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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) Docket TG-111672
) Pages 1-28
MURREY'S DISPOSAL COMPANY, INC., G-9)
Respondent.)
.....)
WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) Docket TG-111674
) AMERICAN DISPOSAL COMPANY, INC., G-87)
Respondent.)
.....)
WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
vs.) Docket TG-111681
) MASON COUNTY GARBAGE CO., INC., D/B/A)
MASON COUNTY GARBAGE, G-88)
Respondent.)

PREHEARING CONFERENCE, VOLUME I
Pages 1-28
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

10:32 A.M.
NOVEMBER 10, 2011
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

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A P P E A R A N C E S

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OLYMPIA, WASHINGTON, NOVEMBER 10, 2011

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10:32 A.M.

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P R O C E E D I N G S

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JUDGE KOPTA: Then let's be on the record in Dockets TG-111672, 111674, and 111681, consolidated and captioned respectively, Washington Utilities and Transportation Commission versus Murrey's Disposal Company, Inc., American Disposal Company, Inc., and Mason County Garbage Company, Inc., d/b/a Mason County Garbage.

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It is a little after 10:30 on Thursday, November 10, 2011. I'm Administrative Law Judge Gregory J. Kopta. With me on the Bench is Commissioner Pat Oshie and Chairman Jeff Goltz. Commissioner Phil Jones is unavailable.

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We are here for a prehearing conference, and I'm going to start by taking appearances. I note that all counsel I see present in the room have filed notices of appearance or otherwise provided their full contact information through a filing and, therefore, we just need the short form of appearances today.

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We'll begin, since this is a complaint proceeding brought by the Commission, with Commission Staff.

24

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MR. TRAUTMAN: Thank you, Your Honor. Gregory J. Trautman, Assistant Attorney General, for Commission Staff.

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1 JUDGE KOPTA: Thank you. And for the Companies?

2 MR. WILEY: Good morning, Your Honor. David Wiley
3 for the respondent Companies: American Disposal, Murrey's
4 Disposal, and Mason County Garbage, Inc.

5 JUDGE KOPTA: Thank you. And for potential
6 Intervenor?

7 MR. SELLS: Thank you. If, Your Honor, please, James
8 Sells, appearing on behalf of proposed Intervenor, Washington
9 Refuse and Recycling Association.

10 JUDGE KOPTA: All right. Thank you.

11 Is there anyone else that wishes to make an
12 appearance? Hearing none, we will move on to the next issue,
13 which is intervention.

14 I have received -- or the Commission has received one
15 petition for intervention from the Association.

16 Mr. Sells, do you have anything to add to your
17 written petition?

18 MR. SELLS: No. If, Your Honor, please, other than
19 to point out this is, of course, a second go-around with these
20 Companies and these counties, and we were allowed to intervene
21 last year in this with the same parties.

22 We will not broaden the issues. I don't believe that
23 we would call any witnesses, should there be an evidentiary
24 hearing, but we would file briefs regarding any motions that may
25 be made.

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1 JUDGE KOPTA: All right. Thank you, Mr. Sells.

2 Does anyone object to the intervention of the
3 Association in this proceeding or these proceedings?

4 MR. TRAUTMAN: No, Your Honor.

5 MR. WILEY: No, Your Honor.

6 JUDGE KOPTA: Okay. Thank you. The petition will be
7 granted, and the Association will be granted party status.

8 The next issue is discovery. Because this is a --
9 these cases involve suspension of tariffs involving rates, then
10 the Commission's discovery rules are automatically available
11 under the existing rules. We can discuss under scheduling
12 whether we want any limitations on discovery.

13 I also understand that there is an issue in terms of
14 Order 01 in the Mason County Garbage case, Docket TG-111681. We
15 can take that up probably when the Commissioners are not on the
16 Bench. The reason that they are here is because we want to
17 discuss scheduling, which is what I would like to turn to next.

18 The Commission wants to resolve this expeditiously as
19 part of the notice of the prehearing conference. We included a
20 couple of alternatives for scheduling that would resolve this
21 case expeditiously.

22 I don't know whether the parties have had an
23 opportunity to review that, those suggestions, or otherwise
24 discuss scheduling among themselves, but at this point, I would
25 like to hear from the parties in terms of their thoughts on how

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1 we can schedule this and do so and have the Commission consider
2 this in an expeditious fashion.

3 Mr. Trautman?

4 MR. TRAUTMAN: Your Honor, Greg Trautman, for
5 Commission Staff. We have started discussions with the
6 Companies. It would be probably helpful to have a few more
7 minutes to talk about it some more. We have talked about the
8 option of trying to set aside possible dates for summary
9 judgment motion after periods of discovery, and then file any
10 briefs if there can be stipulated facts.

11 We don't know whether that will occur at this point,
12 but we'd like to perhaps fill that in the schedule, and then if
13 that does not succeed, then have an evidentiary hearing a bit
14 further out.

15 So that's -- go ahead.

16 JUDGE KOPTA: Mr. Wiley?

17 MR. WILEY: I think that's a fair summary. We've
18 only preliminarily discussed calendaring, because it does depend
19 on the discovery, the data request, the Bench request, and
20 getting facts exchanged, and then I think the initial goal would
21 be to try to do a summary adjudication like the last round if we
22 can.

23 So that's why we haven't really projected hearing
24 dates versus summary judgment motion dates, and we can talk some
25 more about that.

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1 We also have, because of the issue with Mason County
2 and that order, it may be that that -- that could be, while
3 consolidated on a different track for resolution, I don't
4 know -- but there are a couple procedural issues sort of hanging
5 right now that will affect scheduling, at least in our view.

6 JUDGE KOPTA: Okay. Well, as I see it, at this
7 point, there are really two phases or two aspects of this case.
8 The first is the plans that are coming that have already come to
9 an end from 2010 through 2011, and then the other are the plans
10 that have been submitted for 2011-2012.

11 And those are two different issues, and I'm -- so
12 that's one of the things that we wanted to discuss here, whether
13 the parties want to consider those issues together in one
14 proceeding, whether one kind of issue can be resolved more
15 expeditiously than another and would be taken up on a different
16 track.

17 Again, you know, the Commission's interest is trying
18 to resolve this sooner rather than later, since we don't want
19 to, again, be in a situation where you have a final order nine
20 months into your plan that's only one year long.

21 So we're trying to be sensitive to getting things
22 done in a manner that will allow the Company to do what it needs
23 to do -- Companies, I should say.

24 MR. WILEY: Well, we appreciate that summary, because
25 I think that kind of characterizes the legal issues that we see

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1 in the proceeding, and they're sort of bifurcated. One is the
2 past, and one is the future. And I do think that -- that our
3 position on the past is a different position. Legally, just in
4 terms of jurisdiction and outcome, we would argue, then -- then
5 the prospective or the current plan and the year -- the 11
6 months remaining in that plan.

7 So, you know, I intend to say some things about that
8 today, but I don't want to waive, you know, our position on the
9 past performance plan completion.

10 JUDGE KOPTA: And I understand that, which is why I
11 had wanted to make it clear how the Commission views this
12 proceeding and what the major issues are that we feel the
13 Commission needs to resolve. I don't think anybody's going to
14 be waiving anything at this point, unless they do so explicitly,
15 which I don't expect.

16 So at this point, I guess what I would like to hear
17 from Commission Staff is we have issued -- the Commission has
18 issued bench requests, because there are some obvious
19 information that we believe the Commission needs to consider.
20 And, again, this was in an effort to try and expedite the
21 proceeding to get the facts out so that we can make some kind of
22 determination of the appropriate schedule.

23 Does Staff have a view on the likelihood of being
24 able to reach a factual stipulation?

25 MR. TRAUTMAN: Well, I guess Staff thinks it may be

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1 possible. We have not ruled it out. It depends on the outcome
2 of subsequent of data requests that Staff would put out. I
3 think Staff also wants to do some audits.

4 There are issues, and Bench Request 5 went to this
5 one in terms of Mason involving the discount. And so this --
6 right. And then Staff feels that may be an issue for all three
7 companies, not just Mason, and we may have additional -- we will
8 have additional data requests on that score.

9 So I -- I think Staff thinks that -- feels it may be
10 possible to reach stipulated facts. It's just hard to pin that
11 down definitively, but we haven't ruled it out.

12 JUDGE KOPTA: Okay. Are there any objections at this
13 juncture from any of the parties of setting an evidentiary
14 hearing date without setting prefiled testimony filing
15 deadlines, with the anticipation that if a factual stipulation
16 is not possible, that we would have live presentation of
17 testimony at the hearing in front of the Commissioners?

18 MR. TRAUTMAN: Yes. Does the Commission have dates
19 in mind?

20 JUDGE KOPTA: Not at this juncture. Obviously, we
21 wanted the parties to consult among themselves --

22 MR. TRAUTMAN: Right.

23 JUDGE KOPTA: -- to see what kind of time frames they
24 believe are necessary. But what we are anticipating is that if
25 there is going to be an evidentiary hearing, and if we're going

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1 to schedule one, which I fully expect to do as a result of the
2 prehearing conference today, then it will be a hearing that will
3 be not preceded by prefiled testimony, because we don't feel
4 that under the circumstances of this case, that that's
5 necessary, and, in fact, we can proceed more effectively and
6 more expeditiously if we don't have prefiled testimony.

7 So I just wanted to make sure that the cards are on
8 the table and, you know, speak now or forever hold your peace,
9 if that's -- if you have some concerns about that kind of a
10 procedure.

11 MR. WILEY: I don't have concerns, because I don't
12 think transportation cases generally lend themselves ideally to
13 prefiled testimony. We're used to doing it cold from, you know,
14 years and years. But I do think there should be some sort of
15 time gap in between if -- if we can't reach a stipulation
16 factually to -- to a hearing so that we can prepare. You know,
17 I don't want to that to be three days after the discovery cutoff
18 or something.

19 So if we can schedule some sort of interval in
20 between when discovery would be completed or resolved or not
21 resolved, and the hearing. And I'm sure that will depend on
22 their hearing schedule anyway, so -- so that would be my
23 preference.

24 JUDGE KOPTA: Okay. That makes sense, and that
25 certainly would be my contemplation that there would be some

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1 time period. But I just wanted to make sure that there aren't
2 any objections to that concept.

3 And I also want to give the Commissioners an
4 opportunity to weigh in, if they so choose, on what their goals
5 are in terms of process.

6 CHAIRMAN GOLTZ: Thank you. This is Jeff Goltz. I
7 think that the -- my vision for this was to get this done as
8 expeditiously as possible. As Judge Kopta said, you don't want
9 to have a plan on a prospective issue take effect three months
10 before the end of the year.

11 So I think -- I think, Mr. Wiley, you were talking
12 about it, and Judge Kopta also talked about separating the
13 retrospective from the prospective issues, and so those can be
14 on separate tracks. And the need for doing something quickly is
15 on the prospective issues --

16 MR. WILEY: Yes.

17 CHAIRMAN GOLTZ: -- and the discussion was about a
18 stipulation of facts. That's one way to term it, but it also
19 could just be a stipulated record. Not necessarily that
20 everyone has to agree to Facts 1 through 100, but could agree to
21 just a record that goes into the -- and you wouldn't have to
22 stipulate, in fact, to facts. You'd just agree to the record
23 and we go from there. And if that needs to be supplemented by
24 live testimony from a couple of people, then so be it.

25 And so I think that given that possibility, I agree

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1 that -- with Judge Kopta that maybe you can pick a date for an
2 evidentiary hearing, and that evidentiary hearing could either
3 go forward -- in the event there's not a stipulated record, it
4 goes forward in some abbreviated fashion. If there is a
5 stipulated record but you need some clarification or some live
6 testimony from somebody, and/or third, it goes away because
7 everyone determines that the record as stipulated is accurate.

8 And it may be then, again, that that may only apply
9 to the plan for this current year. I was talking about
10 prospective, but it's really not just prospective. It's
11 current. And maybe the retrospect of that aspect is done on
12 motions for summary determination that aren't -- but at the time
13 might not be as of the essence.

14 JUDGE KOPTA: Thank you, Mr. Chairman.

15 Commissioner Oshie, is there anything that you wanted
16 to add?

17 COMMISSIONER OSHIE: Well, the only question that I
18 had was to the parties is -- and listening to the Chairman, but
19 I think I understand where the Chairman is coming from, which is
20 if we can deal with the prospective essence, you know, of this
21 case almost immediately based on what the parties have in mind
22 in their investigation of the development of the plans that are
23 in question, you know, we can do that, and we should. And then
24 we can look retroactively, if you will, or look retrospectively
25 to what happened in 2010-2011, which may be a more detailed

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1 record, or it may not. It may just be, you know, just maybe a
2 legal question.

3 So these are the -- I would -- maybe if I had to
4 guess, that a stipulated record or an agreement as to the
5 material facts of this case could be done probably without a
6 hitch, so to speak, if you look retrospectively.

7 Now, there may be some other questions of fact that
8 are more difficult for the parties to agree on going forward,
9 given the prospective nature of what is planned to be done
10 between two thousand -- the point in 2011 when the plan is
11 approved, and then its culmination would be one year from the
12 approval date.

13 So is that what I'm -- I'm thinking that's what I
14 heard the Chairman say, and I would certainly -- I think that's
15 a -- you know, that's a fairly logical path to some conclusion.

16 And although we're not bifurcating these two issues,
17 they are combined, but we can certainly handle each one
18 independent of one another, since they are independent, other
19 than the fact they deal with the same Companies on the same
20 issues but at different time periods.

21 JUDGE KOPTA: Okay. Thank you.

22 Do the parties have any questions of the Bench based
23 on what you've heard in terms of process?

24 MR. WILEY: Judge Kopta, I don't think as much as a
25 question as it is a statement. In a fair agreement with what I

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1 have just heard articulated, I do think that the retrospective
2 issue is far more a legal issue. And I think could be -- I can
3 see that being resolved on a summary adjudication much more
4 easily than prospectives, particularly because a prospective
5 plan is a work in progress in terms of a performance
6 benchmark-based plan. There are facts yet to be adduced, I
7 imagine, in terms of how it is developing over the year. I
8 think that would be much more of a fact issue. I'd still like
9 to resolve it without a hearing, but I think Chairman Goltz's
10 description of the stipulated record, stipulated facts, and the
11 three alternatives sounded reasonable to me.

12 I would just like to state for the Companies that I
13 see the retrospective issue as a legal issue, and that would be
14 something that I would think we could address. It's not as time
15 sensitive, obviously, in terms of the impact, but I think that
16 procedure would be more streamline like.

17 JUDGE KOPTA: Okay.

18 CHAIRMAN GOLTZ: One more thing. Andy (phonetic) is
19 not here, although I heard a beep in the bridge line, so maybe
20 they are listening.

21 Mr. Wamback was very active during the open meeting
22 proceeding, and we got lots of information from him that was
23 very useful.

24 MR. WILEY: Mm-hm.

25 CHAIRMAN GOLTZ: I can foresee perhaps needing to

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1 be -- even though they kind of might not be a party, but we need
2 to get some information from the County.

3 Do you see any -- foresee any problem with their
4 willingness to assist in that regard?

5 MR. WILEY: In answer specifically to that question,
6 I have yet to talk to him. He's on jury duty, I understand,
7 from his out-of-office message, for the next two weeks. I have
8 been in touch with him by e-mail with the orders; the prehearing
9 conference order, et cetera.

10 I anticipate talking to him either this week or next,
11 and I don't anticipate -- I mean, the County's been actively a
12 party since 2005, so I wouldn't think so. But I don't want to
13 indicate that I have verified that with you.

14 CHAIRMAN GOLTZ: Yeah, but the County has an
15 interesting clarity of this whole issue.

16 MR. WILEY: Oh, absolutely.

17 JUDGE KOPTA: Mr. Trautman?

18 MR. TRAUTMAN: I think Staff wanted to point out one
19 issue, was that both -- both the forward and the retrospective
20 plans could affect the credits, that commodity credits, so there
21 may be some overlapping issue there; that it relates to -- for
22 the County that can be -- and then that part can be worked out
23 later.

24 JUDGE KOPTA: Well, obviously, the ultimate
25 resolution of the tariff filing, which is the commodity credits,

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1 may depend on resolution of both set of issues, which is what
2 I'm hearing Staff say, and I understand that. But that doesn't
3 mean that we couldn't proceed with resolving the one issue
4 without waiting to have both sets of issues resolved at the same
5 time.

6 MR. WILEY: I view that as a technical mechanism that
7 would affect the Commission's order in terms of effectuating the
8 order. I don't think it impacts the procedure that we would
9 follow.

10 JUDGE KOPTA: Okay. At this point, I think it
11 probably would be best to let the parties continue their
12 discussions in terms of proposal for a schedule. I think the
13 Commissioners have made clear what their objectives are, so we
14 can let them go on to other business.

15 And we will take a break, go off the record, and --
16 for however long we need to and come back and take up the other
17 things that we need to take up.

18 Is that acceptable to the parties?

19 MR. WILEY: Yes.

20 MR. TRAUTMAN: Yes, Your Honor.

21 JUDGE KOPTA: All right. Thank you. Then we will be
22 off the record.

23 (A break was taken from 10:53 a.m.
24 to 12:22 p.m.)

25 JUDGE KOPTA: Let's be back on the record.

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1 During the break, the parties have conferred on
2 schedule, and we have the following dates as I understand them.
3 The case will be considered in two parts: The first part is the
4 prospective issues having to do with the plans that have been
5 filed for the plan years of 2011 through 2012, and the schedule
6 for addressing those issues will be a status telephone
7 conference on December 28th at 10:30 a.m.

8 Hearings, if necessary, will be on January 11th, and,
9 if necessary, carrying over into January 12th. And simultaneous
10 post-hearing briefs will be due on February 8th.

11 For the retrospective issues, those will be addressed
12 through cross-motions for summary determination. Opening briefs
13 and motions will be due on April 19, 2012, with response briefs
14 on April 30, 2012.

15 Have I recited that correctly?

16 MR. WILEY: Yes.

17 MR. TRAUTMAN: Yes.

18 JUDGE KOPTA: Thank you. So that takes care of our
19 scheduling issues.

20 As I had indicated earlier, there is one other issue,
21 which is Order 01 in Mason County, and I will turn to Mr. Wiley
22 to tee that issue up.

23 MR. WILEY: Thank you, Your Honor. Order No. 1, and
24 to a lesser extent the notice of prehearing conference in which
25 Order 1 bleeds, contains some factual legal concerns for Mason

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1 County -- I think for Mason County Garbage Company.

2 In the Mason County order at Section 5, the
3 Commission correctly notes there was a revision to the plan
4 filed by the Company on or about October 18, 2011. However, the
5 order at page 3, Table 1, fails to reflect the appropriate
6 amount of the retention in the first line. As we go through
7 this, you'll see why it might be a significant issue.

8 In line 1 of Table 1, the total amount by the --
9 retained by the Company is actually \$56,607, not 84,910. And
10 more importantly, the last line in Table 1 of page 3, again, of
11 Order No. 1, references a final retention amount of \$21,521.
12 The actual retention amount is \$1709. Thus, the table and
13 corresponding footnote, No. 2, on that same page, 3, are
14 erroneous.

15 And then the conclusion repeated again that the
16 Company proposed to keep 25 percent of the retained revenue at
17 Section 7, page 4, line 2, is inaccurate. Indeed, the amount
18 the Company proposes to keep is less than 2 percent of the
19 unspent retained revenue.

20 The concerns -- the Commission correctly notes the
21 benchmark, Criteria B, in the order, but -- and acknowledges the
22 Company's recognition that it failed to meet by about 0.04
23 pounds, a 4 percent retention, and by less than a pound, the 10
24 percent full retention, but that was missed, and the Company
25 acknowledged it both at the open meeting and in its refiling in

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1 mid-October.

2 That, of course, raises the issue, particularly with
3 respect to Mason County Garbage Company, whether a protracted
4 contest on the 2010-2011 plan for Mason County is cost
5 beneficial for both ratepayers, the Commission, and the Company.
6 We understand that the Staff -- and they will, obviously, speak
7 for themselves -- still wishes to propound a data request or --
8 or wishes the answer to Bench Request No. 5, I should say,
9 addressed, and we will address that.

10 But I am concerned that we not -- clearly from the
11 comments by the Bench on last Thursday's open meeting, it was
12 clear that the focus is on the Pierce County companies and the
13 Pierce County plan. And other than resolving some of the
14 apparent cost issue in Mason County, I hope we will not spend
15 time on the retrospective piece for Mason County for \$1709 of
16 unspent retention.

17 And I also would note for the Bench, and I think
18 he'll recall, the previous year, 2009-2010, we overspent in
19 Mason County by approximately \$10,000.

20 So I am concerned that the order puts significant
21 weight and uses the same language as the other orders about the
22 concern about the size. I think with the correction, that's no
23 longer a material issue.

24 JUDGE KOPTA: Okay. My understanding is that the
25 order reflects the same chart that was in the Staff's memo

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1 preparing for the open meeting; is that correct?

2 MR. WILEY: I believe it does. It was not changed
3 by -- the filing occurred -- or the refiling occurred on October
4 18th and 19th. I believe the new tariff pages with the new
5 credits --

6 FEMALE SPEAKER: 17th.

7 MR. WILEY: -- 17th, I'm told -- with the new
8 commodity credit, which was actually -- \$2.31, was it? It
9 was -- the Staff memo said two thirteen. It was actually two
10 thirty-one, I believe.

11 FEMALE SPEAKER: Two thirty-nine.

12 MR. WILEY: Two thirty-nine? Two thirty-nine. So,
13 yes, the -- if the Commission, in formulating this order relied
14 on the Staff memo, that was an obsolete table.

15 JUDGE KOPTA: Okay.

16 MR. WILEY: And you certainly can ask the Staff.

17 JUDGE KOPTA: Well -- no, and I will, but I'm just
18 making sure that this information was not brought to the
19 Commission's attention until after the open meeting when...

20 MR. WILEY: No, you're right. I think we were more
21 focused on the Pierce County plans, and there was very little
22 discussion of Mason County, again, because of the material. And
23 we had a witness from County, you'll recall that.

24 JUDGE KOPTA: Okay.

25 MR. WILEY: And, so, yes, there was some shared

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1 omission on that point, Judge Kopta.

2 JUDGE KOPTA: Well, obviously, the Commission's
3 preference would be to have orders issued based on correct facts
4 rather than having to correct them. Obviously, everyone makes
5 mistakes, but I certainly believe that the Commission wants to
6 make sure that its orders are accurate. But I would urge all
7 parties to make sure that the information provided to the
8 Commission on which they're to base their orders is correct at
9 the time that the facts are submitted.

10 Mr. Trautman, does Staff agree with the figures that
11 Mr. Wiley was just providing to the Commission in terms of...

12 MR. TRAUTMAN: I'm not sure that we can agree with
13 all of the -- of all of the figures, or whether any of the other
14 numbers on the table should be revised.

15 MR. WILEY: That's news to me, so...

16 JUDGE KOPTA: Briefly, because we may need to have
17 some additional submissions as opposed to discussing this if we
18 can't -- if there isn't a simple fix, but go ahead.

19 MR. GOMEZ: Dave Gomez here. If I understood
20 correctly from Mr. Wiley, the total amount retained by the
21 Company after the performance penalty, which is the Company's
22 failure, I believe, to meet Item -- or Category B, correct? --
23 of the performance requirements in the 2010-2011 plan, the
24 actual amount retained by the Company would be \$56,607, which, I
25 believe, is accurate, the amount that Mr. Wiley had said in the

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1 table, which then would reflect the performance penalty of
2 \$28,303.

3 And as Mr. Wiley had said, the final retention
4 amount, meaning the amount of money left over after the
5 expenditures, the expense descriptions in the table, which are
6 correct as stated in the table, would leave a balance of
7 retention amount by the Company of \$1,709.

8 The Company, or at least Mr. Wiley, as he has stated
9 and as I understood, that is correct and reflects the numbers
10 that should be reflected in the table that's in the order. And
11 that also means that the footnote would also need to be deleted
12 and/or corrected.

13 The other -- anyway, I think that answers the
14 question. I'm not sure if there's anything else that Mr. Wiley
15 can think of that needs clarifying.

16 JUDGE KOPTA: Okay. So --

17 MR. GOMEZ: Oh, I'm sorry. Just one more thing is
18 that the final numbers that are reflected in the tariff --
19 meaning the actual credit amount -- are correct. Those do not
20 need to be corrected.

21 So the amount of the credit that is now suspended for
22 Murrey's and American is correct and reflects the accurate
23 number. It's just a table in the way that articulates the
24 retention amount is incorrect.

25 JUDGE KOPTA: Okay. Ms. Woods?

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1 MS. WOODS: I'm sorry to kind of barge in here. I'm
2 Fronda Woods, Assistant Attorney General. I have not entered an
3 appearance in this case, but I've been sitting here this
4 morning.

5 I wanted to get a little bit more clarity about the
6 numbers in the table. I think what's being discussed is that
7 the amount -- the line for "Total Amount Retained by Company,"
8 the number on that line would be changed to approximately
9 56,000. And I think in order to make all of the arithmetic work
10 out, you then would have to delete the line in the table that's
11 labeled "Performance Penalty."

12 MR. WILEY: Yes.

13 MS. WOODS: Because that would have been reflected
14 already in the total amount retained.

15 MR. WILEY: That's correct, mm-hm.

16 MR. TRAUTMAN: Your Honor, would it make sense for
17 Staff and the Company to put together a proposed revised
18 change --

19 JUDGE KOPTA: Yes, it would.

20 MR. TRAUTMAN: -- to the table?

21 JUDGE KOPTA: As a lawyer, I always cautioned the
22 Bench about my math. And as a judge, I'm now cautioning the
23 parties about the same thing.

24 So I think in order to ensure that it's accurate -- I
25 don't want to have another order if we correct this. I want it

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1 corrected so that it's accurate going forward.

2 So I would appreciate a submission -- a joint
3 submission from the parties that identifies what needs to be
4 corrected in the order, and proposes how best to do so in terms
5 of a new table or just a substitution of numbers or whatever.

6 MR. WILEY: Your Honor, would that also include
7 sections of the narrative or the findings and conclusions that
8 that table bleeds into? I assume the answer is yes in terms of
9 the language and --

10 JUDGE KOPTA: I suspect that will be more difficult
11 for the parties to agree on, particularly the discussion
12 paragraph that you referenced, Mr. Wiley.

13 MR. WILEY: Yeah. We will try.

14 JUDGE KOPTA: We will consider whatever you want to
15 propose and whatever Staff wants to propose or whatever the
16 Company wants to propose.

17 Certainly, you know, there will need to be some
18 modification to that, because I agree that there's a difference
19 between \$1700 and 30,000.

20 MR. WILEY: And just as an example to support what
21 you have just stated, on page 5, Section 10, there's the
22 sentence that -- I believe is the third sentence. I'll just
23 read it.

24 It says, "In addition, our prior orders anticipated
25 that the Company would be entitled to keep some of the revenues

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1 under the plan as an incentive for accomplishing plan goals, but
2 neither the Commission nor Staff anticipated a percentage of
3 unspent retained revenues of the magnitude the Company
4 proposes."

5 That would be an example of where I would probably
6 interline for your review.

7 JUDGE KOPTA: At least after the comma.

8 MR. WILEY: Okay.

9 JUDGE KOPTA: So -- no, and I understand that.

10 MR. WILEY: Yeah.

11 JUDGE KOPTA: And I think at this point, like I say,
12 it would be beneficial for the parties to identify those aspects
13 of the orders that they believe should be corrected, and to
14 provide some information or specific proposals as to how it
15 should be corrected.

16 And to the extent possible, we would prefer a joint
17 submission. If there are disagreements, then -- pardon me --
18 competing language would be fine.

19 MR. WILEY: Some form of stipulation or something
20 would be your goal?

21 JUDGE KOPTA: Yeah.

22 MR. WILEY: That's fine.

23 JUDGE KOPTA: Or a letter from one party saying --
24 representing that -- you know, that the other party has reviewed
25 this and agrees, whatever you all can come up with to indicate

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1 that it's coming from both sides.

2 MR. WILEY: Yeah. And I would like to get that in
3 very quickly so that we don't have that hanging over us as the
4 proceeding ensues.

5 JUDGE KOPTA: Yes. All right. Then I think that
6 resolves that issue.

7 Is there anything else to come before the Commission
8 in this proceeding at this point?

9 MR. TRAUTMAN: No, Your Honor.

10 JUDGE KOPTA: All right. Then we are adjourned.

11 Thank you.

12 (Proceeding concluded at 12:37 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON)
4 COUNTY OF KING) ss

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter
7 and Notary Public in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and accurate to
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 22nd day of November, 2011.

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SHELBY KAY K. FUKUSHIMA, CCR

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18 My commission expires:
19 June 29, 2013

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