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7 BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

8 In re Application of

DOCKET NO. TG-081725

9 Northwest Industrial Services, LLC
10 d/b/a American on Site Services,

REPLY TO MOTION OF
PETITIONER FOR LEAVE TO
PURSUE DISCOVERY

11 for Solid Waste Collection Services.
12

13 **COMES NOW** Protestant and respectfully submits the following in reply
14 to Applicant's above-referenced motion.

15 Protestant's position regarding this motion is the same as stated in its
16 "Objection to Data Requests" previously filed in this matter.

17 Specifically, Applicant has not given any qualifying reason why the
18 "discovery rule" should be invoked at this late date. **WAC 480-07-400(2)(b)**
19 lists the criteria for allowing discovery in this type of proceeding. This motion
20 does not specify which of these criteria Applicant believes is applicable, nor
21 does it state why discovery, as opposed to cross-examination at hearing,
22 should be allowed.

23 The information which Applicant apparently wishes to obtain can, and
24 probably will, be the subject of Applicant's case in chief at hearing. Applicant
25 has the burden here, not Protestant. Applicant must prove that Protestant is
26 not providing service "to the satisfaction of the Commission" before it can
meet its second burden of proving that it is fit to provide such service. That is
why we are having a hearing. The information Applicant seeks by discovery is

Reply to Motion of Petitioner for Leave
to Pursue Discovery - 1

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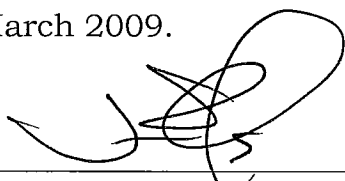
1 information that will be readily available by cross-examination at hearing.

2 The parties have already exchanged witness and exhibit lists. The
3 witnesses, of course, will be subject to cross-examination; and Applicant has
4 had more than ample time to review the proposed exhibits, one of which is
5 Protestant's Annual Report which contains a significant amount of
6 information concerning Protestant's operations, and is of public record, as are
7 any complaints by other witnesses concerning Applicant's activities.

8 Applicant's (and counsel's) professed unfamiliarity with the
9 Commission's rules and procedures is not a valid reason to, in effect, reverse
10 a portion of the Prehearing Conference Order. Applicant chose not to retain
11 counsel in this matter until well after the Prehearing Conference; and the
12 wisdom of that choice is not a matter with which the Commission should be
13 concerned. As in any litigation, pro se litigants are held to the same standard
14 as those with benefit of counsel. It is neither the Commission's, nor
15 Protestant's, duty to bend or ignore the rules simply because an applicant
16 chose not to be represented at a crucial stage of a proceeding.

17 In summary, whatever evidence the Administrative Law Judge needs to
18 formulate an order in this matter will be readily available at hearing. There is
19 no need to take the highly unusual step of invoking the discovery rule in a
20 solid waste application proceeding well after the finding that same was not
21 appropriate in this particular matter.

22 DATED this 6 day of March 2009.

23 
24 _____
25 JAMES K. SELLS
26 WSBA No. 6040
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Attorneys for Protestant

CERTIFICATE OF SERVICE

I hereby certify that on March ^{6th}, 2009, I caused to be served the original and ten (10) copies of the foregoing document to the following address via first class mail, postage prepaid to:

Dave Danner, WUTC Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to: records@wutc.wa.gov

I certify I have electronically sent a PDF version of the foregoing document to:

The Honorable Adam E. Torem
Administrative Law Judge
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1 I swear under the penalty of perjury of the laws of the State of
2 Washington that the foregoing is true and correct.

3 DATED and signed at Silverdale, Washington on March 6th, 2009.

4 
5 Cheryl L. Sinclair
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