0216

1 BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3

In re the Matter of: )

4 )

Determining the Proper Carrier)

5 Classification of )

) DOCKET NO. TG-072226

6 GLACIER RECYCLE, LLC; ) VOLUME VI

HUNGRY BUZZARD RECOVERY, LLC; ) PAGES 216 - 241

7 AND T&T RECOVERY, INC. )

------------------------------)

8

9 A status conference in the above matter was held on

10 Tuesday, February 8, 2011, at 1:30 p.m., at 1300 South

11 Evergreen Park Drive Southwest, Olympia, Washington, before

12 Administrative Law Judge ADAM TOREM.

13 The parties were present as follows:

14 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by

SALLY BROWN, Senior Assistant Attorney General, PO Box

15 40128, Olympia, Washington 98504; telephone 360-664-1193

16 GLACIER RECYCLE, LLC; HUNGRY BUZZARD RECOVERY, LLC; T&T

RECOVERY, INC., by DONALD L. ANDERSON, (via bridge line)

17 Attorney at Law, Eisenhower & Carlson, 1201 Pacific Avenue,

Suite 1200, Tacoma, Washington 98402; telephone 253-572-4500

18

WASHINGTON REFUSE AND RECYCLING ASSOCIATION, by JAMES

19 K. SELLS, Attorney at Law, General Counsel, 3110 Judson, PMB

22, Gig Harbor, Washington 98335; telephone 360-981-0168

20

MURREY'S DISPOSAL COMPANY, INC.; WASTE CONNECTIONS OF

21 WASHINGTON, INC.; ISLAND DISPOSAL, INC.; LYNNWOOD DISPOSAL,

d/b/a ALLIED WASTE OF LYNNWOOD; EASTSIDE DISPOSAL, d/b/a

22 ALLIED WASTE OF BELLEVUE, by DAVID W. WILEY, Attorney at

Law, Williams Kastner, 601 Union Street, Suite 4100,

23 Seattle, Washington 98101; telephone 206-628-6600

24 Tami Lynn Vondran, CCR No. 2157

25 Court Reporter

0217

1 (Appearances continued.)

2 WASTE MANAGEMENT OF WASHINGTON, by POLLY L. MCNEILL,

Attorney at Law, Summit Law Group, 315 Fifth Avenue South,

3 Suite 1000, Seattle, Washington 98104; telephone

206-676-7040

4 and

ANDREW M. KENEFICK, Senior Legal Counsel, 801 Second Avenue,

5 Suite 614, Seattle, Washington 98104; telephone 206-264-3062

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0218

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

2 JUDGE TOREM: Good afternoon. Let's be on the

3 record. This is Administrative Law Judge Adam Torem. This

4 is Docket TG-072226. It's Tuesday the 8th of February, a

5 little after 1:30 p.m., as designated by those ringing in on

6 the bridge line right on time.

7 This is the matter of determining a proper carrier

8 classification for three respondent companies, they are

9 Glacier Recycle, LLC; Hungry Buzzard Recovery, LLC; and T&T

10 Recovery, Incorporated.

11 We're conducting this conference today as a status

12 conference based on a notice the Commission issued on 12th

13 of January. And I want to go around and take appearances in

14 just a moment. Our main agenda item today is sort of to

15 answer the question "now what?" And figure out a

16 recommendation to the commissioners as to where to take this

17 docket, if anywhere, now that certain things did or didn't

18 occur from last summer's expectations.

19 So let me go around and take appearances and start

20 with Commission staff.

21 MS. BROWN: Sally Brown, Senior Assistant Attorney

22 General, appearing on behalf of Commission staff. I filed a

23 notice of appearance yesterday.

24 JUDGE TOREM: That's part of the record now.

25 Thank you, Ms. Brown.

0219

1 For the WRRA.

2 MR. SELLS: Thank you. If Your Honor please,

3 James Sells appearing on behalf of Washington Refuse and

4 Recycling Association. You want the full addresses today?

5 JUDGE TOREM: We have it in the record.

6 Mr. Wiley, if you want to list your clients in this matter?

7 MR. WILEY: I was just trying to find that list,

8 Your Honor, as we speak. Thank you. I'm appearing today on

9 behalf of Murrey's Disposal Company, Inc.; Waste Connections

10 of Washington, Inc.; Lynnwood Disposal, d/b/a Allied Waste

11 of Lynnwood; Eastside Disposal Company, d/b/a Allied Waste

12 of Bellevue. Those appear to be the companies that I'm

13 representing.

14 JUDGE TOREM: Thank you. And, Ms. McNeill.

15 MS. McNEILL: Thank you. Polly McNeill

16 representing Waste Management of Washington. And with me

17 today is Andrew Kenefick, in-house counsel for Waste

18 Management of Washington.

19 JUDGE TOREM: I don't see Don Anderson here in the

20 room in Olympia. Mr. Anderson, are you on the line?

21 MR. ANDERSON: Yes, I am. This is Don Anderson

22 for the respondents.

23 JUDGE TOREM: All right, excellent. So we have

24 all of our counsel present. As was summarized in the

25 notice, we had an expectation last July when the final order

0220

1 was issued that a temporary exemption from administrative

2 code provisions would be resolved in an ongoing rule-making.

3 Unfortunately, at the end of last year, in

4 November, the Governor issued an executive order terminating

5 a variety of rule-makings of agencies around the state. And

6 Docket TG-080591, I guess depending on your view, died a

7 timely or untimely death, but without resolution of the

8 issues it took up.

9 This docket in the Hungry Buzzard case was one

10 that we had depended on resolving some definitions and a new

11 solid waste rule that is not going to come to fruition. At

12 this time my understanding is that the Governor's edict

13 about rule-making extends for this entire calendar year of

14 2011. Whether that would be renewed again for 2012 remains

15 to be seen. So paragraph 36, and any other related

16 paragraphs of the order that assume that the exemption was

17 going to expire sometime this calendar year, I suppose,

18 won't happen. So we have right now to clarify I think.

19 My discussion with the commissioners before the

20 notice went out is that the exemption is still in place but

21 we just have some confusion as to if or when it might

22 terminate. The parties I hope will have a chance to give

23 their various views today and make some recommendations to

24 me. If there's some joint recommendations that would be

25 helpful, as well, as to how the Commission would go forward.

0221

1 Among the options, but certainly not a limitation, is

2 resuming the process with a hearing based on the decisions

3 that were left to be made on the respondent companies for

4 Mr. Anderson's clients as to the quantification of the waste

5 that they were moving under the existing rules as again they

6 now stand.

7 One other procedural point, and it came very

8 quickly in the middle of January. Mr. Anderson, one of your

9 clients indicated, I believe it was Glacier Recycle, that

10 they may no longer actually be your client, they may be a

11 whole new entity? Do you want to speak to that or have one

12 of the other counsel in the room do that?

13 MR. ANDERSON: No. Glacier Recycle is in fact our

14 client and is an entity that still exists. Substantially

15 all the assets of Glacier Recycle were sold to Waste

16 Management.

17 JUDGE TOREM: Is Glacier still engaging in the

18 recycling that it was doing in its previous incarnation?

19 MR. ANDERSON: No, it has no active business of

20 that nature. It's basically winding up.

21 JUDGE TOREM: So Waste Management of Washington

22 now owns those assets?

23 MR. ANDERSON: Yes, and the right to do business

24 under that name.

25 JUDGE TOREM: Okay. Ms. McNeill, is Waste

0222

1 Management now -- have they amended the G-certificate to

2 include those operations?

3 MS. McNEILL: No. Your Honor, Waste Management

4 has acquired the assets of Glacier Recycle and has commenced

5 taking over the operations of Glacier Recycle. The

6 acquisition doesn't change Waste Management's operations in

7 terms of its collection activities. It continues to comply

8 with the State statutes, both 81.77 putting aside any

9 municipal contracts or exemptions to that statute. But

10 nonetheless, its collection operations will not be

11 influenced by its acquisition of Glacier Recycling's assets.

12 The operations of the material recovery facility

13 as a MRF, as it's called, are really the cornerstone of the

14 asset acquisition. And Waste Management is undertaking a

15 transition in terms of taking over the operation of that and

16 transferring the solid waste handling permit functions and

17 approval from the department of -- I think it's the King

18 County Seattle Department of Public Health and Department of

19 Ecology.

20 Long answer, but there will be no difference in

21 Waste Management's collection operations that would be

22 influenced by its acquisition of the assets. There were no

23 certificate rights transferred. There were no collection

24 rights transferred except, of course, to the extent that

25 commercial recycling which Waste Management operates

0223

1 throughout the state in compliance with the regulations and

2 statutes that affect that.

3 JUDGE TOREM: So I'm not hearing you say that

4 Waste Management's takeover of Glacier's operations would

5 require an ongoing exemption for Glacier and its operations

6 because it would fall under Waste Management and not -- you

7 will no longer be conducting anything that would require an

8 exemption; is that correct?

9 MS. McNEILL: That is correct.

10 JUDGE TOREM: All right. So it would appear

11 then--and I would hear from other parties if they see it

12 differently--that, Mr. Anderson, as far as Glacier goes

13 there may be an appropriate motion to dismiss them from the

14 case at this time unless there's going to be a look-back

15 that Staff wants to do in classifying their previous

16 operations. That may or may not be relevant, but I'll leave

17 that to Commission staff's discretion. If you want maybe

18 before we close this afternoon, or at a later date, file a

19 motion to remove that client from the case we'll take that

20 up either today or when you file it. Does that make sense

21 to you, Mr. Anderson?

22 MR. ANDERSON: Yes.

23 JUDGE TOREM: Maybe we'll go and hear directly

24 from you, Mr. Anderson, first, on the remaining clients that

25 are still, I believe, conducting the operations with the

0224

1 benefit of the temporary exemption under Hungry Buzzard and

2 T&T. First, are your clients interested in maintaining that

3 exemption? And if so, for the foreseeable future? For a

4 set period of time?

5 MR. ANDERSON: Yes, Your Honor, under the

6 current -- under current operations and for quite some time

7 Hungry Buzzard hasn't been operating a MRF. Their CDL

8 collections have been taken to other facilities. They

9 haven't been direct hauls to disposal or brought to their

10 own facilities to sort. So their -- and they have been

11 filing with the Department of Ecology, and I think their

12 percentage should be down to zero as far as any materials

13 that aren't recycled because of that. So I think they would

14 be -- there's really no need for an exemption because they

15 aren't involved in the complaint of activity.

16 That really leaves T&T. And T&T is interested in

17 continuing the exemption. There are really two options

18 here, you know. It's hard to predict with the budgetary

19 situation what is going to happen.

20 I think the first offense that may shed some light

21 on both rule-making and the administrative process of the

22 government in general at the state level is going to be the

23 conclusion of the legislative session. And I don't know

24 that we can anticipate that the Governor's imposed plan on

25 rule-making is really going to last for a year until we see

0225

1 what happens then. But I think it would be appropriate to

2 carry it out a year under the current situation and see

3 where that rule-making authority is at that point. I think

4 both Ecology certainly has an interest in following up on

5 this, and I think it's important for both the budding

6 industry and the G-certificate haulers to have some

7 definition of where this is going.

8 JUDGE TOREM: Let me ask Commission staff what

9 their intentions might be if the rule-making is something

10 that they're aware of they want to take up if given an

11 opportunity. Or what direction Staff might want to see this

12 case go, especially now. Thanks, Mr. Anderson, for the

13 explanation of the scales down from three companies to a

14 single company that's seeking to maintain the exemption that

15 was provided.

16 MS. BROWN: Thank you, Your Honor. Currently

17 Staff is not interested in actively pursuing solid waste

18 rule-making.

19 JUDGE TOREM: Okay. What about the position on

20 then the remaining request of one of three to continue the

21 exemption in some form or another?

22 MS. BROWN: Well, Staff's position, if you see my

23 argument, that contrary to what you said, Your Honor,

24 Staff's position that the exemption, temporary exemption

25 from WAC 480-70-016(1), expired 30 days after the

0226

1 rule-making closed on December 9th.

2 JUDGE TOREM: Okay. Is there language in the

3 order that you point to for that or do you have more

4 detailed --

5 MS. BROWN: It's expressly in Order 08.

6 JUDGE TOREM: Okay. So Staff's taking the

7 position then, to sum it up, that the exemption has already

8 expired in December?

9 MS. BROWN: It expired 30 days after the

10 Commission closed the solid waste rule-making docket on

11 December 9, 2010, in response to executive order 1006.

12 JUDGE TOREM: So approximately January 9th or

13 10th, depending on how we count the days?

14 MS. BROWN: Correct.

15 JUDGE TOREM: All right. Almost the same day we

16 got the notice out.

17 Let me ask the parties what their positions might

18 be with regard to that. Let me start with Mr. Sells and

19 work my way around the table.

20 MR. SELLS: If it's okay with Your Honor we're

21 going to start with Mr. Wiley?

22 JUDGE TOREM: Okay.

23 MR. WILEY: Your Honor, obviously this record is

24 protracted over about three and a half years, and so there's

25 a number of source documents to pull in coalescing a

0227

1 position. Let me just say that I agree with Ms. Brown. I

2 agree that the conditional granting of the exemption which

3 was uniquely based upon a pending rule-making that had gone

4 on for two years evaporated under the expressed terms of

5 Order No. 08--I believe it is paragraph 36--30 days after.

6 Thus, I believe the only position that whatever remaining

7 companies are the respondents in this action is is that they

8 must conform their operation to current existing law. It's

9 a pretty simple analysis from my standpoint.

10 JUDGE TOREM: Okay. Thank you, Mr. Wiley.

11 MR. SELLS: Thank you, Your Honor. We're in basic

12 agreement with that. The exemption has in fact gone away.

13 And if it's going to be continued in any manner it's going

14 to have to be done pursuant to some sort petition from T&T

15 or whomever. We remain concerned about footnote 11 on page

16 12 of Order 08, which leaves an unresolved issue, I think.

17 And whether or not further hearing is needed, at some point

18 it seems in this docket the issue of the transfer of solid

19 waste residual from a MRF has to be addressed.

20 But we also, at the same time we agree that we are

21 now back to whatever rules were in place and whatever

22 statutes were in place when this thing started. And the

23 most important thing from our perspective is that the

24 existing rules and the existing statutes be enforced. But

25 this issue of the residual haul is going to have to be

0228

1 resolved somewhere somehow.

2 JUDGE TOREM: Ms. McNeill, what is your client's

3 position?

4 MS. McNEILL: Well, our client's -- thank you,

5 Your Honor. Waste Management's position has really been

6 consistent throughout this proceeding, and that is its

7 interest was very much in curtailing and precluding the haul

8 of the what's so-called industrial waste stabilizer to a

9 landfill, any landfill. In this case, it was the one in

10 Cowlitz County operated by Weyerhaeuser. But the claim that

11 that somehow converted a solid waste collection activity to

12 commercial recycling was the main concern that Waste

13 Management had in this proceeding. And it continues to be

14 the paramount concern both stated, we think, in the

15 complaint and also in the resolution of the settlement. And

16 one of our interests is to ensure that the finality of Order

17 06 that Order 08 ordered remains the effective outcome on

18 that.

19 We agree that the issue with regard to the need

20 for the respondent companies and all of the companies in the

21 state to comply with regulations and rules that are in

22 effect, if that is the outcome of eliminating any further

23 proceeding in this matter and the interpretation of the

24 Commission. We certainly agree that everybody should comply

25 with those rules. And Waste Management does and continues

0229

1 to abide by them.

2 We had a concern, of course, and one of the

3 reasons that we came down here presently today is because

4 Waste Management did acquire the assets of Glacier, and we

5 wanted to be sure that somehow didn't convert us so having a

6 seat on both sides of the table. And we certainly support a

7 dismissal of Glacier as an entity since it no longer

8 operates any recycling.

9 JUDGE TOREM: Mr. Anderson, I hope you could hear

10 the other counsel around the table. But I think I can sum

11 up that no one around the table, speaking for a party in the

12 case, believes that the exemption is still operational and

13 believes that the exemption should be revived. Although I

14 believe Mr. Sells indicated that would only be if your

15 client T&T filed a petition to make a specific request to

16 extend it. Did you want to speak further to the issue?

17 MR. ANDERSON: I don't think a footnote in that

18 regard controls the intent of the order. It was in a

19 different context, and the context was that the rule-making

20 process would end with an order with respect to the new

21 amended or retained rule. That didn't happen. And so there

22 wasn't -- our position would be there wasn't an event that

23 terminated -- there wasn't a contemplated event that

24 terminated the exemption.

25 JUDGE TOREM: That's the contemplated event in

0230

1 paragraph 36 that Ms. Brown referred to that -- her

2 interpretation is once the rule-making itself was terminated

3 that that was the operational event; is that correct,

4 Ms. Brown?

5 MS. BROWN: Can I be heard on that?

6 JUDGE TOREM: Yes, please.

7 MS. BROWN: I just want to get across here that

8 it's Staff's position that this classification proceeding

9 should be terminated without further process based on the

10 language of footnote 11 in Order 08 which clearly states

11 that the settlement agreement is effective only until the

12 conclusion of the solid waste rule-making. That rule-making

13 has concluded, and it's our position that the parties then

14 return to the status quo entity.

15 I think to hold otherwise would ignore the many

16 "for the time beings" in Order 08 which clearly indicates

17 that the Commission intended the exemption and settlement

18 agreement to be somewhat of a stop-get measure, temporary

19 measure and not intended to permanently resolve all issues

20 of the docket. In fact, I think it was the Commission's

21 intention that the rule-making order adopting the rules

22 would actually supersede the settlement agreement. And

23 admittedly at the time no one contemplated or anticipated

24 that the Commission in December 2010 was going to terminate

25 the solid waste rule-making in response to the executive

0231

1 order, but that's exactly what happened. And it's our view

2 that the effect of the moratorium was to conclude the solid

3 waste rule-making, and as a result the settlement is no

4 longer valid.

5 So I think that the context of this case -- I

6 agree with Mr. Anderson, the context changed dramatically

7 throughout the past year, but I think the context supports

8 Staff's position here.

9 JUDGE TOREM: When you asked originally to be

10 heard, you said Staff's position on the case though and

11 posture is that the entire docket should be terminated

12 without any further proceedings?

13 MS. BROWN: Yes.

14 JUDGE TOREM: If I recall when this originally

15 started Staff was seeking to classify these three companies,

16 whose operations have changed over the course of time now.

17 Now I think there would only be one company left that's

18 relevant. Does Staff no longer wish to seek classification

19 of T&T as a solid waste collection company?

20 MS. BROWN: Yes, that's my final point here. I

21 want the Commission to remain mindful of the fact that this

22 classification proceeding was instituted by the Commission

23 at the request of Commission staff. And now evidently Staff

24 is satisfied with what's happened and with Glacier's

25 acquisition by Waste Management and suggests that no further

0232

1 process is warranted.

2 JUDGE TOREM: So Staff is no longer concerned with

3 Glacier or Hungry Buzzard. Is there any specific concern to

4 be stated as to T&T which continues its operations at some

5 level?

6 MS. BROWN: No.

7 JUDGE TOREM: Thank you.

8 Let me hear from other parties at the table on

9 Staff's position on what the Commissioners should do

10 assuming they agree that the exemption has been terminated

11 and the settlement agreement has run its course. Mr. Wiley.

12 MR. WILEY: Yeah, I think one thing is important

13 to know, we do have concurrence--at least with the parties

14 at the table--that the prior and now existing rules do apply

15 to all the operations. And the reason I think that's a

16 point that your order -- your prospective order might

17 address is that if you recall, and you'll recall the

18 April 16, 2010 -- or mid April hearing on the settlement,

19 the WRRA and the intervenors that I represent opposed the

20 settlement on the basis that the Staff -- that then Staff's

21 recommendation violated WAC 480-70-016(1). And on that

22 basis the Commission concurred with our position allowing

23 the settlement, which we did not agree with, but conditioned

24 the settlement on the acknowledgment that the Staff's

25 position, then position, contravened the rule.

0233

1 So if in making her request, Ms. Brown--and I

2 believe she's saying that--acknowledges that 480-70-016(1),

3 applies to the activities in question, the rule applies.

4 And what happens after that is something that this record

5 may not need to dispose of, no pun intended, but it has to

6 acknowledge that operations of CDL haulers must comply with

7 that rule.

8 MS. BROWN: Your Honor, may I be heard?

9 JUDGE TOREM: Please.

10 MS. BROWN: I don't believe it's necessary for you

11 or the Commissioners in the order to restate existing law.

12 I think it was said here earlier that the statutes and

13 regulations are what they are, they speak for themselves.

14 With regard to enforcement of Commission statutes and rules

15 the Commission, as you're well aware, can exercise

16 prosecutory discretion.

17 As I understand it, the legislature recently

18 appropriated another $100,000 for the Commission to pursue

19 solid waste enforcement actions. And as recently as

20 yesterday the announcement came out that Commission staff

21 hired a solid waste investigator. Now, can I make a

22 commitment as to where those dollars will be allocated and

23 the time spent? No.

24 MR. WILEY: Your Honor, if I can respond briefly

25 to that? I do think that while it's true the law is the

0234

1 law, and that adage goes without argument, the original

2 Staff complaint at paragraph 5, sub 1 and sub 2, made

3 allegations about the operations that your Order No. 7

4 addressed as still outstanding. So I don't think it's

5 entirely correct to characterize the record at present as

6 completely disposing of all the original issues raised by

7 the Staff. And that's particularly why the applicability of

8 that general rule that's mentioned so prominently in order

9 08 is important to us.

10 JUDGE TOREM: Other counsel at the table?

11 MR. SELLS: If I may, Your Honor. As just a

12 practical situation we're facing here, if you recall back in

13 April Mr. Troy Lautenbach testified that his sole disposal

14 site was the Weyerhaeuser facility. Now, as long as the

15 exemption was in place I'm presuming that he continued to go

16 to that facility because he would be allowed to pursuant to

17 the exemption. If Your Honor finds that the exemption has

18 expired, which I wish I had thought of that, as I think back

19 now it has already expired. And we're running as we sit

20 here today without that exemption. We're concerned with the

21 practicalities. Where is T&T going to take its stuff now

22 that they can't take it to Weyerhaeuser anymore? Do we need

23 to have some sort of testimony, some sort of sworn statement

24 on that? Does the enforcement staff need some direction

25 from the Court? I don't know. But those are the

0235

1 practicalities that we're looking at here.

2 JUDGE TOREM: Understood. Thank you, Mr. Sells.

3 MS. McNEILL: If I may? Again, Polly McNeill for

4 Waste Management.

5 Mr. Sells said that he was troubled by footnote

6 11. And I think we're all talking here about footnote 11,

7 and I think there is a remaining troubling aspect to

8 footnote 11. I'm not suggesting that I would advocate any

9 other outcome than what Staff is requesting, but it seems to

10 me that footnote 11 says that the legal issue about the

11 hauling of the residual waste from a MRF is at the heart of

12 the pending rule-making and will be more fully determined

13 there as informed by the facts of solid waste and recycling

14 industries presented in that docket.

15 So I want to be clear that when we talk about a

16 dismissal of this case the legal issue that is presented in

17 footnote 11, in my mind, is not resolved. And I think that

18 is what Staff is saying. But everybody's sort of using

19 these generic terms of compliance with regulations and

20 rules. And I just want to be specific that it is that

21 particular aspect of this order that is still left

22 unresolved. And my client is -- does not oppose terminating

23 the proceeding for that reason. I just would want to be

24 clear that we all understand that that is a legal issue that

25 has not been resolved.

0236

1 JUDGE TOREM: Certainly the Commission had two

2 different competing proceedings going on that might have

3 reached different outcomes. That's why each was

4 alternatively paused to allow the other to come to

5 conclusion so there would be some harmony and the Commission

6 would speak in one voice.

7 I think Commission staff's position, that was well

8 taken, that the law and the existing regulations are what

9 they are. If they were confusing back in 2007 to some

10 hopefully some of these proceedings and the discussion at

11 the rule-making helped provide some clarification. But the

12 words that were enacted and adopted are still the same as

13 they were before either of these proceedings got started,

14 and nothing here has changed existing law.

15 The temporary exemption. If the Commission is to

16 concur with those here in Olympia that it no longer applies;

17 or if the commissioners determine it does still apply but

18 they wish to terminate it on their own accord based on

19 unforeseen events, then again those rules would be in

20 effect. I don't think anybody is going to argue the legal

21 theory there.

22 For Mr. Anderson's client, the remaining client

23 that wants to continue to benefit from the outcome of the

24 settlement agreement and the temporary exemption,

25 Mr. Anderson, you will have to wait and see what the next

0237

1 order says. I need to confer with the commissioners, pass

2 along the parties' various positions, and ask them what they

3 want to do, because that's the voices that will really count

4 in this. If the exemption no longer applies clearly

5 enforcement staff may take an interest in interviewing your

6 client and determining what its plans might be.

7 If the exemption does stay in place then

8 certainly, as it has been since July, it will continue and

9 we may have additional proceedings. But it doesn't sound as

10 though that's what Staff is advocating for today. In fact,

11 I know it sounds like Staff is not advocating for that.

12 Mr. Anderson, did you want to add anything based

13 on everything you have heard now?

14 MR. ANDERSON: Your Honor, I would concur with

15 Staff. At a dismissal my client doesn't have any issue with

16 further investigation or cooperation. I would represent, we

17 haven't put it on the record, but at present there is no

18 direct haul to Weyerhaeuser, for example, and it is the

19 residual from the operation. And Staff's determination as

20 to whether there is compliance with the existing regulation

21 would be fine.

22 MR. WILEY: Your Honor, I would just point out the

23 concept of a direct haul was a legal issue in and of itself

24 in that proceeding. And we may have differing

25 interpretations of what constitutes a direct haul. So

0238

1 that's just an example of the kind of hangover issues we may

2 have.

3 JUDGE TOREM: I actually heard the double-meaning

4 that could be taken from that as well, Mr. Wiley. And it

5 sounds as though Mr. Anderson, on behalf of his client, is

6 willing to let Commission staff use their prosecutorial

7 discretion to make an issue of that, or not, outside of this

8 case if the proceedings are terminated. Mr. Anderson, did I

9 get that right?

10 MR. ANDERSON: That's correct, Your Honor.

11 JUDGE TOREM: It does sound then that everybody is

12 in agreement that there shouldn't necessarily be any further

13 proceedings required here. That one way or the other the

14 commissioners can decide how and when the exemption they

15 granted last summer will continue for a short while, or will

16 be terminated effective with the next order, or was already

17 terminated by operation of the terms of the settlement

18 agreement. But however it goes it sounds as though the

19 recommendation to commissioners is that there's no ongoing

20 need for the exemption, nor for any further proceedings in

21 this case, and that a concise and short order saying as

22 much. And perhaps if the commissioners agree with

23 Mr. Wiley, a quick reminder to all parties that the law and

24 regulations apply, with no exemptions to be interpreted,

25 that Staff will be executing its discretion based only on

0239

1 what's previously been adopted by the Commission, not what

2 was simply considered or talked about during the course of

3 this docket or the rule-making docket. That sounds like a

4 unified recommendation from all concerned.

5 All right, I'm seeing nods here in Olympia and not

6 hearing any objection from the bridge line.

7 MR. ANDERSON: No objection.

8 JUDGE TOREM: I'll certainly carry that

9 recommendation forward to the commissioners later this week.

10 Is there anything else we need to take up today, assuming

11 they follow your recommendation and that order is

12 forthcoming?

13 MS. BROWN: I don't believe so.

14 MS. McNEILL: I don't think so.

15 JUDGE TOREM: Okay. I don't see anything else.

16 If that's the case then, Mr. Anderson, it won't be necessary

17 to make any separate motion with regard to Glacier. If this

18 docket terminates we won't need to worry about it. If

19 something goes other than what's recommended by the parties

20 then we can take up a motion to dismiss Glacier and/or

21 Hungry Buzzard based on facts that you would characterize in

22 a motion and allow me to rule on that separately. But we

23 only need to do that, and burn up anymore of your billable

24 time for your clients, if absolutely necessary.

25 MR. ANDERSON: Thank you, Your Honor.

0240

1 JUDGE TOREM: Counsel, anything else here in

2 Olympia? Seeing none. Mr. Anderson, anything there in

3 Tacoma?

4 MR. ANDERSON: No, Your Honor.

5 JUDGE TOREM: Okay. Thank you. A little bit

6 after 2:00, we are adjourned.

7 (Whereupon, the proceedings went off

8 the record at 2:05 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0241

1 C E R T I F I C A T E

2

3 I, TAMI LYNN VONDRAN, a Certified Court Reporter,

4 do hereby certify that I reported in machine shorthand the

5 foregoing proceedings in the above-entitled cause; that the

6 foregoing transcript was prepared under my personal

7 supervision and constitutes a true record of the testimony

8 of the said witness.

9 I further certify that I am not an attorney or

10 counsel of any parties, nor a relative or employee of any

11 attorney or counsel connected with the action, nor

12 financially interested in the action.

13 DATED at Edgewood, Washington this 18th day of

14 February, 2011.

15

16

17

18 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tami Lynn Vondran, CCR

19 Certified Court Reporter

License No. 2157

20

21

22

23

24

25