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5

6 WASHINGTON UTILITIES AND TRANSPORTATION
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P R O C E E D I N G S

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1 JUDGE RENDAHL: So we will do a little
2 transition now and go to the public comment session,
3 and I will ask that Mr. Shutler with our involvement
4 section, are there any witnesses who said they wish to
5 comment?

6 MR. SHUTLER: Yes. There is one.

7 JUDGE RENDAHL: Are there any people calling
8 in on the bridge line who wish to make a comment during
9 this public comment hearing? Okay, there is one
10 witness who has identified they wish to speak in the
11 public comment session.

12 At public comment hearings, ordinarily the
13 administrative law judge or the commissioner would make
14 some opening statements about the matter, but
15 considering we are having this in the context of a
16 hearing and the person who wishes to testify has been
17 here, I don't feel the need to go through any
18 preliminary matters about this. The only thing I would
19 say is the Commission has received numerous comments on
20 both applications, and we have a placeholder in our
21 exhibit list, Exhibit No. 91, to receive copies of
22 those written comments. Those and any additional ones
23 that are received by Monday, January 4th, will be
24 compiled in one comment exhibit together with a summary
25 of the public comments, the numbers pro and con, that

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1 the public involvement staff so those will also be a
2 part of the exhibit.

3 Is Ms. Shannon Thomsen here? Would you
4 please come up? We have one witness who signed up to
5 testify. I'll ask again, is there anyone on the
6 conference bridge line who wishes to testify in the
7 public comments hearing in this matter? Ms. Tomsen, it
8 looks like you are it. I will let you know before I
9 swear you in as a witness that the other parties do
10 have an opportunity to ask you questions as well as the
11 commissioners, so would you raise your right hand?

12

13 Whereupon,

14 SHANNON TOMSEN,
15 having been first duly sworn, was called as a witness
16 herein and was examined and testified as follows:

17

18 JUDGE RENDAHL: Would you state your full
19 name for the record as well as your address?

20 THE WITNESS: My name is Shannon Tomsen, 2125
21 Whalen, W-h-a-l-e-n, Drive, Point Roberts, Washington,
22 98281.

23 JUDGE RENDAHL: You are a resident of Point
24 Roberts?

25 THE WITNESS: I am a resident of Point

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1 Roberts.

2 JUDGE RENDAHL: Have you been a customer of
3 Point Recycling?

4 THE WITNESS: Yes, I was.

5 JUDGE RENDAHL: Please go ahead. I'm sorry;
6 I need to ask you one other question. Are you here
7 representing yourself or a member of an organization?

8 THE WITNESS: I'm representing myself and the
9 other two complainants in the initial suit.

10 The second document that I handed out is
11 dated August 25, 2008. It talks about the recycling
12 problems in Point Roberts. There are a few comments
13 that are highlighted. I would like to start with a
14 comment made by Mr. Wilkowski: "Wilkowski also
15 attacked Danner's (phonetic) agency calling regulators
16 the epitome of paper-pushing, indifferent, dictatorial
17 bureaucrats." So that's kind of what he thinks of this
18 organization.

19 I was interviewed in this article and I had
20 said, and it is accurately repeated here, "I just want
21 to have curbside recycling back. I want the County to
22 enforce its laws. All I want to do is have my garbage
23 and recycling picked up and not have to hear about it
24 anymore."

25 We are the three complainants in Docket

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1 TG-081089. Shelley Damewood has lived in Point Roberts
2 since 1976; Renee Coe since 1989, and myself since 2003
3 --

4 JUDGE RENDAHL: You may not need to read this
5 entire document into the record. It will become part
6 of the record, so you may want to summarize some key
7 aspects of that for the record here.

8 THE WITNESS: Okay. The initial purpose of
9 our formal complaint is the same reason we are here
10 today, which is losing public services. The decision
11 of whether or not the Commission grants Freedom 2000 a
12 G-certificate must be based on law, Staff's
13 investigation, and fact-based public comment.
14 Outrageous, some defamatory claims have been made on
15 the comments posted to the UTC's Web site.

16 Like Mr. Wilkowski's claim that curbside
17 recycling was economically infeasible, the Commission
18 is supposed to accept these submissions and statements
19 at face value. If you don't or if you ask for proof,
20 you will be accused of not understanding the situation,
21 refusing to accept another's point of view, and/or
22 collusion. To date, Mr. Wilkowski has never once
23 provided any documentation to verify his claim that
24 anything in Point Roberts regarding solid waste or
25 recycling is economically infeasible.

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1 As we stated all along, we would accept
2 anyone willing and able to provide professional,
3 reliable curbside services. Mr. Wilkowski not only
4 fails to meet these requirements, he has demonstrated
5 he's unfit to hold a G-certificate. For the majority
6 of this time, he has owned his closely-held private
7 company. He has hounded and berated the UTC and
8 Whatcom County for not changing laws that make his
9 company more profitable. After that, he went to the
10 citizens. Unfortunately for him, we chose to ask him
11 to prove his point, and he refused repeatedly.

12 So we are here today because a truck broke
13 down. Had he resumed curbside recycling, none of this
14 would have happened. You wouldn't be here today. I
15 wouldn't be here today, and I wouldn't have wasted the
16 last year-and-a-half trying to get my curbside
17 recycling restarted, and I don't think we would have
18 lost our curbside garbage pickup, but Mr. Wilkowski
19 chose not to replace his truck and instead chose to
20 violate the law.

21 Whatcom County filed a formal complaint with
22 UTC to force Mr. Wilkowski to resume service. We filed
23 our formal complaint six months after that. In a July
24 meeting in the community of Point Roberts this year,
25 Jay Scotty, an employee of Mr. Wilkowski, stated that

1 Mr. Wilkowski was forced to surrender his certificate
2 to protected his employees and family.

3 According to the reporter, she said to me,
4 "There have been public allegations that you, the
5 Complainants, also requested drug testing for his
6 employees and his personal finances and that the judge
7 ordered him to produce these. The motion compel signed
8 by Judge Friedlander in May of this year, does not
9 support these claims, and that motion contained the
10 only request that he was obligated to respond.

11 I believe Exhibit 15 submitted by
12 Mr. Gellatly's attorney is the motion to compel signed
13 by Judge Friedlander. On Page 6 of that exhibit, it
14 states that we initially had requested information
15 regarding the quadrupling of income to the Company and
16 its reports from 2004 to 2007 for drivers' wages and
17 benefits. During that time, the number of drivers was
18 two for each of those years. It never increased to
19 three. There were only two, and Arthur is one of them.

20 The Complainants argue that in the Points
21 2004 annual report, the Company reported that it paid
22 \$40,000 for driver wages and benefits, while in its
23 2007 annual report, Points paid \$161,000 for the same
24 category. Both annual reports stated that the Company
25 had two drivers. As such, Complainants requested a

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1 detailed list of the categories from the Commission's
2 annual report where Mr. Wilkowski derives any or all of
3 his personal income from 2004 to 2008.

4 We never asked him for his personal income
5 tax. We never asked him for percentages of the
6 categories. We asked him to supply us with what
7 categories he was deriving his salary out of. That was
8 all, and that is what Judge Friedlander granted. So
9 his claim that we were asking him to provide personal
10 financial information is inaccurate, and again, that's
11 on Pages 6 and 7 of the motion to compel, Exhibit 15.

12 Mr. Wilkowski clearly surrendered his license
13 willing and knowingly in May of this year. After this
14 motion to compel came down on the 5th of May, his
15 industry-provided attorney withdrew on May 7th. On
16 May 8, he was telling people in the community that he
17 was surrendering his license. On May 20, we made a
18 motion for sanctions against Mr. Wilkowski for failure
19 to comply with this motion to compel.

20 On May 26th, Judge Friedlander issued a
21 notice of opportunity to file comments based on our
22 May 20 letter, and the comments were due on the 29th.
23 Conveniently, Mr. Wilkowski withdrew on May 28, so
24 those comments were never accepted.

25 As Mr. Wilkowski stated earlier today, prior

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1 to coming to Point Roberts in 1999, he worked for
2 Whatcom County Solid Waste, then Nooksack Valley. He
3 clearly knew the laws and he clearly knew the
4 conditions in Point Roberts when he bought the
5 G-certificate from Ms. Matthews. He has not respected
6 Whatcom County, the law, the UTC staff, or a judges
7 order, and I might add, or his own customers.

8 His actions show he is either unwilling or
9 unable to take responsibility for his own decisions.
10 We've all taken different parts of the old adage to
11 heart. When the facts are on your side, argue the
12 facts. When the law is on your side, argue the law,
13 and when you don't have either the law or the facts on
14 your side, pound the table.

15 We have provided facts and law to support all
16 of our claims and our formal complaints. Mr. Wilkowski
17 has neither, so he has turned to personal attacks and
18 pounding the table, and that's why we are here today.
19 Thank you.

20 JUDGE RENDAHL: Thank you. Mr. Wilkowski, if
21 you have any questions for the witness.

22 MR. WILKOWSKI: Yes.

23

24

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CROSS-EXAMINATION

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1 BY MR. WILKOWSKI:

2 Q. Ms. Tomsen, you are an attorney; is that
3 correct?

4 A. No.

5 Q. Are you an accountant?

6 A. No. I have about 15 years of experience in
7 finance and running my own company.

8 Q. You've made issue about Point Recycling
9 complying with the laws. You are aware that Whatcom
10 County has a universal service ordinance that requires
11 that all households be on service in order so that a
12 recycling or garbage company would have enough
13 customers to be able to economically and successfully
14 provide the service?

15 A. Is that a question?

16 Q. Are you aware that that law exists?

17 A. I'm aware of a statute, but it's not called
18 that.

19 Q. It's called the Whatcom County Universal
20 Service Ordinance. Are you aware that the state of
21 Washington issued planning guidelines for counties that
22 had an urban and rural designation criteria on it?

23 A. I know a law exists. I don't know how it's
24 applied.

25 Q. So do you think that the state requirements

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1 for planning a system in the County's existing
2 Universal Service Ordinance would somehow be relevant
3 to this case?

4 A. To your case or to what case?

5 Q. To the issue of garbage and recycling service
6 in Point Roberts.

7 A. I don't have an opinion on that.

8 Q. Do you feel that Whatcom County does not have
9 to comply to their own laws or the state laws upon them
10 similar to how you feel that Point Recycling should
11 comply with our county laws?

12 A. I don't have an opinion on that.

13 Q. May I refer to you, Shelley Damewood, Renee
14 Coe, and Shannon Tomsen, as the three complainants?

15 JUDGE RENDAHL: Yes.

16 MR. WILKOWSKI: In the course of your
17 complaint against Point Recycling, did any of the three
18 complainants share e-mail correspondence with David
19 Gellatly.

20 A. I don't see what that has to do with this.

21 JUDGE RENDAHL: Can you demonstrate the
22 relevance to this case?

23 MR. WILKOWSKI: There is submitted into the
24 record many pages of correspondence between the three
25 complainants and Mr. Gellatly about their pursuit of

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1 the revocation of Point Recycling's certificate.

2 THE WITNESS: Could you supply me with the
3 copies of those so I can corroborate that?

4 MR. WILKOWSKI: So you are saying you didn't
5 forward or send any e-mails --

6 THE WITNESS: I didn't say that. I'm asking
7 you to provide me with copies so I can either --

8 MR. WILKOWSKI: I submitted 400 pages into
9 the record.

10 THE WITNESS: If they had the correct
11 information on it --

12 JUDGE RENDAHL: I would like the responses
13 directed to the Bench, please, not to each other so we
14 don't get into an argument. Mr. Wilkowski, you
15 submitted, and I think it has been received as a public
16 comment exhibit, which we don't have in front of us, so
17 can you move this along and ask your question a
18 different way, because we don't have that exhibit
19 before us right now.

20 Q. (By Mr. Wilkowski) Okay. Did you or any
21 other of the complainants participate in meetings
22 between Mr. Gellatly and Whatcom County regarding his
23 Freedom 2000 application?

24 A. Could you ask that again?

25 Q. Did you or any of the other complainants

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1 participate in meetings with Whatcom County where
2 Mr. Gellatly was present to discuss the Freedom 2000
3 application?

4 A. No. I would also like to point out that in
5 one of the pages of the comment, the 469-page comment,
6 there is a reference from Barbara Brenner, a Whatcom
7 County counselor, where she talks about somebody who is
8 a female attorney in Point Roberts asking her for
9 information, and on that document, Mr. Wilkowski has
10 written my name on that as if I'm the person who
11 requested, and that was incorrect.

12 JUDGE RENDAHL: Do you have any further
13 questions, Mr. Wilkowski?

14 MR. WILKOWSKI: Yes.

15 Q. (By Mr. Wilkowski) Did you or any of the
16 three complainants meet with Whatcom County Public
17 Works staff to discuss conditions to be placed in the
18 Point Recycling county transfer station lease?

19 A. No. I sent Frank Abart an e-mail.

20 Q. Did your initial complaint against Point
21 Recycling include a complaint against the County
22 requesting that they not change their service level
23 ordinance and that they not remove curbside recycling
24 as a criteria?

25 A. I think that question needs to be asked

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1 differently because it doesn't -- that's not what our
2 complaint against Whatcom County was about.

3 JUDGE RENDAHL: Can you rephrase it so it's
4 understandable? I'm not sure I understood the
5 question.

6 Q. When you filed your initial complaint, did
7 you also name Whatcom County as a party in that
8 complaint?

9 A. Yes.

10 Q. After my attorney, Jim Sells, filed papers
11 with the Commission to request on behalf -- after
12 review of Whatcom County to join their request for
13 postponement of the pretrial hearing to allow us to
14 discuss issues, did Shelley Damewood and Renee Coe and
15 Ron Calder file complaints with the State Bar
16 Association against Jim Sells?

17 A. I have no idea.

18 Q. You have presented information that recycling
19 was incredibly profitable and that I must have been
20 making approximately \$17,000 a year in profit, because
21 your calculation was if I had approximately \$20,000 in
22 revenue, gross revenue billed to customers and only
23 \$3,000 in recycling processing expense that the entire
24 rest of that would be profit.

25 A. Is that a question?

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1 Q. Would you portray that as being an accurate
2 accounting calculation of the profit of that program?

3 A. I would need to see whatever document he's
4 referring to before I could corroborate any of that.

5 MR. WILKOWSKI: I have no more questions.

6 JUDGE RENDAHL: Thank you. Commission staff,
7 do you have any questions for the witness?

8

9

10 CROSS-EXAMINATION

11 BY MS. CAMERON-RULKOWSKI:

12 Q. Ms. Tomsen, you passed out a document which
13 appears to be a news article, and you had read a quote
14 from you in there saying, "All I want to do is have my
15 garbage and recycling picked up and not have to hear
16 anymore about it." Is that still how you feel?

17 A. Yes. I would like to have my garbage wheeled
18 down to the street with the recycling, have it picked
19 up, wheel it back, and never hear about it or see it
20 again.

21 Q. Does it matter to you what company and what
22 person would provide that service?

23 A. No, not at all.

24 MS. CAMERON-RULKOWSKI: I don't have any
25 other questions. Thank you.

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1 JUDGE RENDAHL: Mr. Anderson, because this
2 witness was on your list, I'm not going to ask you to
3 ask any questions of this witness.

4 MR. ANDERSON: I have no questions and will
5 not be calling her as a cross-witness.

6 JUDGE RENDAHL: I have one question. Do the
7 commissioners have any question for this witness?

8

9

10 CROSS-EXAMINATION

11 BY JUDGE RENDAHL:

12 Q. What is the publication?

13 A. This is the Bellingham Herald.

14 Q. So it's the August 25th, 2008 Bellingham
15 Herald. So if we were to go online and look at the
16 past issues, we might be able to find this.

17 A. They don't archive online, unfortunately.

18 JUDGE RENDAHL: I believe that's the only
19 question I had just to clarify the record. Do the
20 commissioners have any questions?

21

22

23 CROSS-EXAMINATION

24 BY CHAIRMAN GOLTZ:

25 Q. So right now, you are self-hauling garbage?

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1 A. My husband does because I refuse to. It's a
2 filthy, filthy place, and the first time -- I've only
3 gone twice, but the first time I went, I live very
4 close to the transfer station, and if I had a good arm
5 and there weren't big trees behind my house, I could
6 probably just throw it real hard, but it is filthy, and
7 I was going out to cross the border into Canada where I
8 do a lot of work and transactions like most people in
9 Point Roberts. I was dressed to go, and I had to go
10 home and change because my shoes were filthy and my
11 pants were filthy, so my husband, who works all day,
12 has to take it.

13 Q. So basically, you are self-hauling garbage
14 and recycling as well?

15 A. Correct.

16 Q. Since there is discontinuance of curbside
17 garbage and recycling, basically, everybody is
18 self-hauling to the transfer station?

19 A. Most people are self-hauling. Some neighbors
20 help neighbors, and there is a group that helps in
21 emergency situations that is trying to help people who
22 are unable to get to the dump to take their things.

23 Q. So it's either self-hauling or cooperative
24 hauling.

25 A. Correct.

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1 CHAIRMAN GOLTZ: Thank you.

2 THE WITNESS: Could I explain one more thing
3 about that?

4 CHAIRMAN GOLTZ: Sure.

5 THE WITNESS: So when curbside recycling
6 stopped, we assumed it would start up fairly quickly,
7 so we weren't really doing anything with our recycling,
8 and after about two or three weeks, we had a mouse. We
9 had never had a mouse in our house before, but we had a
10 mouse because of the smell of food and we live on a
11 half acre, and we had a mouse.

12 So now we have this very ornate system for
13 handling our garbage and our recycling, because my
14 husband doesn't have the time to go to the dump every
15 week, we have a section of our refrigerator that is put
16 aside for things that might smell the garbage up too
17 much that we have to keep for, that kind of stuff for a
18 week or two and then pile it into the garbage that has
19 been sitting for a week. So we are very much wanting
20 the service restarted and really don't care who does
21 it.

22 CHAIRMAN GOLTZ: Thank you.

23 JUDGE RENDAHL: Commissioner Jones?

24

25 CROSS-EXAMINATION

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1 BY COMMISSIONER JONES:

2 Q. A question on the sentiment in the community,
3 there doesn't appear to be any opinion pole or anything
4 taken, but how many people would you estimate would
5 continue to self-haul even if Freedom 2000 or -- well,
6 Freedom 2000 is the only applicant. You heard
7 Mr. Gellatly today speak, and he said 60 or 70 percent,
8 perhaps in the initial phase. What I'm trying to do is
9 get a sense of what the community might do if Freedom
10 2000, since it has been what, six or seven months of
11 self-hauling?

12 A. I think there is a lot of people who no
13 matter what want to self-haul, and it's a very odd
14 thing. I'm lucky enough to live in a really nice part
15 of Point Roberts. One of my neighbors drives a
16 Bentley, and he has always taken his garbage to the
17 dump. My neighbor with the Maserati doesn't want to
18 take his garbage to the dump. I don't want to take my
19 garbage to the dump.

20 I think what most people feel is that no
21 matter what happens, this needs to end. It's a
22 situation that has gone on too long. The mud-slinging
23 has taken its toll and it needs to end. The percentage
24 of people who I think would be happy to see curbside
25 recycling, I can't guess, but at the Christmas party I

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1 went to on Sunday, most people were just saying, I want
2 it picked up and I want it down now. I don't know why
3 these people are dragging it out.

4 Q. Ms. Thompson, are there many people in Point
5 Roberts on fixed incomes or senior citizens who have a
6 problem self-hauling?

7 A. Yes. In fact, there are people who have
8 problems even getting their garbage to the curb, and
9 that was one of the things that Jay Scotty was known
10 for is that if you had problems wheeling it down or
11 walking it over or whatever, he would help with that,
12 but self-hauling makes it incredibly harder.

13 Q. So final question, what specifically do you
14 want this commission to do? Do you want us to -- I
15 think in your exhibit you say, look at the facts,
16 conduct a fact based on law, Staff's investigation, and
17 fact-based public comment, and I assume that your
18 comment is fact-based public comment. So you are
19 asking us, the commissioners, to listen to you, conduct
20 a fact-based inquiry, and let the marbles, if you will,
21 end up where they are going to end up.

22 A. I don't want to come out in support of
23 Mr. Gellatly because he's the only person applying. I
24 want you to do the investigation that is necessary. Do
25 you know what I mean? I think that if the

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1 investigation said that he's a great candidate, I'm
2 ecstatic with that. If you say for whatever reason
3 that the investigation showed something or another and
4 we are going to not grant a G-certificate to anybody,
5 I'll be disappointed because then we have to all
6 self-haul for probably evermore, but if that's the
7 decision that you make, that's the decision I'm willing
8 to live with, but I would still be disappointed.

9 COMMISSIONER JONES: Thanks.

10 JUDGE RENDAHL: I think we are done, unless
11 you have anything further to add.

12 THE WITNESS: No, thank you.

13 JUDGE RENDAHL: You are excused, and I will
14 ask again if there is anyone on the bridge line who
15 wishes to make a comment in the public comment session.

16 Then our public comment hearing is concluded,
17 and we will now return to the evidentiary portion of
18 the hearing. We will take a brief recess, maybe one or
19 two minutes, to allow the court reporter to transition
20 back to the other transcript.

21 (Public hearing adjourned at 2:10 p.m.)

22

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24