

0001

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In re Joint Application)
4 GA-79141 for authority to)
5 transfer all rights under)
6 Certificate No. G-41 from)

7 RABANCO CONNECTIONS) DOCKET NO. TG-030433
8 INTERNATIONAL, INC.,) Volume I
9) Pages 1 - 25

10 to)
11)
12 RABANCO, LTD.)

13 -----
14 In re Joint Application)
15 GA-79142 for authority to)
16 transfer all rights under)
17 Certificate No. G-235 from)

18 NORTHWEST WASTE INDUSTRIES,) DOCKET NO. TG-030434
19 INC.,) Volume I
20) Pages 1 - 25

21 to)
22)
23 RABANCO, LTD.)

24 -----
25 In re Joint Application)
26 GA-79159 for authority to)
27 transfer all rights under)
28 Certificate No. G-12 from)

29 RABANCO LTD. & RABANCO) DOCKET NO. TG-030590
30 RECYCLING, INC.,) Volume I
31) Pages 1 - 25

32 to)
33)
34)
35 RABANCO, LTD.)

36 -----

37

38

39 Kathryn T. Wilson, CCR

40 Court Reporter

0002

1 A prehearing conference in the above matter
2 was held on November 23, 2004, at 1:35 p.m., at 1300
3 South Evergreen Park Drive Southwest, Olympia,
4 Washington, before Administrative Law Judge C. ROBERT
5 WALLIS.

6 The parties were present as follows:
7

8 RABANCO, LTD., by JAMES K. SELLS (via
9 bridge), Attorney at Law, Ryan, Sells, Uptegraft, 9657
Levin Road Northwest, Suite 240, Silverdale, Washington
98383; telephone, (360) 307-8860.

10 KING COUNTY, by P. STEPHEN DIJULIO, Attorney
11 at Law, Foster, Pepper & Shefelman, 1111 Third Avenue,
Suite 3400, Seattle, Washington 98101; telephone,
12 (206) 447-8971.

13 WASHINGTON UTILITIES AND TRANSPORTATION
14 COMMISSION, by DONALD T. TROTTER, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
15 Post Office Box 40128, Olympia, Washington 98504;
16 telephone, (360) 664-1189.

17

18

19

20

21

22

23

24

25

0003

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

2 JUDGE WALLIS: This is a prehearing
3 conference in the matter of Dockets TG-030433, et al.,
4 which are petitions on the part of King County to amend
5 certain orders of the Commission relating to the
6 authority of Rabanco to conduct business within the
7 state.

8 This conference is being held at Olympia,
9 Washington, on November 23 of the year 2004 before
10 Administrative Law Judge C. Robert Wallis. I would
11 like to call for appearances now beginning with the
12 moving party.

13 MR. DIJULIO: Thank you, Judge Wallis. Steve
14 DiJulio, Foster, Pepper, and Shefelman, appearing on
15 behalf of petitioner, King County.

16 JUDGE WALLIS: So that we have it in the
17 record, Mr. DiJulio, would you state your contact
18 information; your telephone, fax number, and e-mail?

19 MR. DIJULIO: Thank you. Foster, Pepper, and
20 Shefelman, Suite 3400, 1111 Third Avenue, Seattle,
21 98101. My direct telephone, (206) 447-8971; fax, area
22 code (206) 749-1927, and e-mail, dijup@foster.com.

23 JUDGE WALLIS: Other appearances within the
24 hearing room today?

25 MR. TROTTER: Thank you, Your Honor. I'm

0004

1 Donald T. Trotter, assistant attorney general,
2 appearing before the Commission. My address is 1400
3 South Evergreen Park Drive Southwest, PO Box 40128,
4 Olympia, Washington, 98504-0128. My phone number is
5 (360) 664-1189; fax, (360) 586-5522, and my e-mail is
6 dtrotter@wutc.wa.gov.

7 JUDGE WALLIS: Thank you. Any appearances on
8 the bridge line today?

9 MR. SELLS: Yes. If Your Honor please, James
10 K. Sells, attorney, 9657 Levin Road Northwest, Suite
11 240, Silverdale, Washington, 98383; telephone, (360)
12 307-8860; fax, (360) 307-8865; e-mail,
13 jimsells@rsulaw.com.

14 JUDGE WALLIS: Thank you, Mr. Sells. Let me
15 ask at this time for purposes of the record whether
16 there is any person either on the bridge line or in the
17 hearing room that desires to participate as a party in
18 this docket and wishes to intervene? Let the record
19 show that there is no response, and we have no
20 petitions for intervention to consider.

21 There are three matters at issue here. They
22 are Dockets TG-030433, 434, and 030590. Let me ask
23 whether the parties believe it would be appropriate to
24 consolidate these matters for consideration.

25 MR. DIJULIO: For purposes of King County's

0005

1 position, consolidation would be appropriate.

2 MR. TROTTER: For Commission staff, they do
3 appear to be identical issues of law, and I think that
4 if there are any differences in fact that they will not
5 be substantial, so we would support handling the three
6 dockets together and reserve the right to issue a
7 separate order if the need arises for some reasons.

8 JUDGE WALLIS: Mr. Sells?

9 MR. SELLS: On behalf of Rabanco, we have no
10 problem with consolidation.

11 JUDGE WALLIS: I think we are in the mode of
12 confirming the decision the Commission has made, and we
13 will carry through with that.

14 Is it likely that any discovery will be
15 necessary and that invocation of the discovery rule
16 will be necessary?

17 MR. DIJULIO: From King County's perspective,
18 we don't believe that discovery will be required.

19 JUDGE WALLIS: Commission staff?

20 MR. TROTTER: We have the same impression,
21 and if it is required, I believe it can probably be
22 accomplished informally. As the need arises in the
23 future, we can come to Your Honor for an order if
24 necessary.

25 JUDGE WALLIS: Mr. Sells?

0006

1 MR. SELLS: I think everybody knows
2 everything that's going on here.

3 JUDGE WALLIS: Very well. Is there any need
4 for a protective order?

5 MR. DIJULIO: For purposes of King County,
6 there is in place protective orders in the underlying
7 lawsuit, and the County will stipulate to be bound by
8 those existing protective orders and does not believe
9 that further protective orders will be necessary in
10 this matter. Most of the issues before the judge, we
11 think, will be based upon existing public WUTC record.

12 MR. TROTTER: Your Honor, the Commission is
13 not a party to the civil litigation that's referenced
14 in the pleadings, and so the only concern I have --
15 first, I don't foresee a need for a protective order.
16 However, if some of the documents that are under
17 confidentiality order in King County cannot be used in
18 any other proceeding and we need to look at those,
19 hopefully, parties will be able to work out something
20 regarding that. That would be my only concern, and I
21 don't know the terms of that order, so maybe
22 Mr. DiJulio or Mr. Sells would weigh in on that one.

23 JUDGE WALLIS: Mr. Sells?

24 MR. SELLS: If Your Honor please, I'm not
25 representing Rabanco in the civil litigation, but it is

0007

1 my understanding that there are protective orders in
2 place. If the County is willing to abide by them,
3 that's fine with us.

4 I would want to reserve the right at some
5 point in the future if some unknown document or some
6 documents that are not covered or we are unaware of
7 comes up to at least bring that issue back before Your
8 Honor for an individual protective order, but frankly,
9 I don't anticipate that happening.

10 JUDGE WALLIS: Very well. I would call the
11 parties' particular attention to this issue and ask you
12 to be sensitive, especially those who are familiar with
13 the civil litigation. We don't want to run afoul
14 either as the agency or any of the parties to this
15 agency in the inadvertent violation of a protective
16 order and would ask that the parties do monitor the
17 paper as it flows through and verify that none is
18 subject to that order.

19 I'm wondering, Mr. DiJulio, will you be able
20 to supply to the parties and to the Commission for the
21 file a copy of that protective order?

22 MR. DIJULIO: I will do so.

23 JUDGE WALLIS: Let me ask at this point
24 whether any of the parties are contemplating
25 dispositive motions in this matter?

0008

1 MR. DIJULIO: From the County's perspective,
2 Judge Wallis, we expect that the matter can be decided
3 summarily by the Commission proceedings. We do not
4 believe that there are material issues of fact, and it
5 is an issue that can be decided summarily.

6 MR. TROTTER: This is Donald Trotter. I
7 would suspect the Commission staff would be on the
8 responsive end of a dispositive motion. I don't think
9 we were necessarily planning to tee it up. We are not
10 the moving party here, so I will let the others speak.

11 JUDGE WALLIS: Mr. Sells?

12 MR. SELLS: If Your Honor please, I think
13 that's probably true that this whole thing can be done
14 by motion. Our concern at the moment is whether we
15 need to do anything now, and probably the only motion
16 that we would contemplate making, which we may make
17 here today, is to put this whole thing on hold until
18 the Division One of the Court of Appeals rules, which I
19 understand is supposed to happen in somewhere around 90
20 days. Although, that's just what I've been told, but I
21 don't see a big bunch of hearings and all that, no.

22 JUDGE WALLIS: Very well. Why don't we just
23 take these matters one at a time. Mr. Sells, you've
24 mentioned a request for a continuance. Do you want to
25 make that a little bit more specific and more formal

0009

1 for the record?

2 MR. SELLS: Sure. If Your Honor please,
3 again, I'm somewhat new on this. Mr. Wiley had a
4 conflict, but it's my understanding that this matter is
5 before Division One, this very issue; that oral
6 argument is set for January 12th in the morning, and at
7 least I'm told by counsel on our side that they expect
8 a ruling within 90 days of that. It seems to us that
9 if the Commission proceeds on essentially a parallel
10 track as the Court of Appeals, depending on what the
11 Court of Appeals says, we may end up doing this thing
12 twice before the Commission.

13 I would add in response to Mr. Trotter's
14 short brief here, Rabanco is, in fact, in compliance
15 with flow control. The garbage is going where it's
16 supposed to be going. They are not paying the fee
17 because a bond has been posted, but there is not that
18 issue of the garbage being shipped out to Nebraska or
19 someplace. That's not taking place. So we don't see
20 any reason to do this now until we find out what the
21 Court of Appeals says. Depending on what the Court of
22 Appeals says, there may not be any reason to do this at
23 all.

24 JUDGE WALLIS: Mr. DiJulio?

25 MR. DIJULIO: Thank you, Judge Wallis. For

0010

1 purposes of clarification of the record, the matter was
2 argued before the Court of Appeals on November 8th.

3 MR. SELLS: I'm sorry; that's correct.

4 MR. DIJULIO: So to the extent the judge is
5 not fully aware of the background of this, and we
6 should just give reference to it for purposes of the
7 record, there is a case titled Rabanco Limited, a
8 Washington Corporation, Plaintiff, versus King County,
9 a political subdivision of the State of Washington,
10 Defendant, King County Cause No. 04-2-06720-1 SEA.

11 That action was initiated by Rabanco in 2004
12 against King County. There are seven counts in that
13 lawsuit, one of which was decided on summary judgment,
14 that issue regarding the interpretation of 36.58.040.
15 That issue was certified by the trial court to the
16 Court of Appeals for review.

17 The Court of Appeals has granted and has
18 initiated an accelerated schedule for hearing of that
19 appeal, and as previously stated, oral argument on that
20 was heard by a panel of Division One on November 8th,
21 and as Mr. Sells suggests, hopefully, we will have the
22 decision out within 90 days on that matter. That's
23 just by way of background.

24 JUDGE WALLIS: Do you have a position on the
25 request to continue further process in this matter

0011

1 until the issuance of a Court of Appeals decision?

2 MR. DIJULIO: Yes. The County believes it is
3 appropriate to proceed with this matter notwithstanding
4 the pendency of the Court of Appeals decision for a
5 couple of reasons. One of the reasons is that there is
6 no assurance of the timeliness of that decision. We
7 can look to the court's traditional schedule, but that
8 doesn't assure any timeliness of that decision.

9 Additionally, there is no assurances that
10 that decision will be final, either as a result of an
11 appeal for petition for review to the Supreme Court or
12 potentially a determination by the court not to publish
13 its decision, thereby rendering it not precedential.

14 The County believes the underlying issue as
15 to the application of 36.58.040, the G certificates,
16 here, the Rabanco G-12 certificate that authorizes
17 collection in more than one county can be used to
18 circumvent the comprehensive plans of the counties and
19 the regulation of waste management consistent with the
20 Solid Waste Management Act as well as the Commission's
21 responsibility to enforce the provisions of county
22 solid waste management plans.

23 And so we believe it is not appropriate to
24 stay these proceedings pending the determination by the
25 Court of Appeals on that issue. Frankly, the

0012

1 Commission can resolve this issue in a manner that does
2 not affect the authority of the haulers but simply
3 clarifies an issue with respect to the management of
4 waste handling consistent with statute and the
5 Commission's regs.

6 JUDGE WALLIS: You've indicated that you
7 believe the issue in the Court of Appeals now matter
8 would resolve the questions in this proceeding; is that
9 correct?

10 MR. DIJULIO: Would expect them to, but there
11 can be no prediction, again, of the fact that the
12 Commission's decision will either be final anytime
13 soon, or excuse me, the Court of Appeals' decision will
14 be final anytime soon or that the Court of Appeals'
15 decision will be precedential if it is determined not
16 to be published.

17 JUDGE WALLIS: Would it be possible for you
18 to provide to the Commission copies of the trial court
19 decision and the briefs on the appeal?

20 MR. DIJULIO: I will do so.

21 JUDGE WALLIS: Very well. Mr. Trotter?

22 MR. TROTTER: First of all, I would like to
23 thank Mr. Sells for clarifying what Rabanco is and is
24 not doing. I appreciate that. It does seem to me that
25 the issue here is if the Superior Court is affirmed,

0013

1 again, whether by the Court of Appeals or ultimately by
2 the Supreme Court, if it goes that far, then this case
3 is moot, as I understand it.

4 If the Superior Court is reversed, if the law
5 is as Rabanco would have it, then this case does become
6 important in that the issue would be should the
7 Commission segregate the permit in order to negate the
8 effect of the statute as Rabanco would interpret it.
9 We indicated in our pleading that the law of the case
10 right now is the Superior Court has held that the
11 statute is not to be interpreted the way Rabanco would
12 like it, and so that's, I guess, the law of the land
13 right now in that limited aspect. So we wanted to urge
14 that the County make a case that there is some arm or
15 some reason to act expeditiously, and I'm not sure they
16 have done that, but reasonable minds could differ on
17 that.

18 The other problem, of course, is the
19 Commission's own procedures and how long that would
20 take. The Commission is busy in their many, many
21 dockets going on, and it may not be that this case
22 would be resolved before that Court of Appeals rules in
23 any event, so all of that militates in favor of
24 Rabanco's position as stated by Mr. Sells, but the
25 County has some arguments for proceeding on, and I

0014

1 would also note, of course, that regardless of how the
2 Commission rules, ultimately, any party could appeal
3 that, so finality is maybe elusive in this case, at
4 least in the short-term.

5 JUDGE WALLIS: I take it that no party is
6 arguing that the Commission is precluded by the mere
7 existence of the pending matter in the judicial system
8 from proceeding to examine the issue.

9 MR. SELLS: This is Jim Sells. I don't think
10 the Commission is precluded from doing so, but our
11 concern, and I think maybe the Commission's concern as
12 well, is whether it's the best use of resources and
13 time to do so.

14 We are talking about the interpretation of a
15 statute, which at least that seems pretty clear on its
16 face but apparently isn't, and eventually, that
17 interpretation as to what that statute says or does not
18 say is going to be decided in court, and since it's
19 already there, it just seems to be sensible to let the
20 courts do it.

21 JUDGE WALLIS: Mr. DiJulio, why do you think
22 that the matter is sufficiently critical to the
23 County's interests that we should proceed despite the
24 status of the judicial review?

25 MR. DIJULIO: If it please the judge, on this

0015

1 matter, as reflected in the Staff's submission on this
2 matter, these are important issues regarding the
3 integration of the various statutes governing solid
4 waste handling in the state of Washington.

5 Under the argument that is being espoused,
6 the consolidation of certificate areas in a single
7 certificate that has collection authorization in more
8 than one county would permit a hauler to circumvent the
9 regulatory schemes for direction of waste to designated
10 land fills consistent with the various statutes, and as
11 mentioned previously, the Commission's responsibility
12 to insure compliance with those statutes and adopt its
13 comprehensive plans.

14 We believe it is an important issue for the
15 Commission to address sooner rather than later so that
16 this issue does not remain out there and available. As
17 the record reflects in this case, the G-12 certificate,
18 the reissued certificate, was issued August 21st of
19 2003, and less than a year later, that consolidated
20 certificate was used as a basis for circumventing the
21 King County designation of Cedar Hills as the disposal
22 site for all waste collected in unincorporated King
23 County and also is reflected by submissions by, I
24 believe, the WRRRA and the Commission as well. There
25 are a number of certificates for other collection

0016

1 companies, not only Rabanco, that authorizes that
2 company to collect and handle solid waste in more than
3 one county.

4 The issues that are currently pending before
5 the Court of Appeals relate to the particular dispute
6 between King County and Rabanco Limited with respect to
7 the G certificate, G-12 that's at issue, but we believe
8 the Commission should be addressing this issue now and
9 not waiting to see whether or not the Court of Appeals
10 addresses this issue finally in a precedential
11 decision, because we do think it's an issue of
12 statewide importance to assure compliance with the
13 scheme, the plan that exists with respect to the
14 integrated solid waste statutes in the state of
15 Washington. Thank you.

16 JUDGE WALLIS: If the Commission were to
17 decide the matter one way and the court the other
18 subsequently, would that render the Commission's
19 decision totally without effect?

20 MR. DIJULIO: The County does not believe so.
21 The County believes that the Commission within its
22 authority can, just as it consolidated for convenience,
23 can also decouple or separate for convenience in
24 assurance of compliance with basic solid waste
25 management planning in the state of Washington. For

0017

1 example --

2 JUDGE WALLIS: Do I hear you say that even if
3 the Commission didn't have to do something, it could do
4 so within its discretion?

5 MR. DIJULIO: Yes. As it is today, under the
6 argument espoused by Rabanco in the underlying
7 litigation, if a G certificate authorized a collection
8 company to operate within King and hypothetically
9 Garfield County, King County could not direct the waste
10 stream of the certificate hauler in unincorporated King
11 County absent a local agreement between King County and
12 Garfield County, even though there are separate tariffs
13 and even though there is no cross-county collection
14 routes.

15 That's the kind of situation that we believe
16 that the Commission should not permit to be continued,
17 and it makes no sense under the statutory scheme, as we
18 have argued before and the Superior Court agreed, and
19 we think the Commission should be addressing that, and
20 that is why King County sought to have this issue
21 clarified at the Commission level because it is an
22 issue that may -- well, it does have statewide
23 importance, because it simply does not apply to this
24 particular litigation, but as suggested, may apply more
25 broadly throughout the state.

0018

1 JUDGE WALLIS: Mr. Sells?

2 MR. SELLS: Thank you, Judge. That's all
3 true, but we need to remember we are dealing with a
4 state statute here. That's why we have statewide
5 implications, and if, in fact, that statute is
6 ill-conceived or it's being interpreted incorrectly,
7 then there is two places to go. One is to the courts
8 and the other is to the legislature.

9 But what King County is asking the Commission
10 to do is to place itself essentially ahead and above of
11 both the legislature and the courts and say, Well, this
12 is how we are going to interpret this statute, and we
13 don't care what the court is going to say. We are
14 going to proceed, even though we know that tomorrow or
15 the next day, the legislature and/or the courts are
16 going to tell us we are wrong, and there we will be.

17 It just doesn't make any sense to do it at
18 this point until we find out A, is the statute going to
19 be amended, and B, what do the courts have to say about
20 it, but Steve is right. The issue is statewide. There
21 are others in this situation.

22 JUDGE WALLIS: Mr. Trotter?

23 MR. TROTTER: I think we need to think this
24 through a little bit. Let's assume the Commission
25 decides to proceed with this case and dispositive

0019

1 motions are filed. One of the critical issues will be,
2 how does the Commission interpret the key statute here?
3 If the Commission construes it similar to the Superior
4 Court of King County, in theory, the Commission could
5 dismiss the petition because nothing needs to be done.
6 That's one way it could go.

7 The other is that the Commission could
8 interpret it the way Rabanco interprets it and then
9 take action as King County is requesting it; that is,
10 to segregate the authorities, or it could elect not to
11 for whatever reason it found to be justified. Or it's
12 even conceivable the Commission could issue a
13 conditional order. It could say, We aren't sure how
14 this ought to be interpreted, but if it is interpreted
15 this way, then this consequence will apply, and if it
16 is interpreted a different way, the following
17 consequence will apply, and the order will be
18 self-executing once the Court of Appeals rules. So
19 there is any number of ways this case could be played
20 out, so I think I'm disagreeing with both counsel in
21 that regard.

22 So I think it's just comes down to, in my
23 opinion, a question of your good judgment as to what is
24 the best way to proceed. One concern I guess is that
25 if the Court of Appeals should rule in favor of Rabanco

0020

1 and King County finds itself in a real bind and feels
2 that it wishes to pursue its petition aggressively,
3 could this be done in a relatively short time frame?
4 First of all, I think we would have the law clarified,
5 and then the issue would be, Should the relief sought
6 in the petition; that is, the segregation of the
7 permits, be approved, and if the parties were going to
8 commit to an expedited procedure, then maybe those
9 concerns could be alleviated. If we're talking six
10 months of wrangling, then maybe not. I offer that to
11 you for your consideration.

12 JUDGE WALLIS: Let's set this question just a
13 tiny bit aside for a moment and ask what the parties
14 envision in terms of their presentations. We've
15 already asked for the material that had been presented
16 in the judicial review, I believe, was it Rabanco's
17 proceeding there, and what else would parties want to
18 do? I'm not asking in terms of your legal strategy but
19 in terms of the volume of materials, affidavits, the
20 degree of effort that would be required to produce the
21 material that you think essential and to brief it?

22 MR. DIJULIO: Speaking for the County, Judge
23 Wallis, we think that the Commission would take notice
24 of its own certificates and tariffs that are related to
25 these proceedings, would take notice of the process

0021

1 that led to the consolidation that is now reflected in
2 G-12. Other than that, we are talking about a fairly
3 straightforward briefing schedule, so I think that the
4 issue could be brought forward to hearing within as
5 short a period of time as 30 days.

6 JUDGE WALLIS: What time frame would you find
7 necessary or optimal to prepare a pleading,
8 Mr. DiJulio?

9 MR. DIJULIO: We could have our materials to
10 the Commission within two weeks.

11 JUDGE WALLIS: Mr. Sells?

12 MR. SELLS: Well, again, as I said earlier, I
13 don't anticipate the need for a hearing, and I think
14 the Commission can take notice of its own procedures
15 and some of the documentation that led to this
16 consolidation and other consolidations.

17 Unfortunately, my recollection and some
18 others' recollection of that and some of the Commission
19 staff's recollection seems to be different, so it's
20 going to be a matter of us talking to some of the
21 people that were involved in finding out whose
22 recollection is correct.

23 Other than that, certainly, we can respond to
24 any pleadings in two weeks or so. We would anticipate
25 at least one declaration from Rabanco, but a two-week

0022

1 set of windows certainly can be done. The question is
2 whether we ought to do it.

3 JUDGE WALLIS: Mr. Trotter?

4 MR. TROTTER: I think Commission staff could
5 abide that sort of schedule.

6 JUDGE WALLIS: It does appear to me that
7 there has been no identification of any urgent matter
8 that would require Commission action imminently. In
9 light of the estimated time that the parties identify
10 for proceeding, it does not strike me that a delay for,
11 say, 90 days to reassess the status of the matter in
12 court would be inappropriate.

13 If it is necessary to proceed at that point
14 or the parties feel that it would be appropriate to
15 proceed and the Commission agrees, then the time to
16 conclude the matter does not seem to be extensive. So
17 my preference on this would be to hold the matter in
18 abeyance and schedule a further prehearing conference
19 in approximately 90 days.

20 I would suggest, Mr. Sells, you have
21 indicated the need to do some legwork on this, that you
22 might be working on that during the interim period --

23 MR. SELLS: I will, Your Honor.

24 JUDGE WALLIS: -- and that when we reconvene
25 in approximately 90 days that the parties then would be

0023

1 able to proceed quickly as the need may appear; that
2 the status of the Court of Appeals matter will be
3 known, certainly, if the decision has been entered by
4 that point, and that if some other matter has arisen to
5 render the pursuit of this question more urgent, the
6 parties will then be in a position to proceed
7 expeditiously.

8 So my ruling is that the matter should be
9 continued for a period of approximately 90 days to a
10 date to be set and that we should reconvene a
11 prehearing conference at that point to determine the
12 status of the matter and whether it is appropriate for
13 the Commission to proceed with it at that time.

14 MR. DIJULIO: Judge Wallis, just a point of
15 clarification, recognizing the determination to set
16 this matter for a further prehearing conference in
17 approximately 90 days, would that be with leave to the
18 parties that should the decision of the Court of
19 Appeals be issued sooner that we could come back before
20 the ALJ?

21 JUDGE WALLIS: Certainly. Do the parties
22 have your calendars here so we could look at a
23 potential date?

24 MR. DIJULIO: Yes.

25 MR. SELLS: Yes.

0024

1 JUDGE WALLIS: Would the third week in
2 February be available; that is, the week beginning
3 February 14th?

4 MR. DIJULIO: On behalf of the County, that
5 is available.

6 MR. TROTTER: Yes, Your Honor.

7 MR. SELLS: Your Honor, I have a trial set
8 there but it's being consolidated, and I'm 99.9 percent
9 sure it's going to be bumped into March, so I will say
10 okay, and if that's not the case, I will let the
11 Commission and the parties know immediately.

12 JUDGE WALLIS: Would that consume the entire
13 week?

14 MR. SELLS: The trial would probably be about
15 a three-day trial, and it's a Kitsap County trial, so
16 who knows when it's going to start. We will make it
17 work.

18 JUDGE WALLIS: Let's set it for the 16th.
19 Would parties prefer a morning or an afternoon?

20 MR. SELLS: Doesn't matter to me, Your Honor.

21 MR. DIJULIO: Afternoon, please.

22 MR. TROTTER: That's fine.

23 JUDGE WALLIS: Very well. 1:30 p.m. on the
24 afternoon of February 16th. Is there anything further
25 to come before the Commission?

0025

1 MR. DIJULIO: Nothing from the County, thank
2 you, Judge Wallis.

3 JUDGE WALLIS: I will prepare and enter a
4 prehearing conference order in this matter confirming
5 the discussions that we've had today. If any party
6 wishes to take exception to that, there is the
7 opportunity to do so, and we will, with that, conclude
8 this prehearing conference. Thank you all.

9 (Prehearing conference concluded at 2:16 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25