

0002

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

2 JUDGE MOSS: Let's be on the record then.

3 Good afternoon, everyone. We are convened this
4 afternoon in the matter styled Murrey's Disposal
5 Company, Inc., G-9, against Waste Management of
6 Washington, Inc., G-237, Docket Number TG-030673. This
7 is our first prehearing conference, and I'm Dennis
8 Moss. I'll be the presiding administrative law judge
9 in this proceeding. The commissioners will not be
10 sitting, and we will take up the question later of what
11 we want to do about a initial decision in the case in
12 light of the fact they are not sitting.

13 The first order of business is to take
14 appearances, and so I suppose it would be most
15 appropriate to begin with our complainant.

16 MR. WILEY: David W. Wiley with the law firm
17 of Williams, Kastner, and Gibbs, Suite 4100, 601 Union
18 Street, Seattle, Washington, 98101. My phone number is
19 (206) 628-6600. My fax number is (206) 628-6611. My
20 direct line is (206) 233-2895, and my e-mail address is
21 dwiley@wkg.com. I'm appearing today on behalf of
22 Murrey's Disposal Company, Inc.

23 JUDGE MOSS: Is your address still Two Union
24 Square?

25 MR. WILEY: Yes.

0003

1 JUDGE MOSS: For Waste Management?

2 MS. MCNEILL: Polly L. McNeill, Summit Law
3 Group, 315 Fifth Avenue South, Suite 1000, Seattle,
4 Washington, 98104. My phone number is (206) 676-7000.
5 Fax is (206) 676-7001. E-mail is pollym@summitlaw.com,
6 and I'm representing Respondent Waste Management of
7 Washington, Inc.

8 MR. SELLS: If Your Honor please, James Sells
9 with the law firm of Ryan, Sells, Uptegraft
10 representing proposed intervenor, Washington Refuse and
11 Recycling Association. Our address is 9657 Levin Road
12 Northwest, Silverdale, Washington, 98383; telephone,
13 (360) 307-8860; fax, (360) 307-8865; e-mail,
14 jimsells@rsulaw.com.

15 MS. TENNYSON: Mary M. Tennyson, senior
16 assistant attorney general on behalf of Commission
17 staff. My address is 1400 South Evergreen Park Drive
18 Southwest, Post Office Box 40128, Olympia, Washington,
19 98504-0128. Telephone is (360) 664-1220; fax, (360)
20 586-5522; e-mail, mtennyso@wutc.wa.gov.

21 JUDGE MOSS: Anyone on the conference bridge
22 line? Apparently not. Thank you all for your
23 appearances. Why don't we take up the petition to
24 intervene. We have the written petition from the WRRRA,
25 and let me ask if there is any objection?

0004

1 MS. MCNEILL: I have no objection.

2 MR. WILEY: No, Your Honor.

3 MS. TENNYSON: Staff does not object.

4 JUDGE MOSS: I think the petition is complete
5 on its face, and there being no objection, the petition
6 will be granted, Mr. Sells.

7 MR. SELLS: Thank you, Your Honor.

8 JUDGE MOSS: At this point, I want to take up
9 any motions or requests from the parties, and the two
10 that are sort of standard matters are the question of
11 whether discovery might be required in this proceeding,
12 so Mr. Wiley, your complaint.

13 MR. WILEY: We've had a number of discussions
14 amongst counsel about the issue of triggering the
15 discovery rule in this proceeding. I think Ms. McNeill
16 and I have different views of whether or not it's
17 applicable on its face, and I will let her state her
18 rationale for why it isn't.

19 My concern at this point, Your Honor, is that
20 we are still in the process of gathering evidence in
21 anticipation of a hearing. At this point, I would be
22 willing to hold in abeyance a request for triggering
23 the discovery rule, but I would reserve the right to
24 make a request to trigger the rule in the near future
25 if I feel it would be helpful to the burden of proof

0005

1 that we face in terms of amassing additional
2 documentary and testimonial evidence.

3 I don't know. I lead to you and Ms. Tennyson
4 in terms of your experience in complaint cases, perhaps
5 in utility matters, as to how I would be able to raise
6 that either by a separate motion or a renewed
7 prehearing conference. I think at this point, I am
8 willing to accept the issue of not triggering it now,
9 but I do want to reserve the right to seek your
10 approval to trigger it a little later on in the summer
11 if I need to.

12 JUDGE MOSS: It's not essential that it be
13 done today and that the decision be made today, and you
14 could reinitiate your request through a written motion,
15 and I don't want to cut anybody off. If anybody else
16 wants to be heard on the issue today, I'm happy to
17 listen, or since it's not being expressly requested, we
18 can simply hold any argument on the subject until such
19 time if it is requested.

20 MS. MCNEILL: I think that's fine. As
21 Mr. Wiley said, I don't read the rule to support at
22 this mandatory invocation of the discovery rule in this
23 case. I recognize the discretion you have in making
24 that determination, however, and I guess at this point,
25 I feel that if we are just going to hold off on a

0006

1 decision about that, I will wait and see if it is
2 invoked and whether I have a position at that time.

3 JUDGE MOSS: I think that's just fine. I
4 think that would probably answer the next standard
5 question, which is whether the parties perceive a need
6 for a protective order. In the absence of formal
7 discovery, that certainly would not be indicated. So
8 if it should become appropriate then, that also can be
9 raised by motion. Are there any other preliminary
10 motions or requests that we need to consider before we
11 talk about process and procedural schedule? Apparently
12 not.

13 I do want to talk about the process and
14 procedural schedule then, and I really throw it open to
15 you all to tell me what do we need to do in this case,
16 when would you like to do it, and assuming a hearing is
17 indicated, where do you want to do it, and I will just
18 say that I would like to hear from you in connection
19 with that, whether anyone is contemplating filing a
20 dispositive motion, and if so, we would want to build
21 that into our schedule, and finally, in terms of
22 process, the question of whether you all would wish to
23 waive the initial decision and have me essentially
24 certify the record to the commissioners for the final
25 decision at the end of the process. We can do that

0007

1 either way. Of course, if I do an initial decision,
2 then you have the opportunity to seek administrative
3 review and the commissioners look at it that way, so
4 it's a question of whether it's a one-step or two-step
5 process.

6 With that, I keep turning to the complainant
7 simply because that seems to be the logical order of
8 things, and ask first, Mr. Wiley, what your preferences
9 are in terms of the questions I've posed.

10 MR. WILEY: I think I'll sort of skip around
11 in terms of responding. First of all, I had some
12 discussions yesterday with Ms. Tennyson about the
13 historical experience procedurally about timing and
14 about prefiling testimony. I don't believe any of the
15 three of us have had a commission proceeding involving
16 a complaint against a solid waste carrier at the UTC
17 level. Most of the experience I have is in the
18 trucking nonuse field and some experience in the boat
19 field, but Ms. Tennyson was indicating that the
20 procedure and complaints cases in the telecom area had
21 involved prefiled testimony and has varied in terms of
22 whether there is cross-examination immediately after
23 the prefiling of the testimony or whether the hearing
24 itself is convened at the end of the three phases of
25 prefiled testimony, that being the complainant's, the

0008

1 respondent's, and the rebuttal, so I'm open.

2 I certainly want to hear from Ms. Tennyson or
3 other counsel about their concerns. I think my concern
4 and I think Ms. McNeill's concern is that we each have
5 sufficient time, if we do the prefiling route, to
6 prepare our cases in response either to my case or
7 leading up to the filing of my case, so I think I want
8 to build in time for that. As far as live hearings
9 versus prefiling, I don't have any preconceived
10 position yet. I wanted to hear from the parties. I
11 don't know if you want to do that on the record or off
12 record.

13 JUDGE MOSS: Unless it gets excessive, let's
14 keep it on the record.

15 MR. WILEY: I wanted to mention to not forget
16 to ask you about the initial order versus the final
17 order. I think most of us are familiar with the
18 process where you issue an initial order and it goes
19 before the commission. I'm probably most comfortable
20 with that just because that is what I'm most familiar
21 with. If there are time constraints that the
22 commission is laboring under at the present time where
23 that would affect that, I would want to know. I
24 believe you were involved in the Drop Boxes case in
25 terms of being a hearing examiner. I think we used an

0009

1 initial order and a final order in that case, and that
2 was a show-cause proceeding but similar to a complaint
3 case.

4 JUDGE MOSS: It was. I think Greg Trautman
5 was involved, but I know Mr. Sells and yourself were
6 both involved in that proceeding. That's probably as
7 close a case in my experience to this as we have had in
8 terms of process. I don't recall. Did we use prefile
9 testimony in that case?

10 MR. WILEY: I don't believe we did. There
11 was a pro se respondent in that case, and I think it
12 was all live.

13 JUDGE MOSS: We did that in one hearing down
14 in Battle Ground, as I recall. In terms of hearing, I
15 do prefer to do it in a single hearing rather than the
16 multiple-stage hearing that some of you are familiar
17 with in years past. We've been following the
18 single-hearing model for some time in the utility
19 sector now, and I find it to be most efficient.

20 MS. MCNEILL: Your Honor, the only comment I
21 have, I don't know if I have a preference, but
22 Mr. Wiley is correct. The limitations of experience in
23 complaint proceedings is shared by all, and I'm a
24 little, I guess "confused" is the right term to use
25 about how the process works when the burden of proof is

0010

1 on the complainant.

2 At this point in time, until I know what
3 evidence the complainant has, I have no idea what kind
4 of responsive testimony or evidence or documents might
5 be needed, and so I guess if you are not interested in
6 having multiple hearings, because that would be one
7 procedure that I think would accommodate my interests
8 and concerns if we have a hearing where Mr. Wiley could
9 forward his case and then had a break for me to prepare
10 my responsive testimony and evidence, and that would
11 give me a chance to be able to know what it is he
12 actually is basing the complaint on.

13 But we have discussed that issue, and an
14 alternative is to use prefiled testimony. I don't know
15 whether prefiled testimony would be required from both
16 of us or whether we would use prefiled testimony from
17 the complainant and then go into a hearing. I think we
18 could probably discuss the variations on that theme,
19 but the one point that I remain consistently concerned
20 about is to have the opportunity to have Mr. Wiley show
21 me what he's got so I could figure out really what it
22 is that needs to be responded to.

23 JUDGE MOSS: Have the parties had an
24 opportunity to discuss this case amongst themselves
25 prior to today?

0011

1 MR. WILEY: Not amongst the representatives.
2 Amongst counsel, yes.

3 MS. MCNEILL: We have discussed it
4 procedurally. I have no idea what evidence Mr. Wiley
5 has, and I think one of the fair topics for us to
6 explore today is the nature of that evidence and the
7 scope of it, what is relevant and what is not relevant,
8 those kinds of things.

9 JUDGE MOSS: It would be worth exploring as
10 well the question of whether we might proceed in this
11 case on a stipulated record. While it strikes me there
12 are issues of fact implicated by the complaint, and
13 certainly those will need to be resolved, it may be
14 that the essential facts are not controverted. We
15 don't know at this juncture, of course. In other
16 words, the case may boil down to a question of law, so
17 not wanting to cut things off prematurely, I wonder if
18 it would be appropriate to take a brief recess and let
19 the parties discuss amongst themselves the process
20 possibilities and where they are.

21 Would that be helpful if I gave you fifteen
22 or twenty minutes to discuss among yourselves where the
23 case is, a sort of status conference? Perhaps you
24 could have some brief discussion about the sort of
25 evidence, the sort of facts that may or may not be in

0012

1 dispute, and that might make things more efficient.

2 Would that be worthwhile?

3 MR. WILEY: We certainly want Ms. Tennyson
4 involved in terms of the process experience.

5 JUDGE MOSS: I can either stay or go as you
6 prefer, but I was thinking we could have an informal
7 chat off the record.

8 MS. MCNEILL: Sure.

9 JUDGE MOSS: Let's be off the record.

10 (Discussion off the record.)

11 JUDGE MOSS: I understand that parties have
12 had an opportunity to confer among themselves regarding
13 a process and schedule, and who will be the
14 spokesperson?

15 MR. WILEY: I can start out, Your Honor, and
16 I'm sure I will be interrupted if I misstate. I think
17 the parties, we have one issue in dispute, but in terms
18 of scheduling and hearing your preferences about how
19 the hearing would be convened in terms of not phasing
20 it over the prefiling, I think we can agree that the
21 complainant will prefile. The respondent will respond
22 at a date. There will be a rebuttal filing of
23 testimony possible, and then the hearing about two
24 weeks after the rebuttal is filed, and I understand
25 from Ms. Tennyson, and I was checking this yesterday,

0013

1 there is no suspension time period that we are facing,
2 so we have reached agreement on some tentative dates,
3 obviously, subject to your input.

4 They would be that the complainant's case
5 would be prefiled by September 30th. The respondent's
6 response would be prefiled November 10th. The rebuttal
7 would be December 1, and the hearing would ideally be
8 scheduled the week of December 15th. We also were
9 mindful of not wanting to brief during Christmas
10 vacation. If we could have some briefs due after into
11 January, that would be fine.

12 We also talked about, at least Ms. Tennyson
13 and I talked, and I think Ms. McNeill overheard, the
14 concept of an initial order versus a final order. I am
15 comfortable with there not being an initial order in
16 this case. I don't know how the other parties feel.
17 I'm flexible either way, and I will see to the majority
18 view on that, but that is my feeling.

19 I would also like to request that we have the
20 hearings in Clallam County for the convenience of my
21 witnesses, at least, and I would recommend that we not
22 have the hearing on a Monday, if we could avoid that.
23 If it could be a Tuesday, Wednesday, Thursday or
24 Friday, and I think two days will be necessary for the
25 hearing.

0014

1 JUDGE MOSS: Is Sequim in Clallam County?

2 MR. WILEY: Yes.

3 JUDGE MOSS: And that's supposed to be nice
4 in the winter? We will think about Sequim or Port
5 Angeles then.

6 MR. WILEY: The only issue in dispute, and I
7 would like to hear from the other counsel, if you
8 wouldn't mind coming back to me, is the discovery rule
9 triggering.

10 MS. MCNEILL: Your Honor, it seems to me that
11 the phased approach of prefiling testimony, I am
12 comfortable with permitting discovery along with those
13 phases so that when Mr. Wiley files his prefiled
14 testimony, I would get to do discovery on that, and
15 then when I prefile my responsive testimony, he would
16 get to do discovery on that. Whether it be necessary
17 for rebuttal, I don't know, but that would be the way
18 that I would support moving forward if we do any
19 discovery.

20 But discovery prior to the prefiled testimony
21 from Mr. Wiley is something I would object to, and at
22 that point, I would argue that literally reading the
23 rule, the discovery rule does not apply in this case.
24 I would agree to allowing it to apply in the phase
25 approach I've suggested, but the crux of this case

0015

1 really has to do with whether there have been incidents
2 where customers have been turned down for service and
3 refused service and told the company is unavailable,
4 and I object to the notion of having Mr. Wiley go on a
5 fishing expedition with my client when certainly to
6 file a complaint, he must have had sufficient evidence
7 to support the complaint, and I think the burden is on
8 him to come forward with telling us what he does have,
9 and then we can proceed on a discovery path.

10 MR. WILEY: My concern about that is that it
11 appears to be a one-way street. We do have the burden
12 of proof and we acknowledge that, and part of
13 marshalling our case involves seeking information which
14 may be uniquely in the possession of the respondent.

15 My concern on the timetable or the issues
16 that we have addressed off record remains only the
17 issue of being precluded from seeking any discovery
18 from the respondents until after my case in chief is
19 filed, and then I am hemmed in, Your Honor. If there
20 is information that is uniquely within possession of
21 the respondent, which is entirely possible in this kind
22 of case, I think I should have the right to identify
23 and discover that before I'm hemmed in by my case in
24 chief through pre-filing of testimony. I'm not opposed
25 to holding off triggering the discovery rule until,

0016

1 say, 30 days before I have to prefile, but not being
2 able to trigger the discovery rule until after my case
3 in chief is filed seems to me to hamstring the party
4 who has the very uphill burden of proof in this case.

5 JUDGE MOSS: Anyone else want to be heard on
6 the question of discovery? Anything further?

7 MS. MCNEILL: No. I guess I would add that
8 it doesn't seem consistent with policy of equity that
9 it's almost like a Fifth Amendment right that we would
10 have. To ask us to provide the evidence that's
11 going to be used against us, it just doesn't sit right
12 with me, I guess.

13 JUDGE MOSS: A case like this is more akin to
14 civil litigation than much of what we do in
15 administrative adjudication. Certainly in the context
16 of civil litigation, it is commonplace for complaints
17 to be filed on the basis of information in a brief-type
18 pleading, which is this one, and then for discovery to
19 follow, whether it be through the interrogatories,
20 request for admissions, depositions, or what have you.
21 It's a rare thing, I think, that a complainant's case
22 is fully worked out at the time the complaint is filed,
23 so there would be a lot more motions for summary
24 determinations filed with the complaints. I think it's
25 certainly the case that there may be information you

0017

1 need within the hands of the respondents.

2 The other thing I would say in this
3 connection, and you can sense my drift here, often
4 times, some early discovery can do much to either bring
5 a case to an early termination, well, in a variety of
6 ways. It may be that upon discovery, the complaining
7 party finds out the case is somewhat different than
8 imagined, and the case might be voluntarily withdrawn.

9 On the other hand, it may be that as the
10 parties have some opportunity to see each other's
11 respective theories through the discovery process that
12 an early settlement can be achieved by the virtue of
13 having done some exchange of information where
14 previously, there may have been some misconceptions, so
15 I do see some advantages to it, and I think the final
16 point that I will make in allowing the discovery to go
17 forward, as I'm inclined to do, is simply to the extent
18 it's burdensome or in other ways objectionable, there
19 is still the opportunity for you to seek a protective
20 order, and it can be shut down in that way if
21 appropriate.

22 What I would expect to happen would be that
23 both the amount and the scope of the discovery would
24 be, I would think, fairly constrained in a case like
25 this, so if it proved to be otherwise, you certainly

0018

1 could come back and we could adjust the situation, but
2 I think I do think it's important there be an exchange
3 of information and the opportunity for that. This case
4 does have some industry-wide significance. I'm not
5 aware of precedent on this specific point. I can't say
6 I've researched it either, but nothing immediate came
7 to mind.

8 MS. MCNEILL: There actually is a court of
9 appeals decision that is exactly on the point.

10 JUDGE MOSS: Maybe you can give me the cites
11 to that, and I could read that to prepare myself.

12 MS. MCNEILL: I would be happy to. While I'm
13 doing that and in reaching for that, but in light of
14 that precedent, is there any mechanism that we could
15 use in discovery to identify the scope of discovery so
16 it isn't just a fishing expedition, so that it actually
17 is tailored to the legal issues that are on point?

18 JUDGE MOSS: I find the complaint fairly
19 narrowly drawn on what would be relevant. The
20 essential element of the complaint, as I see it is --
21 well, two, I suppose, in terms of factual assertions,
22 the one being that Waste Management has not, in fact,
23 in 12 months provided services certificated to provide
24 in the territory at issue, and the other being -- well,
25 I'm not quite sure how to phrase it. Such service has

0019

1 not been made available on request, or something along
2 those lines. I don't have it committed to memory, but
3 basically, those two issues are facts that have been
4 asserted and that would need to be proven, and there is
5 the question of applying the law in 81.77.030(6).

6 MS. MCNEILL: If I may, Your Honor, the
7 citation is to Harold LeMay Enterprises versus the UTC.
8 It's at 67 Washington Appeals 878, 1992, and it
9 reverses order MVG No. 1403 of August 1989, and under
10 that decision -- in fact, the first prong of the
11 statement you just made is not relevant. Whether the
12 company has actually been providing service or holding
13 itself out for service is not the relevant inquiry.
14 The relevant inquiry is limited to whether it has been
15 unavailable for service or has refused service, and
16 that's the reason that I'm asking that we narrowly
17 constrain the scope of discovery, because it seems to
18 me those are the only factual issues that are relevant
19 in this case.

20 JUDGE MOSS: But there may be no dispute as
21 to whether the company has or has not provided service,
22 so there wouldn't be much discovery to be had anyway.

23 MS. MCNEILL: That's correct.

24 JUDGE MOSS: I find this case interesting --
25 I'll tell you that -- from a legal perspective because

0020

1 the opportunity to be here today caused me to go back
2 and review the statutes, and I haven't looked at them
3 in awhile. Of course, we have the provision there in
4 81.77.030(6) that talks in terms of providing service
5 in the 12 months.

6 But then we have, I think it's actually in
7 the very next section of the statute, 040, that talks
8 in terms of applications for certificates, and there,
9 the standard is stated in terms of applications for
10 overlapping authority being turning on the standard of
11 providing service to the satisfaction of the
12 commission, which is a standard we see elsewhere in our
13 transportation statutes as well.

14 So it's not stated quite the same way. To
15 me, it raises some interesting legal questions about
16 what exactly we are looking at here. I'm not sure it's
17 perfectly clear. I will read this case, of course, and
18 appreciate the citation to it. Again, I would expect
19 any discovery to be fairly limited in scope. Is that
20 what you are envisioning, Mr. Wiley?

21 MR. WILEY: Yes.

22 JUDGE MOSS: I would think if it proved to be
23 burdensome or objectionable to you that you would bring
24 that to my attention, and I will be happy then to deal
25 with that, whether in a live conference or telephone

0021

1 conference.

2 MS. MCNEILL: I appreciate that, because
3 actually, the issue of analogy to applications for
4 overlapping authority is one of the areas that troubles
5 me because that's not a relevant standard in this case,
6 and for instance, the kind of discovery that is asking
7 about all sorts of things, that could be characterized
8 as not serving to the satisfaction of the commission
9 when many of those topics are simply not relevant under
10 the 030(6).

11 JUDGE MOSS: We are past that. We've got the
12 overlapping authority in place, so we are to the next
13 phase, which is why the complaint is framed as it is,
14 of course.

15 MS. MCNEILL: But I appreciate your ruling
16 and listening, and I understand it.

17 JUDGE MOSS: Very good. So we will go
18 forward with that, and as far as the process that you
19 all have outlined, I have no trouble with the schedule.
20 It's a fairly relaxed schedule, and from my
21 perspective, that far out doesn't pose any problems for
22 me. I'm thinking I have one other hearing this fall,
23 so no, I don't see any problems.

24 Complainants prefiled testimony then on
25 September 30th. Response testimony on November 10th.

0022

1 Rebuttal, if any, on December 1st, and we will try to
2 do the hearing the week of December 15th. I do have
3 some vacation plans in the latter part of December, so
4 we won't want to let that hearing date slip, unless
5 it's in January.

6 MS. MCNEILL: No, Your Honor, we were
7 specifically mindful of the end of December when we
8 looked at the schedule.

9 JUDGE MOSS: We can set the briefing schedule
10 at the close of hearing as the parties will better know
11 their schedules, and does staff plan to participate
12 actively?

13 MS. TENNYSON: Staff does not at this time
14 plan to participate in the hearings. We would reserve
15 the right to do so following review of the testimony if
16 there would be any issues that staff might want to put
17 on. We do not intend to present any witnesses.

18 JUDGE MOSS: In my experience, I have
19 sometimes wanted to inquire of staff, given of its view
20 of a legal question or sometimes even a factual point,
21 so will you have someone available from the regulatory
22 staff?

23 MS. TENNYSON: Yes.

24 JUDGE MOSS: Mr. Sells, I believe you
25 indicated in your petition that there was some question

0023

1 as to whether you would have testimony. Do you know at
2 this juncture, or is that something we would reserve?

3 MR. SELLS: I would like to reserve that,
4 Your Honor, but as Your Honor indicated, this case is
5 of significant interest to the industry at large for an
6 array of reasons. I'm going to participate in all the
7 hearings by being there. Whether or not I'm going to
8 be an active participant with cross-examination,
9 probably not. If I have any witnesses, it will only be
10 one, and that would be very short.

11 JUDGE MOSS: I would expect an intervenors'
12 testimony to be filed on the schedule with whatever
13 party is being supported, so if you want to come out
14 supporting the complainant in the case, then you would
15 want to file at the time the complainant files. If you
16 end up supporting the respondent in the case, then at
17 the time the respondent files and so forth. Basically,
18 aligned parties follow the same schedule.

19 Our new procedural rules will hopefully
20 simplify all this, and I think I will wait a little
21 closer in time to arrange a specific hearing with the
22 thought that many things may happen between now and the
23 end of the year to obviate the necessity for a live
24 hearing. Did the parties want to build in a date for
25 dispositive motions? We've got a pretty generous

0024

1 schedule here, so if that were to happen, I'm
2 comfortable with you surprising me.

3 MS. MCNEILL: I don't really perceive
4 dispositive motions, but I don't want to foreclose that
5 opportunity, and I think we've left ourselves enough
6 time to do that.

7 JUDGE MOSS: I also think you've left
8 yourself some opportunity here, and one of the things I
9 like to do at the prehearing is remind the parties that
10 the commission does have rules that are at least
11 supportive of alternative dispute resolution settlement
12 process, so you've got time in this schedule to pursue
13 that avenue if you wish to without even the necessity
14 for request of continuances.

15 And I'll mention in that connection that the
16 commission's practice over the past couple of years, at
17 least, has been to let the parties know that we
18 sometimes can assist in alternative dispute resolution
19 processes. We have mediators available. We do have
20 several people in the agency who are trained in
21 mediation techniques, and sometimes we can make such
22 persons available. Sometimes we can't, but that's
23 something you can request if it would help you, and we
24 can see what we can do.

25 I did check with respect to filings in the

0025

1 proceeding. On paper filings, we will need an original
2 plus nine copies for purposes of internal distribution.
3 As you are all familiar, you make your filings here
4 through the commission secretary in the records center
5 at the commission's mailing address, which is 1300
6 South Evergreen Park Drive Southwest, PO Box 47250,
7 98504-7250 in Olympia.

8 MS. MCNEILL: Would there be an ability to
9 accommodate filing by e-mail in this case?

10 JUDGE MOSS: We aren't quite there yet. We
11 are getting there, so we aren't ready to open the doors
12 to universal electronic filing. I'm glad you mentioned
13 it. I do want to emphasize that we ask, at least, that
14 we have a courtesy copy by electronic means because it
15 facilitates posting and my lifting things when I write
16 the order, all kinds of things.

17 MS. MCNEILL: Can we stipulate to service by
18 e-mail?

19 JUDGE MOSS: Yes. You can waive other forms
20 of service, but at this juncture, because of the
21 statutes, we ask that you do give us a letter saying
22 that you waive other forms of service and that you will
23 receive service by electronic means exclusively. We
24 are going to write that into the new procedural rules,
25 but I think we can go ahead and push the envelope a

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1 little bit. If you all want to do that, just write
2 each other letters, copy, file them to the commission,
3 and we can do that.

4 In my practice, I like for us all to exchange
5 things by e-mail as courtesy copies even when we can't
6 do it formally, and that way, people get things sooner
7 and more efficiently. Be cautious when you are doing
8 that. If I'm on your e-mail list, you might
9 inadvertently send me something you don't intend to.
10 That has happened a few times, so you have to perhaps
11 have two lists, one that includes me and one that
12 doesn't.

13 MS. MCNEILL: I don't even know how to make a
14 list.

15 MS. TENNYSON: I'm specifically familiar with
16 that problem, and I didn't intend to include the judge.

17 JUDGE MOSS: I will enter a prehearing
18 conference order that will capture everything for us
19 all. Typically, I like to have a final prehearing
20 conference a few days before the hearing where we can
21 exchange potential cross-examination exhibits, get
22 everything marked, numbered. It makes for a very
23 efficient hearing, and we will cross that bridge a bit
24 further downstream.

25 MR. WILEY: One question that arose with

0027

1 Ms. McNeill that I don't know if we resolved, I
2 anticipate that protective orders will be sought in
3 this proceeding by either the respondent or complainant
4 in answering the discovery. Do we utilize the typical
5 procedure of notifying the commission, or would the
6 judge assigned to an adversary proceeding, do you issue
7 the protective order? What's the process for that?

8 JUDGE MOSS: If you can just move for -- if
9 you feel that it's necessary. I don't want to
10 encourage it, frankly. Let's do keep in mind that
11 protective orders are to be used judiciously, which is
12 to say they are only intended to protect -- the
13 so-called standard form of protective order is only
14 intended to protect truly commercially sensitive
15 information, so if that comes up, then certainly
16 prepare to have the commission enter such an order.

17 And we do have the standard form of
18 protective order. I'm sure you have all seen it, and
19 it's not that onerous, but it just makes the process a
20 little more cumbersome if we have claims of
21 confidentiality, and sometimes, they tend to be a
22 little overbroad. So let's not do that unless we have
23 to, but if it comes up, you can file it by motion, and
24 it can be done very quickly and I can handle that. Of
25 course, there is the other form of protective order,

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1 which is more familiar in civil litigation, where a
2 party seeks protection from disclosure altogether, and
3 that's available to use as well by motion.

4 My practice is to make myself available on
5 short notice if there is a discovery dispute that needs
6 resolving, and we can usually do that by telephone
7 conference and a tape recording, or if you are all in
8 town and feel like it, we can get together here.

9 Anything else we need to cover today? I
10 believe that covers everything I need to cover. Thank
11 you all very much, and I will get that order out. I'm
12 taking a brief vacation, so I may not get that order
13 out for a week. I may get it out tomorrow, but if I
14 can't, it will be a week.

15 MS. MCNEILL: That's fine, Your Honor. Thank
16 you.

17 MR. WILEY: Thank you.

18 JUDGE MOSS: We'll be off the record.
19 Thanks.

20 (Prehearing concluded at 2:56 p.m.)

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