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

2 JUDGE MOSS: Good morning, everyone. This is  
3 Dennis Moss, Administrative Law Judge, with the Washington  
4 Utilities and Transportation Commission. We are convened  
5 today for what was noted as a prehearing conference in two  
6 dockets. WUTC against Harold Lemay Enterprises doing  
7 business as Joe's Refuse Service, Docket TG-091769 and WUTC  
8 against Harold Lemay Enterprises doing business as Rural  
9 Garbage Service in Docket TG-091774. Let's take brief  
10 appearances. We don't need the full information, just your  
11 name and who you represent.

12 Mr. Wiley.

13 MR. WILEY: Yes, Your Honor. David W. Wiley  
14 appearing for Respondents Harold Lemay Enterprises, Inc.,  
15 d/b/a Joe's Refuse and Rural Garbage Service.

16 JUDGE MOSS: Mr. Cedarbaum.

17 MR. CEDARBAUM: Thank you, Your Honor. Robert  
18 Cedarbaum, Assistant Attorney General, representing the  
19 Commission staff.

20 JUDGE MOSS: And Mr. Sells was on the phone  
21 earlier. Are you there, Mr. Sells?

22 He was going to check back in with us perhaps, but  
23 if he does we'll hear him come on line and we can take his  
24 appearance then.

25 Just for the record, Public Counsel is not

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1 participating in this proceeding or these proceedings. I  
2 should say they're not consolidated.

3 I understand from some off-the-record discussion  
4 with Mr. Cedarbaum that the parties have reached settlements  
5 in both cases. That's correct, Mr. Cedarbaum?

6 MR. CEDARBAUM: Yes, Your Honor. In both the  
7 Joe's Refuse case and the Rural Disposable case, the staff  
8 and the companies have reached settlement on all issues in  
9 the case which I can briefly describe and tell you the  
10 mechanics for how we propose to present it to the  
11 Commission.

12 JUDGE MOSS: Okay. That would be good. Thank  
13 you.

14 MR. CEDARBAUM: In both cases staff and the  
15 companies have agreed to an overall revenue requirement  
16 increase for the company, not just for the disposal increase  
17 from the tariff under suspension but for all tariffs, all  
18 services provided by the company for tariffs that have not  
19 yet been suspended. We've also agreed to a rate spread or  
20 rate design on how to treat those agreed revenue  
21 requirements.

22 With respect to the Rural docket which is  
23 TG-091774, there is a small refund with respect to the  
24 disposal fees in our agreement, and we've agreed how to  
25 credit those refunds back to customers. Because the

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1 agreement involves tariffs that are not under suspension,  
2 we've also agreed to provisions for customer notice for the  
3 proposed settlement by the parties and an opportunity for  
4 public comment on that settlement proposal, as well as a  
5 request of effective dates for rates to go into effect if  
6 the Commission adopts the settlement proposal which the  
7 parties are obviously recommending that the Commission do.

8           With respect to the mechanics, our goal is to  
9 provide the written formal settlement document and supported  
10 documentation no later than next Friday, and we'll advise  
11 you for some reason that needs be to delayed, but there's no  
12 reason to anticipate a delay.

13           Because this is a full adjudicative proceeding  
14 under the APA, we are going to follow the Commission's  
15 settlement rule with respect to the types of information  
16 that the supporting documentation will include. We have  
17 discussed typically -- or I shouldn't say typically -- but  
18 in other cases that's been done in a question and answer  
19 testimony format. We've discussed, however, doing it more  
20 in terms of a memorandum statement from staff and the  
21 companies covering the items and the rules specifically  
22 which logistically is easier to do.

23           But I think those are the general parameters of  
24 the agreement and the procedures that we have agreed to  
25 follow. Of course, if you have any advice the mechanics of

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1 the documentation that you think we should use instead,  
2 we're happy to hear that advice.

3 JUDGE MOSS: I'd say as a general proposition what  
4 you outlined sounds fine. I need to hear a little more if I  
5 could about how the public comment piece is going to play  
6 into this. Are we just going to have a hearing or are we  
7 going to solicit written comments or what are we to do in  
8 that regard?

9 MR. CEDARBAUM: I think the idea was to follow the  
10 typical procedure that the Commission would have for the  
11 public comments in any solid waste rate case which my  
12 understanding is, and staff will correct me if I'm wrong,  
13 that the public is allowed to submit written comments in the  
14 normal course of e-mail, letters, phone calls, whatever, but  
15 they also are allowed to appear in open meetings. That's  
16 usually the context for oral comments. So I think we would  
17 anticipate a hearing, but it could be done on an open  
18 meeting agenda for the convenience of the Commission and the  
19 parties.

20 JUDGE MOSS: I think we're going to do all of this  
21 in the context of the adjudicatory proceedings. We have to  
22 do it apart from, but we could do it in connection with an  
23 open meeting.

24 MR. CEDARBAUM: That's what I mean. It would be  
25 noticed out like any other public comment hearing in an

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1 adjudication, but just to have the Commissioners we know  
2 they're in the building for an open meeting, here in the  
3 building presumably for an open meeting. The parties can be  
4 here. It's just really a matter of convenience for  
5 everyone, but it is a formal hearing under the APA.

6 JUDGE MOSS: What sort of time frame are we  
7 looking at on that?

8 MR. CEDARBAUM: I think the goal is to try to  
9 again have the settlement and the supporting documentation  
10 filed by next Friday. The notice to customers would go out  
11 soon thereafter, and we're looking on language to make sure  
12 that we're working on agreeable language. It would be a  
13 30-day notice period. So the 30 days would need to run, and  
14 then at that point as soon as the Commission can schedule  
15 it, but it's really the Commission's calendar. So it would  
16 be we could advise the Commission when the notice has been  
17 issued to customers, and it would be no sooner than 30 days  
18 after that.

19 JUDGE MOSS: I think that's probably good, yes.  
20 What I'm thinking is we're probably not going to be able to  
21 set a date today. We better wait and see how things  
22 develop. Well, let's just wait and see how things develop,  
23 and you all keep me apprised of the steps you take along the  
24 way. Of course, I'll see the filings.

25 MR. CEDARBAUM: I mean obviously customers will be

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1 able to submit written comments as soon as they know about  
2 it, but the hearing itself we would need I think 30 days  
3 notice at least.

4 JUDGE MOSS: Yes, we will have to do that. We  
5 will have to allow appropriate notice. Things could develop  
6 in such a way that it won't be necessary to have a live  
7 hearing. We'll see how things progress. If there's no  
8 expression of interest from members of the public, then we  
9 may decide it's not necessary to conduct a live hearing.  
10 I'm simply saying that to identify it as a possibility that  
11 might save some Commission resources in terms of the expense  
12 of conducting a hearing.

13 MR. CEDARBAUM: And the same would go for  
14 witnesses to testify in support of the settlement itself.  
15 That is entirely within the Commission's discretion.  
16 Witnesses will be made available if the Commission wishes.

17 JUDGE MOSS: Right. This is the type of thing  
18 that often can be resolved on the basis of a paper record,  
19 and so I'm more concerned about the public comment component  
20 of it in terms of the hearing than I am in terms of the  
21 evidentiary support that you would provide for the  
22 settlement. I think your idea of providing a memorandum in  
23 form of a narrative, for example, is just fine. So that's  
24 the piece that's sort of an uncertainty in my mind, but  
25 we'll just see how things develop on that front and take it

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1 one step at a time. At the appropriate point in time we'll  
2 be in a position to draft an appropriate order.

3 Okay. Anything else?

4 Mr. Wiley, did you have something?

5 MR. WILEY: A couple things, Your Honor. We also  
6 would intend to request a waiver of the initial order go to  
7 final order. Obviously under these circumstances I hope  
8 that one wouldn't be viewed as unorthodox. We also I want  
9 to kind of just briefly on the open meeting/public hearing  
10 piece, I would think in having been through this in the  
11 solid waste rate area there is not the typical kind of  
12 quorum of public commenters. I understand that we may want  
13 to provide for that here.

14 I would think that we could have that comment  
15 piece as Mr. Cedarbaum suggests recessing the open meeting  
16 as an item issue under utility matters, for instance, And I  
17 just the looked at my calendar. If we have an open meeting  
18 September 30, which would be the fifth Thursday in the  
19 month -- I don't know what the rule is -- is the second or  
20 the fourth or does it go to the fifth when there's a fifth  
21 Thursday in the month? I can't remember. If September 30  
22 is available, that might be ideal. While that might not be  
23 quite at the end of the 30-day period, certainly the  
24 Commission would leave the record open for the three or  
25 four days after to take any comments like they do



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1 conventionally for the open meeting solid waste item.

2 So I just toss that out. I agree with you, Your  
3 Honor, that we can't resolve that today, but that would be  
4 beneficial from the companies' standpoint.

5 JUDGE MOSS: Any comment on that, Mr. Cedarbaum?

6 MR. CEDARBAUM: Only to say that I suggested the  
7 hearing happening during the block of time that an open  
8 meeting is occurring. It doesn't have to be that way.  
9 We're not locked into an open meeting so the Commission can  
10 set the hearing whenever it chooses to set the hearing, if  
11 it chooses to set a hearing.

12 MR. WILEY: And that's a fair point. I was  
13 thinking of efficiency, but we're certainly flexible either  
14 way, Your Honor.

15 JUDGE MOSS: Let's just be sure that we provide  
16 the public an adequate opportunity if we do. I grant it, we  
17 don't see the kind of public input in solid waste cases that  
18 we typically do, for example, in a water case, but this  
19 might be the first time we do. So let's be sure we provide  
20 the public an adequate opportunity to have that.

21 MR. CEDARBAUM: Mr. Eckhardt just reminded me of a  
22 point.

23 JUDGE MOSS: Yes.

24 MR. CEDARBAUM: That the notice should, the notice  
25 to customers should tell them when a public hearing is to

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1 occur; otherwise, we would have to re-notice the customers  
2 again. So perhaps we really need to work out a date for  
3 that to happen today so that that can be included in the  
4 notice.

5 JUDGE MOSS: All right. Well, you were saying  
6 30 days, Mr. Cedarbaum. Other than the fact that that would  
7 be the minimum period I suppose for the rates to go into  
8 effect is there any reason 30 days is a magic number?

9 MR. CEDARBAUM: Just to give customers sufficient  
10 time.

11 JUDGE MOSS: Yes, okay. So I think the statute  
12 and rules would allow for 20 days notice of a hearing.

13 MR. CEDARBAUM: Correct.

14 JUDGE MOSS: So if you all get everything filed by  
15 the end of next week, that would be the 3rd of September.  
16 That's more than 20 days notice of doing something in  
17 conjunction with an open meeting on the 30th. I think that  
18 it would be probably sufficient if we -- Mr. Sells, is that  
19 you?

20 MR. SELLS: Yes, this is me.

21 JUDGE MOSS: Okay. Fine. We'll just note your  
22 appearance on behalf of the WRRRA, and we're coming to a  
23 closure here on our discussion concerning the settlement  
24 agreement the parties have reached, and I can let them brief  
25 you off the record later if you wish.

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1 MR. SELLS. That would be great.

2 JUDGE MOSS: But we're working out some details in  
3 terms of scheduling public comment opportunity in connection  
4 with the settlement since it involves some not previously  
5 suspended tariff changes.

6 I was just going to say that it seems to me that  
7 if you all do get everything filed and have your notice  
8 ready to go by the end of next week as you hope to do  
9 apparently, we could set the 30th open meeting date as a  
10 date for a public comment hearing which I don't know if the  
11 Commissioners will want to be present for that or not. I  
12 have no idea. They probably will just have me do that which  
13 again gets us to the idea we don't have to --

14 MR. CEDARBAUM: I think that works for staff.

15 JUDGE MOSS: Okay. Why don't we just plan it that  
16 way. I'll mention this to the Commissioners today, and if  
17 there's no hue and cry over this unusual process which it  
18 is, then we'll just proceed along those lines. If there is  
19 some concern on the part of the Commissioners, I will let  
20 you know right away and we may have to do something  
21 different. But it sounds workable to me so we'll see.

22 Okay. Anything else we need to talk about?

23 Waiver of initial order, Mr. Wiley. Over the  
24 years we've done that various ways. The most recent in my  
25 experience was under a previous chairman who preferred that

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1 we simply have a waiver of the review and then let the order  
2 become effective immediately, and that would come in the  
3 form of letters from the parties saying we waive review, and  
4 then, of course, the Commission waives its own opportunity  
5 for review, and so in terms of time it's effectively the  
6 same.

7           Whether the current Commission under its new  
8 chairman, under its present chairman would want to revert to  
9 the more traditional method of just simply preparing the  
10 order as a final order, I don't know. But either way we'll  
11 facilitate the finality of the matter.

12           Okay. Anything else?

13           All right. Thank you all very much. I appreciate  
14 your efforts, the Commission appreciates your efforts in  
15 terms of arriving at a settlement of these matters and look  
16 forward to seeing your paperwork in the near term.

17           MR. CEDARBAUM: Thank you, Your Honor.

18           (Prehearing conference adjourned at 10:04 a.m.)

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1 In re: WUTC vs. Joe's Refuse Service

2 Docket No. TG-091769

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I, Shaun Linse, CCR, do hereby certify that the

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foregoing transcript prepared under my direction is a

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full and complete transcript of proceedings held on

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August 27, 2010, in Olympia, Washington.

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Shaun Linse, CCR 2029

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