

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TG-081725 of

NORTHWEST INDUSTRIAL SERVICES,
LLC d/b/a AMERICAN ON SITE
SERVICES

For a Certificate of Public Convenience and
Necessity to Operate Motor Vehicles in
Furnishing Solid Waste Collection Service

DOCKET TG-081725

COMMISSION STAFF'S RESPONSE
TO APPLICANT'S MOTION FOR
LEAVE TO PURSUE DISCOVERY

1 Commission Staff (Staff) respectfully submits this response to Northwest Industrial
Services, LLC's (Applicant) Motion for Leave to Pursue Discovery:

2 Staff does not object to the Applicant's motion. Although Commission rules do not
specify that a contested application for a solid waste certificate meets the criteria for the
formal methods of discovery described in the rules, discovery is available in "any
proceeding in which the Commission, in its discretion, determines that the needs of the case
require the methods of discovery specified in this rule." WAC 480-07-400(2)(b)(iv). The
Prehearing Conference Order (Order 01) in this case allows that, while "it does not appear
that formal discovery will be required...if the need for discovery becomes apparent later,
any party may request by motion that the Commission allow for discovery pursuant to the
Commission's discovery rules." See Order 01, ¶ 6. Granting the motion requires
modification of Order 01 to invoke these rules. Each party would be subject to the rules.

3 The Parties may agree to informal discovery procedures, in addition to, or in place of, formal discovery. WAC 480-07-400(b). It is apparent from B&N Sanitary Service's (Protestant) objection, and the Applicant's subsequent motion, that the Parties have not agreed to exchange discovery between them informally.

4 The Applicant has supported its motion with reasons setting forth a need to submit discovery on the Protestant in the form of a data request. The Applicant's motion does not appear to indicate an improper purpose for conducting discovery, as would be prohibited under WAC 480-07-400(3) if the rules are invoked. Rather, the Applicant has stated a belief that discovery is needed in order to "present evidence that would enable the Commission to properly rule on its application." According to the motion, this need has become apparent to the Applicant since the prehearing conference. Staff has not seen the contemplated data requests or any responses, so Staff cannot state an opinion as to any evidence yet to be offered. However, because the Applicant presumably will respond in its direct case to the protest, and must show that the existing carrier is not providing service to the satisfaction of the Commission, the motion seems reasonable. Without having seen the data requests, it is not clear to Staff that the information sought to be obtained should be withheld from discovery by the Applicant in advance of the hearing, and only available to the Applicant through cross-examination.

5 Staff notes that the Applicant's Motion for Continuance, filed February 13, 2009, contemplates that "it may be necessary to conduct formal discovery." See Motion for Continuance, page 3. The motion was brought in advance of an agreed-upon new deadline for supplementing witness and exhibit lists (March 27, 2009), and well before hearing. However, these deadlines are fast approaching. Given the response time for data requests, the Applicant, if this motion is granted and it chooses to conduct discovery, should take into

account the potential burdens upon a responding party to answer in a timely manner, and other issues of scope, frequency, and extent set forth in WAC 480-07-400(3).

6 The Commission will not consider or treat as evidence any response to a data request unless and until it is entered into the record. WAC 480-07-405. The Commission need not address admissibility at this time, because no data request responses have been offered for admission.

7 Finally, as a general matter, exchanging discovery can help all parties identify and streamline issues and facts for hearing, and focus testimony. Staff is neither the proponent, nor the direct recipient, of the data requests at issue. However, Staff is entitled to receive copies of any data requests, and responses exchanged between the other parties, under WAC 480-07-405(2) and WAC 480-07-405(7)(a). For this reason, and the reasons set forth above, Staff has an interest in the timely resolution of the Applicant's motion, and does not object thereto.

DATED this _____ day of _____, 2009.

Respectfully submitted,

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