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

2 JUDGE TOREM: It's now about three minutes  
3 after nine, and we are 30 minutes ahead of the open  
4 meeting. This is Docket TG-081725, and this is the  
5 matter of Northwest Industrial Services, LLC. It's an  
6 application for a solid waste permit in the Spokane  
7 area.

8 My name is Adam Torem. I'm the  
9 administrative law judge. Today's date is Thursday,  
10 February 12th, 2009. We have all the parties on the  
11 line. First let me start with the assistant attorney  
12 general now substituting into the case. Mr. Fassio,  
13 can you give your full appearance?

14 MR. FASSIO: Good morning, Your Honor.  
15 Michael Fassio representing Commission staff. My  
16 address is 1400 South Evergreen Park Drive Southwest,  
17 Box 40128, Olympia, Washington, 98504. My phone number  
18 is (360) 664-1192. Fax is (360) 586-5522, and e-mail  
19 is mfassio@utc.wa.gov.

20 JUDGE TOREM: Mr. David Alvarado is on the  
21 line. He has since hired counsel, who filed a notice  
22 of appearance earlier, Mr. Paul Allison. Sir, can you  
23 go ahead and make that same full appearance for the  
24 record?

25 MR. ALLISON: My name is Paul J. Allison,

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1 Washington State Bar No. 2114. My address is 11315  
2 East 44th Avenue, Spokane Valley, Washington,  
3 99206-9417. My telephone number is (509) 755-7000. My  
4 fax number is (509) 755-7002. My e-mail address is  
5 pjalaw@comcast.net.

6 JUDGE TOREM: Thank you. We have Jim Sells  
7 on the line representing Robert Nichols, doing business  
8 as B&N Sanitary Service. Mr. Sells, are you there?

9 MR. SELLS: I am.

10 JUDGE TOREM: The first item of business is  
11 simply to make official and enter into the record with  
12 your concurrence a series of, I believe, seven e-mails  
13 that were exchanged beginning on Monday, January 26th,  
14 2009. The first one is a note from you, Mr. Alvarado,  
15 sending a letter about a witness who may have, I'll  
16 call it, stage fright. The second one was my response,  
17 same date, January 26th, 2009. Third was a January  
18 27th, 2009, e-mail. It was your response,  
19 Mr. Alvarado, to mine, so continuing that discussion.

20 Fourth is my reply to that, also January  
21 27th. Fifth was another response from me,  
22 Mr. Alvarado, with a follow-up. Sixth is another  
23 January 27th letter. This one is from Mr. Sells just  
24 acknowledging receipt of the e-mail regarding the  
25 reluctant witness, and seventh and eight will be a

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1 recommendation from me, Mr. Alvarado, dated January  
2 27th, 2009, to correspond with the Commission staff's  
3 attorney and Mr. Sells about working out any need for a  
4 continuance, which we will discuss shortly, and the  
5 witness issues, and the eighth and final e-mail that I  
6 want to make part of the official record is at four  
7 o'clock in the afternoon, January 27th, with my note  
8 back to Mr. Sells about the potential continuance and  
9 the issues.

10 So that string of e-mail occurred Monday and  
11 Tuesday of two weeks ago, and after looking at it, it  
12 had enough substantive discussion about what we are  
13 going to discuss today that I just want to send those  
14 eight pieces over to the records center and make them  
15 part of our official record for the hearing. Are there  
16 any objections?

17 MR. SELLS: None from me.

18 MR. FASSIO: None from Staff.

19 JUDGE TOREM: They will get into the record.

20 MR. ALLISON: May I inquire, Mr. Alvarado, do  
21 you have copies of all of those documents?

22 MR. ALVARADO: I think I do, Paul.

23 JUDGE TOREM: Mr. Allison, part of the reason  
24 of putting them in there is to make that publicly  
25 available to any party in the case or any interested

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1 person, so they will all become publically available.

2           On the 10th of February, Mr. Allison, you  
3 filed a motion requesting a continuance of the case  
4 because you had been recently associated and hired as  
5 counsel by Mr. Alvarado, and you wanted to push the  
6 case out to at least April. Mr. Fassio, I understood  
7 you had no objection, and Mr. Sells, did you have any  
8 objection?

9           MR. SELLS: No, I don't. I understand what  
10 it's like to come into a case at the last minute. It  
11 would be hypocritical on my part to object.

12           JUDGE TOREM: I'll grant the motion, and that  
13 takes us to what dates might be best. Again, we are  
14 looking at the Commission finding a hearing room in the  
15 Spokane area, which may yet give us a pause to  
16 reconsider the actual dates that you have available.  
17 We don't know what facilities might be available in  
18 Spokane, but starting with the week of April 13th, my  
19 understanding, Mr. Fassio, you are not available at  
20 least until April 7th or 8th, and I'm not available  
21 until April 13th in that month, so Mr. Sells, do you  
22 have any concerns with the week of April 13th?

23           MR. SELLS: The only thing I've got that week  
24 so far is a dentist appointment, which I would be happy  
25 to cancel.

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1 JUDGE TOREM: Mr. Allison?

2 MR. ALLISON: I had my dental appointment  
3 yesterday and I'm still recovering, but I'm open that  
4 week.

5 JUDGE TOREM: Are we still looking to  
6 schedule two days? I think we had decided we would  
7 hold two days on the calendar. If we got it done in  
8 one, people would travel back, but if we needed two  
9 days, it would be harder to add on a day later, so is  
10 that still going to be sufficient?

11 MR. SELLS: I guess that depends on whether  
12 additional witnesses are added. We spoke about this  
13 yesterday amongst the parties, and I think,  
14 Mr. Allison, correct me if I'm wrong, he was going to  
15 gather together some more witnesses, which I suppose I  
16 can object to, but the response of that would be just  
17 to withdraw it and file again and start all over, so  
18 that wouldn't be make much economic sense for anybody.  
19 With the witnesses as they stand now, I think it's a  
20 one-dayer. If any are added, then it may well be a  
21 two-day.

22 JUDGE TOREM: Mr. Fassio, does Commission  
23 staff concur with that view?

24 MR. FASSIO: Probably. Staff has no  
25 witnesses of its own at this point, so we don't

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1 anticipate adding witnesses from our standpoint, so I  
2 guess it just kind of depends upon how many additional  
3 witnesses might be added by the other parties.

4 JUDGE TOREM: At this time, the exhibits that  
5 I have, Mr. Alvarado, you submitted back on January  
6 28th four different exhibits. There are e-mail from  
7 Cathy Kern, an e-mail from Penny Ingram, a tariff from  
8 B&N Sanitary, Mr. Sells' client, and then some  
9 telephonic witness information. Was there also a  
10 witness list?

11 MR. ALVARADO: No, there wasn't.

12 JUDGE TOREM: So the one witness that is  
13 mentioned in Exhibit 4 is the one witness, Mr. Kress,  
14 that you were looking to put forward at this point.  
15 Then I know, Mr. Sells, you had submitted some  
16 exhibits, including your client's annual report and  
17 equipment list sponsored by your client, Mr. Nichols,  
18 and then Mr. Torre was going to sponsor some  
19 photographs, and then Cindy Low was also going to be a  
20 witness.

21 So right now, we have four witnesses. I'm  
22 sure we could get them done in a single day, but  
23 Mr. Allison, if you are going to send us more than two  
24 additional, I think once we spill over to six or seven  
25 witnesses, it would be safer to have two days reserved.



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1 If we get it done in one day we do, but let's hold it  
2 at two days.

3 Is there any particular pair of dates that  
4 works best that week of the 13th? Would you want a  
5 Monday, Tuesday to facilitate weekend travel, or  
6 Thursday, Friday, or midweek as we had this time  
7 around. I think we were looking for a Wednesday,  
8 Thursday hearing allison.

9 MR. FASSIO: As I point out, I think the 12th  
10 is Easter, so I would prefer not to schedule it for the  
11 early part of the week for traveling.

12 JUDGE TOREM: If I take the dates of the  
13 15th, which is the Wednesday, 16th and 17th and try to  
14 find a facility that has two of those three days  
15 available, would that work for the parties?

16 MR. SELLS: That works for me.

17 MR. ALLISON: That's fine with me.

18 MR. FASSIO: I think that's fine with me, and  
19 I also have Staff's calendar in front of me, and it  
20 looks like Staff are available as well.

21 JUDGE TOREM: Then I will try to find the  
22 15th, 16th, and 17th and hope everybody has their taxes  
23 filed ahead this year and get a facility. Which now  
24 brings us to the next question. If we have a hearing  
25 date from which to work backwards, we need to pick a

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1 new date for, I guess I'll call it a supplementation of  
2 witness and exhibit lists, and Mr. Allison, this will  
3 be for you to review what your client has and file  
4 something.

5           From the past order, I believe we had  
6 required January 30th was the deadline and the hearing  
7 was the 18th, so we were looking at two-and-a-half  
8 weeks. If we follow that model, then we would be  
9 looking toward the end of March. So arbitrarily, how  
10 would Friday the 27th of March look for a new deadline  
11 for supplementation?

12           MR. ALLISON: I think that's reasonable.

13           JUDGE TOREM: The only advantage of earlier  
14 would be to allow you and Mr. Sells and Staff, if they  
15 choose to be involved, to negotiate any resolution to  
16 Mr. Sells' protest, and if he knows who your witnesses  
17 are in advance, Mr. Sells, particularly if he had  
18 exhibits, that may facilitate those discussions on a  
19 wider basis.

20           Mr. Allison, if I give you a deadline and you  
21 want to file them sooner, certainly you can do that,  
22 but I know how deadlines enforcing action. What's the  
23 parties' interest in this case as trying to get  
24 something formally resolved prior to the April 15th  
25 hearing date?

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1                   MR. ALLISON: I would only inquire, does  
2 Mr. Sells anticipate supplementing his witness list and  
3 exhibits?

4                   MR. SELLS: Probably not, but I'll reserve  
5 that right after I see who yours are.

6                   MR. ALLISON: Do we have the opportunity then  
7 to submit further witness and exhibit lists after the  
8 date of 3/27 for response? I think what Mr. Sells  
9 indicated is if I gave him some names that sort of  
10 raises attention that he might have someone that he  
11 would call.

12                   JUDGE TOREM: And there is always the chance  
13 for a rebuttal witness to be called with less notice,  
14 and parties can make a motion to supplement an exhibit  
15 or witness list at any time. The other side can agree  
16 or object to it, and then I have to make a procedural  
17 ruling. So there is always the wild card about what  
18 the judge might do to grant that. There is no  
19 guarantees. All the witnesses that are prenoticed are  
20 essentially guaranteed an opportunity to testify.  
21 Anybody after that date will have to be with  
22 appropriate justification and perhaps over an objection  
23 from the other side.

24                   So my standard, as is most judges', will it  
25 help me understand the case and will it prejudice the

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1 other parties by allowing the witness, and what other  
2 domino effect will it have? If I allow that witness,  
3 do I have to allow a surrebuttal witness? So again,  
4 what do I need to evaluate, Mr. Allison, your client's  
5 application in light of the protest. That's the main  
6 issue here. So I guess that's the long way of saying  
7 yes, you could respond, but as Mr. Sells knows, it will  
8 be at his requirement to justify his and from there we  
9 will go on and on.

10 MR. ALLISON: March 27th is okay with me.

11 JUDGE TOREM: Then we will set March 27th as  
12 the date for supplementation. If Staff wishes to  
13 identify any witnesses at that point, great, and  
14 Mr. Sells, if you want to supplement at that point as  
15 well, but mainly, this is for the Applicant.

16 Are there any other issues we need to take up  
17 this morning in the time we have left? I don't hear  
18 any. So let me summarize again. I'm going to take  
19 this other e-mail correspondence from January 26th and  
20 January 27th and enter it into our formal record, and  
21 I've granted the motion to continue the case, and we  
22 are going to set it out to probably April 15th and  
23 16th; although, it may be the 16th and 17th. As soon  
24 as I can confirm that, I'll issue a notice with the new  
25 dates. Prior to the hearing, any supplemented witness

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1 or exhibit list will be due Friday, March 27th, and  
2 that's all that I've got to summarize. Commission  
3 staff, anything to add?

4 MR. FASSIO: No.

5 JUDGE TOREM: Mr. Sells?

6 MR. SELLS: No.

7 JUDGE TOREM: Mr. Alvarado and Mr. Allison?

8 MR. ALLISON: No, that's okay.

9 JUDGE TOREM: Look for an electronic and hard  
10 copy on a notice of scheduling revision which will  
11 reset the hearing date and give you that other  
12 deadline, and then if you look in our records  
13 management system this time next week, you should be  
14 able to access on line all of the e-mails we discussed  
15 earlier. Then it's about 9:20, and we are adjourned  
16 with plenty of time for the open meeting.

17 (Prehearing adjourned at 9:20 a.m.)

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