

0020

1

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2

COMMISSION

3

In the Matter of the Application)

)

4

of FREEDOM 2000, LLC d/b/a)

CANDO RECYCLING AND DISPOSAL,)

5

For a Certificate of Public)

DOCKET NO. TG-081576

6

Convenience and Necessity to)

Hearing Volume III

Operate Motor Vehicles in)

Pages 20 - 217

7

Furnishing Solid Waste)

Collection Service)

8

In the Matter of the Application)

9

of POINTS RECYCLING AND REFUSE,)

10

LLC d/b/a POINT RECYCLING AND)

REFUSE)

11

For a Certificate of Public)

DOCKET NO. TG-091687

12

Convenience and Necessity to)

Hearing Volume III

Operate Motor Vehicles in)

Pages 20 - 217

13

Furnishing Solid Waste)

Collection Service.)

14

15

A hearing in the above matter was held on

16

December 29, 2009, at 9:00 a.m., at 1300 South

17

Evergreen Park Drive Southwest, Olympia, Washington,

18

before Administrative Law Judge ANN RENDAHL, Chairman

19

JEFF GOLTZ, Commissioner PATRICK OSHIE, Commissioner

20

PHILIP JONES.

21

The parties were present as follows:

22

23

FREEDOM 2000, LLC, by DONALD L. ANDERSON,

24

Attorney at Law, Eisenhower & Carlson, 1201 Pacific

Avenue, Suite 1200, Tacoma, Washington 98402;

25

telephone, (253) 572-4500.

25

Kathryn T. Wilson, CCR

0021

1 POINTS RECYCLING AND REFUSE, LLC, by ARTHUR
WILKOWSKI, Company Owner, PMB 1542, 145 Tye Drive,
2 Point Roberts, Washington 98281; telephone, (360)
945-1516.

3

 WASHINGTON UTILITIES AND TRANSPORTATION
4 COMMISSION, by JENNIFER CAMERON-RULKOWSKI, Assistant
Attorney General, 1400 South Evergreen Park Drive
5 Southwest, Post Office Box 40128, Olympia, Washington
98504; telephone (360) 664-1224.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0022

1

2

INDEX OF EXHIBITS

3

4

EXHIBIT:

MARKED:

OFFERED: ADMITTED:

5

6

Gellatly direct

7

1 - 18

premarked

(Stipulated, Page 36)

8

9

Gellatly cross

10

25

33

(not offered)

11

26 - 29

premarked

(Stipulated, Page 36)

12

30

33

141

143

13

14

Wilkowski direct

15

31, 32

premarked

(Stipulated, Page 36)

16

33

premarked

86

88

17

34

premarked

(Stipulated, Page 36)

18

19

Wilkowski cross

20

44 - 49

premarked

(Stipulated, Page 36)

21

50

34

(Stipulated, Page 35)

22

23

Eckhardt direct

24

51 - 56

premarked

(Stipulated, Page 36)

25

57

34

(Stipulated, Page 35)

0023

1 EXHIBIT: MARKED: OFFERED: ADMITTED:

2

3 Johnson direct

4

5 71, 72 premarked (Stipulated, Page 36)

6

7 Pratt direct

8

9 81 premarked (Stipulated, Page 36)

10

11 Illustrative

12

13 91 37 (Admitted after 1/4/10)

14

15

16

17

18

19

20

21

22

23

24

25

0024

1

2

INDEX OF WITNESSES

3

4 WITNESS:

PAGE:

5

DAVID GELLATLY

6

7 Direct Examination by Mr. Anderson 40

8 Cross-examination by Mr. Wilkowski 62

9 Cross-examination by Ms. Cameron-Rulkowski 72

10 Cross-examination by Commissioner Oshie 80

11 Cross-examination by Chairman Goltz 80

12 Cross-examination by Judge Rendahl 82

13

14

15 BENJAMIN L. LAZARUS (via bridge line)

16

17 Direct Examination by Mr. Anderson 45

18 Cross-examination by Mr. Wilkowski 46

19

20

21 SHEELAH OLIVER (via bridge line)

22

23 Direct Examination by Mr. Anderson 48

24 Cross-examination by Mr. Wilkowski 50

25 Cross-examination by Ms. Cameron-Rulkowski 51

0025

	WITNESS:	PAGE:
1		
2	SHELLEY DAMEWOOD	
3		
4	Direct examination by Mr. Anderson	85
5	Cross-examination by Mr. Wilkowski	86
6		
7		
8	ANTHONY SLATER (via bridge line)	
9		
10	Direct examination by Mr. Wilkowski	89
11	Cross-examination by Mr. Anderson	92
12	Cross-examination by Ms. Cameron-Rulkowski	93
13	Cross-examination by Judge Rendahl	96
14	Recross-examination by Mr. Anderson	97
15		
16		
17	ARTHUR WILKOWSKI	
18		
19	Direct Examination by Mr. Wilkowski	100
20	Cross-examination by Mr. Anderson	110
21	Cross-examination by Ms. Cameron-Rulkowski	120
22	Cross-examination by Chairman Goltz	130
23	Cross-examination by Judge Rendahl	135
24		
25		

0026

1 WITNESS: PAGE:

2 NICKI JOHNSON

3

4 Direct examination by Ms. Cameron-Rulkowski 141

5 Cross-examination by Mr. Wilkowski 147

6 Cross-examination by Chairman Goltz 151

7

8

9 DAVID PRATT

10

11 Direct examination by Ms. Cameron-Rulkowski 153

12 Cross-examination by Mr. Anderson 165

13 Cross-examination by Mr. Wilkowski 171

14 Cross-examination by Commissioner Jones 176

15 Cross-examination by Commissioner Oshie 177

16

17

18 GENE ECKHARDT

19

20 Direct examination by Ms. Cameron-Rulkowski 180

21 Cross-examination by Mr. Anderson 194

22 Cross-examination by Mr. Wilkowski 195

23 Cross-examination by Chairman Goltz 200

24

25

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

2 JUDGE RENDAHL: Good morning. We are here
3 before the Washington Utilities and Transportation
4 Commission in Olympia, Washington, this Tuesday,
5 December the 29th, 2009, for an evidentiary hearing
6 concerning applications for certificates of authority
7 to provide solid waste collection service in Point
8 Roberts, Washington.

9 The first application was filed in Docket No.
10 TG-081576, by Freedom 2000 -- that's the number 2000 --
11 LLC, doing business as Cando, C-a-n-d-o, Recycling and
12 Disposal. The second application was filed in Docket
13 TG-091687 by Points Recycling and Refuse, LLC, doing
14 business as Point Recycling and Refuse. The Commission
15 has consolidated these matters for hearing as the
16 applications overlap both in the service they seek to
17 provide and the proposed service territory.

18 I'm Ann Rendahl, an administrative law judge
19 for the Commission, presiding over the hearing this
20 morning. I'll be joined later by Chairman Jeffrey
21 Goltz, Commissioners Patrick Oshie and Philip Jones at
22 the start of the evidentiary hearing. We are going to
23 go over some preliminary matters, get things organized
24 before we delve into witnesses, so thanks for coming
25 earlier than the 9:30 start we originally noticed and

0028

1 being here at nine.

2 So before we go any farther, I would like to
3 take appearances from the parties, beginning with the
4 Applicant, Freedom 2000, and since this is the first
5 evidentiary hearing we've had in these matters, some of
6 you may be making an initial appearance. So I would
7 ask that you provide your full name, the party you
8 represent, your address, telephone number, fax number,
9 and e-mail address, and the purpose for all of this
10 information is so that we can contact you in various
11 ways and send you electronic copies of orders and
12 notices in addition to mailing them. So starting with
13 Freedom 2000.

14 MR. ANDERSON: Good morning. My name is
15 Donald L. Anderson. I'm with the law firm Eisenhower
16 and Carlson, 1200 Wells Fargo Plaza, 1201 Pacific
17 Avenue, Tacoma, Washington, 98402; phone,
18 (253) 572-4500; fax, (253) 272-5732; e-mail,
19 danderson@eisenhowerlaw.com. I represent the
20 Applicant, Freedom 2000.

21 JUDGE RENDAHL: Thank you very much, and for
22 Point Recycling?

23 MR. WILKOWSKI: Good morning. I'm Arthur
24 Wilkowski, W-i-l-k-o-w-s-k-i. I represent Point
25 Recycling and Refuse. My mailing address is PMB 1542,

0029

1 145 Tyee, T-y-e-e, Drive, Point Roberts, Washington,
2 98281. The phone is (360) 945-1516. The fax is (360)
3 945-0414, and my e-mail is prandr@pointroberts.net.

4 JUDGE RENDAHL: For Commission staff?

5 MS. CAMERON-RULKOWSKI: Jennifer
6 Cameron-Rulkowski, assistant attorney general. My
7 address is 1400 South Evergreen Park Drive Southwest,
8 PO Box 40128, Olympia, Washington, 98504-0128. My
9 telephone number is area code (360) 664-1186. My fax
10 number is (360) 586-5522. My e-mail is
11 jcameron@utc.wa.gov.

12 JUDGE RENDAHL: Thank you. Although I don't
13 anticipate it at this time, I'm going to ask if there
14 is anyone in the hearing room or on the bridge line who
15 wishes to petition to intervene in this proceeding at
16 this time? Hearing nothing, let's proceed to the
17 agenda for this morning and any preliminary issues.

18 The items on my list to discuss before 9:30
19 include the witnesses, whether they are still the same
20 witnesses you identified in your preliminary lists,
21 what order you wish to have them testify and their
22 availability, go over the cross-examination estimates,
23 talk about any additions or corrections to the exhibit
24 list, stipulations to the exhibits, any disputed
25 exhibits, and I would like to talk about what we refer

0030

1 to as the illustrative public comment exhibit, which is
2 all the written comments filed about both the
3 applications in the case.

4 Then I would like to ask if anyone is
5 interested in having any posthearing briefs in this
6 case. It's not necessary, but it's really up to the
7 parties to decide what they want to do, and then any
8 other issues the parties have before we start with the
9 evidentiary hearing.

10 So let's start first with the witness order
11 and availability and whether we are still planning on
12 all of the witnesses that the parties identified. I
13 will start with the Applicant, Freedom 2000;
14 Mr. Anderson?

15 MR. ANDERSON: Our witness list is
16 substantially abbreviated. We will, of course, call
17 David Gellatly as the Company witness, and anticipate
18 his testimony will be pretty much as estimated. We
19 anticipate calling Sheelah Oliver and Ben Lazarus as
20 need witnesses over the bridge line, and we anticipate
21 that Shannon Thomsen and Shelley Damewood will be
22 present in person as possible cross-examination
23 witnesses; no other witnesses.

24 JUDGE RENDAHL: So Mr. Lewis, Ms. Aleksejev,
25 Mr. Moat, Ms. Kirwin, Mr. Bourks, and Ms. Coe will not

0031

1 be present or testifying?

2 MR. ANDERSON: Or Mr. Hutching.

3 JUDGE RENDAHL: Okay. Have you discussed
4 with Ms. Oliver or Mr. Lazarus a particular time you
5 want them to call in on the bridge line?

6 MR. ANDERSON: 9:45.

7 JUDGE RENDAHL: So we will interrupt
8 Mr. Gellatly and take up these two witnesses?

9 MR. ANDERSON: Yes.

10 JUDGE RENDAHL: Have you provided them with
11 the conference bridge number?

12 MR. ANDERSON: Yes.

13 JUDGE RENDAHL: So for Mr. Wilkowski, I
14 assume since you are here, you intend to testify
15 yourself, and then are you intending Mr. Slater to call
16 in?

17 MR. WILKOWSKI: Yes. We just need to
18 schedule a time. He's available, and when you pick a
19 time, I'll call him and let him know, and I've provided
20 him with the bridge number.

21 JUDGE RENDAHL: So we will need a little over
22 two hours for Freedom 2000's testimony, including the
23 need witnesses. If we start at 9:30, do you want to
24 have your testimony begin and then we will take a lunch
25 break and the public hearing and then have him call in

0032

1 at 2:30; does that work?

2 MR. WILKOWSKI: I can call him and check, but
3 I think that will work.

4 JUDGE RENDAHL: Or two o'clock. I don't know
5 how many people will appear at the public hearing or
6 call in. I've not had any information about that. We
7 may not need the full hour, but I would hate to have
8 him call in at 2:00 and have a whole room full of
9 people, so that's why I'm saying 2:30 or 2:45, or we
10 could have him testify first at 11:30.

11 MR. WILKOWSKI: Let's do that, and it should
12 only take a minute.

13 JUDGE RENDAHL: So why don't we have him call
14 in at 11:30 on the bridge. Is Commission staff
15 intending to go ahead with the three witnesses?

16 MS. CAMERON-RULKOWSKI: Yes.

17 JUDGE RENDAHL: So we will most likely finish
18 this hearing today, and I appreciate the updates.

19 Cross-examination exhibits, I've received
20 four additional exhibits from Commission staff. While
21 we were off the record, I had discussed with counsel
22 for Freedom 2000 and Mr. Wilkowski, and they have said
23 they don't have any additional exhibits, so it looks
24 like we are just marking and adding the exhibits for
25 Staff, so Ms. Cameron-Rulkowski, would you like to go

0033

1 through your exhibits and identify where they should be
2 located for which witness?

3 MS. CAMERON-RULKOWSKI: The investigation
4 report is a cross-examination exhibit for Mr. Gellatly.

5 JUDGE RENDAHL: So I'll call that the
6 December 2008 staff investigation of David Gellatly and
7 Ronald Calder, and then the d/b/a that's listed, Light
8 Weight Recyclers, J-Man Trucking, Triple K Trucking.
9 That will be marked as Exhibit 30. Please go ahead.

10 MS. CAMERON-RULKOWSKI: The report from the
11 Corporations Division of the Secretary of State is also
12 a cross-exhibit for Mr. Gellatly.

13 JUDGE RENDAHL: Just to confirm,
14 Mr. Wilkowski, you don't have any documents to use in
15 cross-examining Mr. Gellatly?

16 MR. WILKOWSKI: No.

17 JUDGE RENDAHL: So we will make this
18 Exhibit 25, and this will be December 28, 2009,
19 Internet screen print from Secretary of State
20 Corporations Division for Freedom 2000, LLC.

21 MS. CAMERON-RULKOWSKI: Then the 2008 annual
22 report from Points. That's a cross-exhibit for
23 Mr. Wilkowski.

24 JUDGE RENDAHL: So that would be Exhibit 50,
25 and it's the 2008 annual report for Point Recycling and

0034

1 Refuse Company?

2 MS. CAMERON-RULKOWSKI: That's correct, Your
3 Honor. Your Honor, I haven't had a chance to discuss
4 these exhibits with the other parties. Would there be
5 a time when we could go off the record for five minutes
6 and discuss those?

7 JUDGE RENDAHL: Yes. Let's get through
8 marking them and then let's do that.

9 MS. CAMERON-RULKOWSKI: The last exhibit is a
10 penalty assessment in Docket TG-081637, and I was
11 planning to ask Your Honor to take official notice of
12 that and to include this in my direct examination of
13 Mr. Eckhardt, so it does not need to be marked as a
14 cross-exhibit.

15 JUDGE RENDAHL: I'll mark that as Exhibit 57
16 and change the Exhibit list to reflect that it's a
17 direct exhibit. So this will be UTC penalty
18 assessment, TG-081637, dated September 11th, 2008, and
19 that will be Exhibit 57. Let's go off the record for a
20 moment. Do you want me in the room or do you want me
21 to leave the room for this discussion?

22 MS. CAMERON-RULKOWSKI: It doesn't matter to
23 me.

24 MR. ANDERSON: It doesn't matter to me.

25 JUDGE RENDAHL: Off the record.

0035

1 (Discussion off the record.)

2 JUDGE RENDAHL: While we were off the record,
3 the parties discussed some additional cross-examination
4 and direct exhibits proposed by Commission staff.

5 Ms. Cameron-Rulkowski, would you like to put on the
6 record what was discussed off the record?

7 MS. CAMERON-RULKOWSKI: Thank you, Your
8 Honor. We discussed possible stipulations for the
9 entry of these additional exhibits, and the parties
10 have stipulated to the entry of No. 50, which is the
11 2008 Points annual report, and the parties have also
12 stipulated to entry of No. 57, which is the penalty
13 assessment that will be placed in the direct
14 examination of Mr. Eckhardt.

15 JUDGE RENDAHL: Disputed are what's been
16 marked as 25 and 30?

17 MR. ANDERSON: Although with respect to 30,
18 we will stipulate to Appendixes B and higher.

19 JUDGE RENDAHL: Just to clarify, I understand
20 from e-mail correspondence between the parties and then
21 sent to me that the parties have agreed to stipulate to
22 all but one of the exhibits that were identified on the
23 draft exhibit list; is that correct?

24 MR. ANDERSON: Correct. We've agreed to
25 stipulate to all draft exhibits, other than what is now

0036

1 No. 33.

2 JUDGE RENDAHL: That being a December letter
3 from Mr. Wilkowski in Docket TG-091687 concerning
4 comments on demand for services?

5 MR. ANDERSON: Correct.

6 JUDGE RENDAHL: Would you like to take up the
7 arguments on that as the hearing progresses; is that
8 the most logical way to proceed?

9 MR. ANDERSON: Yes.

10 JUDGE RENDAHL: For those of you who have
11 called on the bridge line, we are in the middle of the
12 hearing. If you are a witness, then we will call you
13 at the appropriate time.

14 So we are stipulating to what's been marked
15 as Exhibits 1 through 18 for Mr. Gellatly and for
16 Freedom 2000, and Cross-Exhibits 26 through 29; direct
17 exhibits for Point Recycling, Exhibits 31 through 34;
18 is that correct?

19 MR. ANDERSON: Not 33.

20 JUDGE RENDAHL: 31, 32, and 34; thank you.
21 Cross-examination exhibits for Mr. Wilkowski, Exhibits
22 44 through 50; direct exhibits for Mr. Eckhardt,
23 exhibits 51 through 57; direct exhibits for
24 Ms. Johnson, Exhibits 71 and 72, and Exhibit 81, a
25 direct exhibit for Staff witness Mr. Pratt, and then

0037

1 the illustrative exhibit I'm not going to be admitting
2 at this point. We will continue to receive any written
3 comments in these two applications until Monday,
4 January the 4th, at which point Ms. Cameron-Rulkowski
5 will put together, with the help of Mr. Shutler in our
6 consumer protection division, a collection of all those
7 comments, and we will provide copies to all of you, and
8 then I will ask if there is any objection to admitting
9 the public comments in these two applications. They
10 will be admitted as one exhibit, which I've identified
11 as 91 just to have a placeholder.

12 So is there any objection to admitting the
13 exhibits I identified with the exception of we are not
14 going to be admitting at the moment Exhibits 25, 30,
15 33, and 91 at the moment? Any objection to admitting
16 the remainder of those exhibits?

17 MR. ANDERSON: No.

18 MS. CAMERON-RULKOWSKI: None from Staff, Your
19 Honor.

20 JUDGE RENDAHL: Those exhibits will be
21 admitted, and you may use them in the course of your
22 direct and cross-examination, and we will address the
23 other three as the hearing progresses.

24 So the other items we need to talk about
25 before 9:30 are posthearing briefs. Does any party

0038

1 have a desire to file posthearing briefs in this
2 matter?

3 MR. ANDERSON: No. Only if necessary for
4 response.

5 JUDGE RENDAHL: Ms. Cameron-Rulkowski?

6 MS. CAMERON-RULKOWSKI: No.

7 JUDGE RENDAHL: Mr. Wilkowski?

8 MR. WILKOWSKI: Only if necessary.

9 JUDGE RENDAHL: We will bring this issue up
10 again to see if any party wishes to change their mind
11 on this. So I have no other issues this morning before
12 we start the evidentiary hearing. Is there any other
13 issue the parties wish to discuss before we go forward?

14 So we will take a brief recess until the
15 commissioners arrive around 9:30. We will be off the
16 record until then, and Mr. Wilkowski, please call your
17 witness and let him know that 11:30 is an appropriate
18 time to call in.

19 (Recess.)

20 JUDGE RENDAHL: We are restarting our
21 hearing. For those of you who have joined us, I'm Ann
22 Rendahl, an administrative law judge with the
23 Commission. I'll be presiding in this along with
24 Chairman Jeffrey Goltz, Commissioners Patrick Oshie and
25 Philip Jones.

0039

1 For the benefit of the commissioners, while
2 we were on the record this morning addressing
3 preliminary issues, Freedom 2000 is not calling seven
4 of its witnesses, so we will be hearing from
5 Mr. Gellatly this morning as the Company witness, and
6 as-needed witnesses, Ms. Oliver and Mr. Lazarus, and then
7 cross-examination witnesses Ms. Tomsen and
8 Ms. Damewood, so that will eliminate a significant
9 amount of hearing time we had estimated for today.

10 Ms. Oliver and Mr. Lazarus will be calling in
11 on the bridge at 9:45. In fact, I'm sure they are
12 already on the bridge, so I think it's probably best to
13 start with those two witnesses, Mr. Anderson.

14 For the benefit of the commissioners, if the
15 parties' representatives could identify themselves for
16 the commissioners and then we will get started,
17 beginning with Freedom 2000.

18 MR. ANDERSON: Good morning. I'm Don
19 Anderson. I represent the Applicant, Freedom 2000.

20 MR. WILKOWSKI: Good morning. I'm Arthur
21 Wilkowski of Point Recycling and Refuse.

22 MS. CAMERON-RULKOWSKI: Jennifer
23 Cameron-Rulkowski, assistant attorney general,
24 representing Commission staff.

25 JUDGE RENDAHL: Is Ms. Oliver on the bridge

0040

1 line? All right. Is Mr. Lazarus on the bridge line?
2 All right. Then why don't we get started with
3 Mr. Gellatly, do some preliminary information on the
4 record, and then, Mr. Gellatly, if you could come over
5 to the table over here and I'll administer the oath.
6 If you could please stand up again.

7

8 Whereupon,

9

DAVID GELLATLY,

10 having been first duly sworn, was called as a witness
11 herein and was examined and testified as follows:

12

13

DIRECT EXAMINATION

14 BY MR. ANDERSON:

15 Q. Thank you. Would you please state your name
16 and residence address for the record?

17 A. David Gellatly, G-e-l-l-a-t-l-y, 550 Calder
18 Drive, Point Roberts, Washington, 98281.

19 Q. How long have you resided in Point Roberts?

20 A. I've resided in Point Roberts since about
21 1986, and I've also been around Point Roberts since
22 1979.

23 Q. How are you presently employed?

24 A. I'm self-employed as a currency buyer. My
25 company, Point Roberts Currency Exchange, purchases

0041

1 Canadian currency from all of the businesses and other
2 people in Point Roberts.

3 Q. As an explanation for the Commission, how do
4 you make money as a currency exchange person?

5 A. I purchase Canadian currency from the
6 merchants in Point Roberts at a rate that exceeds the
7 bank rate, so they get a better exchange rate for
8 myself. I pay them in US funds, and then I turn around
9 and sell that Canadian currency to my bank on the
10 Canadian side at a better rate than that, and the
11 difference between what I sell the currency at and what
12 I bought it for is my profit.

13 Q. Does that put you in contact with businesses
14 in Point Roberts?

15 A. I'm in contact with businesses in Point
16 Roberts Monday through Friday. I see my customers
17 every day.

18 Q. When did you first have any dealings at Point
19 Roberts?

20 A. I came to Point Roberts in 1979. I was
21 employed by The Breakers, Incorporated, at the time
22 working in a tavern on Sundays. I joined the volunteer
23 fire department shortly thereafter, and have been in
24 Point Roberts pretty much ever since becoming a
25 permanent resident in 1986.

0042

1 Q. What were your dealings with the fire
2 department?

3 A. I was a volunteer fireman and also an EMT,
4 provided on-call service by pager and got to know a lot
5 of the community as a result.

6 Q. During what period of time?

7 A. I was on the department from 1980 until 1997
8 as a firefighter and also in the capacity of fire
9 chief.

10 Q. When were you fire chief?

11 A. Approximately 1989 to 1997.

12 Q. Do you still have any connection with the
13 fire department?

14 A. Yes. I now serve as a publicly-elected
15 commissioner for Fire District 5.

16 Q. How long have you been a commissioner?

17 A. About six years now.

18 Q. Going back to 1979 and onward, could you
19 please explain your employment history?

20 A. Well, in '79 I was employed at The Breakers,
21 and also for a company in Vancouver, BC, Bankers
22 Dispatch Corporation, as a courier. In 1983, I became
23 employed by Brinks Canada Limited, an armored car
24 company as a driver, and within a year began as their
25 sales representative; stayed with the company until

0043

1 1995 as regional sales manager and then area manager
2 and assistant general manager for western Canada.

3 I then went to work in Blaine for a company
4 called Mobile Exchange, which is in the currency
5 exchange business, and I started an armored car service
6 for them, which was known as Kenneth L. Kellar Truck
7 Lines, doing business as Mobile Armored; stayed with
8 them until 2002. Due to the crossing of borders and
9 the problems resulting from September 11th, 2001, I
10 took a job at the marina in Point Roberts as the
11 general manager for a period of about eight or nine
12 months; left there and started my own business in the
13 currency exchange.

14 Q. Do you have any experience regarding the
15 trucking industry?

16 A. With Brinks Canada and Kenneth L. Kellar
17 Truck Line, there is a lot of work in the trucking
18 business; also as a courier.

19 Q. Would you please explain what you did first
20 with Brinks?

21 A. Well, with Brinks as a driver, messenger and
22 guard, and in my capacity as the area manager, I was
23 responsible for all aspects of the operations from
24 driver's license qualifications to maintenance and
25 operations of the vehicles, and I was responsible for

0044

1 the same as the assistant general manager.

2 With respect to your experience with
3 Calder -- with Kenneth L. Kellar Truck Lines, they
4 basically did the same thing. I was responsible for
5 all aspects of operations and maintenance.

6 MR. ANDERSON: It appears some people may
7 have called in on the bridge line.

8 JUDGE RENDAHL: Is Mr. Lazarus there?

9 MR. LAZARUS: Yes.

10 JUDGE RENDAHL: Is Ms. Oliver on the line?

11 MS. OLIVER: Yes, I am.

12 JUDGE RENDAHL: Mr. Anderson, counsel for
13 Freedom 2000, will pass ask some preliminary questions
14 for you, and then other parties who are here may have
15 questions for you as well. Mr. Wilkowski is
16 representing Point Recycling. Ms. Cameron-Rulkowski
17 represents the Commission staff.

18 Mr. Lazarus, although we can't see you, would
19 you raise your right hand, please?

20

21 Whereupon,

22 BENJAMIN L. LAZARUS,
23 having been first duly sworn, was called as a witness
24 herein and was examined and testified as follows:

25

0045

1

DIRECT EXAMINATION

2

3 BY MR. ANDERSON:

4

JUDGE RENDAHL: Please go ahead,

5

Mr. Anderson.

6

Q. Mr. Lazarus, would you please state your name
7 and address for the record?

8

A. Benjamin Lewis Lazarus. My address is 102
9 Mill Road, Point Roberts, Washington.

10

Q. How long have you resided in Point Roberts?

11

A. Five years.

12

Q. Are you associated with any business in Point
13 Roberts?

14

A. I am.

15

Q. What is that?

16

A. Westwind Marine, Incorporated.

17

Q. What's your relationship to that business?

18

A. My wife and I own it.

19

Q. What type of business is it?

20

A. It's a marine repair facility. We take care
21 of pleasure craft, maintenance repairs, upgrades.

22

Q. Do you currently have residential garbage
23 pickup service in Point Roberts?

24

A. I do not.

25

Q. Do you believe that there is a need for that

0046

1 service?

2 A. I do.

3 Q. Do you currently have a residential curbside
4 recycling service in Point Roberts?

5 A. No.

6 Q. Do you believe there is a need for that
7 service?

8 A. I'm not certain on that. I think it would be
9 good.

10 Q. Do you currently have any commercial garbage
11 pickup service in Point Roberts for your business?

12 A. No.

13 Q. Do you believe that would be advantageous or
14 necessary?

15 A. Definitely, yes.

16 MR. ANDERSON: Your Honor, I have no further
17 questions.

18 JUDGE RENDAHL: Thank you. Mr. Wilkowski, do
19 you have any questions for Mr. Lazarus?

20 MR. WILKOWSKI: Yes, I do.

21

22

23 CROSS-EXAMINATION

24 BY MR. WILKOWSKI:

25 Q. Mr. Lazarus, were you ever on residential

0047

1 garbage or recycling collection service?

2 A. No.

3 Q. What does your business currently do with its
4 garbage?

5 A. We've been disposing of it through the
6 marina.

7 Q. So the Point Roberts Marina hauls your
8 garbage for you?

9 A. I throw my garbage into their garbage cans.

10 MR. WILKOWSKI: Thank you.

11 JUDGE RENDAHL: Ms. Cameron-Rulkowski?

12 MS. CAMERON-RULKOWSKI: Nothing from Staff,
13 Your Honor.

14 JUDGE RENDAHL: Any questions from the
15 commissioners for this witness? Okay. Anything
16 further, Mr. Anderson?

17 MR. ANDERSON: No.

18 JUDGE RENDAHL: Thank you, Mr. Lazarus for
19 calling in. You are now excused.

20 MR. LAZARUS: You are welcome.

21 JUDGE RENDAHL: Ms. Oliver, could you raise
22 your right hand, please?

23

24

25

0048

1 Whereupon,

2 SHEELAH OLIVER,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6

7 DIRECT EXAMINATION

8 BY MR. ANDERSON:

9 Q. Ms. Oliver, would you please state your name
10 for the record and spell your name, please?

11 A. My name is Sheelah, S-h-e-e-l-a-h, Oliver,
12 O-l-i-v-e-r.

13 Q. Where do you reside?

14 A. 263 Mill Road, Point Roberts.

15 Q. How long have you resided in Point Roberts?

16 A. Since 1975, March of '75.

17 Q. Are you employed?

18 A. Yes, sir.

19 Q. Where are you employed?

20 A. For PR Petroleum, which is a gas station on
21 Tyee Drive.

22 Q. That's also in Point Roberts?

23 A. Yes, sir.

24 Q. Do you currently have residential garbage
25 service or curbside recycling service?

0049

1 A. I do not.

2 Q. Do you believe there is a need for
3 residential garbage pickup service at Point Roberts?

4 A. I believe there is a need for a garbage
5 service, yes, but I must qualify that I have never had
6 a personal pickup service as I take my garbage to my
7 place of business, and I also pay for it by giving the
8 driver, or Arthur, a check on a periodic basis.

9 Q. That was when he was operating the garbage
10 service?

11 A. Yes.

12 Q. Do you believe that there is a need for
13 curbside recycling in Point Roberts?

14 A. I believe there is, yes.

15 Q. Does the business that you work at, the gas
16 station, currently have commercial garbage pickup?

17 A. We do not.

18 Q. Do you believe there is a need for that in
19 Point Roberts?

20 A. Yes, I do.

21 MR. ANDERSON: No further questions.

22 JUDGE RENDAHL: Mr. Wilkowski?

23

24

25

0050

1 CROSS-EXAMINATION

2 BY MR. WILKOWSKI:

3 Q. Hi, Sheelah. I just want to clarify for the
4 Commission that the payments you made to me for putting
5 the garbage in your employer's dumpster, those payments
6 were credited to your employer's account; is that
7 correct?

8 A. That is correct, yes.

9 Q. Your gas station, has it been a long-standing
10 problem of residential people in Point Roberts dumping
11 garbage in your commercial containers?

12 A. I believe that's a problem pretty much
13 everywhere. We try to police it by catching people
14 leaving boxes. Mostly it's the cardboard that seems to
15 be a bigger issue for us. However, it's not uncommon
16 to find a bag of garbage waiting for us beside one of
17 the pumps in the morning.

18 Q. So your business, like almost all businesses
19 in Point Roberts, when they had dumpsters, they need to
20 be locked down and secured at all times?

21 A. Yes, indeed.

22 MR. WILKOWSKI: Thank you. No further
23 questions.

24 JUDGE RENDAHL: Ms. Cameron-Rulkowski?

25

0051

1 CROSS-EXAMINATION

2 BY MS. CAMERON-RULKOWSKI:

3 Q. Ms. Oliver, if residential curbside pickup
4 were available again in Point Roberts, would you
5 subscribe?

6 A. You know, honestly, I would prefer to
7 continue the way I am. I have a maniacal fear of
8 rodents, and leaving garbage around for a week or
9 leaving it on the side of the road wasn't really an
10 option that I cared to have. I'm lucky I'm the manager
11 of the station, and my employers agreed what I was very
12 suitable, but I'm just one. I believe there is a great
13 need for a lot of people to have their garbage disposed
14 of properly and their recyclables as well.

15 Q. Ms. Oliver, I'm trying to understand how the
16 gas station disposed of its garbage and how it disposes
17 of its garbage currently?

18 A. One of our employees has a little truck, and
19 he makes a run to the transfer station every Monday,
20 and in the meantime, we have to house it in one of our
21 sheds that we keep oil and other items in.

22 Q. When collection service was available, was
23 the gas station a subscriber?

24 A. Yes, indeed.

25 MS. CAMERON-RULKOWSKI: Thank you,

0052

1 Ms. Oliver.

2 JUDGE RENDAHL: Are there any questions from
3 the commissioners for this witness? Mr. Anderson,
4 anything for this witness?

5 MR. ANDERSON: No.

6 JUDGE RENDAHL: Thank you very much,
7 Ms. Oliver. You also are excused. Thank you for
8 calling in this morning.

9 MS. OLIVER: You are welcome.

10 JUDGE RENDAHL: Now that we have heard from
11 the two witnesses for public need from Freedom 2000, we
12 are going to continue with the examination of
13 Mr. Gellatly. Mr. Anderson, please go ahead.

14 Q. (Mr. Anderson) Mr. Gellatly, when you were in
15 your supervisory capacity at Brinks, how many vehicles
16 were under your care and supervision?

17 A. Between 55 and 80 at any given time.

18 Q. What was the breakdown of those? What type
19 of vehicles were they?

20 A. Various different sizes of armored truck,
21 armored vans, anything from a one-ton van to a
22 tandem-axle highway truck.

23 Q. When did you first become aware of roadside
24 pickup or curbside pickup, garbage service in Point
25 Roberts?

0053

1 A. When I arrived in 1979, we had pickup at The
2 Breakers. As a matter of fact, one of the jobs we had
3 at the end of Sunday night, which was quite a raucous
4 night at The Breakers Tavern in Point Roberts, we would
5 empty all of the bottles and cans and garbage into
6 dumpsters and put them outside, and on Monday mornings,
7 there was collection by Point Roberts Sanitation.

8 Q. Did you become familiar with the owners and
9 operation of the certificated garbage hauler about that
10 time?

11 A. Yes.

12 Q. How was that?

13 A. The owner's husband was the fire chief, and
14 she was also a member of the fire department, and I got
15 to know them personally as a result.

16 Q. Did you become aware of how their operations
17 worked?

18 A. Yes, I did.

19 Q. Mr. Gellatly, I would like you to take a look
20 at some of the exhibits as we walk through them here.
21 Could you please identify what is admitted as Exhibit
22 No. 1?

23 A. That would be my application for, I believe,
24 for a certificate of public convenience to operate as a
25 solid waste collection company.

0054

1 Q. Did you come to amend your application at
2 sometime?

3 A. Yes. Originally I had applied because of the
4 lack of service, the discontinuation of curbside
5 recycling in March or April of 2008. In August, I made
6 application for a certificate to provide strictly
7 curbside recycling service. I then amended the
8 application.

9 Q. How did you come to amend the application?

10 A. The application was amended as a result of
11 notification that the existing operator in Point
12 Roberts was discontinuing service.

13 Q. And when you say "discontinuing service," you
14 mean discontinuing curbside collection of municipal
15 solid waste?

16 A. That's correct.

17 Q. When you applied, was there curbside
18 recycling service?

19 A. No, there was not.

20 Q. This is your amended application?

21 A. That's correct.

22 Q. Could you please identify Exhibit No. 2?

23 A. These are notes with respect to the
24 application. After meeting with Staff, they indicated
25 they required additional information, more involved,

0055

1 and so I provided for them some additional information
2 that was attached to the application.

3 Q. Moving on to Exhibit No. 3, could you please
4 identify that?

5 A. This is a copy of the tariff that was
6 submitted with the application.

7 Q. What analysis have you done to arrive at your
8 pro forma and tariff?

9 A. I basically took the information that was
10 available publicly. At the time, I believe it was
11 Point Recycling and Refuse's 2005, 2006, and 2007
12 filings with the UTC as well as Point Recycling's
13 submissions to Whatcom County for solid waste tax, and
14 I used that information, extrapolated, and prepared my
15 documents as a result.

16 Q. What is Exhibit No. 4?

17 A. Exhibit No. 4 is my initial budget that I
18 submitted with the assumptions to Staff.

19 Q. There was a point where there was a question
20 of operation with and without the transfer station at
21 Point Roberts; is that correct?

22 A. That is correct.

23 Q. Could you explain the difference in
24 operations that you would propose if you had the
25 transfer station under lease from Whatcom County as it

0056

1 compared to if you did not?

2 A. If Freedom 2000 had the lease for the
3 transfer station, then the operations would basically
4 mirror the operations that were in place prior to the
5 former G-certificate holder providing service.

6 The amended without transfer station involved
7 making pickups and then on the same day delivering the
8 collected refuse and collected recyclables to Ferndale.
9 There was reduced expenses in the case of not having
10 the transfer station. It was reduced revenues as well,
11 and it reduced cost of labor and all associated items.

12 Q. How would you propose to deliver the refuse
13 to Ferndale if you did not have the lease on the
14 transfer station?

15 A. The refuse and the recyclable would be driven
16 around in the garbage truck that was collected and/or
17 the recyclable trailer that it was collected in.

18 Q. Is your application conditioned in any way on
19 receiving a lease on the transfer station?

20 A. No, it's not.

21 Q. Would you please move on to Exhibit No. 5 and
22 identify that, please?

23 A. That's an additional document of information
24 provided to the Commission with respect to some
25 increased funding and also that the US DOT operating

0057

1 authority had been filed electronically and that an
2 application has been made for transportation of
3 recyclable materials with the Department of Ecology.

4 Q. Please identify No. 6.

5 A. No. 6, the first document is a commitment for
6 private financing in the amount of \$50,000. The second
7 is an amended financial statement and equipment list.
8 The third is a bill of sale for a container truck and
9 containers.

10 The next one is a quote from Doriviel
11 Containers for the purchase of containers for the
12 purpose of providing commercial garbage service. The
13 next is a balance sheet outlining the assets and
14 liabilities of the Company.

15 The next item is just a refax of some of that
16 information as well as a letter of commitment from
17 Kinsey Reports to provide the services required for
18 accounting and a letter from Banner Bank outlining the
19 balance in Freedom 2000's bank account and a brief
20 comment about my relationship with the bank.

21 Q. Are the funds available and credit available
22 reflected in that exhibit still available to
23 Freedom 2000?

24 A. Yes, they are.

25 Q. There is some equipment outlined in there

0058

1 that you currently own; is that correct?

2 A. That's correct.

3 Q. What equipment do you currently own that
4 would be used in the operations?

5 A. A roll-off container truck and six containers
6 as well as a pickup truck, which would be used to pull
7 the recyclable trailer.

8 Q. If you are granted the certificate to
9 purchase the additional available equipment; is that
10 correct?

11 A. Yes, that's correct.

12 Q. Would you please identify Exhibit No. 7?

13 A. These are the budget assumptions for the
14 proposed budget, which included the transfer station.

15 Q. What is Exhibit No. 8?

16 A. No. 8 is the application to the Federal Motor
17 Carrier Safety Administration for operating authority.

18 Q. And has any action been taken on that
19 application?

20 A. The application has been approved and the
21 authority is in place.

22 Q. What is Exhibit No. 9?

23 A. This is the application to the Department of
24 Ecology for the transportation of recyclable materials.

25 Q. And when was that submitted?

0059

1 A. In June of '09.

2 Q. Has any action been taken on that?

3 A. Yes. We are awaiting the common carrier
4 certificate number, and after some problems with the
5 insurance company continually making out the
6 certificate to the wrong agency, was finally accepted
7 and a number given, submitted to the Department of
8 Ecology, and after several attempts, they finally got
9 it right, and I think that the Freedom 2000 name was
10 put on their list of authorized transporters in
11 November of this year.

12 Q. Would you identify Exhibit No. 10, please?

13 A. It's a letter from the Council Chair at
14 Whatcom County indicating that they have no objection
15 to moving Freedom 2000's application for curbside
16 recycling forward.

17 Q. How about Exhibit 12?

18 A. No. 12 is a letter from the Department of
19 Public Works indicating that it is not opposed to
20 certification of hauling for curbside recycling only
21 and outlining some considerations for Point Roberts.

22 Q. Please identify Exhibit 13.

23 JUDGE RENDAHL: I'm sorry. Mr. Gellatly, are
24 you looking at Exhibit No. 11 or Exhibit No. 12?

25 THE WITNESS: I'm looking at No. 11.

0060

1 MR. ANDERSON: Back up then. To clarify the
2 record, would you please identify Exhibit No. 11.

3 THE WITNESS: It is a letter to Penny Ingram
4 of the UTC from Jon Hutchings indicating comments with
5 respect to Freedom 2000's application for curbside
6 recycling and indicating no opposition to such and
7 outlining considerations for Point Roberts.

8 Q. (By Mr. Anderson) Identify Exhibit 12,
9 please.

10 A. Exhibit 12 is a letter from Whatcom County
11 Public Works, Frank Abart, outlining the cancellation
12 of Points Recycling and Refuse, LLC, garbage collection
13 certificate and advising the community of Point Roberts
14 what's going to happen.

15 Q. And moving on to Exhibit No. 13, would you
16 identify that, please?

17 A. This is a letter of clarification to the
18 Utilities and Transportation Commission.

19 Q. And finally, could you please identify
20 Exhibit 14?

21 A. No. 14 is a copy of the lease license and
22 lease agreement between Whatcom County and Points
23 Recycling and Refuse dated April of 2009.

24 Q. Have you had any discussions with Whatcom
25 County concerning this lease?

0061

1 A. Yes, I have had discussions with Whatcom
2 County.

3 Q. What is your understanding, if any, regarding
4 Whatcom County's desire with this lease?

5 A. Whatcom County didn't want to engage in
6 discussions about the lease agreement. They preferred
7 to wait and find out what was going to happen with the
8 G-certification before they made any commitment
9 whatsoever.

10 Q. Mr. Gellatly, why do you on behalf of Freedom
11 2000 wish to pursue a G-certificate for the Point
12 Roberts area?

13 A. First and foremost, I believe it's a good
14 business, and I think that there is opportunities in
15 Point Roberts to turn it into a very green community.
16 I've in recent years done a fair bit of research on
17 recycling and believe that that's certainly the wave of
18 the future.

19 Point Roberts is geographically located since
20 it's located to a huge market, that being Vancouver and
21 the lower mainland, where there is an extraordinary
22 number of recycling companies who purchase recycled
23 materials, and it's also a key shipping port for
24 shipping offshore, and I believe that there is a
25 tremendous opportunity for Point Roberts in becoming

0062

1 the model community for small garbage collection and
2 reduction of waste, and my goal would be to work
3 towards zero waste, much the same as metro Vancouver
4 has decided it wants to, and I believe we can do it in
5 Point Roberts because we have a significant number of
6 people who have summer residences there, and our
7 primary residential in Vancouver and the lower mainland
8 where curbside recycling in general is a very, very big
9 thing.

10 MR. ANDERSON: I have no further questions.

11 JUDGE RENDAHL: Thank you, Mr. Anderson.

12 Mr. Wilkowski, now is your turn to ask questions of
13 Mr. Gellatly.

14 MR. WILKOWSKI: Okay.

15

16

17 CROSS-EXAMINATION

18 BY MR. WILKOWSKI:

19 Q. Point Roberts Currency Exchange, is that a US
20 or Canadian business?

21 A. It's a US business that is extraprovincially
22 registered in British Columbia, Canada.

23 Q. You have trucking experience with your
24 businesses J-Man Trucking and Light Weight Recyclers,
25 also known at R&D Tidy Bin, also known as Cando

0063

1 Recycling; is that correct?

2 A. I have trucking experience with J-Man
3 Trucking.

4 Q. Is The Breakers Restaurant and Bar still
5 open?

6 A. No, it's not.

7 Q. You mentioned that you had gotten to know the
8 previous owners of the company as actually the owners
9 before the person I bought it from. That was the
10 Myrdals. Do you have a family relationship to them?

11 A. Yes, I do.

12 Q. What happened to their business?

13 A. It was sold. They sold it to a lady by the
14 name of Barb Matthews, I believe.

15 Q. There were some questions about the financial
16 viability of that company, and actually, what happened
17 is the county who operated the transfer --

18 MR. ANDERSON: Objection, not a question.
19 It's testimony.

20 JUDGE RENDAHL: Mr. Wilkowski, if you could
21 restate what you are saying in the form of a question
22 to Mr. Gellatly, that's appropriate cross-examination,
23 and you will an opportunity to testify when it's your
24 turn.

25 MR. WILKOWSKI: Okay.

0064

1 Q. (By Mr. Wilkowski) Was there a question of
2 the owner of that garbage company involved in financial
3 irregularities with the Point Roberts fire department?

4 MR. ANDERSON: Objection, totally irrelevant
5 to this proceeding.

6 MR. WILKOWSKI: The witness has stated he's
7 been involved in the fire department and that he had a
8 relationship with those previous owners. The issues of
9 what happened to that company are a matter of record on
10 the Commission.

11 JUDGE RENDAHL: In terms of Mr. Gellatly's as
12 opposed to the owners, is there any relevance to
13 Mr. Gellatly's application?

14 MR. WILKOWSKI: That's a good question.

15 JUDGE RENDAHL: Let's move on.

16 MR. WILKOWSKI: I'll pass on that.

17 THE WITNESS: If I might --

18 JUDGE RENDAHL: An objection has been made
19 and I've sustained it, so you don't need to respond,
20 Mr. Gellatly. Your counsel will give you an
21 opportunity to follow up if he wishes later.

22 Q. (By Mr. Wilkowski) Give me just a moment
23 here to reorganize these exhibits. In Exhibit No. 4,
24 you stipulate that you are going to drive the garbage
25 truck directly to Ferndale. Is that a single-axle

0065

1 garbage truck that you are going to be doing that with?

2 A. Yes. That would be our intention.

3 Q. What's the maximum payload weight on a
4 single-axle garbage truck?

5 A. Off the top of my head, I can't tell you, but
6 we would be operating under the maximum payload.

7 Q. Do you have projection of the time it would
8 take to drive a garbage truck to Ferndale and return to
9 Point Roberts?

10 A. Yes, I do.

11 Q. What is that?

12 A. Roughly an hour and a half.

13 Q. Is it correct to say that it's 120 miles
14 through four border crossings to go from Point Roberts
15 to Ferndale?

16 A. I would say that it is approximately 100
17 miles, give or take.

18 Q. In Item No. 6 --

19 JUDGE RENDAHL: Is that Exhibit No. 6?

20 MR. WILKOWSKI: Exhibit No. 6.

21 Q. You have an intent here from Will Meursing
22 providing you with funding. Is Mr. Meursing also a
23 commissioner on the Point Roberts fire department?

24 A. Yes, he is.

25 Q. Do you think there is conflict of interest

0066

1 having one elected official loaning money to another
2 elected official?

3 A. I don't see any conflict there whatsoever.
4 It has nothing to do with the fire district.

5 Q. Also in the same item, you have a bill of
6 sale for a roll-off truck and containers purchased from
7 a Canadian company. Is that truck and have those
8 containers been imported into the United States and
9 paid taxes and duties?

10 A. No. They are still registered in Canada, and
11 they have not been imported at this time.

12 Q. That vehicle is licensed under a Canadian
13 license plate and not a United States or Washington
14 State license plate?

15 A. I'm sorry. Was there a question there?

16 Q. That vehicle is operating under a Canadian
17 license plate, not a US or Washington State license
18 plate? Is it operating under a Canadian plate or a US
19 plate?

20 A. It's registered with a Canadian plate. The
21 transfer took place in Canada. The taxes were paid in
22 Canada, and the vehicle is still in that form.

23 Q. Is that vehicle and container still located
24 in Canada?

25 A. No. It's parked in Point Roberts.

0067

1 Q. Are you using that vehicle and containers to
2 provide services at this time?

3 A. I am not, no.

4 Q. In the same exhibit, you have a letter from
5 Kinsey Reports saying it showed your accounting for
6 you. Who does your current accounting and bookkeeping
7 for your businesses?

8 A. I handle all my own accounting for my Point
9 Roberts Currency Exchange.

10 Q. In Exhibit No. 7, in the middle of it you
11 state that you will not be taking a salary from this
12 company until such time it is firmly on its feet and
13 functioning properly. So that would indicate that if
14 the Company doesn't achieve significant growths and
15 customers that it would eventually be necessitating
16 rate increases so you would be able to take a salary
17 from it?

18 A. No, I don't indicate that at all.

19 Q. So you are proposing rates at a level a lot
20 less than the cost of actually providing the service?

21 A. No, I don't believe so.

22 Q. In an exhibit, you outline some revenue
23 assumptions based on having exactly the same equivalent
24 customers that Point Recycling had, even though people
25 have been self-hauling for six months now. Do you

0068

1 anticipate that 100 percent of all previous customers
2 and businesses would sign back up onto service, and how
3 quickly do you think they would sign up for service?

4 A. No. I don't believe 100 percent would sign
5 up immediately, but I believe that there would be a
6 significant portion and that given time and proper
7 customer relations, the business could be grown.

8 Q. For a container picked up, is it reasonable
9 to assume that it is cheaper for a business or a
10 household to self-haul their garbage than to pay a
11 company to pick up that garbage and haul it for them?

12 A. I don't think it's reasonable to assume that
13 unless you take into consideration their time and their
14 money.

15 Q. Exhibit No. 9, the Ecology Transporter
16 Registration, are you currently hauling any
17 recyclables?

18 A. No, I am not.

19 Q. So Cando Recycling is not hauling any
20 recyclables.

21 A. No.

22 Q. Exhibit No. 11, the letter from Whatcom
23 County Public Works addressed to the Utilities
24 Commission, the third paragraph, Item No. 4, the County
25 is requesting that the Commission evaluate whether the

0069

1 proposed plan for providing recycling collection
2 service adequately addresses economic and business
3 realities faced by operations of this nature. Do you
4 think that the Commission Staff have met that request?

5 A. Quite frankly, I don't know. I would say
6 that that's up to the Commission staff.

7 Q. Exhibit No. 12, this is a letter from Whatcom
8 County to the citizens. The County stipulates that
9 they can use their ability to modify the lease or put
10 conditions on it to influence the operations of garbage
11 and recycling collection in Point Roberts. Would you
12 stipulate that that's accurate, that the County's
13 ability to control the transfer station gives them the
14 ability to control the garbage company?

15 A. Well, certainly that is the language in the
16 lease.

17 Q. Exhibit No. 13, a letter from you to the
18 Utilities Commission, fourth paragraph, you stipulate
19 it's important to note that no company operating a
20 solid waste collection service in Point Roberts since
21 inception. Solid waste collection service in the Point
22 Roberts area some 40 years ago has ever been deprived
23 of a transfer station or landfill in Point Roberts.

24 If you are granted a certificate, is there
25 anything that prohibits you from being a customer of

0070

1 the county-owned transfer station even if you don't
2 operate that station?

3 A. No.

4 Q. Exhibit No. 14, county transfer station
5 lease, in that lease in Section "O", reduction in
6 termination service, the County also reserves the right
7 to terminate this lease prior to the end of lease terms
8 for reasons of public necessity.

9 You had stipulated in your application that
10 you can provide the services that you have proposed at
11 the rates you have proposed without operating the
12 County transfer station. So would it be accurate to
13 portray then that there is no public necessity for the
14 County to terminate this lease if your certificate is
15 approved?

16 MR. ANDERSON: Objection. Calls for a legal
17 conclusion regarding the term of the lease. Also, the
18 form of the question misstates the term of the lease
19 since it was incomplete.

20 JUDGE RENDAHL: Mr. Wilkowski, any response?

21 MR. WILKOWSKI: An issue in this application
22 has always been whether or not the purpose of this
23 application was for Freedom 2000 to acquire the County
24 transfer station, and the Commission has said it
25 doesn't have jurisdiction over the County transfer

0071

1 station; therefore, it can't approve an application
2 based on that contingency.

3 JUDGE RENDAHL: When did the Commission make
4 that statement?

5 MR. WILKOWSKI: That has been in the Staff
6 correspondence. That's why there has been
7 modifications to the Freedom 2000 application.

8 JUDGE RENDAHL: So that's a Commission staff
9 response?

10 MR. WILKOWSKI: Yes, I'm sorry. So I think
11 that it is clear or should be clear that Mr. Gellatly's
12 application, that if he's awarded a certificate, he is
13 able to operate as is without any further actions by
14 the County, because he has to present a viable
15 application based only on being able to provide the
16 service at the rates he has proposed.

17 JUDGE RENDAHL: So Mr. Wilkowski, this is a
18 question of whether you are arguing this legal
19 question, which you can do and we've discussed prior to
20 going on the record about whether the parties wish to
21 have posthearing briefs or make argument in closing or
22 whether this is an appropriate cross-examination
23 question for the witness. So if you can rephrase it in
24 a way that doesn't call for legal interpretation and
25 based on the factual discussion of the exhibit, then

0072

1 that's appropriate.

2 Q. (By Mr. Wilkowski) Mr. Gellatly, will you be
3 able to provide the services you have proposed at the
4 rates you have proposed without acquiring control of
5 the Point Roberts transfer station?

6 A. Yes.

7 MR. WILKOWSKI: Thank you. That's all.

8 JUDGE RENDAHL: Thank you. Commission staff?

9 (Discussion off the record.)

10 JUDGE RENDAHL: Would this be a good time to
11 take a very short break? We will be back on the record
12 to restart with Staff. Off the record.

13 (Recess.)

14 JUDGE RENDAHL: We are now turning to
15 Commission staff for cross-examination of Mr. Gellatly.
16 Go ahead, Ms. Cameron-Rulkowski.

17 MS. CAMERON-RULKOWSKI: Thank you, Your
18 Honor.

19

20

21 CROSS-EXAMINATION

22 BY MS. CAMERON-RULKOWSKI:

23 Q. Mr. Gellatly, I would like to ask you some
24 questions to clarify the equipment you are proposing to
25 use to provide service. In your testimony earlier, I

0073

1 believe you referred to a container truck and
2 containers, and in your proposed tariff on Page 42, you
3 have listed drop-box service.

4 JUDGE RENDAHL: Is that Exhibit 3?

5 MS. CAMERON-RULKOWSKI: Yes, it is.

6 JUDGE RENDAHL: So Page 42?

7 Q. (By Ms. Cameron-Rulkowski) Is the container
8 truck you've referenced in Exhibit 6 proposed to
9 provide the drop-box service in Item 260 of the tariff?

10 A. Yes, it would be.

11 Q. And might that container truck also be
12 referred to as a "roll-off truck"?

13 A. That's correct, yes.

14 Q. One more question about that. Would that be
15 for residential or commercial service?

16 A. That would be for residential or commercial
17 drop-box service, but would fit both services.

18 Q. If the Commission were to grant both
19 Freedom's application and PRR's application, would you
20 remain interested in providing all of the services that
21 you've proposed in Freedom 2000's application?

22 A. I don't believe that that would work very
23 well, no.

24 Q. Does your answer mean that you would no
25 longer be interested in providing the services proposed

0074

1 in your application if both of these applications were
2 granted?

3 A. That's correct.

4 Q. You testified earlier that the US Department
5 of Transportation application was approved and that
6 authority was in place. Why is it that Freedom 2000's
7 US DOT number was inactivated?

8 A. There was a problem with the BOC-3 filing,
9 and I had to have it done again by a different company.
10 It's been done, and that happened in November. I
11 received a notification from the Department of
12 Transportation that the BOC-3 filing was no longer
13 valid.

14 JUDGE RENDAHL: What is the BOC-3 filing?

15 THE WITNESS: It's a filing required by the
16 US DOT with respect to having a representative in each
17 state to represent the company.

18 JUDGE RENDAHL: Is that related to insurance
19 or simply a representative?

20 THE WITNESS: I believe that's just as a
21 representative in each state for operations.

22 Q. (By Ms. Cameron-Rulkowski) I would like you
23 to refer to Exhibit 81, and I can bring you a copy of
24 that. That is the e-mail to David Pratt providing a US
25 Department of Transportation database record.

0075

1 JUDGE RENDAHL: Ms. Cameron-Rulkowski, could
2 you provide the witness a copy of that, please?

3 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

4 JUDGE RENDAHL: I'll provide the witness a
5 copy. Please go ahead.

6 Q. This record is from Monday, December 21st,
7 and this record indicates that the authority is still
8 inactive. Do you have anything to support what I
9 understand is your claim that it is active?

10 A. I don't have anything with me. I did receive
11 a copy of the BOC-3 filing from TNT was the name of the
12 company that did it for me, and I do have a copy of
13 that at home indicating that it has been properly
14 filed. There is no other reason for this to be the
15 case because the insurance is in place and active, and
16 that would be the only reason now.

17 I did receive a call from the US DOT several
18 months ago asking to come up and conduct an inspection
19 on the operations. Well, operations haven't commenced
20 so I indicated that to them, and they gave me a number
21 to call when operations did commence. So that would be
22 the only thing I could think of.

23 Q. So you have no explanation as to why the
24 record would reflect that the authority is inactive?

25 A. I have none whatsoever, no.

0076

1 Q. Freedom's registration with the Corporations
2 Division of the Washington State Secretary of State's
3 office was inactivated. Can you provide an explanation
4 for that?

5 A. Yes. That was an oversight on my part that I
6 received at the beginning of December, a letter
7 indicating administrative dissolution. I contacted the
8 Secretary of State's department immediately. They
9 e-mailed me a copy of the reinstatement, and I
10 forwarded them a check and the filed reinstatement form
11 right away. It was mailed the same day.

12 Q. Do you recall the approximate date when you
13 received that e-mail?

14 A. I believe it was somewhere around December
15 15th or 16th.

16 Q. Do you recall responding to a 2008
17 investigation of the Commission into some
18 transportation activities of companies operating in or
19 around Point Roberts?

20 A. Yes.

21 Q. One of the companies that was the subject of
22 that investigation was called Light Weight Recycling.
23 What's your relationship with Light Weight Recycling?

24 A. I created the name as a result of being
25 referred to as a lightweight.

0077

1 Q. Is there a company operating currently under
2 the name of Light Weight Recycling?

3 A. No, there is not.

4 Q. What is your relationship with R&D Tidy Bins?

5 A. The gentleman that owned R&D Tidy Bins, or
6 owns, was a resident of Point Roberts, and I was
7 introduced to him.

8 Q. Have you ever worked for R&D Tidy Bins?

9 A. No, I have not.

10 Q. Have you ever had a contractual relationship
11 with R&D Tidy Bins?

12 A. No. I purchased equipment from Del-Rich Tidy
13 Bins.

14 Q. What's the relationship between R&D Tidy Bins
15 and Del-Rich Tidy Bins, and can you spell "Del-Rich?"

16 A. Del-Rich was D-e-l, and R-i-c-h Tidy Bins,
17 and my understanding is that they are associated
18 companies.

19 JUDGE RENDAHL: For the record, can you also
20 spell or identify how it's read, R&D Tidy Bins. Is it
21 "R" ampersand "D," or is it --

22 THE WITNESS: "R" ampersand "D."

23 JUDGE RENDAHL: Thank you.

24 Q. (By Ms. Cameron-Rulkowski) One of the other
25 companies that was part of this investigation was J-Man

0078

1 Trucking. What is your relationship with J-Man
2 Trucking?

3 A. J-Man Trucking is a partnership between
4 Ronald Calder and myself.

5 Q. What is your involvement in the day-to-day
6 operations of J-Man Trucking?

7 A. I'm not really involved in day-to-day
8 operations.

9 Q. But you have an ownership interest, as you
10 indicated.

11 A. That's correct.

12 Q. Is Mr. Calder involved in the day-to-day
13 operations of J-Man Trucking?

14 A. I would say he is the day-to-day operations.

15 Q. Has J-Man Trucking obtained US Department of
16 Transportation authority, that is, a US DOT number?

17 A. If you are referring to that letter, I
18 referred that matter to Mr. Calder. He had a previous
19 US DOT number that he was going to reactivate. I'm not
20 aware at this point in time that that's happened or
21 not.

22 Q. Has J-Man Trucking been registered with the
23 Department of Ecology as a transporter of recyclable
24 materials?

25 A. Not to my knowledge, no.

0079

1 Q. Has J-Man Trucking been registered with the
2 Unified Carrier Registration program? Let me rephrase.
3 Was J-Man Trucking registered with the Unified Carrier
4 Registration program for 2009?

5 A. I'm unaware. I don't know.

6 Q. How about for 2008?

7 A. Also, I'm unaware of that.

8 Q. 2007?

9 A. (Witness indicating.)

10 JUDGE RENDAHL: Is that a verbal response or
11 a no?

12 THE WITNESS: I'm unaware.

13 Q. (By Ms. Cameron-Rulkowski) What's your
14 relationship with Triple K Trucking?

15 A. I have no relationship with Triple K
16 Trucking.

17 Q. Does Mr. Calder have a relationship with
18 Triple K Trucking, to your knowledge?

19 A. To my knowledge, Mr. Calder is Triple K
20 Trucking.

21 MS. CAMERON-RULKOWSKI: I have no further
22 questions. Thank you.

23 JUDGE RENDAHL: Do any of the commissioners
24 have questions for Mr. Gellatly? Commissioner Oshie?

25 COMMISSIONER OSHIE: Thank you, Judge

0080

1 Rendahl.

2 CROSS-EXAMINATION

3 BY COMMISSIONER OSHIE:

4 Q. You responded to a question by Staff's
5 counsel as to Light Weight Recycling. You created the
6 name. Does that mean you own the company?

7 A. No. There is no Light Weight Recycling
8 Company.

9 Q. So the Staff investigation that's now marked
10 Exhibit 30, it didn't involve the company that didn't
11 exist, Light Weight Recyclers?

12 A. It was just a name that was created.

13 Q. So it didn't have any business whatsoever?
14 It wasn't operating, in other words, and you don't have
15 any knowledge of Light Weight Recyclers as an operating
16 business?

17 JUDGE RENDAHL: That's no?

18 THE WITNESS: Yes.

19 COMMISSIONER OSHIE: Thank you.

20 JUDGE RENDAHL: Chairman Goltz?

21

22

23

24 CROSS-EXAMINATION

25 BY CHAIRMAN GOLTZ:

0081

1 Q. Looking at Exhibit 2, about four pages in, it
2 has a heading two-thirds the way down the page titled,
3 "Budget Assumptions," and it lists commercial
4 customers -- this revenue for commercial customers at
5 10,500 based on 31 commercial customers, and
6 residential customers, 6,000 based on 335 residential
7 customers. Are you familiar with those?

8 A. Yes.

9 Q. I think it appears several times in the
10 record. How do you arrive at the numbers 31 for
11 commercial customers and 335 for residential customers?

12 A. That was arrived at by using Point Recycling
13 and Refuse's 2007 annual report to the Commission that
14 outlined the number of customers they had in each
15 category.

16 Q. So to your knowledge, residential customers,
17 are there more potential residential customers in the
18 Point Roberts service area than 335?

19 A. Yes. I believe there is an awful lot more.

20 Q. How about commercial customers?

21 A. I think the commercial customer base is about
22 accurate.

23 Q. I recall you testifying earlier on the issue
24 of operating with the lease for the transfer station or
25 without the lease for the transfer station, and I think

0082

1 you may have misspoken, but which is more profitable of
2 those two options?

3 A. With the transfer station.

4 Q. But without the transfer station, you would
5 still be a viable business?

6 A. There is still profitability there, yes, sir.

7 Q. Would there be any limitations on your
8 business imposed by the County solid waste management
9 plan as far as to which location you would haul
10 garbage? Are you aware of any?

11 A. Not that I'm aware of, no.

12 Q. So you could haul either to the transfer
13 station or to a disposal site in Ferndale?

14 A. Certainly.

15 Q. And the hauling for recyclables would be to
16 someplace in British Columbia?

17 A. More than likely, yes, sir.

18 CHAIRMAN GOLTZ: I have nothing further.

19 JUDGE RENDAHL: I have a few questions.

20

21

22 CROSS-EXAMINATION

23 BY JUDGE RENDAHL:

24 Q. Mr. Gellatly, going back to questions that
25 Chairman Goltz asked on Exhibit 2, what portion of the

0083

1 31 customers and the 335 residential customers have you
2 estimated for your budget as start-up?

3 A. Well, when I put those numbers together, it
4 was some months ago, and I didn't anticipate that there
5 was going to be this lengthy an interruption of
6 service. Unfortunately, I would say that the numbers
7 at start-up are going to be possibly 60, 70 percent,
8 but I also believe that proportionately, expenses will
9 be dropped from a labor standpoint particularly and
10 also from a dumping peak standpoint because the tonnage
11 will be reduced.

12 Q. In response to the counsel's questions and
13 cross-examination questions about the equipment in
14 Exhibit 6, you mentioned that the pickup truck that the
15 Company owns would be used to pull the recycling
16 trailer. Do you currently own a recycling trailer, or
17 is that something you would purchase or lease if you
18 obtained the certificate?

19 A. That's something that I would purchase if I
20 obtained the certificate.

21 Q. Just to clarify from a question that
22 Mr. Wilkowski asked you on cross-examination in terms
23 of the length, the number of miles and the number of
24 border crossings going to Ferndale, on a one-way basis,
25 you estimated about a hundred miles. How many border

0084

1 crossings would that involve just one way going to
2 Ferndale?

3 A. Going to Ferndale, it's 25 miles through
4 Canada; from Point Roberts, 25 to 30 miles. That's
5 through two borders, and then from Blaine to Ferndale
6 is another, at the outside, 15 miles, so we are now
7 looking at 40 miles.

8 Q. So round-trip four border crossings and close
9 to 100 miles.

10 A. Yes. I would say give or take on the 100
11 miles, yeah.

12 Q. Going back to the questions that Commission
13 staff asked you about J-Man Trucking, what does J-Man
14 Trucking do?

15 A. J-Man Trucking purchases aggregates in Canada
16 and delivers them into the US to contractors for
17 building purposes.

18 Q. When you say "aggregates," what do you mean?

19 A. Gravel, sand, topsoil, bark, mulch.

20 JUDGE RENDAHL: That's all I have.

21 Mr. Anderson, do you have any redirect examination for
22 your witness?

23 MR. ANDERSON: No, Your Honor.

24 JUDGE RENDAHL: Let's be off the record for a
25 moment.

0085

1 (Discussion off the record.)

2 JUDGE RENDAHL: Mr. Gellatly, you are
3 excused, and while we were off the record, Mr. Anderson
4 indicated he wished to call an additional need witness.
5 Mr. Anderson?

6 MR. ANDERSON: Ms. Damewood?

7 JUDGE RENDAHL: Good morning, Ms. Damewood.

8

9 Whereupon,

10 SHELLEY DAMEWOOD,

11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. ANDERSON:

16 Q. Ms. Damewood, would you please state your
17 name for the record and spell your name?

18 A. Yes. My name is Shelley Damewood,
19 S-h-e-l-l-e-y; last name, D-a-m-e-w-o-o-d.

20 Q. Where do you reside?

21 A. 119 Kilarney Place in Point Roberts.

22 Q. How long have you resided in Point Roberts?

23 A. I moved there in 1976.

24 Q. Prior to the termination of curbside garbage
25 pickup, were you a subscriber?

0086

1 A. Yes.

2 Q. Do you believe that there is a need for
3 curbside garbage pickup in Point Roberts?

4 A. Yes.

5 Q. Were you a subscriber to curbside recycling?

6 A. Correct, yes.

7 Q. Do you believe there is a need for curbside
8 recycling in Point Roberts?

9 A. Yes, I believe there is a need, yes.

10 Q. If a certificate were granted for curbside
11 garbage and recycling pickup in Point Roberts, would
12 you subscribe to those services?

13 A. Yes.

14 MR. ANDERSON: No further questions.

15 JUDGE RENDAHL: Before you go ahead,
16 Mr. Wilkowski, if you could spell the street name.

17 THE WITNESS: K-i-l-a-r-n-e-y Place.

18 JUDGE RENDAHL: Go ahead, Mr. Wilkowski, if
19 you have any questions for Ms. Damewood.

20 MR. WILKOWSKI: Yes.

21

22

23 CROSS-EXAMINATION

24 BY MR. WILKOWSKI:

25 Q. How far do you live from the Point Roberts

0087

1 transfer station?

2 A. I live approximately half a mile.

3 Q. Were you one of the complainants against
4 Point Recycling seeking revocation of the G-certificate
5 for failure to provide curbside recycling?

6 A. Yes.

7 Q. In the prehearing conference at that case, or
8 actually, it was the prehearing conference for
9 Freedom 2000's initial application, you commented and
10 you stated that you were part owner in a security
11 storage unit project in Point Roberts?

12 A. That's correct.

13 Q. What is the name of that?

14 A. Ridek Storage, R-i-d-e-k.

15 Q. During the construction of that unit, which
16 is a fairly sizable project, there was construction
17 waste. What happened to that construction waste?

18 A. Did you mean did we have bins that we --

19 Q. That's correct. You had containers there.
20 Who hauled those containers?

21 A. J-Man Trucking did.

22 Q. You also purchased gravel for that project?

23 A. Yes. I might say that I was the project
24 manager for that. I oversaw the contract, administered
25 the contract with Conyear Pacific who also used some of

0088

1 their discretionary in who they obtained gravel from.

2 Q. You are also a commissioner on Point Roberts
3 parks board?

4 A. That's correct.

5 Q. The Point Roberts parks board just finished a
6 construction project next to the fire hall where dirt
7 was hauled out and hauled away for disposal; is that
8 correct?

9 A. Yes, I'm sure it was.

10 Q. Who provided that hauling service for you?

11 A. That work was done by J-Man Trucking along
12 with John Bonstein, B-o-n-s-t-e-i-n, and I think that
13 was under Jim Madden Construction.

14 Q. In this latest issue of the Point Roberts
15 All-Points Bulletin, you wrote a letter in there that
16 you thanked Ronald Calder and David Gellatly for their
17 contributions to that project?

18 A. That's correct.

19 MR. WILKOWSKI: That's all my questions.

20 JUDGE RENDAHL: Commission staff, any
21 questions for the witness?

22 MS. CAMERON-RULKOWSKI: No, Your Honor.

23 JUDGE RENDAHL: Any questions from the
24 commissioners? And I have no questions. Mr. Anderson,
25 do you have any further questions for the witness?

0089

1 MR. ANDERSON: No, Your Honor.

2 JUDGE RENDAHL: Ms. Damewood, you are
3 excused, and Mr. Anderson, do you have any other
4 witnesses you wish to call at this point?

5 MR. ANDERSON: No, Your Honor.

6 JUDGE RENDAHL: At this point, Mr. Wilkowski,
7 we will be turning to the Point Roberts case, and you
8 had asked one of your need witnesses to call, and I'm
9 going to check to see. Mr. Slater, are you on the
10 line?

11 MR. SLATER: Yes, I am.

12 JUDGE RENDAHL: Why don't we take Mr. Slater
13 first. Although we can't see you, Mr. Slater, would
14 you raise your right hand, please?

15

16 Whereupon,

17 ANTHONY H. SLATER,
18 having been first duly sworn, was called as a witness
19 herein and was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. WILKOWSKI:

23 JUDGE RENDAHL: You could ask questions of
24 your witness if you could make sure his full name and
25 address are on the record, that would be helpful.

0090

1 Q. Mr. Slater could you please state your full
2 name, address, phone number, and business name?

3 A. My full name is Anthony Henry Slater, and my
4 address is 118 Park Drive, Point Roberts, and the zip
5 is 98281.

6 JUDGE RENDAHL: Thank you. Please go ahead,
7 Mr. Wilkowski.

8 Q. Mr. Slater, you operate a small construction
9 company called Neptune Enterprises?

10 A. Yes, that is correct.

11 Q. As part of your work when Point Recycling was
12 operating as a full garbage company, did you use that
13 company for special cleanup and drop-box services?

14 A. Yes, we do, and we have done since, I think,
15 about 1998.

16 Q. Would you anticipate if Point Recycling's
17 application was granted that you would have a need in
18 the future for special cleanup and drop-box services?

19 A. Absolutely. It's not in the future. We are
20 starting another project in January, and absolutely we
21 would be coming to Point Recycling again to supply
22 containers and garbage collection. We are renovation
23 contractors, as you are aware, and we create a fair
24 amount of refuse.

25 Q. Was there a period in the past when you were

0091

1 also a customer for curbside garbage and recycling
2 collection from Point Recycling?

3 A. Yes. We came from Hawaii to the Point in
4 1996, and your company was not in operation then, but
5 we used the dump, as we called it, and then when you
6 provided curbside, we went to curbside, but this was
7 prior to starting our business, and when we retire,
8 I'll be going back to curbside.

9 Q. But currently and in the past few years, you
10 have self-hauled your recycling and garbage from your
11 household?

12 A. Yes, we self-hauled. For business, we have a
13 truck, and we signed an exemption, and it works quite
14 well for us to do that. Recycling is an important part
15 of my wife's life.

16 Q. Does the Point Roberts transfer station have
17 adequate recycling options for you?

18 A. Oh, yeah, it does. You know, I have to tell
19 you that before your company took over, it was running,
20 but thankfully, you brought a different degree of
21 efficiency that made it a much more pleasant exercise
22 over the years.

23 MR. WILKOWSKI: Thank you. I have no further
24 questions.

25 JUDGE RENDAHL: Mr. Anderson, any questions

0092

1 for Mr. Slater?

2 MR. ANDERSON: Yes.

3

4

5

CROSS-EXAMINATION

6 BY MR. ANDERSON:

7 Q. Mr. Slater, my name is Don Anderson. I
8 represent Freedom 2000. You indicated that you create
9 waste in your business as Neptune Enterprises. Could
10 you explain what activities are undertaken by Neptune
11 Enterprises?

12 A. Counselor, we call ourselves renovation
13 contractors. I'm virtually a one-man business;
14 although, my wife would deny that, and we do small jobs
15 that a lot of people don't like to do, and we do
16 renovations. We remove people's bathrooms and replace
17 them, and as you are probably aware, there are many old
18 houses here, so we are replacing windows and gutters.
19 I don't know whether or not I'm answering your
20 question.

21 Q. If I understand correctly, you then create
22 construction and demolition waste; is that correct?

23 A. Yes.

24 Q. Then you need to either dispose of or recycle
25 that construction and demolition waste.

0093

1 A. That's correct.

2 Q. And you would prefer to recycle it; is that
3 correct?

4 A. If there was a recycle ability, yes, we do.
5 The current company that operates has separate bins for
6 copper and waste and drywall. Yeah, we would do that.

7 Q. To what extent is the waste that you create
8 recyclable, rough percentage-wise?

9 A. What percentage of the waste is recyclable.
10 Ten, 20 percent max.

11 Q. What does the rest consist of?

12 A. Rotten wood, mainly, I think, and off-cuts
13 and general construction waste.

14 MR. ANDERSON: No further questions.

15 JUDGE RENDAHL: Thank you. Any questions by
16 Commission staff?

17

18

19 CROSS-EXAMINATION

20 BY MS. CAMERON-RULKOWSKI:

21 Q. Mr. Slater, my name is Jennifer
22 Cameron-Rulkowski. I'm an assistant attorney general
23 assigned to represent Commission staff in this
24 proceeding. I have just a couple of questions for you.

25 My first question is since this summer when

0094

1 the Points Recycling and Refuse certificate was
2 relinquished and then canceled, have you been using any
3 drop-box services?

4 A. Yes. We actually formed -- in February or
5 March of this year up until the end of the working part
6 of this year, we have been involved in a larger
7 contract for us in the reconstruction of a fairly large
8 high-end house, so fortunately, Arthur Wilkowski has
9 been able to service our needs, and we have had bins
10 on-site, and he has moved bins for us initially when
11 clearing the lot, and he has replaced the smaller bins
12 with a bigger bin, and business has been as normal.

13 I don't fully understand the intricacies of
14 the drop boxes, but it has always been since we started
15 using them something one could rely on, and I think
16 that's why I'm apprehensive of a change, and that
17 probably isn't part of the question.

18 Q. Well, if you are finished, I will ask that
19 question. If Freedom 2000 were to have a certificate
20 and the Points application were not to be granted,
21 would you take drop-box service from Freedom 2000?

22 A. If I didn't have a choice I would, and I'm
23 saying that, although I know very, very little about
24 Freedom 2000, but at my age, one doesn't like change,
25 and if something is working efficiently, and I guess

0095

1 this is a selfish approach, but if something or
2 somebody is working efficiently, then one doesn't
3 change.

4 And I am aware that running a business,
5 handling garbage and recycling at the Point is a tricky
6 business because we don't have enough people, I
7 believe, to make it profitable. I don't know that.

8 Q. So if I understand you correctly, Mr. Slater,
9 if you didn't have a choice of providers, you would use
10 Freedom 2000 for drop-box service if Freedom 2000 were
11 the only one certificated; is that correct?

12 A. If Freedom 2000 were the only company that
13 was certificated, I would have no choice, because one
14 of the things I try and do is operate a legal company,
15 and I have to dispose of waste and recycling materials
16 legally. So if there was no choice, then yes. I would
17 have to use them.

18 I'm apprehensive of something new because if
19 it is difficult to make a profit under the existing
20 rules and regulations, then a price increase looms, and
21 I wouldn't like that at all.

22 Q. Mr. Slater, you had mentioned that business
23 had gone on pretty much as usual with regard to your
24 drop-box service. Was Point Recycling and Refuse
25 hauling those drop boxes for you?

0096

1 A. They were delivering and emptying the boxes,
2 yes, if that is what you are asking. We had one large,
3 green box on the site for three or four months there.

4 Q. And you would say just to confirm that this
5 was occurring after July, so between July of 2009 and
6 now?

7 A. Yes. That box was on-site at that time.
8 We've removed it now, and I think it was removed a
9 couple of months ago, six weeks ago.

10 MS. CAMERON-RULKOWSKI: Thank you,
11 Mr. Slater. I don't have any other questions.

12 JUDGE RENDAHL: Are there any questions for
13 the witness from the commissioners? I have one.

14

15

16 CROSS-EXAMINATION

17 BY JUDGE RENDAHL:

18 Q. Mr. Slater, my name is Ann Rendahl I'm the
19 administrative law judge presiding with the
20 commissioners today, and I just have one question. You
21 mentioned in your testimony that you used to have
22 residential solid waste and recycling service, but now
23 you take care of that through your pickup truck or your
24 truck through the business and that that might change
25 on retirement.

0097

1 So just assume at the time you do retire,
2 which you've mentioned might be soon, do you anticipate
3 returning to your residential solid waste and curbside
4 recycling service?

5 A. Yes. I think it was extremely convenient to
6 be able to put bins out and have somebody take them
7 away, and the same with recycling, the separate bins
8 and the recycling bucket. We canceled that because we
9 were kind of duplicating in that I was taking the job
10 garbage and rubbish to the dump in the truck, and by
11 signing a waiver or release or whatever it was, I can
12 then put my own garbage in my own truck and take it.
13 It was an expense that we didn't have to pay out, but
14 if it was regular and it was functioning correctly as
15 it used to, again, then the less physical work I have
16 to do, the better, so yes, we would go back to the
17 curbside.

18 JUDGE RENDAHL: Thank you. That's all.

19 Mr. Anderson?

20 MR. ANDERSON: Very briefly, Mr. Slater.

21

22

23 REXCROSS-EXAMINATION

24 BY MR. ANDERSON:

25 Q. Since July when you had this large, green bin

0098

1 that was hauled off by Mr. Wilkowski, do you know where
2 the material was sent?

3 A. I'm hesitating because I was going to say
4 that I was making the assumption that it would have
5 gone back to the transfer station and then across the
6 border to Bellingham, but I don't know that for sure
7 because but I think the bins were taken to the dump.

8 Q. What was the basis of your charge that
9 Mr. Wilkowski made to your business for that? Was it
10 based on tonnage, volume, type of material?

11 A. I think there is a charge for the delivery of
12 the bin, whatever size, and then there is a tonnage
13 charge when it's taken back, and this is what tells me
14 that it went back over the scale.

15 Q. So you were charged a certain amount per ton
16 in addition to the hauling charge?

17 A. I didn't hear that.

18 Q. Were you charged a certain amount per ton in
19 addition to a hauling charge?

20 A. Yes, I believe so.

21 Q. Do you know whether that amount per ton was
22 based on it being recyclable or being garbage?

23 A. I don't know the answer to that. I think
24 most of the stuff in that bin would have been just
25 garbage.

0099

1 Q. This was since July?

2 A. I'm sorry?

3 Q. This happened since July of 2009?

4 A. Yeah. You know, talking to you from where I
5 am now, I don't have the -- we initially had some bins
6 for vegetation clearance when we were clearing that,
7 and that would have been March and April, probably.
8 May and June would have been when the bin arrived. I
9 just can't tell you when that was date-wise.

10 Q. Was any of it after July 1st of 2009?

11 A. Oh, yes, absolutely. They were removed
12 finally about six weeks ago.

13 MR. ANDERSON: Thank you. I have no further
14 questions.

15 JUDGE RENDAHL: Do you have any additional
16 questions for the witness?

17 MR. WILKOWSKI: No.

18 JUDGE RENDAHL: Thank you very much for
19 calling in, Mr. Slater. You are excused. All right.
20 Mr. Wilkowski, I'm thinking we will break about noon
21 if you would like to begin your direct examination of
22 yourself. You don't have to move to the witness stand.
23 I think the court reporter can see you well enough. So
24 if you want to stay where you are, that's fine.

25 MR. WILKOWSKI: Okay.

0100

1 JUDGE RENDAHL: I do need to swear you in
2 though.

3

4 Whereupon,

5

 ARTHUR WILKOWSKI,

6 having been first duly sworn, was called as a witness
7 herein and was examined and testified as follows:

8

9

10

 DIRECT EXAMINATION

11

BY MR. WILKOWSKI: So I have a very short list of

12

exhibits. First off, there is my application and my

13

tariff. I'm providing this because I want to be very

14

clear that this is only for special cleanup and

15

drop-box services. It's barring changes on the part of

16

the County and the structural design of the system, I

17

don't think it's feasible for expanding to provide

18

curbside collection. There is insufficient demand, and

19

without any structural changes to help that, it won't

20

work. So my application is for just drop box and

21

special cleanup services.

22

JUDGE RENDAHL: When you are referring to

23

your application and tariff, that's Exhibit 31?

24

MR. WILKOWSKI: Yes. So to give the

25

Commission a brief history, I've been involved in solid

0101

1 waste since 1991. I worked for the County. I worked
2 for San Juan Sanitation, Nooksack Valley Disposal. I
3 worked for several nonprofits doing recycling
4 education.

5 When I purchased the Company in '99, it was a
6 mess. It was on the point of collapse. The previous
7 company before the person I bought it from had actually
8 gone bankrupt, had been foreclosed upon by the County
9 because the County actually owned the transfer station
10 at that time, and in essence, the County ceased the
11 certificate and sold it in order to pay the bill.

12 They sold it to a lady named Barbara
13 Matthews. She operated it for several years, had a
14 real struggle because the company before her had been
15 very inconsistent and then --

16 MR. ANDERSON: I'm going to object to the
17 lack of foundation. He's talking about other people's
18 operations without any indication there is basis for
19 personal knowledge, the event to which he is speaking.

20 JUDGE RENDAHL: Mr. Wilkowski, any response?

21 MR. WILKOWSKI: I have a long history with
22 solid waste with the County, and I have been involved
23 all along, and I have a substantial knowledge of the
24 history of solid waste in Point Roberts, and the issues
25 regarding the previous companies are matters of record

0102

1 on the Commission and can be verified, but I can move
2 on.

3 JUDGE RENDAHL: Let's move on, because there
4 is not any documentary evidence on the point you are
5 referring to, and I'm not sure it's relevant to your
6 application, per se.

7 MR. WILKOWSKI: So I took over in '99 and it
8 was a mess. I had to believe that with the right
9 system design, the right structure of services, the
10 right level of support from the County and Utilities
11 Commission, that with hard work, I could build a system
12 that worked that was efficient, provided services
13 appropriate to the size of the community at a
14 sustainable level and be able to continue building into
15 the future.

16 It worked along for about five years, and
17 then I reached a point where I really needed the County
18 and the Commission to participate, and I asked for help
19 from both; in structural design on the part of the
20 County to face the reality that their recycling program
21 had very little participation in it in that there were
22 cost barriers and that they had a universal service
23 ordinance that they would not enforce, and asking the
24 Utilities Commission for help in convincing the County
25 of the economic realities facing the system as well as

0103

1 to deal with the operations of some Canadian companies
2 that were coming out and hauling garbage across the
3 system.

4 I got very little response from either
5 agency, and so I had to try to push. I had to find
6 some way to get those agencies to engage in. Asking
7 for help and trying to present data didn't really get
8 me anywhere, and I felt that it was my responsibility
9 to my customers.

10 I don't like conflict. I don't like to
11 fight. I like to analyze things. I was trying to
12 avert what actually did happen, and I think if you look
13 back at an entire history of communication between
14 myself and the Commission and the County, I am
15 consistent in my messages that I believe in the
16 regulatory system. I believe that there are three
17 parties, the County, the Company, and the Commission,
18 and each plays a part, and the Company is bound to
19 serve, but it only operates a system designed by the
20 County, and that the Company in its obligation to serve
21 is also prohibited from taking actions to protect
22 itself, that the agencies that bind it to service need
23 to assist and support the Company.

24 So in my evidence here, I am submitting
25 Exhibit No. 32. This is my response to Whatcom County,

0104

1 communicating to the Commission my response to Whatcom
2 County desiring to have a full certificate; that there
3 be curbside recycling and curbside residential garbage
4 collection. It is the County's obligation to provide a
5 functional system and to support it. The County hasn't
6 done that, and that creates a problem for the
7 Commission in what to do with it, so I am providing my
8 expert opinion on the situation to you.

9 Exhibit No. 33 --

10 JUDGE RENDAHL: Just for the record, that
11 exhibit has not been admitted into the record, so there
12 may be some discussion at this point whether it should
13 be admitted, but please go ahead.

14 MR. WILKOWSKI: I would like to admit
15 Exhibit 33 into the record. I've worked for ten years
16 to try to understand this system. It is an economic
17 model. Rates and companies are regulated within an
18 economic model. It's impossible to determine the
19 fitness or the ability of a company to serve without
20 understanding the parameters with which it must operate
21 under, and so I've provided you with what I think is a
22 reasonable determination of demand and an honest
23 picture of what the reality of the situation is.

24 It is a very problematic territory, and
25 without applying industry-accepted, economic modifiers

0105

1 to it such as universal service, differential tip fees
2 at a transfer station, all those things are outside the
3 Commission's jurisdiction, but it is the responsibility
4 of the County to do this, and the County places a
5 challenging burden on the Commission by not addressing
6 these issues.

7 Exhibit No. 34 --

8 JUDGE RENDAHL: So do you want to offer
9 Exhibit 33 then?

10 MR. WILKOWSKI: I'm offering Exhibit 33.

11 JUDGE RENDAHL: Mr. Anderson, I know you have
12 some objections to this exhibit. Why don't you explain
13 your objections.

14 MR. ANDERSON: We object to this,
15 particularly Paragraph 4, which makes unsubstantiated
16 allegations concerning my client without any foundation
17 basis for that, and because of that, we believe that it
18 should not be admitted.

19 JUDGE RENDAHL: Any response?

20 MR. WILKOWSKI: What specifically
21 Freedom 2000 has stated in their application documents,
22 documents they submitted, there is lines in there where
23 they say they expect there to be a huge, profitable
24 growth in commercial recycling, and my experience is
25 that there is only a handful of businesses. They are

0106

1 all very small, and it's not some huge thing, you know.

2 JUDGE RENDAHL: In particular to this
3 paragraph, Mr. Anderson's concern is that there are
4 some allegations that haven't been demonstrated. Would
5 you be willing to remove this portion of the letter?

6 MR. WILKOWSKI: Well, commercial recycling is
7 really not the jurisdiction of the Commission other
8 than as a CC permit, so in the case of both statements
9 by Freedom and myself, commercial recycling for this
10 matter is actually irrelevant. So if the Commission
11 wants to disregard commercial recycling as an issue, I
12 think that's appropriate.

13 JUDGE RENDAHL: Mr. Anderson?

14 MR. ANDERSON: I will agree to admit the
15 exhibit with the redaction of the references to my
16 client.

17 JUDGE RENDAHL: Just the first sentence of
18 Paragraph 4, or is it the whole paragraph?

19 MR. ANDERSON: Two sentences.

20 JUDGE RENDAHL: The first two sentences?

21 MR. ANDERSON: Yes.

22 JUDGE RENDAHL: Commission staff,
23 Ms. Cameron-Rulkowski, do you have any thoughts on this
24 exhibit?

25 MS. CAMERON-RULKOWSKI: Admitting it with the

0107

1 redactions sounds fine.

2 JUDGE RENDAHL: Mr. Wilkowski, do you still
3 wish to seek admission of the exhibit with the first
4 two sentences of that paragraph stricken?

5 MR. WILKOWSKI: Yes.

6 JUDGE RENDAHL: It will be admitted. Police
7 go ahead. If you have any further questions or
8 statements you wish to make about this exhibit, please
9 go ahead.

10 MR. WILKOWSKI: I think that the Commission
11 needs to be very aware of the economic realities facing
12 this situation; that no one, the Commission hasn't
13 really done the required cost assessment on the
14 County's plan. Whatcom County has not submitted any
15 analysis of Point Roberts to determine need or
16 feasibility of any of their plan, and neither has the
17 Applicant, Freedom 2000.

18 There have been a substantial amount of
19 comments by the public, which the Commission should
20 look at. There are some people that support Freedom.
21 There are a great number of people that support Point
22 Recycling and have supported us all along, but also
23 there is a lot of people saying they want a plan, and
24 for the Commission to grant a full application without
25 that framework of a plan I think is a disservice to the

0108

1 community, and while the Commission cannot order the
2 County to provide a viable plan, that's the Department
3 of Ecology's jurisdiction.

4 The Department of Ecology says that the
5 County doesn't have a viable plan. It would be a
6 service for the community if the Commission chose not
7 to engage in the County's problem and encouraged the
8 County to go back to the drawing board and see what
9 steps they take to make this work.

10 What I'm proposing is a service that my
11 company can provide, has provided to the satisfaction
12 of the Commission and the community. It's a step, and
13 as I've been trying all along, I'm trying to get a
14 working plan for this community so that there can be
15 stable services in the future.

16 So I would like to submit Exhibit 34 where
17 what I'm saying is if the Commission does choose to
18 reject all the applications and send it back to the
19 County to see if the County can come up with something
20 that will make a real certificate work, because I have
21 provided the service in the past, I am willing to
22 provide it under temporary authority to meet a service
23 need that I can meet.

24 JUDGE RENDAHL: Thank you. So is that all
25 you have?

0109

1 MR. WILKOWSKI: That's all I have to say.

2 I'm here to answer the Commission's questions.

3 JUDGE RENDAHL: Thank you. So I guess at
4 this point, I will turn to the commissioners and ask if
5 you wish to take a lunch break now or go through
6 cross-examination of the witness and then break at
7 12:30 and then come back at 1:30 for the public
8 hearing?

9 CHAIRMAN GOLTZ: I guess I would prefer a
10 break now.

11 JUDGE RENDAHL: So we will take our lunch
12 break now, convene at 1:30.

13 CHAIRMAN GOLTZ: Or we could convene at 1:00.

14 JUDGE RENDAHL: We will convene the hearing
15 at one again and then break at 1:30 for the public
16 hearing for any witnesses who wish to testify at the
17 public hearing, and then we will continue with the
18 evidentiary hearing. So thank you very much. We will
19 be at recess until one p.m.

20 (Lunch recess taken at 11:55 a.m.)

21

22

23

24

25

0110

1

AFTERNOON SESSION

2

(1:00-1:35; 2:15-5:00)

3

4

JUDGE RENDAHL: After a lunch break, we are
back to begin cross-examination of the direct testimony
by Mr. Wilkowski. Mr. Anderson?

6

MR. ANDERSON: Thank you, Your Honor.

7

8

9

CROSS-EXAMINATION

10 BY MR. ANDERSON:

11

12

13

Q. Mr. Wilkowski, I would like to refer you to
Exhibit No. 31, which is your application. Do you have
that handy?

14

A. Yes.

15

16

Q. I believe it's the fourth page that starts
out Section 2. Do you see that?

17

A. Yes.

18

19

Q. It is it correct that in your application you
do not intend to provide commercial dumpster service?

20

A. That is correct.

21

22

Q. And you do not intend to provide residential
garbage collection or recycling collection?

23

A. That is correct.

24

25

Q. When you say "special cleanup pickup
services," what do you mean by "special"?

0111

1 A. On-call requests for drop boxes, roll-off
2 boxes, detachable containers, as well as pickup service
3 with pickup truck where someone has a couch or a fridge
4 or something like that from a household that they need
5 help hauling to the dump.

6 Q. So this would be a duplicative of some of the
7 services you provided under your former certificate; is
8 that correct?

9 A. That's correct.

10 Q. Are you currently providing any hauling
11 services in Point Roberts?

12 A. Yes.

13 Q. What type of hauling services are those?

14 A. I have provided a couple of drop boxes to
15 customers. I have three out right now. One is to the
16 letter carrier, which is a parcel and packaging place
17 for them to put their cardboard in because they got
18 overwhelmed over the holidays.

19 I have one out to a woman that had a little
20 plant nursery in Point Roberts, and she sold it and
21 she's transferred materials to another site where she's
22 rebuilding, and so she's filled a container with flower
23 pots, and I moved it to the site, and she's using that
24 container as storage, and my mechanic on Point Roberts
25 is doing a construction project, and he borrowed my

0112

1 truck and he took a container over there for him, and
2 he will be hauling that back. He was previously a
3 driver for the company before I bought it.

4 Q. Did you provide services for Mr. Slater?

5 A. Yes, I did.

6 Q. What type of material was hauled from
7 Mr. Slater's business?

8 A. It was construction waste.

9 Q. How was that disposed of?

10 A. It was disposed of by hauling it to RDS,
11 which is a disposal site in Ferndale. It was
12 transferred at my transfer station.

13 Q. To...

14 A. To larger containers and then hauled to RDS.

15 Q. And was there a disposal fee charge?

16 A. Yes.

17 Q. Was that a recycling rate for the transfer
18 station, or was it something that was separately
19 negotiated?

20 A. It was a disposal rate as was filed under my
21 previous tariff.

22 Q. Which previous tariff?

23 A. The previous tariff for Point Recycling and
24 Refuse Company.

25 Q. Was it charged as a recycling rate or --

0113

1 A. A solid waste rate.

2 Q. I would like to address your attention to
3 Exhibit 14, which is the County lease. I believe
4 you've testified or used that for questioning before?

5 A. Yes. I think I can find it. What is your
6 question?

7 Q. I would like to address your attention to
8 Section "O" of that lease.

9 A. Yes. All right.

10 Q. Particularly the first part of the second
11 paragraph stating, quote, "The County also reserves the
12 right to terminate the lease prior to the end of the
13 lease term for reasons of public necessity, which it
14 must determine in good faith, including but not limited
15 to the following: One, failure of the company to
16 maintain its certification as a WUTC licensed collector
17 and hauler of garbage in Point Roberts." Do you see
18 that provision?

19 A. Yes.

20 Q. Is it your understanding of that provision
21 that if you have a G-certificate, the County cannot use
22 that to terminate your lease of the transfer station?

23 A. That would be an interpretation of this. You
24 are asking for a legal interpretation of a document.

25 Q. I'm asking you your understanding.

0114

1 A. This is similar to my question previously to
2 Mr. Gellatly, and you are asking me to make a legal
3 interpretation of a document.

4 Q. No. I'm asking you for your understanding of
5 that document.

6 JUDGE RENDAHL: Can you rephrase the
7 question, Mr. Anderson?

8 Q. Is it your understanding that if you have a
9 G-certificate that the County can't terminate the lease
10 of the transfer station that's currently in place?

11 A. I would say that the County and I have, as
12 I've communicated to the Commission, unresolved issues
13 regarding this lease and the County's actions against
14 my company. Those issues have yet to be resolved and
15 will probably take a long time to resolve.

16 Q. Isn't it true that the principle reason you
17 are applying for a certificate is to help to maintain
18 your existing lease of the transfer station?

19 A. I'm applying for a certificate because I've
20 worked for ten years to try to get this system on
21 track, and I am providing an option to the community,
22 and I'm encouraging the County and the Commission to
23 take steps to get this system back on track with a
24 reasonable design, and I would like to participate in
25 that design process.

0115

1 Q. Now, isn't it correct that earlier this year,
2 you surrendered your certificate for hauling solid
3 waste in Point Roberts?

4 A. That is correct. We had been involved in a
5 lengthy process, that the County had shown a commitment
6 to not amend their plan, to not contract out for
7 recycling service and to not exempt us from recycling
8 service until such time as they provided me with a
9 reasonable plan.

10 So the County was committed to revoking my
11 certificate, and the court case had deteriorated as to
12 -- it was no longer questions as to whether the County
13 had the right or authority or expectation I provide the
14 curbside recycling, but whether things like the garbage
15 truck getting stuck in the snow is some sort of a
16 pertinent issue. So I could have spent all my time
17 trying to defend the Company and I would have had no
18 time to actually operate it, and there wasn't any
19 resolution in sight, so I didn't feel it was possible
20 to continue with it in that form.

21 Q. Now, prior to that termination, isn't it
22 correct that you had a significant increase in your
23 labor costs as reported to the Commission?

24 A. The Company had always operated understaffed.
25 It's a very small company. For several years, I was

0116

1 the only employee. I was literally running nonstop.

2 Then I hired Jay, great guy, gave everything
3 for the Company, anything I could ask for, and I
4 couldn't pay him that much, and then as the Company was
5 slowly able to grow, I tried to pay him more what he
6 was worth, more of a reasonable wage. He came to me
7 and said, This is what the Labor and Industries says a
8 garbage man should make, and so I tried to raise that
9 to him, tried to provide him health benefits.

10 Because I was so involved in politics and
11 stuff, the legal cases and issues with the Commission,
12 I needed more time to deal with the operation of it,
13 and so I hired another employee, Mike, and also hiring
14 him cheap with sort of the plan of adding benefits and
15 getting him up to a reasonable living wage.

16 Q. Isn't it correct that you raised your own
17 wages?

18 A. Yes, in that one year, and also for myself
19 because the Company paid me what it could pay me. At
20 the end of the year, if the Company has a loss, that's
21 out of my pocket, and over the course of ten years, the
22 Company has paid me maybe an average of \$30,000 a year.
23 There is times that I don't take paychecks. There is
24 times I have to put money back into the Company. That
25 was a year that I actually happened to get divorced

0117

1 because my wife couldn't sustain the stress of the
2 attacks on the Company, and so I needed to take a
3 little bit more money out of the Company. The next
4 year, I had to put \$40,000 back into it to pay the
5 bills.

6 Q. In that year prior to the surrender of your
7 certificate, isn't it also correct that your principle
8 equipment suffered mechanical breakdowns?

9 A. Which equipment?

10 Q. Didn't you have a period of time when your
11 truck was not in service?

12 A. Which?

13 Q. Any truck.

14 A. Well, the recycling truck, we stopped that
15 program. We had two garbage trucks because we have to
16 have a backup when things break down or need service,
17 which takes a couple of days.

18 We never miss garbage pickups. We had a
19 roll-off truck that was in an accident that totaled the
20 truck. Fortunately, Jay wasn't hurt. It was observed
21 by a police officer. He said we were not at fault. It
22 was just one of those silly flukes, and I was able to
23 arrange to lease a truck and have that on service the
24 next day, so we never missed pickups, other than the
25 fact that the recycling truck finally blew its engine

0118

1 after a series of breakdowns.

2 And I had been trying to make the County and
3 the Commission aware that that program needed to be
4 self-funding. Its rates are based on the cost of
5 service. Recycling has to fund recycling. It can't be
6 subsidized by the garbage company customers. When a
7 program is only \$20,000 a year in gross revenue, it's
8 really hard to maintain equipment, let alone have the
9 money to replace it.

10 Q. Do you recall an order being issued in the
11 proceeding regarding your former certificate that you
12 provide certain financial information concerning the
13 operations of the Point Recycling?

14 A. Yes.

15 Q. Did you comply with that order by providing
16 that information?

17 A. No.

18 Q. Instead, you were refused your certificate --
19 you surrendered --

20 A. Because --

21 JUDGE RENDAHL: Let's not talk over one
22 another, and if you have an objection to him going in
23 areas that are not addressed to your question, then you
24 need to direct that. So why don't you start over,
25 Mr. Anderson.

0119

1 Q. It's a yes or no question, Mr. Wilkowski.
2 Did you comply with the order compelling you to provide
3 financial information?

4 A. I would like to explain that answer. Please
5 do not limit my answers.

6 Q. You will have the chance to testify in
7 response, cross-examining yourself, but it's a yes or
8 no question.

9 A. I had offered for the County to send an
10 accountant that actually knew something about financial
11 information to come to my office and sit down and I
12 would answer all their questions. I was providing
13 information as requested to Commission staff; however
14 --

15 Q. Did you comply with the order compelling you
16 to provide financial information in Docket TG-08913?

17 A. No. I was not going to provide my personal
18 financial information to the Complainants.

19 Q. Did you provide information concerning the
20 detail of why your wages stated in your annual report
21 went from \$40,085 to \$161,473?

22 A. I tried to explain that I added an employee.
23 Everyone got pay raises, and we had substantial
24 increases in medical insurance expenses as well as
25 Labor and Industries. That line in the Commission's

0120

1 annual report is an aggregate of employee expenses.

2 Q. Did you provide the detail as ordered by the
3 order to compel?

4 A. No.

5 Q. Instead, you surrendered your certificate.

6 A. Yes.

7 MR. ANDERSON: No further questions.

8 JUDGE RENDAHL: For Commission staff?

9

10

11

CROSS-EXAMINATION

12 BY MS. CAMERON-RULKOWSKI:

13 Q. Mr. Wilkowski, in your testimony, you said
14 that the Department of Ecology has said that the County
15 doesn't have a viable plan, and it appears that you
16 said something similar in what's been marked as Exhibit
17 No. 33. Do you possess any support for that statement?

18 A. There are three letters over ten years that
19 Ecology has sent to Commission staff and the County and
20 myself. Ecology's position is that -- the County is
21 required under the state laws in their planning process
22 to make a rural and urban designation and to design
23 recycling and garbage programs to meet those two
24 distinct needs for rural and urban.

25 Ecology has recognized that Point Roberts is

0121

1 a rural area that's best served by a self-haul-based
2 recycling system. The notified the County and the
3 Commission of that.

4 Q. I'm going to stop you there for the moment.
5 Are those letters anywhere in this record?

6 A. Yes. I sent them into the record.

7 Q. Are they included in your comment of some 400
8 pages?

9 A. They are in there or else they've been sent
10 previously, as well as in my case regarding removing
11 the recycling, Ecology sent a letter to the Commission
12 commenting on the case, Diana Wadley did, and she said
13 that Ecology would like to see a determination as to
14 why exactly the recycling system in Point Roberts
15 collapsed prior to the issuance of a certificate. That
16 was a comment they put onto Freedom 2000's initial
17 application.

18 Q. In your experience operating PRR as a solid
19 waste collection company in Point Roberts, without
20 considering the transfer station revenues, was
21 collection profitable?

22 A. When we were looking, trying to work with
23 Commission staff to determine the feasibility in the
24 court case of the recycling, I had proposed what I felt
25 were reasonable allegations. The profitability of one

0122

1 sector or another is based on the allocations approved
2 by Commission staff, because there is overhead costs,
3 things like that that shift from one to another, and
4 you have cost of service rates for garbage and
5 recycling collection. You have nonregulated
6 activities, like the transfer station which you can't
7 subsidize with the regulated rate.

8 So I submitted allocations that were looking
9 at probably about a \$50,000 rate increase requirement
10 for the garbage collection, and I think that the
11 garbage company has always been subsidized to a certain
12 extent by the transfer station.

13 As you are building a company, you get in a
14 bind where you get a rate increase. You get a little
15 bit more money. Then you've got to buy some equipment
16 or you give employees needed pay raises, and then you
17 consume that, and you've got to do the rate increase
18 again. The goal was to slowly try to raise rates and to
19 build up the company to reach that stable level where
20 you have even depreciation levels and things like that.

21 Residential garbage, I think I calculated it
22 that for doing two routes a week with a truck and two
23 guys, we made \$600 a week. We spent \$300 getting rid
24 of the garbage, so you've got \$300 for two days of
25 work. The commercial garbage, the one-day-a-week route

0123

1 had dropped because businesses have been closing and
2 stuff. It dropped down to eleven hundred, twelve
3 hundred dollars a week, of which half of that you spend
4 on disposal, a couple hundred dollars just on payroll
5 just on the driver.

6 You are up against the wall that there is not
7 enough volume to operate and maintain the capital
8 overhead and to reinvest the equipment, so you run your
9 equipment down into the ground, which is what I did, so
10 we've got to set rates based on our current
11 depreciation, but we need to buy a \$150,000 garbage
12 truck.

13 Q. I'm going to stop you there for a moment
14 again. So if I've understood what you've said
15 correctly, you seem to have indicated that there was a
16 profit of approximately \$300 a week in residential
17 collection and approximately \$500 a week in commercial
18 collection?

19 A. No, not profit. That's just over -- the
20 primary cost to a garbage company is disposal. It's 40
21 to 50 percent of your expenses. You pay to get rid of
22 garbage. Then you have your operational costs, your
23 fuel, your labor and overhead and all that.

24 Q. I'm going to stop you there again. So what
25 was left at the end? Was there any profit?

0124

1 A. No, nothing. 2008, it's like a \$17,000 loss.
2 I burned up all my depreciation, you know. Adding more
3 equipment, you have to raise rates to cover the cost of
4 that equipment. I was facing substantial rate
5 increases to get it on track.

6 Q. Speaking of that annual report, this is the
7 2008 annual report. That was filed late, was it not?

8 A. Yes. Do you want to send me a bill?

9 Q. When did you file that annual report, if you
10 recall?

11 A. I think I sent it in last month.

12 Q. When was it due?

13 A. Back in May. You know, I hadn't decided
14 whether I wanted to continue to have relationships with
15 the Commission. I knew that I was required to submit a
16 closing report, and if I operated in 2009, technically,
17 I owe you a 2009 report at some point.

18 JUDGE RENDAHL: Ms. Cameron-Rulkowski, that
19 has been admitted as Exhibit 50; is that correct?

20 MS. CAMERON-RULKOWSKI: That's correct, Your
21 Honor. Sorry I didn't identify that earlier.

22 Q. (By Ms. Cameron-Rulkowski) So it's your
23 opinion that curbside solid waste and recycling
24 collection currently is not profitable in Point
25 Roberts; correct?

0125

1 A. Not without substantial rate increases or a
2 structural redesign of the system, because if rates
3 increase because its primarily a self-haul community
4 that's so small, you will have a huge attrition of
5 customers, even commercial customers because they are
6 so small, and with such a minuscule residential
7 property customer base, the operational burden of the
8 Company is shifted onto those commercial customers, and
9 they are sort of at their bearing capacity, not that
10 rates were exorbitant compared to like the San Juan
11 Islands, but what they think is their bearing capacity,
12 and at a certain point, they are like, We will just
13 throw it in the pickup truck and drive a mile to the
14 dump.

15 Q. So in your analysis, one of the primary bases
16 of your opinion is that the number of customers in
17 Point Roberts is simply too small; correct?

18 A. Yes.

19 Q. Small customer volume means low revenues;
20 correct?

21 A. Correct, but you are still faced with having
22 that basic operational cost. You have to have a truck.
23 If the truck is not working, it's not paying for
24 itself. You've got to have a backup truck. You've got
25 to have all the stuff that's not working. Normal

0126

1 garbage companies collect in a day what Point Recycling
2 collects in a month or two.

3 Q. So let me ask you this: If the Commission
4 were to grant both PRR's application and Freedom 2000's
5 application, isn't it true that PRR's operations
6 essentially would siphon off business that the curbside
7 collection provider; that is, Freedom 2000, could ill
8 afford to lose?

9 A. Well, I'm applying for special cleanup and
10 drop-box services. The primary expense in providing
11 that service is the pass-through disposal, and so for a
12 garbage company, drop-box services don't contribute a
13 substantial amount of money to funding operational
14 overhead because they are billing an hourly rate, and
15 that hourly rate is for their driver and the truck and
16 all that.

17 As I've said in my application, while I may
18 have done, say, \$40,000 in pass-through operations,
19 only \$8,000 of it was nondisposal pass-through. So you
20 charge someone sixty dollars to drop off and pick up a
21 container, but they have \$150 in disposal. So
22 splitting off that, all you are talking about is those
23 labor operations, so if Point Recycling and Freedom
24 operated within the territory, people would have a
25 choice of whether to have them come pick up a fridge

0127

1 from them or me, that sort of incremental labor cost,
2 the disposal cost is irrelevant to Freedom as a
3 company.

4 Q. Well, you heard Mr. Slater's testimony, and
5 it certainly sounded as if he were saying if he had a
6 choice, he would go with PRR, so that would be one less
7 customer for Freedom 2000 if both companies were
8 certificated; correct?

9 A. Yes. It has a small divisive effect.
10 However, Freedom can't use drop-box revenue to
11 subsidize garbage or recycling collection or vice
12 versa. In an allocated system, a little bit of
13 overhead cost and insurance cost, things like that,
14 would be transferred to the roll-off operations, but it
15 would amount to only a few hundred dollars in any sort
16 of rate case scenario because it's such a small system.

17 Q. After Point stopped curbside recycling and
18 Freedom 2000 applied to provide curbside recycling, you
19 protested Freedom 2000's application; correct?

20 A. Yes.

21 Q. If you were still providing service in Point
22 Roberts, according to your prior certificate, if a new
23 company filed an application, like the application that
24 PRR has filed to provide special cleanup service and
25 drop-box service, on-call service, would you have

0128

1 protested that application?

2 A. If there was an existing company already
3 providing the service, I would have. However, this is
4 the case of a choice between two new things. This
5 isn't an established territory.

6 Q. I agree that the situation we have now is not
7 what was before. I'm asking you a hypothetical
8 question, if you were still providing service?

9 A. Yes.

10 Q. So your answer is yes, you would have
11 protested?

12 A. Yes.

13 Q. Why?

14 A. Because I trust myself to provide service,
15 and you know, if this was a case where Sanitary
16 Services was applying for this whole territory, and
17 they did talk to me a lot about it, and I definitely
18 wouldn't say that I'm buddies with them because that's
19 just local politics. They are not my enemies, but I
20 would have done everything I could have after I
21 forfeited my certificate to assist in establishing them
22 because I trust them, and the goal is to try to get a
23 working system that isn't going to collapse six months
24 from now or nine months from now again and the
25 community is screwed.

0129

1 MS. CAMERON-RULKOWSKI: I have no further
2 questions.

3 JUDGE RENDAHL: It's 1:30, and we are going
4 to start our public hearing at this point, so at this
5 point, we will continue with cross-examination of
6 Mr. Wilkowski. There may be questions from the Bench
7 and there may be additional questions from
8 Mr. Anderson, but we will do that following the public
9 comment hearing.

10

11 (Transition to Public Hearing, Volume II, at 1:30 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0130

1 (Hearing Volume I resumed at 2:15)

2

3 JUDGE RENDAHL: We are going to continue the
4 cross-examination of Mr. Wilkowski. I believe we left
5 off with Commission staff cross-examination, and so
6 I'll now turn to the commissioners.

7

8

9 CROSS-EXAMINATION

10 BY CHAIRMAN GOLTZ:

11 Q. Did you call the commissioners the epitome of
12 paper-pushing, indifferent, and dictatorial
13 bureaucrats?

14 A. Actually, I was not referring to the
15 commissioners. I was referring to your staff, which
16 from my understanding are separate.

17 Q. Modest recovery on that, I guess.

18 A. I thought it was a good quote.

19 Q. I did find it a little offensive.

20 A. I apologize.

21 Q. So you currently operate the transfer station
22 pursuant to the lease?

23 A. Yes.

24 Q. Do you have that lease in front of you, and
25 I'm looking at Exhibit 14, and it's Paragraph F, 3(f),

0131

1 disposal and operation fees?

2 A. Yes.

3 Q. So do I understand from this that you set the
4 disposal fees at the transfer station?

5 A. Well, technically the County approves them,
6 so I have to request fee increases. The County has had
7 a policy specific to my company of not giving requested
8 increases. The County also leases two other stations
9 to Sanitary Services who operates them under the same
10 agreement.

11 So for example, I had requested a fee
12 increase up to 13 cents a pound during this political
13 process, and they said, Well, no, we will give you
14 twelve-and-a-half, but we are going to approve Sanitary
15 for 15.

16 Q. When was that request made?

17 A. That was two years ago.

18 Q. So since this time, there has been no
19 increases?

20 A. There has been no increase. I did request an
21 increase in the recycling fee when the recycling
22 markets collapsed, and in essence what happened is
23 there was a processor at the same time in Canada that
24 closed a major process where I took my recyclables, and
25 I think they just sort of gave up, and I contacted all

0132

1 the other recycling processors in Canada and said, Will
2 you take my stuff, and they all said, Markets are so
3 bad, we have collection contracts for cities for
4 residential recyclables, and we will process our stuff,
5 but we won't take from it anybody else.

6 So I had to haul the recycling down to
7 Bellingham where they charged me five cents a pound. I
8 requested that the County allow me to raise my rate
9 from five cents a pound to nine cents a pound in order
10 to cover the trucking costs, and they refused.

11 I've tried to do structural things like
12 having them have the minimum charge at the transfer
13 station the equivalent to one garbage can a month so
14 that that would encourage people to sign up for service
15 as opposed to self-hauling. They wouldn't do that, but
16 the County sets the rate, and then I have to file with
17 the Commission for the increase to the garbage company.

18 Q. So you had to.

19 A. I had to in the past.

20 Q. Speaking of that, I gather that since you
21 relinquished your certificate, you have been offering
22 services that had been authorized under the certificate
23 but were no longer.

24 A. Yes. Can I explain?

25 Q. Go ahead.

0133

1 A. Point Roberts is a free for all. There is
2 pickup trucks hauling. There is Canadian companies
3 providing drop-box. Mr. Gellatly's company is
4 providing drop-boxes. I've had many of my customers
5 I've turned down. I've had a couple of customers that
6 have been in a bind where they've had a volume that was
7 significant or they couldn't get someone to help them
8 out, and the only other choice, for example, for a
9 drop-box would have been that they hired Mr. Gellatly's
10 company; that I provided services under my old tariffed
11 rates under the commitment of a regulated system,
12 because I've always tried to serve the community, and
13 I'm in a situation where I'm stuck, and I sent --

14 The past few months, I sent several requests
15 to Mr. Eckhardt saying, "I just got someone that called
16 me, and they are up here from Oregon, and they've got
17 to get the place cleaned out before they go back, and
18 they need a drop-box. What do I do?" And he said,
19 "Don't do it," and those guys, I said, "Well, call Bob.
20 He's got a pickup truck." But yes, I'll admit.

21 Q. You referred to a letter from Ecology making
22 a distinction between urban and rural areas for solid
23 waste strategies?

24 A. Yes.

25 Q. And that's in the documents you submitted to

0134

1 the record?

2 A. Yes.

3 Q. One thing that's absent, and I will ask
4 Commission staff if it's in here, the County solid
5 waste management plan, if you can't answer this, I'll
6 ask someone else. Do you know when was the last update
7 of the Whatcom County solid waste management plan?

8 A. They have an update in process. I don't
9 think it's been approved. Their operating plan, I
10 believe, is the '94 plan. It's about this thick and
11 very detailed. Their current one is -- they've like.
12 (Witness indicating.)

13 Q. You are indicating a couple of inches.

14 A. Yes.

15 Q. To your knowledge, does it have any specific
16 references to Point Roberts?

17 A. Other than saying the criteria that they have
18 to list all the haulers and they say, Well, this is
19 Point Roberts. It has this many households, and of the
20 time of the report, there were 200 customers on
21 service, but the plan in general is -- they took a plan
22 for Bellingham and they said, We are going to make it
23 County-wide from a design standpoint.

24 Q. That's why you are saying there is mandatory
25 curbside recycling.

0135

1 A. Yeah. There is a program in Bellingham.
2 They said, We are going to make recycling County-wide,
3 and that was in 1990. The owner at the time just -- no
4 one did anything. No one said, Hey, wait. What about
5 this place?

6 CHAIRMAN GOLTZ: I have no further questions.

7 JUDGE RENDAHL: I have a few questions.

8

9

10 CROSS-EXAMINATION

11 BY JUDGE RENDAHL:

12 Q. Following up on Chairman Goltz, and this is a
13 question for all the parties, would any of the parties
14 have an objection to the Commission taking official
15 notice of the current inplace plan, which I understand
16 to be the 1994 plan?

17 A. I think it's '90 or '94.

18 Q. Taking official notice of that into the
19 record?

20 MS. CAMERON-RULKOWSKI: No objection.

21 MR. ANDERSON: No objection.

22 MR. WILKOWSKI: No objection.

23 JUDGE RENDAHL: I will designate an exhibit
24 number for that, and when I recirculate the exhibit
25 list for this case, it will have an exhibit number,

0136

1 probably 92, below the public comments.

2 Q. So Mr. Wilkowski, are you suggesting in your
3 statements today and your exhibits that you submitted
4 that the Commission not grant either certificate as
5 leverage to force the County to modify its plan?

6 A. If I was you guys -- I'm sorry. That's not
7 proper -- I think that you probably should. I don't
8 think the County will do anything. This whole thing is
9 stuck. The County has gutted their division. They
10 literally won't engage.

11 So if you don't approve anything -- what the
12 County has literally said at a public meeting in Point
13 Roberts is, This isn't our fault and it isn't our
14 problem. If there is no garbage company in Point
15 Roberts, there is no garbage company, and what they
16 want is for the Commission to approve something so that
17 they can say, Well, it's not our fault and it's not our
18 problem, but --

19 Q. You don't need to recite the history. I'm
20 just asking you yes or no if that's your proposal.

21 A. I think you should. I think that on a
22 temporary basis if you want to give me for 90 days the
23 ability to do drop-box and special cleanup and then
24 after 90 days see what the County does, but I don't
25 think any company has a chance.

0137

1 Beyond the personal stuff between Gellatly
2 and Calder's and myself, I don't think they have a
3 chance, and they will fold in about six months or maybe
4 nine, because it's just a problem. There is not enough
5 unless the County makes some changes. I even think if
6 the County isn't going to do universal service, they
7 should just contract with the big Canadian companies
8 right across the border to do the garbage service one
9 day a week. It's a \$200,000 a year gross revenue
10 thing, so for them to do it as a marginal thing, it
11 works, but to expect a company to maintain itself into
12 the future in a situation without any support from the
13 County, as they start raising rates to replace
14 equipment, they are going to lose customers, and that's
15 what I was in.

16 Q. Thank you. I wanted to clarify in your
17 answers to Commission staff's questions, you were
18 referring to a letter to the Commission by Department
19 of Ecology. Was that in response to your tariff filing
20 to terminate curbside recycling, or was that -- I think
21 you stated it was in Freedom 2000's application docket,
22 but I think you might have said both, so I'm trying to
23 clarify for the record.

24 A. I'm thinking Ecology didn't really step in
25 until Freedom's application.

0138

1 Q. I just wanted to clarify where that was.

2 A. Diana Wadley first stepped in at the
3 prehearing conference. They were not intervening, but
4 she was on the phone bridge.

5 Q. That's all I needed to know.

6 JUDGE RENDAHL: I think that's all I have.
7 So did you have any redirect examination of yourself
8 based on the cross-examination questions from everyone
9 else?

10 MR. WILKOWSKI: I would like to say that I
11 provided financials to the Commission auditor and was
12 working with them. The problem is that people were
13 taking financial information that they didn't know
14 anything about and then they would make statements to
15 the County, to the Commission, whatever, inaccurate
16 statements.

17 For example, on my annual reports, on annual
18 reports when it says "owner's compensation," that's
19 owner's compensation, whether I'm driving or answering
20 phones or whatever. So when I put in a number for what
21 owner's compensation is, that's all it is. It's not,
22 Oh, I also drive trucks, so part of the driver's
23 compensation, or I work on the trucks, so I'm part of
24 the mechanic expenses or something like that. The
25 paychecks I pay myself, that's owner's compensation.

0139

1 I presented accurate information to the
2 Commission's auditors. The problem was that people
3 that don't understand the reports or understand basic
4 accounting take that information and then make
5 statements about it. It's just like driver's
6 maintenance records. If someone doesn't maintain a
7 fleet and maintain trucks, they can't take a look at my
8 maintenance records and go, Oh, you should be doing
9 this.

10 The question for the Commission is am I
11 committed to serving my community? Yes. Otherwise, I
12 wouldn't have stayed it in it this long. Do I have
13 support within the community? Yes, a substantial
14 amount, and the fundamental question is, is it possible
15 for the Commission to regulate me, and I will admit
16 that I have done things no other garbage company would
17 dare to do because I needed help. I needed
18 participation, and so I had to push.

19 I believe in a regulated system all along.
20 Get a good design, get effective regulation, and the
21 company can do the job. I couldn't get a good design
22 and I couldn't get support. Whether or not I can be
23 regulated -- I believe I can -- you will have to ask
24 your staff whether they think they can regulate me.
25 Yes, I've done things to piss them off, but I've always

0140

1 been consistent that I just need help.

2 You will have to ask them, but I think if you
3 grant my certificate, yes, I will comply with the rules
4 set up before me, and I will serve because I've always
5 been committed to serve.

6 JUDGE RENDAHL: Okay. Is there anything
7 further by any party for this witness?

8 MR. ANDERSON: No.

9 JUDGE RENDAHL: At this point, you are now
10 excused as a witness, Mr. Wilkowski. You may now
11 return to your position as representing the Company,
12 and Commission staff, it's now your turn, and I
13 understand you wish to call Ms. Johnson first as a
14 witness; is that correct?

15 MS. CAMERON-RULKOWSKI: That's correct, Your
16 Honor.

17 JUDGE RENDAHL: Ms. Johnson, if you would
18 come up over here.

19

20 Whereupon,

21 NICKI JOHNSON,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

24

25

0141

1 DIRECT EXAMINATION

2 BY MS. CAMERON-RULKOWSKI:

3 Q. Please state and spell your name.

4 A. My name is Nicki Johnson. My first name is
5 spelled N-i-c-k-i; last name, J-o-h-n-s-o-n.

6 Q. Please state the name of your employer.

7 A. My employer is the Washington Utilities and
8 Transportation Commission.

9 Q. In what position are you employed by the
10 Commission?

11 A. I'm employed as a regulatory analyst,
12 primarily of transportation companies.

13 Q. How long have you been performing this type
14 of work for the Commission?

15 A. Approximately 27 years.

16 Q. Please briefly describe your responsibilities
17 as they pertain to this matter.

18 A. As a regulatory analyst, I review a company's
19 financial information to determine what the revenue
20 requirement of its regulated operations are. Then I
21 advise the company of what those recommendations are,
22 and I present my recommendations to the Commission.

23 Q. Are you familiar with Freedom 2000, LLC,
24 doing business as Cando Recycling and Disposal?

25 A. Yes.

0142

1 Q. How did you become familiar with
2 Freedom 2000?

3 A. Last July, I was asked to review their budget
4 information that they supplied with their application.

5 Q. Are you familiar with Point Recycling and
6 Refuse?

7 A. Yes.

8 Q. How did you become familiar with Point
9 Recycling and Refuse?

10 A. They made application to also serve the Point
11 Roberts area, and I reviewed its financial information
12 that it supplied with its application.

13 Q. So did you review the application of
14 Freedom 2000 as well as the PRR application?

15 A. Yes, I did.

16 Q. As part of your review, did you review the
17 cost projections and the available assets and analyze
18 overall financial fitness of these applicants to
19 provide the services proposed in their prospective
20 applications?

21 A. Yes.

22 Q. Have you been called upon before to analyze
23 the financial information submitted by an applicant for
24 new service?

25 A. Yes, I did, in an Aqua Express application.

0143

1 That was Docket TS-040650.

2 Q. In analyzing the financial information of an
3 applicant for new service, what do you consider?

4 A. One, I begin by looking at what service
5 they've proposed to provide by looking at their tariff,
6 whether or not they have available equipment to provide
7 that service. If they don't have the equipment on
8 hand, I look to see that they have proposed to buy that
9 equipment, and to buy that equipment, I look to see if
10 they have cash on hand or have described any financing
11 that they have available to buy that equipment.

12 I also look at their expenses that they have
13 in their application to see if those are reasonable,
14 and I look at the revenues to see if their projected
15 customers and the projected rates are close to that
16 revenue they have projected.

17 Q. When you performed your analysis of the
18 financial information from Freedom 2000, did you review
19 documents other than the application materials?

20 A. Yes. First I reviewed the financial
21 information that they filed, I believe, on July 24th,
22 2009, and then they filed additional revised budget
23 information that included the transfer station, and
24 they also filed budget information for their operations
25 if they didn't use the transfer station, and based on

0144

1 those analyses, I sent the Company data requests to
2 which they responded, and I reviewed those data
3 requests.

4 I looked at Point Recycling's 2007 annual
5 report, Point's cancelled tariff that had been in
6 effect, and I also looked at the last general rate case
7 we had on file from Point Recycling to determine what
8 the expenses and customer levels were in that document.

9 Q. The data request that you referenced, the
10 responses to those data requests, are those set out in
11 what has been marked as Exhibit 71 and 72?

12 A. Yes, I believe so.

13 Q. You just talked about all the documents that
14 you reviewed, and when you performed this review and
15 this analysis, did you consider the things that you
16 stated earlier that you consider when you analyze
17 applications for new service?

18 A. In my previous answer, all the things that I
19 analyzed are the equipment list, what assets the
20 company needs to provide the service, whether or not
21 the company has money and financing. I consider all
22 those things and what their projected customer levels
23 are. Did that answer your question?

24 Q. I'm sorry if that was confusing. I wanted to
25 know those things that you just talked about, did you

0145

1 consider those when you looked at both of these
2 applications?

3 A. Yes.

4 Q. Returning just to Freedom, in your opinion,
5 are Freedom's cost projections reasonable?

6 A. Yes.

7 Q. In your opinion, are Freedom's assets and
8 available financing sufficient for Freedom 2000 to
9 provide service for enough time to determine if the
10 operation is profitable?

11 A. I believe that the Company has made a
12 reasonable attempt to project revenue and expenses to
13 operate this company, yes.

14 Q. In your opinion, does Freedom 2000 appear to
15 be financially fit to provide the services it describes
16 in its application?

17 A. Yes.

18 Q. In Freedom 2000's application, Mr. Gellatly
19 has indicated that he has never held a solid waste
20 certificate but that he does have experience in
21 transportation. In your opinion, does Mr. Gellatly's
22 lack of experience providing solid waste collection
23 service mean that Freedom 2000 isn't fit or able to
24 provide the services proposed in its application?

25 A. No. I believe Mr. Gellatly has experience as

0146

1 a motor carrier or other trucking experience, and
2 that's sufficient.

3 Q. There has been some testimony today about
4 equipment, and also Freedom 2000's application
5 materials reference equipment in several places. From
6 the application materials that you've reviewed and from
7 the testimony that you heard today, do you have any
8 concerns about Freedom 2000's equipment proposals?

9 A. No, I don't have any concerns. They have
10 identified or attempted to identify what trucks and
11 what other equipment they will need for both solid
12 waste and recycling collection, and I believe it's
13 reasonable.

14 Q. When you performed your analysis of PRR's
15 financial information, did you review any documents
16 other than the application materials?

17 A. Yes. I reviewed PRR's 2007 and 2008 annual
18 reports.

19 Q. In Mr. Wilkowski's application materials, he
20 has a projection there that after a base year of
21 operations, the allocated expenses will exceed revenue.
22 Do you have any concerns given this projection about
23 PRR's financial fitness to provide the services
24 described in its application?

25 A. I don't have any concerns because in a year

0147

1 if the Company feels that they have insufficient
2 revenue, they can apply to the Commission through a
3 general rate increase to increase their rates so they
4 will cover expenses and have the opportunity to earn a
5 reasonable rate of return.

6 Q. So based on your review, does it appear that
7 PRR is financially fit to begin providing the services
8 it has proposed?

9 A. Yes.

10 MS. CAMERON-RULKOWSKI: Thank you. I have no
11 further questions for Ms. Johnson.

12 JUDGE RENDAHL: Thank you. Mr. Anderson, do
13 you have any questions for the witness?

14 MR. ANDERSON: No.

15 JUDGE RENDAHL: Mr. Wilkowski, do you have
16 any questions for Ms. Johnson?

17 MR. WILKOWSKI: Just a couple.

18

19

20 CROSS-EXAMINATION

21 BY MR. WILKOWSKI:

22 Q. In regards to the Freedom 2000 application,
23 is there any analytical evidence to determine any sort
24 of customer level that if they start out with
25 operations that they will have or acquire eventually?

0148

1 A. I don't believe there was anything in the
2 application that they had that said how many customers
3 they would have in the future. Only that they hoped to
4 acquire more in the future, and I hope that answers
5 your question.

6 Q. So outside of their statement that they hope
7 to have this many customers, there has been no analysis
8 by the Commission or any other party to even indicate
9 if those numbers are realistic?

10 A. Perhaps if you tell me which numbers exactly
11 you are referring to. Do you mean the 338 residential
12 customers?

13 Q. Yeah, that they would be able to relatively
14 quickly achieve the same customer volume that Point
15 Recycling had previously.

16 MS. CAMERON-RULKOWSKI: I'm going to object.
17 I believe this question has been asked and answered.
18 Correct me if I'm wrong, but I believe that
19 Freedom 2000 already testified about its expectations
20 in acquiring customers.

21 JUDGE RENDAHL: Mr. Wilkowski?

22 MR. WILKOWSKI: That's fine.

23 Q. (By Mr. Wilkowski) To your knowledge, has
24 the Commission ever conducted the state-required rate
25 impact assessment on Whatcom County's solid waste plan

0149

1 in specific regards to the G-certificate covered by
2 Point Roberts' territory?

3 A. The simple answer is no. I'm not aware of
4 any requirement for rate impact assessment on
5 individual garbage companies.

6 Q. So when the Commission does the required rate
7 impact assessment on a plan, it looks at the county as
8 an aggregate regardless of the size or unique
9 characteristics of the underlying certificated
10 companies?

11 A. When we look at a solid waste management
12 plan, we review the cost assessment, which is the
13 county's overall assessment of what, if they implement
14 the plan, what the projected cost will be on disposal
15 fees or recycling, and it's generally county-wide, and
16 what we determine is generally speaking, what will be
17 the rate impact to any customer in Whatcom County.

18 Q. I know that you have a vast understanding of
19 the accounting of solid waste companies, but there is a
20 difference between the accounting design of a company
21 and the raw numbers and operational logistics of
22 actually going out and doing the work with the
23 described equipment; for example, Freedom 2000's desire
24 to collect recycling with a trailer.

25 Do you have any experience in the evaluation

0150

1 of day-to-day operational efficiency of garbage
2 companies?

3 A. No, I don't have any operational experience
4 in day-to-day solid waste companies.

5 Q. You've been involved in several rate cases
6 with myself for other companies. In your opinion, have
7 I in the past accurately or attempted to accurately
8 portray financial information to you and to the
9 Commission?

10 MS. CAMERON-RULKOWSKI: Objection, lack of
11 foundation. I don't know that Ms. Johnson has been
12 assigned to review any of the rate cases that were
13 filed by Mr. Wilkowski. That would be my objection.

14 JUDGE RENDAHL: Mr. Anderson?

15 MR. ANDERSON: It's also specific character
16 evidence which isn't at issue, so it would be improper
17 to the extent the normal rules of evidence apply. It's
18 the do-you-think-I'm-a-great-guy question, which isn't
19 properly before the tribunal.

20 MR. WILKOWSKI: My responses would be that
21 Freedom through evidence that they've presented have --

22 JUDGE RENDAHL: Your question was not about
23 Freedom. It was about your own involvement.

24 MR. WILKOWSKI: They've implied that I would
25 attempt to withhold accurate information from the

0151

1 Commission, and Ms. Johnson is a person that has a
2 history of me submitting information to her, and her
3 opinion as to whether she thinks I attempted to mislead
4 her would give bearing as to whether I have a pattern
5 of misleading the Commission or not.

6 JUDGE RENDAHL: Objections are overruled. We
7 will let the question go forward. Would you like the
8 question repeated?

9 THE WITNESS: To my knowledge, Mr. Wilkowski
10 has never withheld anything intentionally from the
11 Commission when I've worked with him in the past on
12 other companies.

13 JUDGE RENDAHL: Thank you.

14 MR. WILKOWSKI: That's all my questions.

15 JUDGE RENDAHL: Thank you. So are there any
16 questions by the commissioners for this witness?

17

18

19 CROSS-EXAMINATION

20 BY CHAIRMAN GOLTZ:

21 Q. Ms. Johnson, the RCW 81.77.040 states that
22 operating a solid waste collection company in
23 unincorporated areas of the county, the company
24 must comply with the solid waste management plan
25 prepared under Chapter 70.95 RCW when the company is

0152

1 franchised in that area.

2 In your review of preparation of this case,
3 these applications, did you review the County solid
4 waste management program?

5 A. No, I did not.

6 Q. If I have questions on that, I should perhaps
7 ask Mr. Eckhardt?

8 A. Yes.

9 JUDGE RENDAHL: Any other questions for
10 Ms. Johnson? I have no questions, so if there is no
11 follow-up from Ms. Cameron-Rulkowski...

12 MS. CAMERON-RULKOWSKI: None, Your Honor.

13 JUDGE RENDAHL: ...then you are excused.

14 Thank you very much, and I understand you now wish to
15 call Mr. Pratt; is that correct?

16 MS. CAMERON-RULKOWSKI: I do.

17 JUDGE RENDAHL: So Mr. Pratt, would you raise
18 your right hand, please?

19

20 Whereupon,

21 DAVID PRATT,

22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

24

25

0153

1 DIRECT EXAMINATION

2 BY MS. CAMERON-RULKOWSKI:

3 Q. Good afternoon, Mr. Pratt. Please state and
4 spell your name.

5 A. My name is David Pratt, D-a-v-i-d, P-r-a-t-t.

6 Q. Please state the name of your employer.

7 A. Washington Utilities and Transportation
8 Commission.

9 Q. How long have you been employed by the
10 Commission?

11 A. Approximately four-and-a-half years.

12 Q. In what position are you employed by the
13 Commission?

14 A. I currently am the assistant director for
15 transportation safety. That includes motor carrier
16 safety, safety compliance, and I also manage the
17 agency's licensing program.

18 Q. How long have you been employed in this
19 position?

20 A. About two-and-a-half years.

21 Q. Please describe your responsibilities as they
22 pertain to this proceeding.

23 A. I think the primary responsibility has to do
24 with the licensing program, and my staff in licensing
25 receive the applications and process them. This case

0154

1 being a high-profile case, it was brought to my
2 attention when it came in, so I made sure everything
3 was looked at appropriately and all the paperwork was
4 documented.

5 Q. Are you familiar with Freedom 2000, LLC,
6 doing business as Cando Recycling and Disposal?

7 A. Yes.

8 Q. How did you first become familiar with
9 Freedom 2000?

10 A. Probably when the application came in for
11 solid waste service.

12 Q. Have you reviewed the application materials
13 of Freedom 2000?

14 A. Yes.

15 Q. Are there any steps that would need to be
16 completed by Freedom 2000 or by the Commission before
17 the Commission could issue a certificate to
18 Freedom 2000?

19 A. At this point, I think yes, there are, and I
20 guess I clarify that by saying a couple of weeks ago, I
21 would have said no. We had reviewed everything, and
22 typically when an application comes in, it has to
23 contain several pieces, one of the most important ones
24 being the insurance, the UBI numbers that are filed
25 with other agencies in the state, and any other

0155

1 authorities that are needed as far as common-carrier
2 permits or federal authority.

3 In this case, we don't always require the
4 insurance to be there when the initial application
5 comes in because insurance is expensive, and we allow
6 them to let us know they will file the insurance before
7 we issue the authority. So when this one came in, it
8 did not have the insurance, but it was filed shortly
9 after, which was acceptable, but I've learned in the
10 last couple of weeks, and it was talked about here
11 today, that the UBI number as of yesterday at the
12 Secretary of State's Web site is listed as inactive --

13 MR. ANDERSON: Objection, Your Honor. We
14 have objected to that exhibit that he has referred to,
15 which is Exhibit No. 25, and would object to that
16 testimony based on this exhibit as opposed to the
17 actual records of the Secretary of State's office, and
18 if you will look at Exhibit No. 25, the very first
19 sentence of that exhibit off the Web site as opposed to
20 the records of the corporations division states:
21 "Neither the State of Washington nor any agency,
22 officer, or employee of the State of Washington
23 warrants the timeliness of any information in the
24 public access system."

25 The record we have through Mr. Gellatly's

0156

1 testimony is that there was a lapse that had been
2 corrected. We received this exhibit by e-mail
3 yesterday when I was in a deposition. Mr. Gellatly had
4 left his office and did not have the opportunity to
5 bring the evidence of reactivation with him, as it's
6 our testimony that that took place, and this exhibit to
7 which Mr. Pratt is referring, states on its face that
8 you can't rely on it as being timely, which it isn't.
9 It's not the best evidence and it's not an official
10 record.

11 We think this can correct itself through
12 timely records of the corporations division. That's
13 our objection to both the exhibit and the testimony
14 based on the exhibit.

15 JUDGE RENDAHL: Ms. Cameron-Rulkowski?

16 MS. CAMERON-RULKOWSKI: We are not offering
17 the exhibit. I think at this point, the testimony is
18 saying that Mr. Pratt performed a check, and I think he
19 can testify what he learned when he performed that
20 check, and we've had testimony on that. We are not
21 attempting to repeat that testimony or establish the
22 validity of the record. Mr. Pratt is simply saying he
23 checked the record, and that was one of the things that
24 informed his analysis. So we are not offering the
25 exhibit, and the testimony is not offered for the

0157

1 truth, if you will.

2 MR. ANDERSON: If it's not offered for the
3 truth, then it is not relevant.

4 JUDGE RENDAHL: Is it offered for the purpose
5 of establishing -- the testimony is not offered for the
6 truth, the document itself, but the testimony is as to
7 what he has done. Maybe you could reask the question
8 and Mr. Pratt can begin again.

9 MS. CAMERON-RULKOWSKI: That's fine.

10 JUDGE RENDAHL: Based on the understanding
11 you are not offering Exhibit 25.

12 Q. (By Ms. Cameron-Rulkowski) So Mr. Pratt, I
13 have two questions for you. We will take them one at a
14 time. The two questions are, are there any steps that
15 would need to be completed before the Commission could
16 grant Freedom 2000's application, and then the next
17 question is, is there anything that would need to be
18 done before a certificate could actually issue.

19 So the first question was, are there steps
20 that need to be completed before the Commission could
21 grant Freedom 2000's application?

22 A. The answer would be yes, and at this point,
23 the way the conversation is going, we would need to
24 have verification that the UBI account was active. At
25 this point, our information that it's not active. I

0158

1 did place a phone call this morning to the Secretary of
2 State to verify the Web site and did receive the same
3 information on the phone as of eight o'clock this
4 morning, but it is up to the Applicant to provide that.
5 If they do, it makes it complete.

6 I do have another concern with the US DOT
7 number, which is a federal requirement for this company
8 to operate. At one point, this company provided us
9 with the US DOT number. It was active and valid.
10 Again in my recheck, this one would have been last
11 week, and it was one of the exhibits that was offered
12 earlier. It was databased. Our information last week
13 showed that the US DOT number had been inactivated by
14 Mr. Gellatly himself October 5th of this year in a
15 phone call to the FMCSA. Again, that's a requirement
16 that we need to get verification that they had an
17 active DOT number before we could issue a certificate.

18 JUDGE RENDAHL: So is that for issuing a
19 certificate or granting the application?

20 THE WITNESS: Both.

21 Q. (By Ms. Cameron-Rulkowski) You had started
22 to testify about insurance earlier, and is insurance a
23 requirement of issuing a certificate rather than
24 granting a certificate?

25 A. Yes.

0159

1 CHAIRMAN GOLTZ: Could you repeat that
2 question and answer? I know the answer is yes.

3 MS. CAMERON-RULKOWSKI: I was clarifying that
4 the insurance requirement is something that needs to be
5 fulfilled before a certificate can issue but not before
6 authority can be granted. So in other words, an order
7 could be issued by the Commission granting the
8 application, and the company wouldn't need to have
9 insurance yet, but then before a certificate could
10 actually issue, the company would need to be insured.
11 Have I explained that correctly?

12 THE WITNESS: That's correct. So if I can
13 summarize, I would say then all the other requirements
14 for this application have been met.

15 Q. (By Ms. Cameron-Rulkowski) Have you or has
16 any of the staff you supervise had cause to investigate
17 Mr. Gellatly?

18 A. Yes.

19 Q. Is that investigation the one that I asked
20 Mr. Gellatly about when he was on the stand?

21 A. Yes, it is.

22 Q. That was an investigation that Staff
23 performed in 2008?

24 A. Correct.

25 Q. Did Staff prepare a report of that

0160

1 investigation?

2 A. Yes.

3 Q. Is this a true and correct copy of the report
4 that Staff prepared? (Indicating.)

5 A. Yes, I believe it is.

6 Q. Is this investigation relevant to the
7 Freedom 2000 application?

8 A. I believe it is, yes. Part of the facts we
9 investigated were in compliance with Commission
10 regulations and other agency regulations, and that was
11 the topic of the investigation is whether or not there
12 were companies operating without the proper
13 authorities.

14 Based on some research we did, we identified
15 multiple companies that Mr. Gellatly either had a
16 relationship with or was listed as an ownership; that
17 we had questions about the proper authorities being
18 established or proper regulations being followed.

19 MS. CAMERON-RULKOWSKI: I would like to offer
20 the staff investigation report of David Gellatly and
21 Ronald Calder, which is marked as Exhibit No. 30 for
22 Commission into evidence.

23 JUDGE RENDAHL: Mr. Anderson, I know you had
24 objected to it earlier.

25 MR. ANDERSON: I object to the Commission

0161

1 report portion Appendix A, which is Mr. Wilkowski's
2 effort to start this investigation. I do not have an
3 objection to Appendix B and beyond, which are
4 Commission inquiries to Mr. Gellatly or others in their
5 statements back. To that extent, the report itself is
6 hearsay. It's inconclusive. It doesn't present any
7 evidence of anything that Mr. Gellatly did. His
8 statements are his statements, obviously, so I don't
9 have any objection to those.

10 MS. CAMERON-RULKOWSKI: May I make an offer
11 of proof?

12 JUDGE RENDAHL: Yes, you may.

13 MS. CAMERON-RULKOWSKI: Mr. Gellatly
14 testified today that he is a part owner of J-Man.
15 J-Man was one of the companies that was investigated in
16 the report, and the investigation concluded that J-Man
17 did not have proper authorities. Therefore, the
18 conclusions of the report that J-Man didn't have proper
19 authorities, and the fact that Mr. Gellatly is a part
20 owner makes the investigation relevant to this
21 proceeding.

22 It should be admitted for the purpose of
23 showing what it shows about the regulatory compliance
24 of companies or specifically of J-Man trucking that
25 Mr. Gellatly is a part owner of. I'm not particularly

0162

1 interested in what started this report off; that is,
2 Appendix A.

3 JUDGE RENDAHL: Mr. Anderson, I just want to
4 clarify your objection. Is it to the Staff report
5 itself plus Appendix A?

6 MR. ANDERSON: Yes.

7 JUDGE RENDAHL: I would admit it over the
8 objection. The Commission will give it the weight to
9 which it will give, understanding there is no witness.
10 Ms. Young is not here to testify to the document, and
11 given what Ms. Cameron-Rulkowski said that it's offered
12 because of the references to J-Man Trucking.

13 I would also admit Appendix A. Mr. Wilkowski
14 is here to testify, if need be, to the veracity of it,
15 and we will assign weight to the opinions stated in the
16 document, so if the commissioner agree, I would admit
17 this and assign it the appropriate weight. So the
18 objection is overruled, and Exhibit 30 will be
19 admitted.

20 Q. (By Ms. Cameron-Rulkowski) In the review that
21 you've performed of some of the documents in this
22 proceeding and the checks that you've done that you
23 have done on the required authority for Freedom 2000
24 and given the testimony that you've heard today, do you
25 have any concerns regarding the regulatory fitness of

0163

1 Freedom 2000 to provide the services it has proposed in
2 its application?

3 A. I guess I would say yes. My concerns are
4 what appears to be a pattern of noncompliance with
5 Commission regulations, and as the report shows, we
6 notified Mr. Gellatly back in October of 2008 of what
7 he needed to do to come into compliance with J-Man
8 Trucking, and as far as I know today, none of those
9 items have occurred yet. So I would have concerns that
10 would be the same for Freedom 2000.

11 We haven't established a link here, but we
12 did look at a company called Light Weight Recycling.
13 We looked at a company called Triple K Trucking as
14 well. There were some similar concerns about those
15 companies as well, and we notified them during the same
16 time frame about the regulatory requirements that have
17 yet to be met.

18 Q. We've spoken so far about the past. You have
19 concerns about Freedom 2000's ability to maintain or
20 come into compliance in the future?

21 A. Yes.

22 Q. Are the concerns you've just testified about,
23 do they constitute grounds to deny Freedom 2000's
24 application, in your opinion?

25 A. That's a very tough question. I guess I will

0164

1 start off by saying some of these factors raise real
2 serious concerns to me because of our repeated attempts
3 to ask them to comply with the regulations, multiple
4 communications between the companies and the agency, so
5 it would give me concerns that there would be issues in
6 the future they would not comply with.

7 I'm not sure I would go all the way to say
8 they should be denied their application, but I would
9 say there should be some pretty strong conditions
10 placed on it if it is approved. To guarantee future
11 compliance, maybe a short window for coming into
12 compliance if items are found out of compliance in the
13 future.

14 Some of the things are very important to me
15 because we are crossing international borders up there
16 is a federal authority would have to be obtained if
17 they are leaving the area. I want to make sure I
18 understand the things, but that's the part that bothers
19 me the most is we are responsible in this state for
20 enforcing the federal requirements as well, so I want
21 to make sure we have something in place that could
22 ensure it would go on in the future.

23 MS. CAMERON-RULKOWSKI: Thank you. I have no
24 further questions for Mr. Pratt.

25 JUDGE RENDAHL: Mr. Anderson?

0165

1 CROSS-EXAMINATION

2 BY MR. ANDERSON:

3 Q. Mr. Pratt, do you have any personal knowledge
4 that a company called Light Weight Recyclers actually
5 did any business?

6 A. I have some pretty strong anecdotal evidence
7 that somebody operating a truck called Light Weight
8 Recyclers was dumping garbage in a gravel pit in Point
9 Roberts, and I have Mr. Calder's name associated with
10 owning that vehicle that was driving it. When we sent
11 a letter to Mr. Calder asking him for his explanation,
12 I received an answer from Mr. Gellatly on Mr. Calder's
13 behalf, so there is a relationship there.

14 I have an advertisement in the Point Roberts
15 newspaper for Light Weight Recycling advertising their
16 services, again to Mr. Calder's phone number, so I am
17 to assuming --

18 Q. -- to Mr. Calder's phone number?

19 A. Right.

20 Q. Do you have any knowledge that it ever did
21 any business as Light Weight Recycling?

22 A. Are you talking about Mr. Gellatly or
23 Mr. Calder?

24 Q. Yes; that anybody ever billed anything as
25 Light Weight Recycling or received any money as Light

0166

1 Weight Recycling as opposed to placing the ad?

2 A. No.

3 Q. Do you have any information that Mr. Gellatly
4 had any interest in KKK Trucking?

5 A. No.

6 Q. And so if he didn't, their compliance
7 wouldn't be relevant to this proceeding; is that
8 correct?

9 A. Specifically, yes, but my concerns were when
10 these companies were raised, we did find some
11 connections with Mr. Gellatly's name continually
12 mentioned with these companies, so that's why my
13 concerns have been there.

14 Q. Do you have a copy of Exhibit No. 81, which
15 is this federal -- it appears to be an e-mail from
16 Richard Smith, December 21, 2009, to you.

17 A. I have a copy.

18 Q. Now, there is a matrix that covers four
19 pages; is that correct?

20 A. Yes.

21 Q. Was that pulled from some other site, or was
22 that created for the e-mail?

23 A. This is a screen print of the federal MCMIS
24 database, Motor Carrier Management Information System.
25 It's a screen print from their database.

0167

1 Q. It's a screen print from somebody else's
2 database, and then what's above it, it says "Dave, here
3 is the MCMIS information." That is an e-mail to you;
4 is that correct?

5 A. Correct.

6 Q. From Richard Smith?

7 A. Correct.

8 Q. So somebody has pulled something and then
9 e-mailed it to you; is that correct?

10 A. Correct.

11 Q. So this is a combination of actually two
12 things?

13 A. Well, it's all one screen print. It's just a
14 long one. There are many, many screens below the fold,
15 as we call it, but it's the same screen print.

16 Q. Does the database itself have any indication
17 of the date that its produced or pulled?

18 A. I believe it does, yes.

19 Q. Where would that be found?

20 A. It would be on Page 2, second line down, and
21 if you see the second line talks about new entrant
22 entry date and the new entrant exit date. New entrant
23 exit date is 10/5/2009. That's the date that the
24 federal authority was made inactive, and if you look
25 down at the name of the authorized person who asked

0168

1 them, it says David Gellatly, president of the company.

2 I asked the feds how does this information
3 get put into here and how does it come into this
4 format, and they tell me that this is a database with
5 empty fields, and when someone calls to change their
6 status or make a correction to their information here,
7 they document the name of the person calling to make
8 sure they have the proper authority to make those
9 changes, and then they enter that information into the
10 screen.

11 Q. Is it your testimony that this data is
12 current as of October 5th, 2009?

13 A. Well, this data is current as of when I
14 printed it, which would have been December 21st, just
15 last week.

16 Q. Where on this document does it say it's
17 current as of that date?

18 A. Well, you can see the screen print -- I don't
19 see that on this particular screen, no. I use the new
20 entrant exit date, which would be when the company
21 inactivated --

22 Q. So we don't know if this is a database that's
23 updated every day, every week, every month?

24 A. It is updated. It is a live database, and
25 one thing I should say about this, this is a secure

0169

1 database. I don't even have access to it. You have to
2 be a federally-certified inspector. That's why I had
3 to ask Mr. Rick Smith to get it for me, and he is my
4 lead investigator, so I asked him to get it because he
5 has authority and I don't.

6 JUDGE RENDAHL: This is directed to both
7 parties. I know there has been some dispute both about
8 the Secretary of State document and this US DOT number
9 and some testimony by Mr. Gellatly. So first, I'm
10 going to make a Bench request to the Company,
11 Freedom 2000, to provide information, up-to-date
12 information certified by the Secretary of State by next
13 Monday as to what the current status is of the
14 Company's UBI number to make sure we have a clear
15 record, and that would correct any possible
16 inaccuracies in the record and leave it up to the
17 Company to demonstrate that what the testimony was on
18 the record is correct.

19 Then the second Bench request is to both
20 parties. If Mr. Pratt is correct in what he says that
21 you have to have a federal certification to have access
22 to this database, then I would like a declaration from
23 Mr. Smith with a current screen print as of Monday that
24 he can verify that the screen print he provided is
25 correct, and an opportunity for Freedom 2000 to provide

0170

1 whatever demonstration it can that the testimony
2 Mr. Gellatly provided is correct that this issue has
3 been rectified. Would that satisfy both parties?

4 MR. ANDERSON: Yes, Your Honor with, I guess,
5 a minor qualification. I'm not sure that certified
6 records of the Secretary of State's office are
7 available in that time frame. This is the office where
8 you have to give them an expedited request to get
9 confirmation of a new corporation back in two months,
10 and my client has confirmation back at the corporation
11 that it has been reactivated.

12 JUDGE RENDAHL: Whatever documentation you
13 can provide.

14 MR. ANDERSON: I think the same kind of thing
15 is probably true for the DOT.

16 JUDGE RENDAHL: If you wish to provide
17 whatever documentation, you can in response to Bench
18 Request No. 2. So Bench Request No. 1, I will not be
19 submitting a separate notice about these. Bench
20 Request No. 1 is documentation from either Staff or the
21 Company that they have about the current status of the
22 UBI number with the Secretary of State's office.

23 Bench Request No. 2 has to do with the status
24 of the US DOT registration, and I think that should
25 clear the record one way or the other on this issue.

0171

1 Is that acceptable?

2 MR. ANDERSON: Yes, Your Honor.

3 Q. (By Mr. Anderson) Mr. Pratt, before we leave
4 this, I would like you to turn to Page No. 4, and the
5 next to the bottom box where the upper left corner says
6 "authority type," and it says "common"; do you see
7 that?

8 A. Yes.

9 Q. Does that mean "common carrier" to you?

10 A. Yes.

11 Q. And "authority status," what's that say?

12 A. It says "active." That's the common carrier
13 permit issued by the UTC. My understanding was there
14 was no question about the common carrier permit. I
15 didn't raise that question.

16 MR. ANDERSON: No further questions.

17 JUDGE RENDAHL: Mr. Wilkowski, do you have
18 any questions of the witness?

19 MR. WILKOWSKI: Yeah.

20

21

22 CROSS-EXAMINATION

23 BY MR. WILKOWSKI:

24 Q. To your knowledge, does J-Man Trucking have a
25 common carrier permit for the hauling of gravel and

0172

1 soil within the state of Washington?

2 A. No.

3 Q. So if they are do not have a common carrier
4 permit, they would be prohibited from operating as a
5 traditional gravel company and hauling waste soil
6 materials locally from one point to the next within
7 Point Roberts?

8 A. That's correct, yes.

9 Q. So if in a situation where they hauled waste
10 soils from the Point Roberts parks project on Benson
11 Road next to the fire hall and hauled away waste soils,
12 they would have been required to have a CC permit?

13 A. Yes, they would.

14 Q. Do you as part of your investigation of
15 companies verify with other agencies in the state that
16 companies have accounts for Labor and Industries,
17 Employment Security, Department of Revenue, etcetera?

18 A. Yes. Quite often we do.

19 Q. Did you conduct that investigation regarding
20 J-Man Trucking?

21 A. I have to be sensitive on how I answer this
22 because I'm not exactly sure of the question, so I have
23 to look at my notes for a second here. I don't believe
24 on J-Man that we actually did verify with the other
25 agencies other than Ecology.

0173

1 Q. So I don't know exactly which page in here,
2 but in regards to materials --

3 JUDGE RENDAHL: Are you referring to Exhibit
4 No. 30?

5 MR. WILKOWSKI: Yes.

6 Q. (By Mr. Wilkowski) In regards to the
7 materials that were dumped in the gravel pit, the
8 response from Mr. Gellatly and Calder was that an
9 employee had driven their truck had mistakenly gone to
10 the gravel pit and dumped that material, so that would
11 establish that they have employees. Did you verify
12 whether they had Labor and Industries accounts for that
13 employee?

14 A. No.

15 MS. CAMERON-RULKOWSKI: I'm going to object
16 here. The results of the investigation are in the
17 investigation report, and I would submit that one can
18 refer to the investigation report to see what the
19 results were and what the investigation covered.

20 MR. WILKOWSKI: Okay.

21 THE WITNESS: I could offer to clarify on
22 that. Just because somebody is hauling in an area
23 doesn't necessarily mean you have to have an L&I
24 account. It could be a sole proprietorship, and under
25 State laws, you are not required to have an L&I account

0174

1 for sole proprietorships. So we don't always check
2 those. It depends on the business structure.

3 You are right. If they were to show us they
4 had employees, then we would look for that. We never
5 got that information here. We never got information
6 there was employees. We heard that another friend,
7 something to that effect, but it was kind of hearsay.

8 Q. Earlier in testimony, Mr. Gellatly stated
9 that sometime approximately last June, he had purchased
10 a roll-off truck and some drop-boxes, and he had also
11 confirmed that he had a Department of Ecology
12 transporter registration but that he had not hauled any
13 recyclables yet under that authority. Therefore, he
14 would not be actually using that equipment since June.

15 Are you aware that the US border agency
16 records commercial vehicle license plates when they
17 cross the border?

18 A. I'm not aware of it, but I wouldn't be
19 surprised.

20 Q. Do you think you would be able to request
21 access to this information?

22 A. Potentially. I've never requested that. The
23 border patrol is a different agency. I suppose it's
24 possible.

25 Q. So in Freedom 2000's application, they list a

0175

1 license plate for that roll-off truck. You could
2 verify whether it has actually been crossing the border
3 on a regular basis hauling materials?

4 A. I don't know if I would go so far as to say
5 on a regular basis, but I assume if you check the
6 records, you could find out if that license plate had
7 ever crossed the border. It would be a pretty thorough
8 analysis to determine if they regularly crossed and
9 multiple crossings, so I don't know if I would go that
10 far.

11 Q. Would you do that?

12 A. Was that a request? Let me put it this way:
13 This was an investigation that was completed last year.
14 December '08 it was completed, and the companies that
15 we contacted, the people that were the contacts within
16 the three trucking companies we contacted were told
17 what they needed to do to come into compliance, so we
18 had not pursued any action since then, so I would have
19 to reopen the case and go back and relook at that.

20 Q. So you have no idea of determining whether
21 they have been operating in compliance or out of
22 compliance since you concluded your report?

23 MS. CAMERON-RULKOWSKI: I'm going to object.
24 First of all, the question is unclear; who is "they,"
25 and then I'm not sure that this is -- if you could

0176

1 explain where questioning is going and how it's
2 directly relevant, that would be my request.

3 JUDGE RENDAHL: Mr. Wilkowski, any response?
4 Do you want to continue this line of questions with
5 Mr. Pratt? You are welcome to. I'm just asking.

6 MR. WILKOWSKI: I have no further questions.

7 JUDGE RENDAHL: Do the commissioners have any
8 questions for Mr. Pratt? Commissioner Jones.

9 COMMISSIONER JONES: Just one quick question.

10

11

12 CROSS-EXAMINATION

13 BY COMMISSIONER JONES:

14 Q. What about the UCR requirements, Mr. Pratt?
15 Wouldn't that be necessary for Freedom 2000 to comply
16 with before a G-certificate would be issued?

17 A. It would have to be simultaneous. In other
18 words, you can't operate on interstate commerce without
19 UCR registration. You could obtain the UCR
20 registration the same day you began your operations.
21 It's an online application. You can use a credit card
22 to pay and get your registration immediately. It's not
23 very expensive, so theoretically, it could be done
24 right away.

25 Q. But at present, is the company registered

0177

1 with the UCR?

2 A. Not currently, no.

3 JUDGE RENDAHL: Commissioner Oshie?

4

5

6 CROSS-EXAMINATION

7 BY COMMISSIONER OSHIE:

8 Q. The question I have, Mr. Pratt, is, and it's
9 really a practical question, at least I think from
10 Commission standpoint, is you stated in your response,
11 your direct testimony, I believe, by your counsel that
12 certain conditions could be placed upon, and I believe
13 it was in reference to the Freedom 2000 application in
14 the event that the Commission would allow it or would
15 approve it, and so my question really is to you, and
16 you can easily punt this to Mr. Eckhardt, and if we
17 take a break, it will give him some time to think about
18 it, but what specific conditions would you place on our
19 approval of Freedom 2000's application, and to be fair,
20 the same question would apply that the application has
21 been made by Mr. Wilkowski.

22 A. I guess as far as conditions, I would reserve
23 the right to have a conversation with Mr. Eckhardt when
24 the Commission made a decision to kind of brainstorm
25 possible conditions that would need to be placed.

0178

1 In my mind, some that are potential that I
2 would consider would be some kind of assurances that
3 they will maintain compliance with all regulations
4 ongoing, maybe some kind of reporting requirement to
5 continue to show us that they are in compliance with
6 those regulations, and then maybe another one might be
7 if they were to be found out of compliance, a very
8 short window to bring themselves back into compliance
9 with maybe some harsh outcomes if they don't.

10 Just kind of making sure we hold them
11 accountable to compliance, and I think we have tools
12 and measures for doing that, and I'm sure Mr. Eckhardt
13 has some great ideas.

14 Q. Let's put that in the future. It's possible
15 that he will. The same question for Mr. Wilkowski's
16 application, do you have an opinion or any
17 recommendations for the Commission? Should we approve
18 his application, how should that be conditioned, or
19 perhaps Staff doesn't believe that conditions would be
20 required in that circumstance.

21 MS. CAMERON-RULKOWSKI: Commissioner Oshie,
22 if I may interject, Mr. Eckhardt is going to be
23 testifying on the regulatory compliance of Points and
24 Mr. Wilkowski, and Mr. Pratt has not testified on that
25 issue. He could answer if he would like to, but it is

0179

1 beyond the scope of his testimony currently.

2 COMMISSIONER OSHIE: I'll accept your
3 objection, with all due respect, the objection to my
4 question. That doesn't happen have often, but when you
5 are right, you are right, and so I will reserve that
6 for Mr. Eckhardt. Thank you.

7 JUDGE RENDAHL: I do not have any questions
8 for Mr. Pratt, so is there anything further on redirect
9 for Mr. Pratt?

10 MS. CAMERON-RULKOWSKI: I have no redirect,
11 thank you, Your Honor.

12 JUDGE RENDAHL: With that, Mr. Pratt, you are
13 now excused. You may step down. We have one more
14 witness. We will take a five-minute break.

15 (Recess.)

16 JUDGE RENDAHL: We will now continue with the
17 questioning and testimony of Mr. Eckhardt. Would you
18 raise your right hand, please?

19

20 Whereupon,

21 GENE ECKHARDT,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

24

25

0180

1

DIRECT EXAMINATION

2

3 BY MS. CAMERON-RULKOWSKI:

4 Q. Good afternoon, Mr. Eckhardt. Please state
5 and spell your full name.

6 A. My name is Gene Eckhardt, G-e-n-e,
7 E-c-k-h-a-r-d-t.

8 Q. Please state the name of your employer.

9 A. I'm employed by the Washington Utilities and
10 Transportation Commission.

11 Q. How long have you been with the Commission?

12 A. Just over 17 years.

13 Q. In what position are you employed by the
14 Commission?

15 A. I've been employed the entire time as the
16 assistant director of solid waste and other unrelated
17 industries.

18 Q. Are these unrelated industries, do they
19 include the transportation industry?

20 A. They include auto transportation companies,
21 ferry companies, oil pipelines, low-level radioactive
22 waste.

23 Q. What are your responsibilities as they
24 pertain to this proceeding?

25 A. I'm responsible for all activities of solid

0181

1 waste industries in regards to reviewing rates and
2 services as far as setting the rates that the regulated
3 companies charge their customers. I also am involved
4 in providing policy-type analysis in regards to
5 requirements for operating authorities, such as the one
6 before you today.

7 Q. Are you familiar with Freedom 2000 doing
8 business as Cando Recycling and Disposal?

9 A. Yes.

10 Q. How did you become familiar with
11 Freedom 2000?

12 A. Through the application that's before the
13 Commission today.

14 Q. Are you familiar with Point Recycling and
15 Refuse?

16 A. Yes.

17 Q. How did you become familiar with PRR?

18 A. Well, in its current version, I believe
19 Mr. Wilkowski purchased the operation in approximately
20 1999, and the Commission has regulated that entity
21 since.

22 Q. Have you reviewed the applications of these
23 two applicants?

24 A. Yes.

25 Q. Have you reviewed PRR's history of regulatory

0182

1 compliance with laws and rules enforced by the
2 Commission?

3 A. Yes.

4 Q. Was PRR subject to any Commission enforcement
5 while it held a certificate of public convenience and
6 need for Point Roberts?

7 A. Yes.

8 Q. Please refer to Exhibits No. 51, 52, and 53.
9 Are these documents associated with enforcement action
10 against PRR?

11 A. Yes, they are. They are related to the
12 company's failure to file its 2005 annual report as
13 required by Commission rule.

14 Q. In the application for mitigation, which is
15 Exhibit No. 52, could you please read the reason given?

16 A. As set forth in Exhibit 52 on the first page,
17 Paragraph No. 3, handwritten is the following: I have
18 several issues before Commission staff that are not
19 being addressed to my satisfaction. When the
20 Commission finds the time to address my problems, then
21 I will comply with the Commission. Until that time,
22 I'm occupied trying to deal with these issues, and --

23 Q. Thank you. Please refer to the order which
24 has the ruling on that application for mitigation, and
25 that is Exhibit 53. In that order denying mitigation

0183

1 on Page 1, could you please read Paragraph 5? It
2 continues to Page 2.

3 A. Paragraph 5 states: In its petition for
4 mitigation, Points expresses an extreme attitude
5 towards compliance with the Commission's regulations;
6 that is, Points will fulfill its legal obligations
7 under the statutes and Commission regulation when and
8 if the Commission first fulfills Points' outstanding,
9 and in quotation, "demands," to the standard
10 established by Points. That is unacceptable.

11 Q. And then please continue with the first two
12 sentences in the next paragraph.

13 A. Paragraph 6 states: As a certificated solid
14 waste carrier, Points is required to comply with all
15 applicable regulations and in a timely manner.
16 Accordingly, the penalty is appropriate.

17 Q. Please refer to Exhibit No. 54. This is the
18 penalty assessment in Docket TG-071244. Does this
19 exhibit represent another enforcement action against
20 PRR?

21 A. Yes, it does, and it is in regards to the
22 Company's failure to file its 2006 annual report as
23 required by rule and on the statute.

24 Q. Regarding both of these penalty assessments,
25 did PRR pay the penalties?

0184

1 A. Yes.

2 Q. Did PRR file its 2005 and 2006 annual reports
3 when it paid the penalties?

4 A. No.

5 Q. Please refer to Exhibit No. 55, the
6 Commission's complaint and order to show cause why
7 permit should not be canceled for failure to pay
8 regulatory fees and/or failure to file 2006 annual
9 report.

10 Did PRR file its 2005 and 2006 annual reports
11 and pay its delinquent regulatory fees after this
12 complaint was filed?

13 A. Yes, as reflected in Exhibit 56.

14 Q. Thank you. That was my next question. Did
15 PRR file its 2007 annual report?

16 A. Yes, I believe it did.

17 Q. Was it timely filed?

18 A. No. Exhibit 57 is a penalty assessment for
19 the Company's fail to file a 2007 report in a timely
20 manner as set forth in this statute and rules.

21 Q. Did PRR pay a penalty?

22 A. Yes.

23 Q. Are you familiar with the Commission's
24 proceedings consolidated under TG-081089?

25 A. Yes.

0185

1 Q. This was the proceeding that included the
2 complaint of Whatcom County against PRR and the
3 complaints of several Point Roberts' residents against
4 PRR and PRR's request to remove curbside recycling from
5 its tariff. What in your understanding was the main
6 issue in this proceeding?

7 A. The proceeding was precipitated by the
8 Company's discontinuance of its curbside recycling
9 collection service.

10 Q. Was this the first time that Mr. Wilkowski
11 had proposed to eliminate curbside recycling from PRR's
12 tariff?

13 A. No, it is not.

14 Q. Do you happen to recall approximately when a
15 prior request to remove curbside recycling from his
16 tariff was made?

17 A. PRR proposed to remove curbside recycling
18 from its tariff in 2001, and the Commission rejected
19 that filing as being a violation of law in contrary to
20 the effective Whatcom County ordinance and rejected the
21 filing. That filing was identified as Docket
22 TG-010202.

23 Q. Are you aware of any other matters relevant
24 to PRR's history of compliance with laws and rules
25 enforced by the Commission?

0186

1 A. No.

2 Q. In PRR's application, Section 2, business
3 information, PRR checked a box to indicate that it had
4 been cited for violation of state law or Commission
5 rule, and it provides the following explanation: Minor
6 violations on record under G-155.

7 Do you agree with PRR's assessment of its
8 violations?

9 A. No, I don't.

10 Q. Why don't you agree?

11 A. I think in the first instance, as I read into
12 the record, the Company is what the Commission
13 described as an extreme attitude towards compliance,
14 was unusual, and that followed with the same violations
15 on filing those annual reports on subsequent years, in
16 my mind, establishes a pattern of willful violation of
17 Commission rules and regulations.

18 Q. Can you make any distinction between the
19 late-filed annual reports or failure to file annual
20 reports and any other compliance issues?

21 A. Well, there is certainly a difference between
22 complying with the annual report filing requirements
23 and the Company's discontinuance of service by
24 canceling its curbside recycling program in violation
25 of the Whatcom County ordinance. I would review the

0187

1 latter, that is, the cancellation of the recycling
2 program, as more severe.

3 Q. Given the compliance history that you've just
4 testified about, do you have concerns about the
5 regulatory fitness of PRR to provide the services
6 proposed in its application?

7 A. Yes, I have serious concerns. The Company in
8 my mind has demonstrated a willingness to violate
9 Commission rules, demonstrated a pattern of violation
10 on the annual reports, I think a serious violation in
11 canceling the recycling service in violation of the
12 Whatcom County service level ordinance, and as we heard
13 today in testimony, the Company has continued to
14 provide what is regulated solid waste collection
15 service after July at which time the Company
16 relinquished its authority and the Commission canceled
17 that authority, so the Company is willingly, knowingly
18 providing services without proper certification.

19 Q. In your opinion, do the concerns you've just
20 testified about constitute grounds to deny PRR's
21 application?

22 A. Yes.

23 Q. Based on your review of the applications and
24 the testimony that you've heard today, if both
25 companies were to be granted authority to provide the

0188

1 services proposed, would they be competitors?

2 A. If both applications are approved, the
3 companies would compete for the portion of the business
4 addressed in Points' application, the special on-call
5 drop-box services, and as we heard testimony earlier
6 today by Mr. Lazarus, I believe, who Points has
7 continued to provide drop-box service after it
8 relinquished its authority that Mr. Lazarus given an
9 option would choose to subscribe to service from Points
10 since he was familiar with that provider.

11 I think that clearly indicates that some
12 customers who would be a potential customer to Freedom
13 would receive service from the competing Points company
14 and that that would dilute the overall business
15 available to Freedom apparently so much so that
16 Mr. Gellatly earlier testified that should the
17 Commission grant both authorities that he would not be
18 interested in providing any service.

19 MR. WILKOWSKI: Excuse me. That was
20 Mr. Slater, not Lazarus.

21 JUDGE RENDAHL: You can ask questions in
22 cross-examination to clarify.

23 MR. WILKOWSKI: He just got the name wrong;
24 that's all.

25 Q. (By Ms. Cameron-Rulkowski) So if the

0189

1 Commission were to determine that both applicants are
2 fit, willing, and able and have established a need for
3 service in Point Roberts and have fulfilled any other
4 factors considered to be important or considered to be
5 relevant here, should the Commission, in your opinion,
6 grant both applications?

7 A. No. In my opinion, the overlap of the
8 business as reflected in the service set forth in
9 Points Recycling results in a situation that will
10 dilute the already small customer base available to the
11 broader service, and in reducing customers, there is an
12 increase in costs to the remaining customers. I don't
13 see where there is a benefit to customers having
14 competing carriers, even on a small portion of the
15 business.

16 Q. We've just talked about a situation where
17 there would be two companies. Mr. Wilkowski testified
18 and has indicated in the recent past that he thinks the
19 system in Point Roberts is too small to support
20 collection service. In your opinion, is Mr. Wilkowski
21 correct?

22 A. I cannot give an absolute definitive answer
23 to that question. What I can say is that the smaller
24 the number of customers, the higher the average cost to
25 provide service, and as is fairly intuitive to

0190

1 understand that if there are currently 350 customers
2 today, and someplace in the exhibits, it was identified
3 there are potentially 2,000 customers in this area, the
4 cost of providing service to 2,000 customers on an
5 average basis would be smaller than the cost to provide
6 350, and likewise, if there were only 100 customers,
7 the average cost to provide service to those customers
8 would be higher than the 350.

9 So there is a balancing act there, if you
10 will, between the number of customers served, the cost
11 to provide services. You have overhead costs that need
12 to be distributed among the customers served, and as
13 those customer numbers change, the relative costs
14 change as well.

15 Q. Is it fair to say that you couldn't make that
16 determination at this time as to whether the system is
17 too small to support collection service?

18 A. Well, the system itself is contained, and I
19 think what we are looking at here is, as an example,
20 the discussion here today in the application of
21 Freedom, I believe they were estimating about 350
22 customers.

23 If that, in fact, occurs, the Company will
24 incur certain costs to provide services to those
25 customers, and it's Staff's job to determine what the

0191

1 reasonable rates would be based on the Company's
2 prudent, reasonable expenses and an opportunity to earn
3 a reasonable return. So Staff's job is to really from
4 a mechanical basis; that is, ignoring valuation
5 judgements as to what may be high or low or just right,
6 but we look at the cost, and we come up with what we
7 believe to be a reasonable rate, so any size system can
8 be calculated as to what a fair rate would be.

9 I think the second question there that people
10 want to know about, well, is that resulting rate viewed
11 from the perspective of potential customers as being a
12 good value, and as we know, we don't have any
13 elasticity studies, but it's well-documented that as
14 the price of a service goes up, the value to customers,
15 on a general basis, goes down, and some customers would
16 likely cancel service. I believe the proposed rate in
17 Mr. Gellatly's tariff for one-can service is just over
18 twenty dollars per month. I expect that should those
19 rates increase to thirty or forty dollars, fewer
20 customers will subscribe to the service.

21 Q. Mr. Pratt's testimony discussed possible
22 conditions being placed on Freedom 2000 if the
23 Commission were to grant the application. Do you have
24 any recommendations as to what conditions or condition
25 that the Commission could place on Freedom 2000?

1 A. I think for starters as a condition to
2 issuing the authority, there ought to be conditions for
3 the Company to commence service, and in Mr. Gellatly's
4 application, I believe he stated it would take
5 approximately 30 days to start service, but I also
6 recall later testimony or discussion along the lines of
7 45 days.

8 As we've discussed earlier, the Company does
9 not to date own the equipment necessary to provide
10 service, and certainly the Company needs some time to
11 acquire the appropriate equipment, notify customers
12 it's available to service, and there is a certain
13 amount of time to become operational, but there ought
14 to be a limit, a date certain, as to when the Company
15 will begin operations. As Mr. Pratt testified to
16 earlier, he has concerns about the Company's compliance
17 going forward, and hearing his testimony, I share his
18 concern, and whatever can be placed as a condition to
19 operating the Company as it attempts to comply with all
20 rules and regulations, not only with this commission
21 but with all other state agency rules and regulations,
22 I think that would be appropriate.

23 The Company has also relied extensively on
24 the experience of the previous operating company. This
25 is essentially a start-up business for Freedom, and as

0193

1 such, they have lots of assumptions in preparing their
2 financial data and projections and also assumption in
3 preparing their business plan. I expect some of those
4 assumptions may change after the Company begins
5 operations, and in that respect, I would recommend the
6 Commission require the Company to file a rate case on a
7 date certain, provide a certain amount of time to start
8 business, 30 to 45 days, a certain period of time to
9 get the business up and running, if you will, maybe
10 three months, and then a year to collect what will
11 hopefully be some fairly stable data from its
12 operations, couple of two or three months additional to
13 prepare a rate case, and then finally to file a rate
14 case as of a date certain, and beyond that, I really
15 haven't thought of other options.

16 While I'm brainstorming here, there is
17 possibility of a performance bond. I've never heard of
18 that being required by a Commission, but that might be
19 an available tool. That's about all I can think about
20 at this moment.

21 MS. CAMERON-RULKOWSKI: Thank you. I have no
22 further questions.

23 JUDGE RENDAHL: Thank you. Mr. Anderson, do
24 you have any cross for this witness?

25 MR. ANDERSON: Yes, Your Honor.

0194

1 CROSS-EXAMINATION

2 BY MR. ANDERSON:

3 Q. Mr. Eckhardt, based upon your experience, is
4 there anything in the current regulatory and
5 rate-setting structure for G-certificate holders that
6 you feel would prohibit operating an economically
7 viable MSW and recycling business in Point Roberts?

8 A. Well, I don't think it's contained within the
9 rules or the regulations. It's the limits of the
10 system will be tested by the factual operations
11 themselves. As an example, Mr. Gellatly has estimated
12 350 residential customers, and as Ms. Johnson
13 testified, she felt that the Company had done a
14 reasonable effort in identifying costs associated with
15 providing those services, and assuming all of those
16 assumptions come true, that may be workable.

17 However, I think it's also been testified
18 that no one knows what's going to happen. If only 10
19 customers show up, I suspect the Company is going to
20 have some significant problems, and the system would
21 not be economically viable at that point.

22 Q. So with any such business operating in Point
23 Roberts, it would come down to the ability to attract
24 customers and the business acumen and efficiencies of
25 the operator; would you agree?

0195

1 A. Yes.

2 Q. We don't know that until it's actually
3 operating.

4 A. Yes.

5 MR. ANDERSON: Thank you. I have no further
6 questions.

7 JUDGE RENDAHL: Mr. Wilkowski, do you have
8 any questions for Mr. Eckhardt?

9 MR. WILKOWSKI: Yes, I do.

10

11

12 CROSS-EXAMINATION

13 BY MR. WILKOWSKI:

14 Q. Would you say that Point Roberts is a unique
15 and problematic territory?

16 A. I would say it's unique with all of the, not
17 only its geographic location but operating restrictions
18 caused by that location. As far as being problematic,
19 there have certainly been many problems. I don't know
20 that any of those problems are insurmountable.

21 Q. Does the County through their solid waste
22 plan and their service level ordinance and their
23 universal service ordinance have the ability to
24 profoundly affect the economics of a company operating
25 in Point Roberts?

0196

1 A. The County's solid waste management plan and
2 implementing ordinances do establish minimum service
3 level ordinances which require the Company to provide
4 certain services, and associated with that, of course,
5 is establishing the rates for providing those services.

6 Q. So if the County chose not to enforce their
7 universal service ordinance, it would have an impact on
8 the number of customers and the rates the Company would
9 have to charge those customers?

10 A. Yes.

11 Q. Over the years, there has been a lot of
12 correspondence between myself and the Commission staff.
13 Would you say that I have tried to communicate that
14 there are problems with the system design to the
15 Commission staff?

16 A. Yes.

17 Q. Would you say that I have made requests for
18 enforcement actions against illegal haulers in Point
19 Roberts?

20 A. That enforcement is outside the scope of my
21 direct oversight, but I believe I have seen documents
22 that you have sent to the Company requesting
23 investigation of companies you felt were providing
24 services illegally. Mr. Pratt is in a much better
25 position to address that than I am.

0197

1 Q. Do you think that Commission staff have been
2 responsive to issues that I have raised over the years
3 or even have the ability to respond to those issues?

4 A. I believe Staff has been responsive, and by
5 way of explanation, many of these issues go back to
6 virtually 1999 when you first purchased the Company.

7 From my perspective, the response Staff has
8 given to you has been consistent, and I understand that
9 you and I disagree on what you think the Commission's
10 role is in this matter and what I understand the
11 Commission's role to be in this matter, and vis a vis
12 the County, and so in summary, yes, I believe Staff has
13 been responsive, and we have continuously offered to
14 meet with you and the County to facilitate discussions,
15 but I've also made it clear that Staff would not take
16 advocacy positions to direct the discussions to certain
17 outcomes.

18 Outcomes are the decision of the County in
19 developing its solid waste management plan and
20 ordinances, which it has done, and I know that you've
21 repeatedly pointed out your concerns to both the
22 Commission and the County, and yet the County has not
23 changed its position in regards to its plan or the
24 ordinance, and my response from the Staff is that the
25 Commission is required to implement the terms of that

0198

1 plan as set forth in 81.77.030(5), and 81.77.040.

2 Q. When I first filed in '01 to remove the
3 recycling, and when I filed later again to do so, were
4 there a significant number of my customers saying that
5 they wanted curbside recycling to continue as a
6 service, or were customers supportive of removing the
7 recycling program?

8 A. I don't recall those issues specifically with
9 2001 filing, and I really don't recall in regards to
10 the most recent filing as to what the popular vote or
11 comment of the customers was.

12 Q. My recollection is that customers were
13 actually in favor of it. So given the situation where
14 a county has control over the obligations that a
15 company has to provide but has chosen to not support
16 the company in fulfilling those obligations through
17 ignoring their universal service ordinance, and the
18 company sees that it will not be able to fulfill those
19 obligations in the future, and a county is not going to
20 address these issues, how can a company communicate
21 those problems to Commission staff?

22 MR. ANDERSON: Objection; compound, assumes
23 facts not in evidence. It's a statement and not a
24 question and calls for an opinion with no foundation.

25 MS. CAMERON-RULKOWSKI: And it's

0199

1 argumentative.

2 JUDGE RENDAHL: It's sustained. Can you move
3 on to the next question, Mr. Wilkowski?

4 MR. WILKOWSKI: Yes.

5 Q. (By Mr. Wilkowski) If Freedom 2000
6 encounters significant problems in implementing their
7 recycling program and their garbage collection program,
8 whether it's operational barriers or insufficient
9 customers, and they need to get changes made to the
10 system, do you think that Whatcom County would make any
11 changes to the system?

12 MR. ANDERSON: Objection, calls for
13 speculation.

14 JUDGE RENDAHL: Sustained. This witness is
15 not the County. He can't speak for the County. He can
16 only speak for his own experience. If you wish to make
17 argument at the end, you will have that opportunity.

18 Q. (By Mr. Wilkowski) What should I have done
19 differently?

20 A. I have no recommendations in regards to your
21 actions as a company owner. The Staff's
22 recommendations to you consistently have been if your
23 operations are such that you require a rate increase
24 that you should have filed one, and that has been the
25 consistent recommendations from Staff.

0200

1 As I stated earlier, our consistent offering
2 to both you and the County was to meet with you to
3 facilitate discussions on those issues, again, with the
4 very strong caveat that Staff would not take an
5 advocacy position in regards to outcomes.

6 MR. WILKOWSKI: That's all.

7 JUDGE RENDAHL: Are there any questions for
8 Mr. Eckhardt from the commissioners?

9

10

11 CROSS-EXAMINATION

12 BY CHAIRMAN GOLTZ:

13 Q. Thank you, Mr. Eckhardt. Speaking of the
14 County, I gather that your recommendation is to deny
15 the application of Points and grant with conditions the
16 application of Freedom 2000.

17 A. Well, yes, with strong reservations, if I
18 may.

19 Q. Reservations on which part of that?

20 A. Reservations on regard to the grant of
21 authority for Freedom, and that is, as I stated
22 earlier, I strongly believe there need to be conditions
23 as much as possible in the grant of the application,
24 should the Commission decide to grant that authority.
25 I think those conditions would really help in the short

0201

1 run in that I think the Company has made a reasonable
2 effort to identify the business's operations, etcetera,
3 and through that is really qualified to start business,
4 and I need to make a distinction there between starting
5 business and staying in business.

6 As I said, all of these assumptions appear to
7 be reasonable today but may not play out in the future,
8 and it's really how this plays out with actual customer
9 signups, etcetera, as to whether the Company can stay
10 in business over the long-term with enough customer
11 base to provide the services at a rate that customers
12 feel is fair for the services they receive. I have
13 concerns about the long-term viability, sustainability
14 of the system that we don't know what those
15 characteristics are.

16 Q. Regarding economic viability, Mr. Wilkowski
17 made the point that since July, Sanitary Service,
18 another carrier in Whatcom County, although not in
19 Point Roberts, could have come in and offered to take
20 over the territory and they didn't, and he derives some
21 relevancy to that about the lack of economic viability,
22 even a company as strong as Sanitary wouldn't do it,
23 how could anyone make a go of it. Do you see relevancy
24 to that fact, or is it a fact?

25 A. Well, first of all, it is a fact that

0202

1 Sanitary Service considered applying for the authority
2 and the fact the Commission advertised in the newspaper
3 seeking qualified applicants to provide service in
4 Point Roberts, and Sanitary did look at providing that
5 service and decided not to provide it.

6 I don't know exactly why, but the fact is
7 they and no one else that operates a regulated company
8 today applied to serve in that territory, and there is
9 Nooksack Valley and Whatcom County, previously Blaine
10 Bay, which has since been purchased by Sanitary
11 Services.

12 Q. You mentioned a concern is maybe not in the
13 short-term but mid or long-term to the economic
14 viability of this, I guess raising the spector that
15 Freedom 2000 would go along, and then six or nine
16 months from now would fail.

17 So my question is so other than the fact that
18 that impacts Mr. Gellatly and his company, so what?
19 What's the harm to customers if the Commission were to
20 approve its application, let him give it a whirl, and
21 it fails or it doesn't. If it succeeds, then the
22 customers have service. If it fails, the customers are
23 kind of where they are now, or are there other down
24 sides I'm not seeing in that?

25 A. I agree with your assessment. I don't see

0203

1 any other down sides, if you will, other than perhaps
2 this situation has been going on for a long period of
3 time and has a prospect of continuing into the future
4 as far as the uncertainty, but as far as the ultimate
5 outcome of customers, I think if the Commission grants
6 Freedom's application to provide service and the
7 Company is up and running, customers, or whoever
8 chooses to sign up, will receive some benefit to that
9 service as long as the Company is in business, and in
10 the best case, lots of people will sign up and the
11 Company will continue providing services for a long
12 period of time.

13 Q. What if instead of doing that we decided to
14 deny both, which is not quite your recommendation, but
15 at least it sounds like you recommend we think about
16 that, so if we deny both, what's the consequence of
17 that?

18 A. If the Commission were to deny both
19 applications, I believe the statutes in Title 36 would
20 come into play. Excuse me for a moment. I'm not an
21 attorney, so this is just my understanding of what
22 might happen, and RCW 36.58(a).030 addresses county and
23 legislative authority in regards to solid waste, and in
24 that statute, it states that if the county establishes
25 a collection district, then no qualified garbage or

0204

1 refuse collection company is available to provide the
2 solid waste collection service under regulation that
3 the county can then provide garbage and refuse
4 collection services itself.

5 So my understanding is should the Commission
6 not approve either of these applications, then the
7 authority would revert to the County to determine what
8 the appropriate level of need is to the residents of
9 Point Roberts and to whatever level they deem
10 appropriate to provide that service themselves.

11 Q. Either they provide it themselves or provide
12 it under contract.

13 A. I don't know specifically about that.

14 Q. You mentioned solid waste collection
15 district. Do you know if Point Roberts is currently
16 within a solid waste collection district?

17 A. Yes. I guess that's the technical term for
18 what has been referred to as the universal service.

19 Q. Last question is I asked Ms. Johnson about
20 the County's solid waste management plan because the
21 statute requires that a carrier comply with that. We
22 don't have that in the record --

23 JUDGE RENDAHL: But we will because we are
24 taking official notice of it.

25 Q. In your review of this, did you have any

0205

1 contact with the County about their solid waste
2 management plan and whether either of these carriers
3 comply with it?

4 A. Not with respect to these applications, no,
5 and I would note the Commission has said it would take
6 official notice of the County's current plan. I want
7 to advise you that the County is in the process of
8 revising its plan and submitted a preliminary draft to
9 the Commission for comment, and the Commission has
10 commented on that plan by letter dated June 11th, 2009.
11 That's a preliminary comprehensive solid waste
12 management plan, and by statute, the Commission is
13 required to determine the effect of the proposed plan
14 on the rates charged to customers served by regulated
15 companies.

16 JUDGE RENDAHL: Is that filed in a docket
17 before the Commission? If so, what docket number is
18 it?

19 THE WITNESS: That is Docket TG-090718.

20 JUDGE RENDAHL: That was addressed in an open
21 meeting?

22 THE WITNESS: Yes.

23 Q. (By Chairman Goltz) Mr. Eckhardt, do you
24 have a copy handy of the current solid waste management
25 plan? Can you provide that to us so we don't have to

0206

1 look around?

2 A. Staff will provide that for the record.

3 Q. And also, do you have the comment on the rate
4 impact of the current plan as well? Can you provide
5 that as well?

6 A. Yes.

7 Q. My last question is again relating to the
8 County. On a witness list, a County representative was
9 listed as a tentative witness, and maybe we will hear
10 about this in closing statements, but do you know why
11 the County is kind of conspicuously absent from this
12 entire proceeding?

13 A. No, I do not, but in my experience, that has
14 been the normal course.

15 Q. With this county or with any solid waste
16 proceeding?

17 A. With the various proceedings that have been
18 in regards to the service levels and the issues in
19 Point Roberts.

20 CHAIRMAN GOLTZ: I have no further questions.

21 JUDGE RENDAHL: Any other questions from the
22 commissioners? I don't have any. Is there any
23 follow-up redirect?

24 MS. CAMERON-RULKOWSKI: None, Your Honor.

25 JUDGE RENDAHL: Mr. Anderson, any recross?

0207

1 MR. ANDERSON: No, Your Honor.

2 JUDGE RENDAHL: Mr. Eckhardt, you are now
3 excused, and we have no further witnesses. So I had
4 stated off the record while Mr. Eckhardt testified that
5 the Commission would like to have some form of closure
6 from all three parties, whether that's through very
7 brief closing arguments or statements from each party,
8 from the applicants particularly as to whether the
9 Commission should grant their respective applications
10 based on the requirements for granting certificates,
11 and from Staff, a statement about what the Commission
12 should do with regard to these applications, what their
13 recommendation is, which we've heard some of in
14 testimony, or the parties can submit something briefly
15 in writing and we can set a date for that, so I don't
16 know if you all have had an opportunity to discuss
17 this. Let's go off the record for a moment and we will
18 have a conversation.

19 (Discussion off the record.)

20 JUDGE RENDAHL: While we were off the record,
21 the parties said they would prefer to make brief
22 five-minute closing arguments, so beginning with
23 Freedom 2000, Mr. Anderson, if you could state why your
24 client's application should be granted specifically
25 focusing on the requirements for granting applications.

1 MR. ANDERSON: Thank you, Your Honor, members
2 of the Commission. I don't think it's disputed that
3 there is a need. You've heard public testimony from
4 residents in Point Roberts that they just want their
5 garbage collected, a very simple request, and they have
6 had some real issues with that of late. Here we have a
7 willing and able and qualified applicant to fill a
8 rather unique and sometimes problematic niche.

9 As the Commission in its questioning
10 Mr. Eckhardt pointed out, if this doesn't work, it is
11 really on the back of the Applicant, Freedom 2000, and
12 it's owner, Mr. Gellatly. It's one of the things that
13 makes America great. Somebody sees an opportunity.
14 Look at all the effort that's gone into this without
15 any compensation already. Whether it's from attorney's
16 fees, all the time and effort put in in responses and
17 the application, getting bids, buying equipment, all on
18 the chance to operate a business with no guarantee of a
19 profit. It's not the State's money. It's not the
20 County's money. It's not the residents of Point
21 Roberts' money. It's their chance to get a service
22 based upon the risk that Mr. Gellatly is willing to
23 take.

24 Why is he qualified? He isn't a current
25 operator of a solid waste company. That isn't a

0209

1 requirement for a certificate. If it was, nobody would
2 have received one. He has a great familiarity with
3 this rather unique geographic section of land here in
4 the Northwest corner of our state. He's been there for
5 30 years. He has shown his commitment to the
6 community.

7 Not only have you heard his testimony that
8 goes beyond the economics of wanting to operate the
9 company, provide a service, potentially make a profit
10 and provide it in a way that is ecologically and
11 socially sound, but he's shown that commitment to the
12 community by his work as a volunteer firefighter, as an
13 unpaid volunteer chief of the fire department and its
14 unpaid commissioner for years. He is someone that is
15 committed to service in the community.

16 He does have fleet experience. He has
17 experience with trucking. He's managed the maintenance
18 and operation of fleet vehicles for his former
19 employers. He has business experience and business
20 acumen, which he can add to this, perhaps give outside
21 perspective as to how to run the economy, to go out and
22 market. He sees the business operators in Point
23 Roberts on a daily basis. It's not that he's isolated
24 in coming in. He deals with these people there
25 already.

0210

1 He's shown you has the finances and assets to
2 start up and he has a viable plan for operation. He
3 acknowledges, quite frankly, that there is going to be
4 a start-up, and he's not going to start where the
5 former operator surrendered certificate left off, but I
6 think there is, based on the evidence, a realistic
7 opportunity for him to exceed that service level and
8 provide it in a manner that can provide a longtime
9 service to the community, and what he asks for is a
10 chance to do that.

11 Now, with conditions, no problem with
12 providing a reasonable start date; that's expected. A
13 compliance showing that you have your DOT certificates
14 and licenses in order as a condition for the
15 certificate to go into effect, and coming back at some
16 point for a rate case and a midterm future. Not right
17 away, but in the midterm future, it's not an
18 unreasonable request by Commission staff, but remember,
19 this is Mr. Gellatly and Freedom 2000's risk, and the
20 benefit, at least in the short-term, and if it works,
21 in the very long-term, is for the citizens of Point
22 Roberts who have nothing at risk here other than the
23 unfortunate prospect of not having a basic utility
24 service, which they so greatly need, and on that basis,
25 we believe that Freedom 2000's application for a

0211

1 G-certificate for Point Roberts should be granted.

2 Thank you.

3 JUDGE RENDAHL: Thank you. Mr. Wilkowski?

4 MR. WILKOWSKI: I worked for ten years to get
5 this system on track. I bought the company. I said I
6 believe in the system. With the right design, the
7 right support from the County, the right support from
8 the UTC, I can make a living. I can build a system
9 that this community needs with hard work and eventually
10 turn it over to someone that doesn't have to work so
11 hard to make it operate.

12 I had reasonable expectations of the County
13 and the Commission. The County all along has refused
14 to engage. You see, they are not here. All through
15 this process, they had the choice to engage, and they
16 refused to. I thought it was in the best interests of
17 my community to push, and yeah, I pushed Commission
18 staff because Staff processed the paperwork that's in
19 front of them, and that's been made very clear.

20 Obviously, from Mr. Eckhardt's response,
21 Staff doesn't want anything to do with me anymore, so
22 they think that it's impossible to regulate me. I
23 think he's mistaken in that, but that shows that
24 granting an application from me is probably unlikely,
25 but also granting an application to a company that is a

0212

1 gamble and has a high potential of failure, and
2 accepting that if it fails in six months or nine months
3 is not a big deal is not correct, because if you look
4 through the comments from all the people in Point
5 Roberts, what they want is a plan, and if nothing
6 changes within the system, the expectation that someone
7 that doesn't really know anything about the solid waste
8 industry or the regulated industry can actually come in
9 and turn it around is unrealistic.

10 It would be better to give the County a
11 chance, reject everything. Freedom can reapply in six
12 months. Within that six months, the County could
13 inherit the option of contracting with the Canadian
14 company to come across to provide the service. That
15 has got to be the lowest cost option and the most
16 secure option for the County and Point Roberts. If
17 that doesn't work, they can look at what structural
18 changes need to be made to make it work, and in six
19 months with the commitment from the County for changes,
20 if they don't contract or do the service themselves,
21 you can hear new applicants based on a redesigned
22 system, which is what should be happening. In there
23 you may get Sanitary Services going, Well, the County
24 has now made assurances for our customer volume that
25 will make it work, and maybe have a very large company

0213

1 serving a small territory. Better rates for the
2 consumers than a stand-alone. A stand-alone is the
3 highest risk, highest potential rates.

4 So give it six months, punt everything to the
5 County and see what happens, but that's probably what's
6 best for the people in Point Roberts, and that's really
7 why I'm here, because while I had unrealistic
8 expectations of the Commission in participating along
9 the way in solving this, I would like to at least give
10 it a shot to see if you will do what's necessary to
11 prompt the County to get this system back on track, and
12 then I can go away and be done with it knowing that my
13 community that I've worked really hard to serve will be
14 taken care of into the future by reliable people.
15 That's all.

16 JUDGE RENDAHL: Thank you, and for Staff?

17 MS. CAMERON-RULKOWSKI: RCW 81.77.040 sets
18 out factors for the Commission to consider when it's
19 deciding whether to grant a solid waste application.
20 Those factors are not exclusive, and they include
21 present service and the cost thereof, the cost of
22 facilities, sufficiency of assets, prior experience,
23 and community sentiment regarding the need for service.

24 The Commission also considers whether an
25 applicant is fit, willing, and able. One citation for

0214

1 that is Ludtke-Pacific trucking, Inc. Ludtke is
2 spelled L-u-d-t-k-e-Pacific, Docket Number TG-011675,
3 for supplemental order, Commission order and decision
4 granting application at Paragraph 12, April 11, 2002.
5 The Commission also can consider within that list of
6 factors the public interest and other factors that may
7 be relevant to the proceeding.

8 When the Commission looks at fitness, it
9 considers financial fitness and regulatory fitness, and
10 regarding financial fitness, an applicant need not
11 demonstrate profitability of proposed operations as a
12 prerequisite to entry. Rather, applicants have been
13 required to show that they have assets sufficient to
14 begin and sustain operations for a reasonable period of
15 time so that profitability can be determined, and
16 that's a direct quote from a Commission case. The
17 citation for that is "In re: Application of Ryder
18 Distribution Resources, Inc., Order MVG, No. 1761,
19 Hearing No. GA-75154, final order modifying initial
20 order granting application as amended at Page 9, August
21 11, 1995."

22 That same case contains some helpful language
23 regarding regulatory fitness. The Commission said,
24 "Their paths and current operations are relevant to
25 establish regulatory fitness. Past violations are not

0215

1 an absolute bar to a finding of fitness. The
2 Commission will consider whether the violations are
3 repeated or flagrant, whether corrective action was
4 promptly taken, and whether the applicant can now
5 provide credible assurances of future compliance."
6 That's at Page 5 to 6.

7 That case also has some helpful language
8 regarding the public interest consideration. The
9 Commission said there, "We believe the proper test for
10 public interest to be whether the entry of an
11 additional carrier who has demonstrated public need for
12 its services will result in damage to carriers that
13 causes a reduction to unacceptable levels of available,
14 reasonably priced service to consumers."

15 We've had testimony today on all of the
16 factors, and Staff specifically has provided testimony
17 about the factors going to the financial information
18 submitted by the companies and also to financial
19 fitness and regulatory fitness and some considerations
20 for the public interest.

21 In summary, Staff's recommendation is to
22 grant Freedom 2000's application with conditions
23 attached. This recommendation, however, was made with
24 some reservations regarding the financial fitness of
25 Freedom 2000. Staff's recommendation would be to deny

0216

1 PRR's application, and the primary basis for this
2 recommendation would be past and current noncompliance.
3 However, denying PRR's application also recommended by
4 Staff because it would not be in the public interest to
5 grant it. Freedom 2000's witness, Mr. Gellatly,
6 testified that if PRR's application were granted that
7 Freedom 2000 would not want to provide service, and
8 that would result in there being no grant of authority
9 to any carrier up in Point Roberts.

10 It seems clear that the companies would
11 compete, and if they both were granted authority, that
12 would seem not to be in the public interest in that
13 there might well be a reduction to unacceptable levels
14 of available, reasonably priced service to consumers
15 given that they would be competing for customers.

16 Chairman Goltz had asked Staff about what
17 would happen if neither application were granted, and
18 Mr. Eckhardt referred us to the solid waste collection
19 district's chapter and referred us to specifically RCW
20 36.58(a).030, and he referenced that if there is no
21 qualified garbage and refuse collection company
22 available that the County, they provide that service.
23 It appears from my legal research that the County could
24 contract out for that service. That concludes my
25 statement.

0217

1 JUDGE RENDAHL: Thank you. Is there anything
2 further from the commissioners today? Thank you very
3 much. This hearing is adjourned.

4 (Hearing adjourned at 5:00 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25