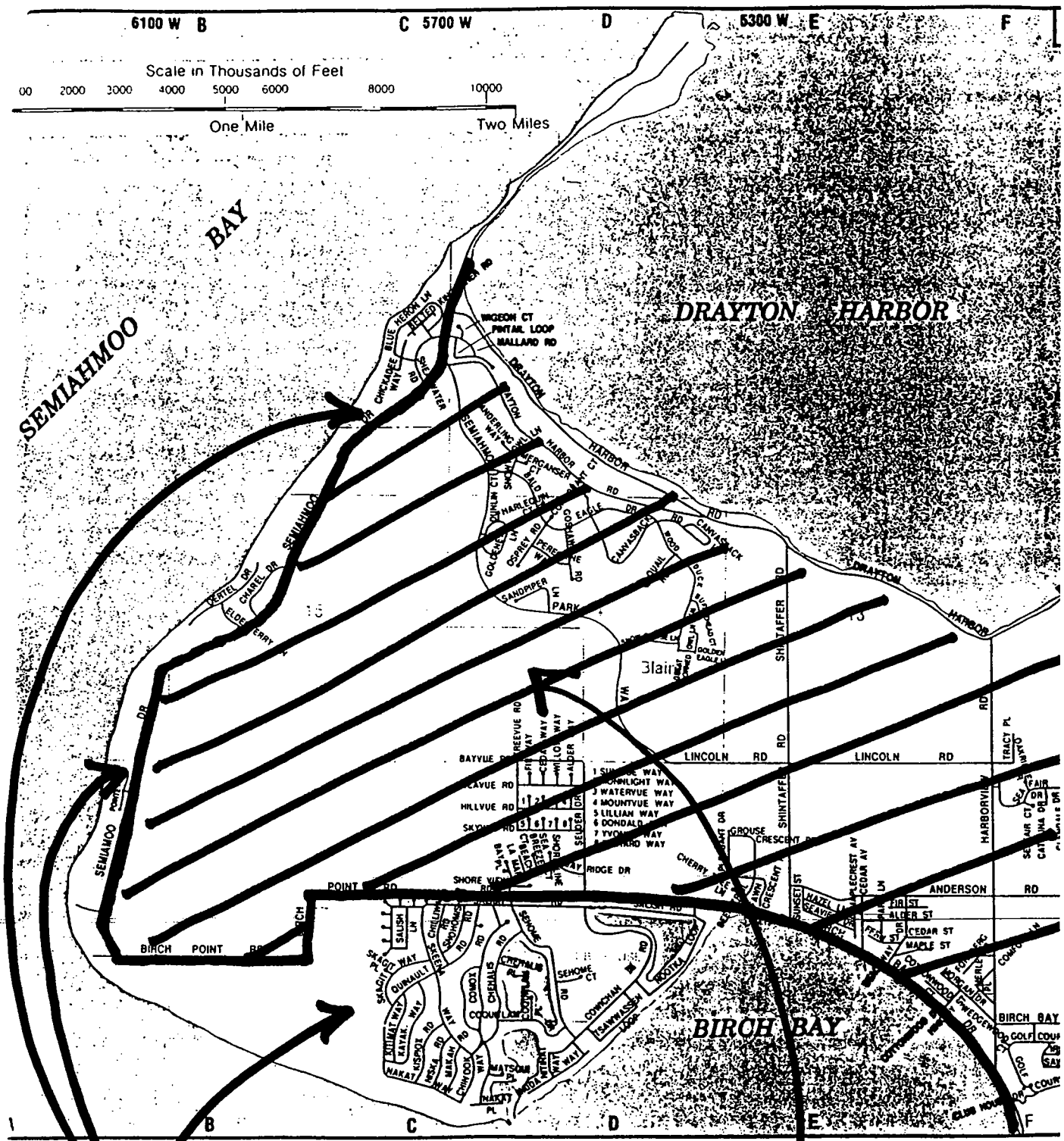
If you have any questions, or want to discuss this further, you may call me at any time.

Very truly yours,

SUMMIT LAW GROUP PLLC

Polly L. McNeill

cc: Paul Razore



Sanitary Service Company's
Exclusive Territory
(from middle of Right of Way)

Sanitary Service Company
and
Blaine Bay Refuse
Overlapping Territory
(to middle of Right of Way)

Exhibit B

FILE COPY

SUMMIT LAW GROUP
a professional limited liability company

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E-MAIL: *pollym@summitlaw.com*

February 11, 2000

Larry McCarter
Blaine Bay Refuse Inc.
P.O. Box 66
Blaine, Washington 98231

Dear Mr. McCarter:

On behalf of Sanitary Service Company (SSC), I am writing this letter in response to the correspondence you sent to Ed Nikula dated February 8, 2000, to clarify our position with regard to the extent of the authority held by Blaine Bay Refuse Inc. (BBR) to provide solid waste collection under its certificate of convenience and necessity (or, "G Permit") issued by the Washington Utilities and Transportation Commission (WUTC). BBR's G Permit includes a portion of territory that overlaps with some of the territory served by SSC under its G Permit. That overlap, which is the subject of this letter, is described as follows in BBR's G Permit:

> Starting at the intersection of the Blaine Road and Hall Road; thence south on the Blaine Road to the Grandview Road; thence west on the Grandview Road extended to Point Whitehorn; thence north on Birch Bay Drive to Birch Point Road; thence west on Birch Point Road to Semiahmoo Drive; thence north on Semiahmoo Drive to Drayton Harbor Road; thence east on Drayton Harbor Road to Blaine Road; thence north along Blaine Road to the point of beginning.

Our position has been, and continues to be, that the territory authorized is clearly described in the company's G Permit, no more and no less. BBR does not have authority to collect solid waste from customers located outside of the perimeters

EXHIBIT B

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described in its G Permit. It may not cross these roads that demarcate its authority to provide service to customers located on the other side of these streets.

When we spoke last fall, you intimated that you were in possession of documents from the WUTC that might potentially affect our position. I subsequently received from Todd D. Gunn, Esq., a copy of Order M.V.G. No. 646, which initially authorized the overlap territory to BBR. Having reviewed those documents, our position remains unchanged. The authority granted was exactly the authority sought. The language in the G Permit controls.

I hope this unequivocally communicates our position on this issue. Please contact Ed Nikula to coordinate on transferring service from BBR to SSC for any customers currently served by BBR who are located in an area outside of its certificated authority (i.e., across the streets enumerated).

Very truly yours,

SUMMIT LAW GROUP PLLC

Polly L. McNeill

cc: Paul Razore (SSC)
Ed Nikula (SSC)
Carole Washburn (WUTC)