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

2 JUDGE MACE: Let's be on the record in Docket
3 No. TG-041481, Washington Utilities and Transportation
4 Commission against T&T Recovery, Inc. This is a
5 show-cause hearing instituted by the Commission on its
6 own motion to determine whether T&T Recovery, Inc., is
7 transporting solid waste for collection or disposal for
8 compensation without a certificate of public
9 convenience and necessity. My name is Theodora Mace.
10 I'm the administrative law judge who has been assigned
11 to this case.

12 This hearing today is in the nature of a
13 prehearing conference. Our prior proceeding was a
14 status conference, but today, we are going to go ahead
15 with all of the items related to a prehearing
16 conference so that we have that information on the
17 record, and so the first thing I would like to do is to
18 take appearances from the parties, and I would like to
19 begin with counsel in the hearing room. Mr. Sells?

20 MR. SELLS: Thank you. Your Honor please,
21 James Sells, an attorney appearing on behalf of
22 proposed intervenor, Washington Refuse and Recycling
23 Association. My address is 9657 Levin Road Northwest,
24 Suite 240, Silverdale, 98383; Telephone, (360)
25 307-8860; fax, (360) 307-8865; e-mail,

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1 jimsells@rsulaw.com.

2 JUDGE MACE: Thank you. If you have already
3 entered your long form of appearance in this docket,
4 you don't need to do it again, but thank you,
5 Mr. Sells. Staff?

6 MS. WATSON: Good morning. My name is Lisa
7 Watson. I'm an assistant attorney general appearing
8 today on behalf of Commission staff.

9 JUDGE MACE: Thank you. I would like to take
10 appearances now from those parties who are represented
11 on the conference bridge beginning with Mr. Ridge and
12 Mr. Van Nostrand.

13 MR. VAN NOSTRAND: Good morning, Your Honor.
14 On behalf of T&T Recovery, Inc., James M. Van Nostrand
15 and John Ridge.

16 JUDGE MACE: Thank you. Mr. Wiley?

17 MR. WILEY: Yes, Your Honor, this is David W.
18 Wiley appearing on behalf of proposed intervenor,
19 Island Disposal, Inc., and to clarify the footnote at
20 Page 2 of the status conference order, I am
21 representing Island Disposal, Inc., which is a waste
22 connection affiliate.

23 JUDGE MACE: Thank you. Ms. McNeill?

24 MS. MCNEILL: Thank you. Good morning.
25 Polly L. McNeill on behalf of proposed intervenor

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1 Sanitary Service Company.

2 JUDGE MACE: Thank you. Are there any others
3 who seek to enter an appearance either on the
4 conference bridge or in the hearing room? I hear no
5 response.

6 Let's turn next to the question of petitions
7 to intervene. As it's obvious from the appearances
8 that have been entered today, there are petitions to
9 intervene filed by Island Disposal, Washington Refuse
10 and Recycling Association, and Sanitary Service
11 Company. Is there any objection to the interventions
12 of those three parties?

13 MR. VAN NOSTRAND: Your Honor, I believe we
14 have on file the objection of T&T Recovery to petition
15 to intervene of Washington Refuse and Recycling
16 Association. We have no objection to Island Disposal
17 or Sanitary Service.

18 JUDGE MACE: Would you outline for the record
19 today what your objection to -- I'm sorry, which party
20 was it?

21 MR. VAN NOSTRAND: WRRRA.

22 JUDGE MACE: Please tell me what your
23 objection is.

24 MR. VAN NOSTRAND: We filed a five-page
25 document. Our position, basically, on the face of

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1 their petition, they do not demonstrate a substantial
2 interest in the subject matter of this proceeding.

3 The other point we made was that this
4 proceeding largely involves factual issues, and WRRRA's
5 participation would largely duplicate the efforts of
6 Commission staff. To the extent they are going beyond
7 the factual issues and raising of law or policy, we
8 believe the intervention would unnecessarily broaden
9 the scope of the proceeding.

10 I would also like to add, we've been having
11 settlement discussions among the parties. I think that
12 process is moving forward fairly well, and the
13 settlement agreement that we have drafted up, we are
14 stipulating for purposes of that settlement that we
15 would not object to WRRRA's participation in the
16 settlements. We would reserve our right to object to
17 that if we go forward to hearing, but we are working
18 with WRRRA in the settlement process, and I'm not sure
19 it's good for purposes of that process to have to take
20 argument and rule on a motion when we largely can put
21 that dispute aside for now.

22 JUDGE MACE: Let me hear from WRRRA and
23 perhaps Staff or any other party interested in this so
24 I have a full record of what the objection is and where
25 things are with regard to this issue. I can reserve

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1 ruling on it and we can determine how it fits in in
2 terms of whether there is a settlement at a later time.
3 Mr. Sells?

4 MR. SELLS: Thank you. If Your Honor please,
5 as we indicated in our written petition to intervene,
6 the Washington Refuse and Recycling Association is a
7 trade association. Trade associations are specifically
8 referenced at least one, two, three times in 480-07 and
9 480-70 as being eligible for party status in
10 proceedings. Also, RCW 70.95.030 references
11 associations.

12 The interest of a trade association, any
13 trade association, in one of these types of hearings is
14 the interest of the industry itself. We represent
15 virtually with one exception every solid waste hauling
16 company in the state. The issue of illegal hauling,
17 which is the issue here, has been a focus of ours for
18 many, many years.

19 We do not intend to broaden the scope here.
20 The scope of this hearing is pretty broad already. We
21 have been part of the investigation. We have assisted
22 in the investigation. The person involved in that will
23 be called as a witness by the Staff, not by the
24 Association.

25 If we were to call a witness at hearing, it

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1 would be just one for the purpose of explaining our
2 position relative to the industry so the Commission can
3 understand why we are taking the part. We wouldn't
4 plan on taking an active part in cross-examination of
5 other witnesses, but we would not do friendly cross for
6 members' witnesses, and we would not duplicate
7 questions or follow leads that other protestants,
8 direct protestants or intervenors would.

9 We have taken part, I believe I'm safe in
10 saying, in virtually every Commission hearing of this
11 type, applications and so forth, since I've been doing
12 this, which is about 20 years.

13 JUDGE MACE: Thank you. Staff?

14 MS. WATSON: Staff does not object to WRRRA's
15 participation in this proceeding. Other than that, I
16 would be duplicating what Mr. Sells has already
17 outlined.

18 JUDGE MACE: I'll take this issue under
19 advisement, and if it's necessary, I will make a ruling
20 on it in the prehearing conference order that will be
21 entered after this proceeding today.

22 However, since there is no objection to the
23 Sanitary Service or Island Disposal petition for
24 intervention, it's likely that those interventions
25 would be granted in the order.

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1 Let's turn to the question of whether or not
2 a protective order is necessary in this proceeding.
3 Does any party seek a protective order?

4 MR. VAN NOSTRAND: T&T Recovery would request
5 the issuance of a protective order.

6 JUDGE MACE: I will indicate that such an
7 order will be entered, and how about discovery? Will
8 the parties be conducting discovery in this proceeding?

9 MR. VAN NOSTRAND: Your Honor, in the event
10 settlement discussions are unsuccessful, T&T would
11 request that the discovery rule be invoked.

12 JUDGE MACE: Thank you.

13 MR. WILEY: Your Honor, I would say that the
14 rules do provide -- normally we don't have discovery in
15 transportation cases, as you are aware, but in
16 complaint cases, the rules specifically provide for
17 discovery, and I think we would join in the proposal.

18 JUDGE MACE: Thank you. Mr. Wiley, again, we
19 are having a hard time hearing you. You will either
20 need to speak up or boost the volume on your phone.
21 Thank you.

22 The next item that we should address is the
23 question of the procedural schedule, and before I turn
24 to that, I would like to hear a little bit about where
25 the parties are with regard to settlement. I've heard

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1 the word "settlement" several times in our discussion
2 this morning and would like to know a little bit more
3 about what's happening. Ms. Watson?

4 MS. WATSON: Your Honor, the parties have had
5 quite productive settlement negotiations. We've met
6 two times now, the first time being December 1st when
7 we were supposed to be meeting for the actual
8 show-cause hearing. We met again in mid January, and
9 we have an agreement in principle. There is a few
10 discreet issues that we need to work through still.

11 There is a couple of attachments to the
12 settlement agreement that we need to develop and the
13 definition of certain terms, that kind of thing. None
14 of those issues are likely not to stop the settlement
15 agreement. In other words, we will as a group be able
16 to work through them and finalize the settlement
17 agreement.

18 We had a teleconference yesterday, and we
19 decided that we would be able to file a signed
20 settlement agreement for the Commission's approval by
21 March 1st of this year.

22 JUDGE MACE: That sounds very promising. I'm
23 a little concerned though that if something should
24 happen to the settlement agreement that we don't have a
25 schedule, and I'm wondering if it would be beneficial

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1 for us to set in the alternative some sort of hearing
2 schedule that would protect us in case in, I hope, the
3 unlikely chance that the settlement doesn't come to
4 fruition. Have you talked at all about a possible
5 schedule?

6 MS. WATSON: We haven't discussed a possible
7 schedule.

8 JUDGE MACE: I would like to give you an
9 opportunity to flesh out a schedule. I would
10 appreciate that just because I don't want to wait until
11 March 1st and find out there is no settlement and then
12 have to proceed to hearing. So if the parties would
13 take a few minutes while I go off the record to allow
14 you to do that and come up with some hearing dates, I
15 would appreciate that.

16 You also might want to come up with a date by
17 which time you would exchange witness lists and exhibit
18 lists, and I need to know probably the number of
19 witnesses you would be bringing and the number of days
20 you will need. I'm assuming the location would be
21 here, but if it's to be otherwise, I would like to know
22 what the parties' recommendation is for that.

23 MS. MCNEILL: Excuse me. I'm going to call
24 back in on a different line. I apologize. I thought
25 this was just a status conference, but I think the cell

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1 phone I'm using is running out of batteries here, so
2 I'm going to call back within 30 seconds.

3 JUDGE MACE: Thank you, and the parties will
4 be aware of that. So let's be off the record then, and
5 I'll let you take a little bit of time, maybe ten
6 minutes, to discuss schedule.

7 (Recess.)

8 JUDGE MACE: Is there anything else that we
9 need to address at this point in time? I know that in
10 the prehearing conference order, there is usually
11 information given about the number of documents that
12 you have to file when you are filing, if you are filing
13 anything in this case, so you will get all of that
14 instruction and formatting instruction, etcetera. I
15 won't review that on the record today. I don't think
16 there is anything else I need to address at this point.
17 Let me just review my notes for a moment. I think
18 that's it.

19 Is there anything else on behalf of any of
20 the parties on the conference bridge or in the hearing
21 room? It does not appear there is. I thank you very
22 much for your cooperation, and we are adjourned.

23 (Discussion off the record.)

24 JUDGE MACE: Let's make sure that what we
25 have on the record recites what the parties have

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1 discussed. The parties have suggested that they will
2 submit a settlement agreement on March 1st, or if
3 settlement is not reached, they will propose an agreed
4 schedule, and I indicated that I thought that that
5 would likely be acceptable, and I'll indicate in the
6 prehearing conference order whether or not it's
7 approved.

8 I asked the parties if there was anything
9 else they wanted to discuss and I heard no response. I
10 think the final thing that I indicated was that the
11 parties would receive instructions in the prehearing
12 conference order for the numbers of copies of documents
13 they have to file with the Commission and in what
14 format. Now let's be off the record.

15 (Prehearing conference concluded at 10:11 a.m.)

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