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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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In re Application No. GA-079331 of)
SURE-WAY SYSTEMS, INC.)Docket TG-042089
Volume I
Pages 1-16

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For a Certificate of Public)
Necessity to Operate Motor Vehicles)
in Furnishing Solid Waste Collection)
Service.)

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A pre-hearing conference in the

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above-entitled matter was held at 1:49 p.m. on

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Thursday, March 3, 2005, at 1300 South Evergreen Park

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Drive, S.W., 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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COMMISSION STAFF, by Gregory J.
Trautman, Assistant Attorney General, 1400 S.
Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
Washington, 98504-1028.

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SURE-WAY SYSTEMS, INC., by Greg
Haffner, Attorney at Law, 555 W. Smith, Kent,
Washington, 98035.

21

STERICYCLE OF WASHINGTON, INC., by
Stephen B. Johnson, Attorney at Law, Garvey Schubert
Barer, 1191 Second Avenue, 18th Floor, Seattle,
Washington 98101.

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Barbara L. Nelson, CCR

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Court Reporter

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1 WASHINGTON REFUSE AND RECYCLING
2 ASSOCIATION, by James Sells, Attorney at Law, 9657
3 Levin Road, N.W., Silverdale, Washington 98383.

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1 JUDGE CAILLE: Then let's go on the record.
2 Good afternoon. We are here today for the first
3 pre-hearing conference in the proceeding Docket
4 Number TG-042089, which concerns the application of
5 Sure-Way Systems, Incorporated, for a certificate of
6 public convenience and necessity to operate motor
7 vehicles in furnishing solid waste collection service
8 consisting of biomedical waste.

9 My name is Karen Caille, and I'm the
10 presiding Administrative Law Judge for this
11 proceeding. Today is March 3rd, 2005, and we are
12 convened in a hearing room in Olympia, Washington.

13 I would like to start out this afternoon
14 with taking appearances from all of the parties. I'm
15 going to ask you to please state your name, spell
16 your last name, state who you represent, your street
17 address and mailing address, telephone number, fax
18 number, and if you have an e-mail address, as well.
19 And if you get stuck, I will prompt you through this.

20 So let's begin with the Applicant.

21 MR. HAFFNER: Thank you, Your Honor. Greg
22 Haffner, H-a-f-f-n-e-r, appearing for the Applicant,
23 Sure-Way Systems, Inc. My address, the address of my
24 office is 555 West Smith Street, Kent, Washington,
25 98035. The post office address is P.O. Box 140,

0004

1 Kent, Washington, 98032. Phone number is
2 253-852-2345. Fax number is 253-852-2030. My e-mail
3 address is gwh@curranmendoza.com. that's
4 C-u-r-r-a-n-m-e-n-d-o-z-a.com.

5 JUDGE CAILLE: Thank you, Mr. Haffner. And
6 for Commission Staff?

7 MR. TRAUTMAN: Thank you. Greg Trautman,
8 Assistant Attorney General, for Commission Staff. My
9 address is 1400 South Evergreen Park Drive, S.W.,
10 Post Office Box 40128, Olympia, Washington, 98504.
11 My telephone number is 360-664-1187. My fax number
12 is 360-586-5522. And my e-mail address is
13 gtrautma@wutc.wa.gov.

14 JUDGE CAILLE: Thank you. Mr. Sells, do you
15 want to go next?

16 MR. SELLS: Thank you. If Your Honor
17 please, James Sells, Attorney, appearing on behalf of
18 Protestant Washington Refuse and Recycling
19 Association. My address is 9657 Levin, L-e-v-i-n,
20 Road, N.W., Suite 240, Silverdale, 98383. Telephone,
21 360-307-8860; fax, 360-307-8865; e-mail,
22 jimsells@rsulaw.com.

23 JUDGE CAILLE: Thank you. And you must be
24 Mr. Johnson.

25 MR. JOHNSON: That's correct, Your Honor.

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1 Your Honor, my name is Stephen, S-t-e-p-h-e-n, B.,
2 like boy, Johnson. I represent Stericycle of
3 Washington, Inc., a Protestant in this matter. My
4 address is Garvey Schubert Barer, G-a-r-v-e-y
5 S-c-h-u-b-e-r-t B-a-r-e-r, 1191 Second Avenue, 18th
6 Floor, Seattle, Washington, 98101. My telephone
7 number is 206-464-3939; my fax number is
8 206-464-0125. My e-mail address is
9 sjohnson@gsblaw.com.

10 JUDGE CAILLE: Thank you. Let the record
11 reflect there are no other appearances. Mr. Haffner,
12 I just want to make sure, because I'm going to be
13 building a contact list, that I have this down
14 correctly, and it will take a while for the court
15 reporter to get me the transcript. So it's P.O. Box
16 140 -- I think I have a -90 here.

17 MR. HAFFNER: That should be just 140.

18 JUDGE CAILLE: Okay.

19 MR. HAFFNER: In Kent.

20 JUDGE CAILLE: Okay. This is Kent. Okay.
21 Then it's 555 West Smith Street, Kent, Washington,
22 98035.

23 MR. HAFFNER: Correct.

24 JUDGE CAILLE: And the phone is
25 253-852-2345.

0006

1 MR. HAFFNER: Correct.

2 JUDGE CAILLE: Fax, 253-852-2030, and e-mail
3 gwh.curranmendoza.com.

4 MR. HAFFNER: Correct. And it's
5 gwh@curranmendoza.com.

6 JUDGE CAILLE: Oh, thank you. Gwh -- I had
7 a dot in there for some reason. Okay. And the post
8 office box in Kent, what was the zip code for that?

9 MR. HAFFNER: 98032.

10 JUDGE CAILLE: Thank you. All right. The
11 Commission has received protests from Stericycle and
12 Washington Refuse and Recycling Association, and I am
13 aware of a letter submitted by the Applicant that
14 proposes a restrictive amendment to the application,
15 and it specifically would include Grant, Whitman and
16 Adams Counties from the proposed service territory.

17 And there has been a letter filed by
18 Washington Refuse Association that indicated that if
19 the amendment was accepted by the Commission, that
20 WRRRA would withdraw its protest.

21 So I need to know from the parties, from
22 WRRRA and the Applicant, if this is still your
23 understanding today?

24 MR. HAFFNER: Your Honor, if I might --
25 again, Greg Haffner, for the Applicant. We are

0007

1 proposing to exclude, and I think you may have said
2 include, but maybe I misheard that --

3 JUDGE CAILLE: I might have misspoken.

4 MR. HAFFNER: We are agreeing to exclude
5 Grant County, Adams County and Whitman County to
6 satisfy the protest of the Washington Refuse and
7 Recycling Association and their proposal to withdraw
8 if we exclude those counties.

9 JUDGE CAILLE: Mr. Sells.

10 MR. SELLS: Thank you. That is correct,
11 Your Honor. If the motion is granted to exclude
12 those counties pursuant to the restrictive amendment,
13 we will withdraw our protest and would not be taking
14 part in the hearing further.

15 JUDGE CAILLE: All right. Does anyone
16 object to the motion or want to be heard on the
17 motion? All right. Then the motion is granted, and
18 Mr. Sells, you are allowed to withdraw your protest.

19 MR. SELLS: We will do so, Your Honor.
20 Thank you.

21 JUDGE CAILLE: Thank you.

22 MR. SELLS: Does Your Honor wish me to do
23 that in writing, as well?

24 JUDGE CAILLE: You know, it will be in the
25 record and I'll put it in the pre-hearing conference

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1 order, so I think that will do it.

2 MR. SELLS: Well, with Your Honor's
3 permission, I'll leave.

4 JUDGE CAILLE: You may go. Thank you.
5 Thank you for coming.

6 All right. Are there any preliminary or
7 substantive motions that we might need to take care
8 of today?

9 MR. HAFFNER: None that I'm aware of, Your
10 Honor.

11 JUDGE CAILLE: And I just want to make sure,
12 before we head off into the land of adjudication,
13 that there isn't any possibility that the parties
14 could amicably resolve this matter by alternative
15 dispute resolution or some sort of settlement
16 process?

17 MR. JOHNSON: I don't see that as possible,
18 Your Honor.

19 JUDGE CAILLE: Okay. If that should change,
20 just please advise the Commission so that we can
21 adjust the schedule accordingly.

22 Let's talk about issues. The issues in this
23 proceeding include whether the issuance of a
24 certificate to Sure-Way Systems is necessary and
25 consistent with the public interest and whether other

0009

1 carriers authorized to serve the territory requested
2 are serving to the satisfaction of the Commission.
3 And this is pretty much outlined in RCW 81.77.040.
4 Does anyone wish to comment on this at this time or
5 make any other comments about issues?

6 MR. JOHNSON: Well, Your Honor, if I might,
7 I don't think you were attempting to make a complete
8 statement of all the issues that may be --

9 JUDGE CAILLE: No, I said including.

10 MR. JOHNSON: Thank you, Your Honor. Just
11 with that clarification, I have no -- no comment.

12 JUDGE CAILLE: Okay. But having said that,
13 Mr. Johnson, is there anything else that you think
14 that the Commission should be aware of?

15 MR. JOHNSON: Well, I think at least there
16 is an issue that I'm not sure is totally encompassed
17 by what you just said, which is the Applicant's
18 fitness. Now, consistent with the public interest
19 perhaps includes almost anything that we might
20 address.

21 JUDGE CAILLE: Yes, I think that that's
22 covered in 81.77.040. I just read it a few minutes
23 ago, so I think that was in there.

24 I'm going to need some general information
25 from the parties as far as the number of witnesses

0010

1 you expect and time estimates for witnesses so that
2 we can figure out a schedule of how much time we'll
3 need and also where we should hold these hearings,
4 because I do want to try to accommodate the shipper
5 witnesses. So generally what the Commission does is
6 we try to go to a place that's fairly -- that will
7 accommodate as many people as possible so that your
8 witnesses don't have to make such a long trip.

9 MR. TRAUTMAN: Your Honor, this is Greg
10 Trautman, for Commission Staff. We had spoken --
11 Counsel had spoken beforehand, and they may want to
12 add to this, but I think they had talked about
13 possibly pre-filing testimony --

14 JUDGE CAILLE: Oh.

15 MR. TRAUTMAN: -- ahead of time and working
16 that into a schedule along with discovery, and then
17 having hearings after that. So it might be helpful
18 at some point to go off the record and work that out.

19 JUDGE CAILLE: Okay.

20 MR. TRAUTMAN: Then come back on with a
21 complete schedule.

22 JUDGE CAILLE: Okay. I wasn't aware that
23 there would be pre-filed testimony. Yes, let's do
24 that. Let's go off the record and have an off-record
25 discussion about scheduling. We're off the record.

0011

1 (Discussion off the record.)

2 JUDGE CAILLE: Let's go back on the record.

3 Okay. We've had a fairly lengthy off-record
4 discussion concerning the scheduling of this
5 proceeding, and the parties have come to an
6 agreement.

7 Let's see. Let's start with discovery. The
8 parties have agreed to a discovery period of 90 days.
9 That means that discovery will be completed June 3rd.
10 This is written discovery, anything that is
11 encompassed in the discovery rules, and I am inclined
12 to allow the parties to do depositions in an effort
13 to be more efficient about the whole hearing process.
14 so I just want to give it a little more
15 consideration, and I will make that ruling in the
16 pre-hearing order.

17 Pre-filed testimony, the Applicant will file
18 its pre-filed testimony July the 1st, and the
19 Protestant, and if Staff decides to, will file their
20 pre-filed testimony August the 2nd. Then we will
21 have hearings the week of August the 15th in Spokane,
22 and I will have to find a location and take care of
23 that part of it. Hopefully, I'll be able to do that
24 in the pre-hearing conference order.

25 And then we will have three days of hearings

0012

1 in the Tri-Cities, September 7th, 8th and 9th. There
2 will be disclosure of the shipper witnesses for
3 Spokane on August the 10th, and for Tri-Cities on
4 August the 31st.

5 We haven't discussed briefing. I'm hoping
6 there will not be a need for briefing, so let's just
7 -- let's just hold off on that until closer to the
8 hearing. Perhaps at that pre-hearing conference.
9 Oh, and that's what we didn't select, was a date for
10 the pre-hearing conference right before the hearings.
11 So let's go off the record once more.

12 (Discussion off the record.)

13 JUDGE CAILLE: We're back on the record.
14 And we will have a pre-hearing conference to mark
15 exhibits, acknowledge the order of witnesses and take
16 care of any other procedural matters prior to the
17 hearing, and that will be on August the 10th,
18 beginning at 1:30.

19 I'm going to give a little caveat here. I
20 may have to adjust my little -- what I need, and I
21 would do that in a letter, if I actually do need
22 something more ahead of time.

23 MR. HAFFNER: Would it be possible to do
24 that pre-hearing conference by telephone, or do we
25 need to all attend personally?

0013

1 JUDGE CAILLE: Well, I need you to bring
2 your exhibits.

3 MR. HAFFNER: Okay.

4 JUDGE CAILLE: So --and there will be an
5 exchange of exhibits and --

6 MR. HAFFNER: Theoretically, we could
7 deliver exhibits to each other by carrier or whatever
8 means, but --

9 JUDGE CAILLE: You could do that. You know,
10 I will consider that. I --

11 MR. JOHNSON: The only problem, Your Honor,
12 is if there is a dispute over exhibits.

13 JUDGE CAILLE: Yes.

14 MR. JOHNSON: It's a little difficult to do
15 that over the phone.

16 MR. HAFFNER: Well, we'll have all the
17 exhibits in front of us.

18 MR. JOHNSON: As we've discussed it, the
19 exhibits would not be distributed prior to the
20 pre-hearing conference, at least as far as the
21 schedule that I followed so far.

22 MR. HAFFNER: Oh, I see, okay. Well, yeah,
23 but I mean, again, it's no different. You're going
24 to see them --

25 JUDGE CAILLE: Let me -- let's see.

0014

1 Actually, exhibits get filed with your testimony.
2 What I am talking about right now are cross exhibits.
3 I'm sorry I didn't make that clear. So those would
4 be cross exhibits, so hopefully there may not be as
5 many. So -- yes.

6 So up to that time, I will be able to begin
7 my exhibit list, and so everything will be -- the
8 pre-filed testimony will be included and all of the
9 exhibits that go with that, and then I only have to
10 include the cross exhibits. So it's cross exhibits
11 that are exchanged at that time, so that makes it
12 maybe even easier to do it over the telephone. But
13 we're not there yet.

14 Okay. I think I have covered everything.
15 Is there anything that we discussed off the record
16 that either of the parties would like to put on the
17 record?

18 MR. JOHNSON: Your Honor, this is Steve
19 Johnson. I do want to note that while we were off
20 the record, Mr. Haffner pointed out that the
21 application, as originally filed, requested contract
22 carrier authority, and the question was discussed as
23 to whether the docket notice that went out, although
24 written more broadly than contract authority, was
25 sufficient to provide notice to the affected

0015

1 community with respect to the Applicant's
2 application.

3 And I just want to note that we reserve the
4 right to object to the notice provided and the
5 adequacy of the docket notice to apprise the public
6 of the nature of the application in light of the fact
7 that the application itself talks about contract
8 authority and now, at least Mr. Haffner, off the
9 record, indicated that the Applicant is seeking
10 common carrier authority instead.

11 MR. HAFFNER: And Your Honor, I might note
12 that the docket does not make reference to contract
13 authority. It is stated in terms of common carrier
14 authority.

15 JUDGE CAILLE: Okay. Anything else? Just
16 in closing, I'd like to inform the parties that, on
17 filings, we will need an original, plus seven copies.
18 That's for internal distribution at the Commission.
19 I will actually include all this in my pre-hearing
20 conference order, along with everything else we have
21 discussed today, and any requests I will make clear
22 -- will grant or deny them in that order.

23 Are there any questions from the parties?
24 If not --

25 MR. HAFFNER: I have one, Your Honor. Going

0016

1 back to the application, do you wish that we file an
2 amended application to check the correct box to
3 reflect this as common carrier authority, or will
4 this record be sufficient for that?

5 JUDGE CAILLE: That's something I'm going to
6 think about.

7 MR. HAFFNER: Okay.

8 JUDGE CAILLE: And I will let you know.

9 MR. HAFFNER: Thank you, Your Honor.

10 JUDGE CAILLE: All right. Anything further?

11 All right. Then thank you very much for coming.

12 This meeting is adjourned.

13 MR. HAFFNER: Thanks, Your Honor.

14 MR. JOHNSON: Thank you, Your Honor.

15 (Proceedings adjourned at 2:53 p.m.)

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