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1                                   BEFORE THE WASHINGTON  
2                                   UTILITIES AND TRANSPORTATION COMMISSION

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3                                   ) )  
4                                   In re Application No. GA-079266 of )Docket TG-040553  
5                                   )Volume I  
6                                   RUBATINO REFUSE REMOVAL, INC., )Pages 1-40  
7                                   )(Consolidated)  
8                                   For an Extension of Certificate No. )  
9                                   G-58 for a Certificate of Public )  
10                                  Convenience and Necessity to Operate)  
11                                  Motor Vehicles in Furnishing Solid )  
12                                  Waste Collection Service. )  
13                                  )  
14                                  In re Application No. GA-079251 of )Docket TG-040221  
15                                  )  
16                                  HAROLD LEMAY ENTERPRISES, INC., )  
17                                  d/b/a CITY SANITARY CO., EGH )  
18                                  DISPOSAL, HARBOR DISPOSAL CO., JOE'S)  
19                                  REFUSE SERVICE, LAKEWOOD REFUSE )  
20                                  SERVICE, PACIFIC DISPOSAL, PIERCE )  
21                                  COUNTY REFUSE, RURAL GARBAGE )  
22                                  SERVICE, WHITE PASS GARBAGE CO., AND)  
23                                  BUTLERS COVE REFUSE )  
24                                  )  
25                                  For an Extension of Certificate No. )  
26                                  G-98 for a Certificate of Public )  
27                                  Necessity to Operate Motor Vehicles )  
28                                  in Furnishing Solid Waste Collection)  
29                                  Service. )  
30                                  )  
31                                  In re Application No. GA-079254 of )Docket TG-040248  
32                                  (Continued on Next Page) )  
33                                  )  
34                                  )

19                                   A hearing in the above-entitled matter  
20                                   was held at 9:31 a.m. on Thursday, May 20, 2004, at  
21                                   1300 South Evergreen Park Drive, S.W., Olympia,  
22                                   Washington, before Administrative Law Judge ANN E.  
23                                   RENDAHL.  
24                                   Barbara L. Nelson, CCR  
25                                   Court Reporter

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1 KLEEN ENVIRONMENTAL TECHNOLOGIES, )  
INC. )  
2 )  
For a Certificate of Public )  
3 Convenience and Necessity to )  
Operate Motor Vehicles in )  
4 Furnishing Solid Waste Collection )  
Service. )  
5 \_\_\_\_\_ )

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7 The parties present were as follows:

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

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KLEEN ENVIRONMENTAL TECHNOLOGIES, INC.,  
11 by Greg Haffner, Attorney at Law, 555 W. Smith, Kent,  
Washington, 98035.

12

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

15 RUBATINO REFUSE REMOVAL, INC., HAROLD  
LEMAY ENTERPRISES, INC., WASHINGTON REFUSE AND  
16 RECYCLING ASSOCIATION, by James Sells, Attorney at  
Law, 9657 Levin Road, N.W., Silverdale, Washington  
17 98383.

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1           JUDGE RENDAHL: Let's be on the record.  
2    Good morning, I'm Ann Rendahl, the Administrative Law  
3    Judge presiding over these proceedings. We're here  
4    before the Washington Utilities and Transportation  
5    Commission this morning, Thursday, May 20th, 2004,  
6    for a pre-hearing conference in Docket Numbers  
7    TG-040221 and TG-040248, the applications of Harold  
8    LeMay Enterprises, Incorporated and Kleen  
9    Environmental Technologies, Inc. Kleen is spelled  
10   K-l-e-e-n. Those two applications have been  
11   consolidated for hearing and determination.

12           We're also here to consider Docket Number  
13   TG-040553, the application of Rubatino Refuse  
14   Removal, Incorporated, which has also been  
15   consolidated with the other two dockets for purposes  
16   of hearing only.

17           As I stated off the record before we got  
18   started, the purpose of this pre-hearing is to take  
19   appearances of all parties, discuss the consolidation  
20   of the applications, Mr. Haffner indicates we'll be  
21   talking about amending Kleen Environmental's  
22   application back to its original application,  
23   determine whether to invoke the discovery rule, and  
24   establish a procedure schedule, including the form of  
25   the process, and anything else that comes up during

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1 discussion.

2           So before we go any farther, I'd like to  
3 take appearances from the Applicants and Protestants.  
4 First, in Consolidated Docket Numbers TG-040221 and  
5 TG-040248, the LeMay and Kleen applications. First,  
6 beginning with LeMay. If you would -- because this  
7 is your first appearance in this matter and I'll be  
8 creating a master set of representatives and all  
9 information, if you'd please state your full name,  
10 the party you represent, your full address, telephone  
11 number, fax number, and e-mail address, that would be  
12 very helpful. Okay. Mr. Sells.

13           MR. SELLS: Thank you. If Your Honor  
14 please, James Sells, Attorney, 9657 Levin, L-e-v-i-n,  
15 Road Northwest, Suite 240, Silverdale, Washington,  
16 98383. Telephone, 360-307-8860; fax, 360-307-8865;  
17 e-mail, jimsells@rsulaw.com, appearing on behalf of  
18 Applicant LeMay and various Protestants to the Kleen  
19 application, including LeMay Consolidated Disposal,  
20 Inc. and Rubatino Refuse, Inc.

21           JUDGE RENDAHL: Now, are you also here  
22 representing the Refuse and Recycling Association?

23           MR. SELLS: And I'm sorry, Washington Refuse  
24 and Recycling Association, a Protestant in the Kleen  
25 application.

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1 JUDGE RENDAHL: Thank you. For Kleen  
2 Environmental?

3 MR. HAFFNER: Thank you, Your Honor. Greg  
4 Haffner, 555 West Smith Street, P.O. Box 140, Kent,  
5 Washington, 98035-0140. Telephone number is  
6 253-852-2345; fax number is 253-852-2030; e-mail  
7 address is gwh@curranmendoza.com, here on behalf of  
8 Kleen Environmental Technologies, Inc., one  
9 Applicant, and we also intervened in the LeMay  
10 application.

11 JUDGE RENDAHL: As a Protestant or as an  
12 Intervenor?

13 MR. HAFFNER: As an Intervenor.

14 JUDGE RENDAHL: Okay. For Stericycle of  
15 Washington?

16 MR. JOHNSON: Thank you, Your Honor. My  
17 name is Stephen B. Johnson, J-o-h-n-s-o-n. I'm with  
18 the Law Firm of Garvey Schubert Barer, G-a-r-v-e-y  
19 S-c-h-u-b-e-r-t B-a-r-e-r. Our address is 1191  
20 Second Avenue, 18th floor, Seattle, Washington,  
21 98101-2939. Telephone, 206-464-3939; fax,  
22 206-464-0125; e-mail, sjohnson@gsblaw.com,  
23 representing Protestant Stericycle of Washington,  
24 Inc. in both the Kleen and LeMay applications.

25 JUDGE RENDAHL: Thank you. And for

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1 Commission Staff?

2 MR. TRAUTMAN: Gregory J. Trautman,  
3 Assistant Attorney General. My address is 1400 South  
4 Evergreen Park Drive, S.W., Post Office Box 40128,  
5 Olympia, Washington, 98504. My telephone number is  
6 360-664-1187; my fax number is 360-586-5522; and my  
7 e-mail is gtrautma@wutc.wa.gov.

8 JUDGE RENDAHL: Thank you. Is there any  
9 other person who wishes to state an appearance in  
10 these two dockets? Okay. Let's proceed to Docket  
11 Number TG-040553, the application of Rubatino Refuse  
12 Removal. For the Applicant?

13 MR. SELLS: Thank you. If Your Honor  
14 please, James Sells. Want me to go through the whole  
15 --

16 JUDGE RENDAHL: Nope, you don't need to go  
17 through the whole rigmarole this time.

18 MR. SELLS: -- appearing on behalf of the  
19 Applicant, Rubatino Refuse, Inc.

20 JUDGE RENDAHL: Thank you. And Protestant  
21 Stericycle?

22 MR. JOHNSON: Thank you, Your Honor.  
23 Stephen B. Johnson, representing Protestant  
24 Stericycle of Washington, Inc.

25 JUDGE RENDAHL: Thank you, and for

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1 Commission Staff?

2 MR. TRAUTMAN: Gregory J. Trautman,  
3 Assistant Attorney General, for Commission Staff.

4 JUDGE RENDAHL: Thank you. Is there any  
5 other person who wishes to state an appearance or  
6 intervene in that application?

7 MR. HAFFNER: Since the matters have been  
8 consolidated, we will be intervening.

9 JUDGE RENDAHL: Okay. So for --

10 MR. HAFFNER: Greg Haffner, for Kleen  
11 Environmental Technologies.

12 JUDGE RENDAHL: Sorry. Okay. Thank you.  
13 So in terms of the consolidation, as you all were  
14 aware, the Commission initially consolidated the  
15 applications of LeMay and Kleen Environmental  
16 pursuant to WAC 480-70-111, and WAC 480-07-320, as  
17 some of the territory requested in the applications  
18 is overlapping and the applications were filed within  
19 30 days of one another.

20 And then, on May 13th, after the Rubatino  
21 Refuse Removal application cleared the docket, the  
22 Commission, after requesting comments from the  
23 parties, consolidated the application of Rubatino  
24 Refuse Removal with the other two applications for  
25 the purposes of hearing only, and solely for

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1 resource. Instead of having hearings where some of  
2 the same parties and witnesses would appear, it  
3 appeared logical, to save both the parties and the  
4 Commission some time and resource, to consolidate for  
5 purposes of hearing, but not for determination.

6 As Mr. Haffner noted in his comments, the  
7 Rubatino application does not qualify for Ashbacker  
8 treatment, in other words, consolidation for  
9 determining the merits of the application, and  
10 there's no overlap, and nor was it filed within 30  
11 days, but under WAC 480-07-320, the Commission has  
12 discretion to consolidate matters which it believes  
13 are appropriate for consolidation.

14 In this case, the Commission determined that  
15 consolidating for hearing only was appropriate.  
16 Considering that Counsel for Kleen Environmental did  
17 oppose the consolidation and all other parties  
18 supported, I'd still like to hear from all the  
19 parties on that issue to see if it still makes sense  
20 to go forward with consolidation for purposes of  
21 hearing.

22 This is not the issue of the LeMay and Kleen  
23 applications, but merely the issue of whether we hear  
24 the Rubatino application with the other two. So I'm  
25 going to start with Mr. Haffner, and then we'll go



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1 forward from there.

2 MR. HAFFNER: Okay. Thank you, Your Honor.

3 We appreciate the fact that the Commission is  
4 recognizing that this does not fall under the  
5 Ashbacker doctrine, and that certainly helps us a  
6 little bit with accepting the consolidation.

7 The one thing that we would like to see  
8 taken into consideration -- actually, two things.  
9 First of all, we submitted a restricted -- a  
10 restrictive amendment to our application reducing the  
11 territory within which we sought operations to  
12 exclude those territories that the Rubatino  
13 application sought new authority.

14 To the extent that that consolidation has  
15 now occurred, we would ask that that application be  
16 rescinded or that our original application be  
17 reinstated as to statewide authority.

18 With respect to the procedural issues that  
19 we perceive with a consolidated hearing of this type,  
20 if we are not to have the ability to seek authority  
21 in Snohomish, Skagit and Whatcom Counties, we'd like  
22 somehow for the hearings to be scheduled in such a  
23 way that we do not have to be present during  
24 testimony on those issues without somehow  
25 jeopardizing our presence for other testimony. And

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1 I'm not sure yet how that would work out, because I  
2 don't know what witnesses are going to be involved  
3 and so on, but I guess that -- I would like that to  
4 be taken into consideration.

5 I think, though, to the extent that we have  
6 our application reinstated to full statewide  
7 authority, we would probably intend to participate  
8 fully in all of the hearings.

9 JUDGE RENDAHL: So just to clarify, you're  
10 asking that the original application be reinstated,  
11 but if that's not the case, that you'd like to have  
12 the hearings be structured in such a way that you  
13 don't have to appear for those counties that you have  
14 eliminated from your application?

15 MR. HAFFNER: Correct.

16 JUDGE RENDAHL: Okay. Is there anything  
17 more you would like to add?

18 MR. HAFFNER: No, Your Honor.

19 JUDGE RENDAHL: Okay. Mr. Sells.

20 MR. SELLS: Thank you, Your Honor. If Your  
21 Honor please, the Rubatino application is limited to  
22 a fairly small area combined with the rest of this.  
23 We don't have any strong feelings one way or the  
24 other, other than I think the more consolidation we  
25 have, the less it's going to cost the clients here,

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1 and any hearings that can be consolidated, rather  
2 than making two trips to Whatcom County or Snohomish  
3 County, is fine with us.

4 I don't think that we have any objection to  
5 reinstating the original application, either. I  
6 understand that Mr. Haffner was hoping that if we  
7 restricted ours just to the one county, the remainder  
8 of the one county, maybe we could resolve that.  
9 Unfortunately, that's not the case, so we may as well  
10 put everything together and try to get it done as  
11 quickly and as cheaply as possible.

12 JUDGE RENDAHL: Okay. Mr. Johnson.

13 MR. JOHNSON: Your Honor, as I said in the  
14 comments I submitted in response to the notice on  
15 this issue, we think it makes sense to consolidate.  
16 It should save substantial duplication in the  
17 proceedings, and particularly on the Stericycle side  
18 of the issues and the generator witnesses that may be  
19 testifying, as well. I think we can -- it makes  
20 sense to consolidate to minimize the extent to which  
21 third party witnesses are inconvenienced by the  
22 hearing, as well as to save the resources of the  
23 Commission and the parties more generally.

24 I know that the Commission retains the  
25 ability to sever certain components or to manage the

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1 hearing process in a way to make it efficient so that  
2 if there are days of hearing where individual parties  
3 are not affected by the proceedings, that they might  
4 be excused and portions of the hearing be conducted  
5 on one matter as opposed to another, if that may  
6 arise, but it seems to me that, given Mr. Haffner's  
7 point about reinstating their application statewide,  
8 it's logical to hear all these matters together.

9 JUDGE RENDAHL: And do you have any  
10 objection to the reinstatement?

11 MR. JOHNSON: No.

12 JUDGE RENDAHL: Thank you, Mr. Johnson. For  
13 Staff, Mr. Trautman.

14 MR. TRAUTMAN: Thank you. I would just  
15 reiterate what we've said in our brief comments. We  
16 said we didn't -- we don't have any objection to the  
17 consolidation for hearing and it does seem to make  
18 sense. It would save a great deal of resources,  
19 especially considering the large number of witnesses  
20 that are anticipated to testify in both cases, and we  
21 also do not have any objection to the reinstatement  
22 of the amendment.

23 JUDGE RENDAHL: Okay. In terms of  
24 reinstatement, would that -- are there any other  
25 parties who would have joined as -- who would have

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1 sought to protest that application had it been  
2 statewide? And I guess I'm looking to you, Mr.  
3 Sells, in terms of your clients.

4 MR. SELLS: No. That would not add any  
5 protestants here.

6 JUDGE RENDAHL: Okay. So the only  
7 protestant to the Rubatino application would still be  
8 Stericycle, even if it were reinstated as the  
9 original application?

10 MR. HAFFNER: And if I might add something  
11 to that, Your Honor?

12 JUDGE RENDAHL: First, Mr. Haffner, then Mr.  
13 Johnson.

14 MR. HAFFNER: I believe that the Rubatino  
15 application and our restrictive amendment both  
16 occurred after a 30-day protest period, and so there  
17 would not be an ability for anybody to add an  
18 additional protest to that statewide application. In  
19 other words, the right to protest an enlarged  
20 application would have already come and gone. This  
21 application -- the reinstatement seeks nothing more  
22 than what was in the original application, and all of  
23 the parties protesting have already appeared during  
24 that time that was available to them.

25 JUDGE RENDAHL: Okay. I'm just trying to

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1 determine this morning if there's other -- in  
2 addition to what we've talked about in terms of  
3 appearances, if there was anybody who would have been  
4 involved. So I appreciate your clarification of that  
5 point.

6 MR. HAFFNER: Thank you.

7 JUDGE RENDAHL: Mr. Johnson.

8 MR. JOHNSON: Your Honor, just to clarify  
9 one point in your summary of things, it seemed to me  
10 that Mr. Haffner's client was also going to intervene  
11 in the Rubatino matter, I assume as a Protestant, in  
12 effect, who opposed the application. I believe he  
13 mentioned that earlier, and so they would also be a  
14 party in that matter, I believe.

15 JUDGE RENDAHL: Correct.

16 MR. HAFFNER: Correct.

17 JUDGE RENDAHL: Now, would you be asserting  
18 your interest as a Protestant or as an Intervenor in  
19 that matter?

20 MR. HAFFNER: Well, as I understand it, we  
21 can only intervene, because we don't have authority  
22 to protest, since we don't have authority from the  
23 Commission.

24 JUDGE RENDAHL: Well, that's how we'll  
25 leave it, then. Well, with no objection from any

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1 party, then we will go forward with a reinstatement  
2 of the original Rubatino application for statewide  
3 authority for biomedical waste collection.

4 MR. HAFFNER: Your Honor, may I correct  
5 that, that it was not the Rubatino application, but  
6 the Kleen Technologies application.

7 JUDGE RENDAHL: I'm sorry. Thank you.  
8 There's a lot of parties. I still haven't gotten my  
9 head around all of this. Bear with me. The Kleen  
10 Environmental application will be reinstated for  
11 state -- for a request for statewide authority for  
12 collection of biomedical waste. No party objects.  
13 That matter will, as Mr. Haffner stated, will not be  
14 considered for Ashbacker treatment. Is that what  
15 you'd stated?

16 MR. HAFFNER: Correct.

17 JUDGE RENDAHL: And so even though it would  
18 be consolidated for hearing purposes, determination  
19 -- it will not be consolidated for purposes of  
20 determination and an order, so there will be two  
21 separate -- two or three separate orders, depending  
22 on how this matter plays out from the Commission.

23 MR. JOHNSON: Your Honor, could I just ask  
24 one more clarifying question about the parties?

25 JUDGE RENDAHL: Please.

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1           MR. JOHNSON: I believe Mr. Sells has  
2 indicated that he's representing -- on the Kleen  
3 application, he's representing LeMay, Consolidated  
4 Disposal, Rubatino and Waste Haulers Association, and  
5 it isn't clear to me that the Waste Haulers  
6 Association has any interest in the matter not  
7 already represented by the other three. I just  
8 wanted to clarify whether the Waste Haulers  
9 Association is participating to represent any other  
10 party other than those three, or in what capacity?

11           And this only will have a bearing later on,  
12 as we progress, as to whether there would be any  
13 separate examination, cross or direct, by the Waste  
14 Haulers Association, and that kind of issue.

15           JUDGE RENDAHL: Mr. Sells.

16           MR. SELLS: Well, thank you. If Your Honor  
17 please, WRRRA is a, quote, unquote, association that  
18 is given the right, as a protestant in garbage  
19 applications -- and I didn't bring my book with me,  
20 so I can't cite you to the WAC. There's two cites to  
21 the WAC and one to the RCW. In answer to Counsel's  
22 question, if WRRRA calls any witnesses on its own, it  
23 would be one witness, and that would be the executive  
24 director, to explain and testify regarding statewide  
25 -- or regarding G-certificate authority in general,



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1 and the Association's position of any operating  
2 witnesses would come from the other protestants.

3 JUDGE RENDAHL: Mr. Johnson.

4 MR. JOHNSON: Thank you, Your Honor.

5 JUDGE RENDAHL: Do you have any opposition  
6 to the participation based on Mr. Sells' explanation?

7 MR. JOHNSON: I don't have a problem with  
8 that. I do think that when we get into the hearing  
9 process, I'm assuming Mr. Sells will sort of act in a  
10 unitary manner in terms of cross-examination and  
11 presentation, so that he will be, in essence, a  
12 single party for purposes of briefing and that sort  
13 of thing.

14 MR. SELLS: I'm nothing if not unitary.

15 JUDGE RENDAHL: Thank you, Mr. Sells. Okay.  
16 Well, let's go forward to the issue of -- first,  
17 let's talk about discovery. Usually we don't invoke  
18 the discovery rule in these types of application  
19 cases, but if there's a need expressed by the parties  
20 that's sufficiently justified, the Commission can  
21 invoke the discovery rule. So I'm just asking all of  
22 you if that's something that you all feel is  
23 necessary in this matter. Mr. Johnson.

24 MR. JOHNSON: Your Honor, I do think  
25 discovery would expedite the process and is

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1 appropriate in this case, as the rules permit the  
2 Commission to authorize discovery in any matter at  
3 its discretion, but also indicates that specifically  
4 if there's precedent, potential precedential value in  
5 the case, that discovery should be allowed.

6 I believe, under either of these criteria,  
7 that discovery would be appropriate. There hasn't  
8 been a significant medical waste authority case for  
9 about 10 years. There was a flurry -- there were a  
10 flurry of cases, there was a flurry of cases back in  
11 the early '90s. The Commission's policies with  
12 respect to these types of authorities were in a  
13 developmental stage at that point. It's been 10  
14 years. I think there's a fair chance that the  
15 outcome of this case will be precedential for these  
16 kinds of applications.

17 Also, I recall from the Stericycle and Ryder  
18 hearings that there was quite a bit of sort of  
19 discovery taking place in the hearings themselves,  
20 which can be a very inefficient and somewhat chaotic  
21 process. And I think that, given the number of  
22 parties and the potential precedential value of the  
23 case, that we ought to try to permit some level of  
24 discovery that would allow us to be more efficient  
25 during the hearings and to be more focused on issues

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1 that have direct bearing on the Commission's  
2 decision. So I would propose to request that  
3 discovery be permitted.

4 JUDGE RENDAHL: What sort of discovery would  
5 Stericycle propose to propound?

6 MR. JOHNSON: My thought was that we needed  
7 to have some modest level of written discovery,  
8 interrogatories, requests for production. Some of  
9 that might be circumvented just by conferences among  
10 counsel and an informal exchange of information about  
11 who the right witnesses might be with respect to  
12 particular matters, so we might be able to truncate  
13 the, you know, the time involved in written  
14 discovery, and some depositions would be appropriate.

15 JUDGE RENDAHL: And why do you think  
16 depositions would be useful?

17 MR. JOHNSON: Well, again, from Stericycle's  
18 perspective, we're looking at issues -- a substantial  
19 issue here would be public need, and we are  
20 interested to know, before we walk in the door for  
21 the hearing, how the public need -- you know, what  
22 the evidence will be with respect to public need so  
23 that we can prepare our own case in response to it.

24 Again, the alternative available to us is to  
25 basically do discovery in the hearing from the

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1 witnesses for the Applicants, and I believe that's a  
2 less efficient and a less effective way to conduct  
3 the hearings, so that the -- if we are allowed to do  
4 discovery, the Commission will save a certain degree  
5 of resources that would otherwise be -- the  
6 alternative is sort of a more extensive and chaotic  
7 hearing process. I think we can substantially reduce  
8 the amount of hearing time if we're allowed to do  
9 some discovery, and deposition discovery is the only  
10 way you really determine what the witness -- the  
11 knowledge of the witness is and what kind of evidence  
12 they propose to present.

13 JUDGE RENDAHL: Okay. First, Mr. Sells, and  
14 then Mr. Haffner.

15 MR. SELLS: Thank you. If Your Honor  
16 please, I too was part of those hearings and they  
17 were, on occasion, chaotic. I do recall that. We  
18 don't necessarily have any problem with written  
19 discovery. I really hadn't given much thought to  
20 depositions. My concern about depositions, frankly,  
21 is the cost. This is a statewide -- statewide  
22 applications, and I agree with counsel that  
23 depositions are the best way to find out what's going  
24 on, but if we get to the point where we're going all  
25 over the state taking depositions, the cost to the

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1 Commission, as well as to the parties to this thing,  
2 can get entirely out of hand. But I don't have any  
3 problem with RFPs and interrogatories and that sort  
4 of thing.

5 JUDGE RENDAHL: Okay. Mr. Haffner.

6 MR. HAFFNER: Well, we're not opposed to  
7 some written discovery. I suppose we would reserve  
8 objection to the scope of discovery. We are opposed  
9 to depositions, and especially depositions or any  
10 significant discovery to witnesses only because of  
11 the burden that it puts -- I mean shipper witnesses,  
12 pardon me, only because of the burden that it puts on  
13 those shipper witnesses that already we are asking to  
14 take time out of their day to come and testify on our  
15 behalf.

16 To the extent that they're asked to appear  
17 somewhere or submit to a deposition is something that  
18 we think could have a chilling effect on their  
19 participation in these hearings. I think the idea of  
20 these hearings is to determine what level of service  
21 is being provided, and I think the best way to  
22 determine that is to simply ask those witnesses at  
23 the time of the hearing.

24 So we would be opposed to depositions, but  
25 not opposed to some limited written discovery.

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1           JUDGE RENDAHL: Okay. Thank you. And for  
2 Staff, Mr. Trautman.

3           MR. TRAUTMAN: Staff, likewise, would not  
4 oppose invoking the discovery rule for purposes of  
5 putting out written requests or data requests or  
6 interrogatory type questions. Staff does think that  
7 the concerns that have been expressed with having  
8 depositions, particularly on a statewide basis, and  
9 given the potential scope of the cost, Staff does  
10 think that those objections are valid and are  
11 well-taken.

12          JUDGE RENDAHL: Okay.

13          MR. JOHNSON: Your Honor, could I just make  
14 one small response to the comments that were made?

15          JUDGE RENDAHL: Please go ahead.

16          MR. JOHNSON: My thought is not that we  
17 would be deposing people statewide or even that we  
18 would -- depositions would involve the shipper  
19 witnesses. My thought is, fundamentally, the  
20 depositions I'm talking about would be Puget  
21 Sound-based for the -- and involve the parties  
22 themselves.

23                 So it would be a limited number of party  
24 witness depositions that would enable Stericycle, for  
25 example, to identify the services proposed, the

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1 services being offered by the existing -- by Rubatino  
2 and LeMay in their existing service territories, and  
3 reciprocally, the other parties would be able to  
4 determine, if they wished, the status of Stericycle's  
5 existing service.

6 JUDGE RENDAHL: So you'd inquire as to the  
7 carriers' existing service?

8 MR. JOHNSON: For LeMay and Rubatino, we  
9 have a substantial question as to what they are  
10 currently providing their customers within their  
11 existing service territories. I think that's a key  
12 to our baseline as to what they have to offer in the  
13 new territories. We want to determine what their  
14 current service amounts to in their existing --

15 JUDGE RENDAHL: Current services in terms of  
16 biomedical waste collection, and I believe your  
17 response was yes?

18 MR. JOHNSON: Yes. So again, we're not  
19 proposing a traveling, you know -- traveling road  
20 show around the state; we're thinking of a witness or  
21 two from each party, I'm thinking that that's likely  
22 to be the number, in a convenient location in the  
23 Seattle, Tacoma, greater Bremerton area.

24 JUDGE RENDAHL: Mr. Sells, any response to  
25 Mr. Johnson?

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1           MR. SELLS: Well, yes, if Your Honor please,  
2 that's probably a good thing to get that information,  
3 but I don't see why we can't get that through the use  
4 of written discovery.

5           JUDGE RENDAHL: Mr. Haffner.

6           MR. HAFFNER: I would agree with Mr. Sells'  
7 comments.

8           JUDGE RENDAHL: And Mr. Trautman.

9           MR. TRAUTMAN: That was going to be my --

10          JUDGE RENDAHL: Okay. Well, my sense of  
11 this is that we will invoke the discovery rule for  
12 purposes of data requests, interrogatories, written  
13 discovery, but should the need arise, based upon the  
14 information gained through the written discovery,  
15 that there is in fact a need for the depositions that  
16 -- the limited depositions that Mr. Johnson  
17 mentioned, we can have a pre-hearing over the phone  
18 and discuss that issue in greater detail should the  
19 need arise, but I'd like to see the parties minimize  
20 the expense of discovery in this matter and avoid  
21 depositions if possible.

22          So let's turn to the procedural schedule.  
23 Some of this we may discuss off the record, but  
24 beginning with Mr. Sells, then Mr. Haffner, and then  
25 Mr. Johnson, the primary question I have is how soon



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1 do the parties wish to have this hearing, how much  
2 time do you need for discovery, the written discovery  
3 prior to hearing, and we had also talked about  
4 process, what process you all had in mind for the  
5 hearing. Mr. Johnson had mentioned the possibility  
6 of pre-filed testimony versus live in-hearing  
7 testimony, and so I'd like to discuss those issues  
8 first. Mr. Sells.

9 MR. SELLS: Well, as far as time is needed,  
10 that may depend upon how many hearings we have and  
11 where they are and how far apart they're spaced. I  
12 would think, however, that whatever discovery is  
13 going to be done can probably be done in six weeks or  
14 so, and I'll stand corrected if the other parties  
15 think that's way off base, but --

16 JUDGE RENDAHL: In terms of how many and  
17 where and how far apart, what would you propose in  
18 terms of -- just one hearing here in Olympia or  
19 several throughout the state?

20 MR. SELLS: Well, the problem with having  
21 them all in Olympia, and I think I share this with at  
22 least the other Applicant, is getting the shipper  
23 witnesses to leave their jobs or get permission to  
24 leave their jobs sometimes for a day, an entire day,  
25 sometimes even more.

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1           From our perspective, anyway, I would think  
2 that probably there could be one hearing in Eastern  
3 Washington, perhaps, and two in the Puget Sound area.  
4 But, again, if somebody's got a better perspective  
5 than that, I'm certainly willing to listen.

6           JUDGE RENDAHL: Okay. Well, let's hear from  
7 Mr. Haffner, unless you have more to add?

8           MR. SELLS: No, Your Honor.

9           JUDGE RENDAHL: Okay. Mr. Haffner.

10          MR. HAFFNER: In terms of location of  
11 shipper witnesses for Kleen Environmental, I think we  
12 can have all of our hearings in Western Washington.  
13 And my preference would be to try and have them  
14 closer to Seattle, as opposed to Olympia. If they  
15 could be shared in Tacoma or Kent, that would be fine  
16 with us, but I think it would certainly be more  
17 convenient for our shipper witnesses to be in the  
18 Seattle area.

19          In terms of the number of hearings, boy, I  
20 just -- I'm kind of guessing at this. I think we  
21 could have everything consolidated in the Puget Sound  
22 area, so I guess when Mr. Sells talks about multiple  
23 hearings, I'm assuming this is going to be taking a  
24 significant number of days for this consolidated  
25 application.

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1           JUDGE RENDAHL: I don't know that we've  
2 heard a number of days yet, so I'll --

3           MR. HAFFNER: Okay.

4           JUDGE RENDAHL: Now, since Kleen  
5 Environmental is requesting authority in the entire  
6 state, you don't have -- you wouldn't see a need for  
7 shipper witnesses in an Eastern Washington hearing?

8           MR. HAFFNER: The witnesses that we have can  
9 testify to their needs in Eastern Washington and  
10 Peninsula and Southwestern Washington. I understand  
11 that, to the extent that the Protestants would need  
12 to possibly have witnesses testify about operations  
13 in Eastern Washington, we might need to have hearings  
14 in those parts of the state, but for our purposes, we  
15 only would require witnesses to be brought from the  
16 western side of the state.

17           JUDGE RENDAHL: Okay. Thank you. Mr.  
18 Johnson. And I guess at this point let's hold off on  
19 how many days of hearing, but just in terms of  
20 location and time for discovery. Oh, Mr. Haffner, is  
21 six weeks acceptable for discovery, written  
22 discovery?

23           MR. HAFFNER: I think that might be a little  
24 bit quick. I'd probably lean more towards maybe  
25 eight weeks, but that's not a significant difference.

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1 JUDGE RENDAHL: Okay. Anything else?

2 MR. HAFFNER: No, Your Honor.

3 JUDGE RENDAHL: Okay. Mr. Johnson.

4 MR. JOHNSON: Just speaking to the time for  
5 discovery, I -- you know, the typical time for  
6 response would be 30 days, I guess, and my thought is  
7 that we probably need 30 days to prepare, so --

8 JUDGE RENDAHL: Before you go farther,  
9 Commission's discovery rules, WAC 480-07, beginning  
10 at 400 and going to 425, specifies a 10-day response  
11 period for data requests, so there isn't a 30-day.  
12 It's not the court rules here, unfortunately for you.

13 MR. TRAUTMAN: Business days.

14 JUDGE RENDAHL: Ten business days, it's 10  
15 business days. So I think that that concern of 30  
16 days is not appropriate.

17 MR. JOHNSON: Well, Your Honor, I guess,  
18 having had some experience with discovery in other  
19 contexts, frequently parties who are on the receiving  
20 end of discovery ask for additional time, and it may  
21 be that that wouldn't happen here, but if we wanted  
22 to lay out a plan that we could stick to, we might  
23 want to allow some significant sort of period that  
24 would give people a certain play in the time for  
25 response.

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1           I have no problem with the fact that the  
2 Commission's rule require an expedient response, and  
3 if that's possible, that would be great. I'm  
4 thinking -- my original thought was that we would  
5 basically have 30 days to propound written discovery,  
6 then some reasonable time for back and forth, in my  
7 way of thinking, would perhaps be another 30 days.  
8 So -- and if there are discovery disputes or  
9 something, then we'd want to have a little chance, a  
10 little time to resolve those.

11           So my thought was that we're basically at  
12 June 1st. If we plan to hold the hearings in  
13 September or thereabouts, that that would give us the  
14 time to work through discovery and make -- prepare  
15 for the hearing in an orderly way.

16           In terms of location, I would like to see  
17 one Eastern Washington location. If it is -- we're  
18 dealing with a statewide set of issues, we don't know  
19 all the potential witnesses that we're going to offer  
20 at the hearings, but a statewide application suggests  
21 that, very likely, that there would be witnesses on  
22 the east side of the state, and we'd like to make it  
23 as convenient as possible for those folks to  
24 participate.

25           The number of sort of hearing sessions, I

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1 think it's difficult to predict at this point, so I'm  
2 not able to do that.

3 JUDGE RENDAHL: Okay. In terms of the --  
4 look at the discovery rule -- one of the discovery  
5 rules, WAC 480-07-405, at your leisure. The  
6 Commission does allow, if a party can't respond  
7 within 10 days, to let the other party know, prior to  
8 the 10-day period expiring, that they can't meet that  
9 time period and explain why and set a date when they  
10 will provide it.

11 I will say that in more technically  
12 complicated cases, the Commission has a very short  
13 discovery period, so I think an eight-week discovery  
14 period is probably appropriate. We have to take in  
15 mind that Applicants desire to resolve this  
16 expeditiously, as well as the parties' interests for  
17 gathering information. If it appears that we need to  
18 extend the schedule, I'll entertain that, but I think  
19 let's try to stick to an eight-week period.

20 Generally, the way it's done is the parties  
21 propound discovery upon each other concurrently, and  
22 if there are discovery disputes, please look at the  
23 Commission's rules, there's a process for bringing  
24 those disputes to me, and we can have a conference  
25 call to discover -- to address discovery disputes

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1 over the phone.

2 MR. SELLS: Excuse me, Your Honor. If I  
3 may, I forgot to make one comment regarding the  
4 places. I guess it had skipped my mind that  
5 Southwestern Washington is going to be a factor here,  
6 as far as the LeMay application is concerned. And I  
7 know, traditionally, I've tried to schedule in these  
8 sorts of things one hearing in the Vancouver area,  
9 and I think that probably would be appropriate here.

10 JUDGE RENDAHL: I guess when you had  
11 mentioned one hearing in Eastern Washington and two  
12 in -- when you said Puget Sound, I was anticipating  
13 one in Puget Sound and one in Southwest, so I think I  
14 was thinking along the same lines.

15 MR. SELLS: All right.

16 JUDGE RENDAHL: Reading your mind, if not  
17 the words. Okay. Well, I think, in order to figure  
18 out how many days of hearing we need, I think we need  
19 to now talk about witnesses, and I don't know how far  
20 all of you have gotten in terms of anticipating that.

21 One of the things I do want to talk about  
22 this morning is pre-distribution of witness lists, as  
23 well as any documentary evidence you wish to use at  
24 the hearing. I know there was some discussion of  
25 pre-filed testimony. Let's talk about that first.

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1 Starting with you, Mr. Johnson, you had mentioned  
2 that you were interested in that. Can you explain  
3 why you think that might help?

4 MR. JOHNSON: Well, I guess it's more of a  
5 question on my part as to whether we're going to go  
6 that route, and if so, what the time period would be  
7 to receive that prior to the scheduled hearing date.  
8 It's just, to my way of thinking, more a matter of  
9 scheduling. We're not specifically proposing that  
10 that be done. It was done in the prior  
11 Stericycle/Ryder proceedings. I'm not sure that it  
12 saved a whole lot of time, but it at least, you know,  
13 has that potential in some instances.

14 My question is, really, to the Commission  
15 and the parties, whether they're interested in that,  
16 and if so, we should perhaps discuss how it -- the  
17 process.

18 JUDGE RENDAHL: Starting with you, Mr.  
19 Sells, on the issue of pre-filed testimony.

20 MR. SELLS: Thank you. If Your Honor  
21 please, maybe this is more of a personal bias than  
22 anything, but I don't like pre-filed testimony. I  
23 think that what it ends up doing is you spend a lot  
24 of time drafting up your pre-filed testimony and then  
25 you go into hearing and you end up going through



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1 exactly the same thing on redirect that you would  
2 have done if you had done it on direct to start with.  
3 And you really end up with double the time that could  
4 have been involved by just putting the witness on.  
5 That's especially true, in my view, when you have the  
6 discovery rule invoked and you will have some  
7 information concerning the witnesses.

8 I certainly have no problem, in fact, would  
9 encourage witness lists to be exchanged and maybe a  
10 summary of the testimony, but --

11 JUDGE RENDAHL: Thank you. Mr. Haffner.

12 MR. HAFFNER: Thank you, Your Honor. I  
13 think it would be helpful for the parties to have the  
14 option to submit pre-filed testimony, and to have  
15 that -- those statements submitted, say, three weeks  
16 prior to the hearing where that witness would appear.

17 I think, however, that if pre -- if  
18 statements are submitted, Mr. Sells' concerns need to  
19 be recognized, and direct examination of those  
20 witnesses needs to be limited. To the extent that  
21 clarifications need to be made, maybe it can be done  
22 on redirect, but I think that it can be valuable to  
23 try and keep these -- especially with three  
24 applications in a consolidated hearing, I think it  
25 would be helpful to keep things moving quickly.

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1 JUDGE RENDAHL: Mr. Trautman.

2 MR. TRAUTMAN: Well, I guess all I'll say  
3 is, generally, in these types of cases, with the  
4 transportation cases, I believe the experience has  
5 been not to have the pre-filed testimony. And my  
6 understanding of why we had pre-filed testimony in  
7 other cases is when you have almost all expert  
8 witnesses and often very complicated materials that  
9 not only require the testimony, but often exhibits  
10 and accompanying documents that really could not be  
11 brought in through direct. And in this case, you  
12 have, in many cases, many of the witnesses are  
13 shipper witnesses, and I don't think they're the  
14 types of witnesses that typically we would -- for  
15 which we would typically have pre-filed testimony.

16 So my inclination would be not to have the  
17 pre-filed testimony.

18 JUDGE RENDAHL: Okay. Mr. Johnson.

19 MR. JOHNSON: Just one other. As I -- this  
20 discussion has reminded me of my own thinking about  
21 this. I don't think pre-filed testimony makes sense  
22 for shippers, generators, witnesses, but I was  
23 thinking more in terms of, for example, the economic  
24 presentations that the Applicants need to make. That  
25 can be -- I think pre-filing that kind of testimony

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1 can be helpful.

2 JUDGE RENDAHL: Just so you all are aware,  
3 when the Commission does use pre-filed testimony,  
4 that testimony is the direct testimony. And  
5 generally, it's not just one round that's filed.  
6 There's an opportunity to respond to it by the other  
7 side and then a reply, and it does eat up a certain  
8 amount of time. The intent is to limit hearing time  
9 by the parties. And as Mr. Trautman mentioned,  
10 specifically when you have witnesses, expert  
11 witnesses who are testifying on very technical  
12 aspects, such as telecommunications, engineering and  
13 that sort of thing, it's very useful to read it  
14 several times instead of hear it once, but I'm not  
15 sure that it would necessarily be valuable in this  
16 proceeding, but I guess I'm trying to think here --  
17 let's be off the record for a moment.

18 (Discussion off the record.)

19 JUDGE RENDAHL: Let's be back on the record.  
20 While we were off the record, and just as soon as we  
21 had gone off the record earlier today, it was pointed  
22 out by Staff that the Rubatino Refuse Removal  
23 application, in fact, does fall within the Ashbacker  
24 Rule, WAC 480-70-111, which provides that an  
25 application can be consolidated for Ashbacker

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1 purposes for hearing and consideration by the  
2 Commission if the application is filed within 30 days  
3 of the mailing date of the application docket notice  
4 of the original application.

5 And we determined that the docket mailing  
6 date for the LeMay and Kleen applications was  
7 February the 23rd, and that the Rubatino Refuse  
8 Removal application was filed with the Commission on  
9 February the 22nd.

10 MR. TRAUTMAN: March 22nd.

11 JUDGE RENDAHL: Thank you, March 22nd, which  
12 would be within the 30-day period. So for purposes  
13 of these applications, they are all consolidated for  
14 hearing and consideration under the Ashbacker Rule,  
15 WAC 480-70-111.

16 Also, while we were off the record, we spent  
17 a fair amount of time discussing the process for this  
18 hearing, and this is what we came up with. There  
19 will be discovery. As I noted earlier on the record,  
20 at this point I'd like to try to limit it to written  
21 data requests and interrogatories under the  
22 Commission's discovery rule. The deadline for  
23 discovery is July 16th, which is a Friday. The first  
24 round of operational testimony by the Applicants  
25 would be due four weeks later, on August the 13th.

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1 The second round of operational pre-filed testimony  
2 would be filed with the Commission on September 10th.  
3 And that would include the Protestants', Intervenors'  
4 and Staff's pre-filed affirmative testimony, plus any  
5 response to the Applicants' pre-filed testimony.

6 There will be a pre-hearing conference on  
7 Tuesday, the 21st, at 9:30, probably in Room 206, but  
8 I will look into that. The day prior, on Monday, the  
9 20th, parties will need to file estimates of  
10 cross-examination time for the witnesses who filed  
11 pre-filed testimony, as well as any cross-examination  
12 exhibits they plan on using at the hearing.

13 We will have a hearing the week of September  
14 27th. The location is to be determined. We'll  
15 attempt in the Kent/Tacoma area. If not, it will be  
16 here at the Commission. There will be -- and that  
17 hearing is limited to operational witnesses who have  
18 filed pre-filed testimony.

19 The shipper witnesses will be held -- we'll  
20 have hearings to hear testimony from shipper  
21 witnesses separately on October 6th, 7th and 8th, and  
22 we will look for the Kent area. There will be a  
23 hearing for shipper witnesses in the Puget Sound  
24 region, and on October 12th, which is a Tuesday, we  
25 will have a hearing to hear from shipper witnesses in

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1 the Vancouver area, and then, in Spokane, we'll hear  
2 from shipper witnesses on Thursday, October 28th.

3           Again, those specific locations, we'll need  
4 to determine those, and we'll let you all know.

5 Those locations may not be in the pre-hearing  
6 conference order, but they may be -- we may notify  
7 you separately of those locations.

8           We've set aside simultaneous initial briefs  
9 to be filed with the Commission on November 12th,  
10 which is a Friday. And given the Thanksgiving  
11 holidays, the simultaneous responsive briefs are due  
12 at the Commission on Tuesday, November 30th.

13           Is there anything else we need to discuss  
14 this morning? I'm not hearing anything, but before  
15 we adjourn the conference, is there any party that  
16 would like a copy of the transcript of today's  
17 conference? If so, you need to let the court  
18 reporter know before you leave this morning.

19           MR. JOHNSON: Your Honor, I just would  
20 request one clarification. I think earlier in our  
21 conference you expressed the idea that you would be  
22 open to permitting Protestants and Intervenors to do  
23 some discovery after the initial round of pre-filed  
24 testimony. I just wanted to confirm that.

25           JUDGE RENDAHL: Correct. And given that

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1 there's four weeks in between the first round of  
2 testimony being filed and the second round, if  
3 there's any discovery that you need to propound in  
4 order to complete your written testimony, that is  
5 allowed within that time period.

6 And likewise, if there's any discovery that  
7 needs to be propounded based on that, there is some  
8 time between the hearing, and if the Applicants need  
9 to conduct that, they are entitled to do that, as  
10 well.

11 MR. SELLS: On that line, Mr. Johnson's just  
12 about convinced me of his position that maybe some  
13 depositions might be appropriate. If the parties can  
14 agree on depositions during that time or some other  
15 time, do you want us to come back and check with you,  
16 or should we just go ahead and do them or --

17 JUDGE RENDAHL: If you are in agreement that  
18 you need to conduct depositions, based on the  
19 discussion we had earlier about the need for limited  
20 depositions for operational witnesses, I have no  
21 objection to you all doing it if you are in  
22 agreement. If it's contested, please bring it to me.  
23 And I don't believe I need to know when they're being  
24 scheduled unless you need me to somehow be involved.

25 Okay. Is there anything else we need to

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1 talk about this morning? Hearing nothing, we'll be  
2 adjourned. Thank you all very much. We'll be off  
3 the record.

4 (Proceedings adjourned at 11:23 a.m.)

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