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1 BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 In the Matter of the Application)

of )

5 )

BOBBY WOLFORD TRUCKING & ) Docket No. TG-152228

6 SALVAGE, INC. )

)

7 For Authority to Operate as a )

Solid Waste Collection Company )

8 in Washington or Alternatively )

for Exemptions from Commission )

9 Rules Governing Regulated )

Collection of Medical Waste )

10 )

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12 PREHEARING CONFERENCE

13 Pages 1-13

14 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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9:31 a.m.

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SEPTEMBER 21, 2016

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Washington Utilities and Transportation Commission

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1 OLYMPIA, WASHINGTON; SEPTEMBER 21, 2016

2 9:31 A.M.

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4 P R O C E E D I N G S:

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6 JUDGE PEARSON: Okay. Then let's be on the

7 record in Docket TG-152228, which is an application

8 filed by Bobby Wolford Trucking & Salvage, Inc., for

9 authority to operate as a solid waste collection company

10 in Washington.

11 Today is Wednesday, September 21st, 2016, at

12 9:30 a.m., and we are here for a prehearing conference

13 to discuss scheduling and other procedural issues.

14 My name is Rayne Pearson. I'm the

15 administrative law judge presiding over this case.

16 So let's get started by just taking short

17 appearances, beginning with the Applicant.

18 MS. ALVORD: My name is Elizabeth Alvord,

19 and I represent Bobby Wolford Trucking.

20 JUDGE PEARSON: Thank you.

21 And for Waste Management and Rubatino?

22 MS. MCNEILL: Thank you. Polly McNeill with

23 Summit Law Group, and co-counsel Sara Kelly with Summit

24 Law Group on behalf of Rubatino Refuse, Inc., and Waste

25 Management of Washington, Inc.

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1 JUDGE PEARSON: Okay. Great.

2 And for Republic Services?

3 MR. WILEY: Good morning, your Honor. David

4 Wiley representing Rabanco, Republic Services.

5 JUDGE PEARSON: Okay. Thank you.

6 And Mr. Sells, did you want to introduce

7 yourself?

8 MR. SELLS: Yes, your Honor. James Sells

9 representing proposed Intervenor, Washington Refuse &

10 Recycling Association. I also have co-counsel,

11 Mr. Whitaker, who will not be here today.

12 JUDGE PEARSON: Okay, great. Which brings

13 us to our first issue, which is the WRRA's petition to

14 intervene.

15 Mr. Sells, would you like to speak briefly

16 to your petition?

17 MR. SELLS: Thank you, your Honor. This --

18 we see this matter as having two primary issues, one

19 being the issue of use of equipment, and who picks the

20 equipment, and whether other companies have the right to

21 get the equipment if they don't -- if, in fact,

22 equipment is -- special equipment is needed. That's

23 something that would affect the entire industry

24 statewide.

25 Secondly is the issue of fitness. This is

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1 an applicant who is coming off a couple substantial

2 fines. And, once again, this is kind of unusual to us,

3 and it's something that's going to have to be decided,

4 and it will be precedential for the entire statewide

5 industry.

6 JUDGE PEARSON: Okay. Thank you.

7 Is there any objection to WRRA's petition to

8 intervene?

9 MS. ALVORD: No objection.

10 JUDGE PEARSON: Okay. Since there is no

11 objection, I will grant the petition for intervention.

12 And next, I would like to clarify the scope of the

13 proceeding and the application.

14 When I read the application, I see that it's

15 narrowly tailored to provide solid waste collection

16 services of debris from construction sites, it looks

17 like, using the specialized end dump, side dump and belt

18 trailers within the boundaries of King and Snohomish

19 Counties.

20 And again, when I read the application, it

21 looks as though the Company is asserting that no

22 incumbent hauler is able to provide this service at the

23 time, not that the service is being provided but not to

24 the Commission's satisfaction.

25 So you are proposing to operate different

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1 service as opposed to an overlapping service; is that

2 correct?

3 MS. ALVORD: That's correct.

4 JUDGE PEARSON: Okay. I just wanted to

5 clarify that on the record.

6 So my next question is whether the parties

7 want the discovery rules to be available.

8 MS. MCNEILL: Your Honor, Polly McNeill for

9 Rubatino and Waste Management.

10 On your prior point, I appreciate your

11 question to the Applicant to clarify that. Of course, I

12 would assume that, if we have evidence that there are

13 carriers performing this service, that the issue would

14 become subsumed into the Applicant's position that no

15 service is being provided. We're certainly not willing

16 to concede that the service is not being provided at all

17 at this point.

18 JUDGE PEARSON: Right.

19 MS. MCNEILL: Okay.

20 JUDGE PEARSON: I think that's what we're

21 here to determine is whether this service is being

22 provided.

23 MS. MCNEILL: Thank you. I just wanted to

24 clarify that. I appreciate that.

25 JUDGE PEARSON: Okay.

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1 Any comment on the discovery rules?

2 MS. MCNEILL: Oh, well, we think that there

3 would be a need for some discovery in this case, so we

4 would appreciate having the opportunity to explore,

5 prior to the hearing, some of the factual bases for the

6 Applicant's assertions.

7 MR. WILEY: Yes, your Honor. On behalf of

8 Republic Services, I would say that, particularly

9 because of the issues that were framed by Mr. Sells in

10 terms of the WRRA's role, that those issues also would

11 pertain to the protestness [sic] in terms of developing

12 evidence about the use of equipment, particularly in

13 this case.

14 JUDGE PEARSON: Okay. And I agree, and it

15 sounds like we're on the same page, that discovery

16 should be used in this case for the limited purpose of

17 looking at whether or not the service is the same. I

18 don't think we need to go down the road of looking at

19 the Company's fitness, because I don't think we will

20 necessarily reach that question. We'll just be looking

21 at whether or not the service is being provided by the

22 incumbent haulers. So just keep that in mind when you

23 draft your discovery requests.

24 And so is there a need for a protective

25 order? I'm hearing nothing on that, so we won't issue

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1 one then.

2 And do each of the parties consent to

3 electronic service, if the Commission decides to serve

4 documents in that manner?

5 MS. MCNEILL: Yes, very definitely for Waste

6 Management and Rubatino, we do, thank you.

7 JUDGE PEARSON: Great.

8 MR. WILEY: Your Honor, on that issue, could

9 we also waive service by mail, at least of the parties

10 versus the Commission and you?

11 JUDGE PEARSON: Yes.

12 MR. WILEY: Okay. Thank you. We would so

13 waive if it's approved by everyone else.

14 MS. ALVORD: Agreed.

15 JUDGE PEARSON: Okay.

16 MR. SELLS: Correct, your Honor. Thank you.

17 JUDGE PEARSON: Great. Thank you.

18 So that brings us to the schedule. I don't

19 think that it's necessary to brief out testimony in this

20 case because, again, the issues are relatively limited

21 and narrow. So what we need to do is set a hearing

22 date, working back from there, setting a date one week

23 prior by which parties must file exhibit and witness

24 lists, and at least ten days prior to that date the

25 cutoff for discovery.

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1 So just to be clear, because this is a

2 little bit different, and it's not necessarily laid out

3 in the procedural rules, the exhibit list should include

4 descriptions of each exhibit, and the witness list

5 should provide the name of the witness and a brief

6 summary of the witness's testimony and a time estimate

7 for their testimony.

8 So have the parties had the opportunity to

9 discuss a hearing date in advance or -- okay. That's

10 okay. So just so you know what works for my schedule

11 and for this room, because that's what I've looked into,

12 I do have some possible hearing dates in mid-November,

13 and what I have is November 9th, November 14th,

14 November 16th, November 18th and November 22nd.

15 MR. WILEY: Your Honor, November 22nd, I

16 believe, is the week in which -- is that the week this

17 year that Thanksgiving --

18 JUDGE PEARSON: Thanksgiving, yes.

19 MR. WILEY: Thank you.

20 JUDGE PEARSON: Yes. So if you don't want

21 to do it that week, I understand. So do you need a few

22 minutes? I don't know that I necessarily need to leave

23 the room, but maybe we can go off the record for a few

24 minutes and discuss amongst the parties --

25 MS. MCNEILL: Why don't we do that.

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1 Presently, the dates are all good with me, but we should

2 work together and see what works for everybody, if you

3 don't mind.

4 JUDGE PEARSON: Okay. We will take a short

5 recess then.

6 MS. MCNEILL: Thanks.

7 (A break was taken from 9:40 a.m.

8 to 9:43 a.m.)

9 JUDGE PEARSON: Okay. All right. Well,

10 let's go ahead and go back on the record then. And

11 while we were in a brief recess, the parties had the

12 opportunity to discuss a hearing date, which it looks

13 like Ms. Alvord is going to inform me of.

14 MS. ALVORD: Yes. We decided on the 14th of

15 November.

16 JUDGE PEARSON: Okay.

17 MS. ALVORD: And the witness and exhibit

18 lists, then, would be due on the 7th.

19 JUDGE PEARSON: Okay.

20 MS. ALVORD: And discovery would be

21 completed, or the discovery cutoff date would be the

22 28th of October.

23 JUDGE PEARSON: Perfect. Okay.

24 And did you decide whether you wanted a

25 morning or afternoon hearing?

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1 MS. KELLY: It would be my strong preference

2 to do it in the morning.

3 JUDGE PEARSON: Okay. That's fine.

4 MR. WILEY: Do you think we'll get through

5 in a morning session, your Honor?

6 JUDGE PEARSON: Most likely, but it would

7 probably be safer to set it for the morning just in case

8 it does spill over into the afternoon. Okay.

9 And what about start time? Would the

10 parties prefer 9:00 or 9:30 or 10:00?

11 MR. WILEY: 9:30.

12 MS. KELLY: 9:30 is fine.

13 MS. ALVORD: 9:30 is fine.

14 JUDGE PEARSON: Then we would do 9:30 on

15 November 14th. Okay.

16 Is there anything else that we need address

17 while we're here?

18 MS. MCNEILL: No.

19 MR. WILEY: Nope.

20 JUDGE PEARSON: Okay. Then I will issue an

21 order reflecting everything that was discussed here

22 today, and we will be adjourned until the hearing on the

23 14th of November.

24 MS. MCNEILL: Thank you.

25 MS. KELLY: Thank you.

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1 JUDGE PEARSON: Thank you very much.

2 MS. ALVORD: Thank you.

3 MR. WILEY: Thanks.

4 (Hearing concluded at 9:45 a.m.)

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3 STATE OF WASHINGTON )

) ss.

4 COUNTY OF KING )

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7 I, ANITA W. SELF, a Certified Shorthand Reporter

8 in and for the State of Washington, do hereby certify

9 that the foregoing transcript is true and accurate to

10 the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this 26th day of September, 2016.

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