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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION

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In re Application TG-091259 of)	
WEST WASTE & RECYCLING, INC.,)	DOCKET NO. TG-091019
For an Extension of Certificate)	Volume I
No. G-251 for a Certificate of)	Pages 1 - 22
Public Convenience and)	
Necessity to Operate Motor)	
Vehicles in Furnishing Solid)	
Waste Collection Service.)	

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In re Application TG-091019 of)	
MURREY'S DISPOSAL COMPANY, INC.,)	
d/b/a OLYMPIC DISPOSAL)	DOCKET NO. TG-091019
For an Extension of Certificate)	Volume I
No. G-9 for a Certificate of)	Pages 1 - 22
Public Convenience and)	
Necessity to Operate Motor)	
Vehicles in Furnishing Solid)	
Waste Collection Service.)	

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14 A prehearing conference in the above matter

15 was held on October 12, 2009, at 1:29 p.m., at 1300

16 South Evergreen Park Drive Southwest, Olympia,

17 Washington, before Administrative Law Judge DENNIS J.

18 MOSS.

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The parties were present as follows:

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WEST WASTE & RECYCLING, INC., by GEORGE
 KARGIANIS, Attorney at Law, 701 Fifth Avenue, Suite
 4760, Seattle, Washington 98104; telephone, (206)
 624-5370.

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MURREY'S DISPOSAL COMPANY, by DAVID W.
 WILEY, Attorney at Law, Williams Kastner, 601 Union
 Street, Suite 4100, Seattle, Washington 98101;
 telephone, (206) 628-6600.

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Kathryn T. Wilson, CCR

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1 WASHINGTON REFUSE AND RECYCLING ASSOCIATION,
2 by JAMES K. SELLS, Attorney at Law, Ryan, Sells,
3 Uptegraft, 9657 Levin Road Northwest, Suite 240,
 Silverdale, Washington 98383; telephone, (360)
 307-8860.

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

2 JUDGE MOSS: Good afternoon, everyone. I'm
3 an administrative law judge with the Washington
4 Utilities and Transportation Commission, and I've been
5 designated as the presiding officer in these dockets.

6 We are convened today in consolidated
7 dockets, the first being Docket TG-091259, which is the
8 application of West Waste and Recycling, Inc., for an
9 extension of Certificate No. G-251 to operate motor
10 vehicles in furnishing solid waste collection service.

11 The other docket is TG-091019, and that's the
12 application of Murrey's Disposal Company, Inc., doing
13 business as Olympic Disposal, for an extension of its
14 certificate No. G-9 to operate motor vehicles in
15 furnishing solid waste collection service, and I
16 believe these applications cover the same territory and
17 that there is no other territory involved.

18 This is our first prehearing conference, and
19 the purpose today is to take appearances of counsel. I
20 understand all parties are represented. We will need
21 to consider Mr. Sells' petition to intervene, and then
22 we will talk a little bit about what you all need from
23 me in this case in terms of what process.

24 We will begin with appearances, and we will
25 start with West Waste and Recycling, and we do ask that

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1 you give your full name, your business address, your
2 phone number, your fax number, and your e-mail on this
3 first one.

4 MR. KARGIANIS: My name is George Kargianis.
5 I'm appearing on behalf of West Waste and Recycling
6 Incorporated. My address is Columbia Tower, 701 Fifth
7 Avenue, Seattle 98104. The phone number is (206)
8 624-5370. My e-mail is george@kargianislaw.com, and we
9 are here today to pursue the remedies contemplated by
10 the judge. Thank you, sir.

11 JUDGE MOSS: Just for your reference, I have
12 not seen you here before. We are perhaps a little less
13 formal than some other forms in which you appear, and
14 there is no need for you to stand.

15 MR. KARGIANIS: An old habit, Your Honor.

16 JUDGE MOSS: I understand, and in some
17 venues, that's routine, so just to let you know.
18 Mr. Wiley, please?

19 MR. WILEY: David W. Wiley with the law firm
20 of Williams Kastner and Gibbs, Suite 4100, Two Union
21 Square, 601 Union Street, Seattle, Washington 98101.
22 My fax number is (206) 628-6611, and my e-mail address
23 is dwiley@williamskastner.com, and my direct phone line
24 is (206) 233-2895. I'm appearing today on behalf of
25 the applicant in Docket No. TG-091019 and protestant in

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1 the other docket matter, which is TG-091259.

2 MR. KARGIANIS: For the record, my fax, which
3 you requested and I did not give is area code (206)
4 448-7950.

5 JUDGE MOSS: Thank you very much. Mr. Sells,
6 would you please?

7 MR. SELLS: If Your Honor please, James
8 Sells, attorney appearing on behalf of proposed
9 intervenor, Washington Refuse and Recycling
10 Association. My address is 9657 Levin Road Northwest,
11 Suite 240, Silverdale, 98383; telephone, (360)
12 307-8860; fax; (360) 307-8865; e-mail,
13 jimsells@rsulaw.com.

14 JUDGE MOSS: The next order of business will
15 be to take your petition to intervene, and I'll just
16 ask, to perhaps save a little time, if there is any
17 objection.

18 MR. KARGIANIS: There is an objection, unless
19 Mr. Sells and his association can delineate with some
20 particularity what their specific interest is in the
21 proceeding. If they are coming in as an association to
22 ascertain whether or not the laws, rules, and
23 regulations are being appropriately applied in the
24 interest for the industry, that's one thing.

25 On the other hand, if they are going to be

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1 taking a parochial stance in this matter in favor of
2 one party or the other, then I would object, because
3 the applicant, Murrey's Disposal, is well represented.
4 I've been opposite his counsel on several occasions,
5 and certainly needs no assistance from the Association.
6 So if we could have a clarification, I would appreciate
7 it.

8 JUDGE MOSS: Mr. Sells?

9 MR. SELLS: If Your Honor please, Washington
10 Refuse and Recycling Association is, in fact, a trade
11 association as defined at least two or three places in
12 the WAC, is classified as a person who can become a
13 party within the WACs. We have, in the 25-some years I
14 have been representing them, taken part in every
15 garbage solid waste application.

16 These consolidated applications involve at
17 least three areas which are of interest statewide to
18 the industry as a whole. One is the application of the
19 Ashbacker doctrine, which we haven't seen here in a
20 long time. The second one is service to federal
21 properties as involved here such as parks, Job Corps
22 centers, that sort of thing, and the third involves a
23 situation where an existing certificated holder, as we
24 believe is the case here, has been serving an area in
25 good faith. We believe that that area is within the

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1 certificate, and with the latest advances in GPS and
2 mapping and all that, we sometimes find out that it
3 isn't and an application has to be made, and we expect
4 to see more of those as mapping gets more sophisticated
5 as time goes along.

6 So the industry as whole, which we represent,
7 we are not here as the second team for Waste
8 Connections. I represent the industry as a whole. I
9 suspect that we will be supporting Waste Connections'
10 position, and I'm required by the WAC to state that in
11 the application, but our primary interest is in those
12 three statewide issues, industry-wide issue.

13 MR. KARGIANIS: If I might respond just
14 briefly, I have no objection to his participating on
15 the general issues, the Ashbacker doctrine or service
16 to the federal areas. I think that might be an
17 appropriate function of the Association.

18 As far as choosing or delineating between one
19 applicant or the other under this consolidation, I
20 think that goes beyond the duties and functions of an
21 association, of a trade association because that really
22 doesn't have any statewide or industry-wide
23 significance as to whether or not one party or the
24 other takes it.

25 As far as whether an existing certificated

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1 carrier is presently serving, that is an issue of fact
2 insofar as I know of no certificate that has been
3 issued by the Commission to the Murrey applicant to
4 service the area in question; to wit, within the parks
5 service area.

6 JUDGE MOSS: I think that is clear at this
7 point that nobody has a certificate, specifically
8 encompassing this area at this time?

9 MR. WILEY: We hold a temporary certificate
10 that we were granted in July, and we also noted that
11 there is a PID 17 in this certificate that refers to a
12 contract with the Olympic National Park. I think we
13 will certainly be exploring the history of that because
14 this permit has been around for quite a long time, so I
15 think there is a couple issues as to whether we are an
16 existing certificate holder, admittedly not permanent,
17 and also whether PID 17 was extant at least for some
18 long period of time.

19 MR. KARGIANIS: Your Honor, to that point,
20 obviously, Mr. Wiley can certainly address those issues
21 exclusive of any participation on the part of the
22 Association, and I would also point out that if, in
23 fact, there have been improper illegal operations in
24 the past that the issuance of a temporary authority at
25 this time would not obviate the past operations, all of

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1 which could be at issue at the time of hearing.

2 JUDGE MOSS: I think the third issue that
3 Mr. Sells raises is essentially, I believe, will prove
4 to be essentially a legal question which will be of
5 some interest, I think. Looking through the WAC before
6 I came down this morning or came up, I notice in WAC
7 480-70-081, we do have a provision there at sub 6 in
8 terms of operating within certificated authority
9 requiring that companies must operate strictly within
10 the authority ascribed in its certificate.

11 This may, in fact, raise an interesting legal
12 question for us in this proceeding in terms of how we
13 treat, if it turns out to be the fact that this area
14 has been served for many years, as you say, but the
15 factual question itself I don't think will be
16 particularly disputed. I don't anticipate Mr. Sells
17 participating in that in terms of putting on witnesses
18 or things like that; is that correct, Mr. Sells?

19 MR. SELLS: I would not anticipate calling
20 any witnesses, Your Honor.

21 JUDGE MOSS: I think considering the posture
22 of things, we will simply grant the intervention, and
23 we will police the parties as we always do, and if
24 Mr. Sells surprises me and steps out of his bounds, I
25 will call him back into his bounds, but the Association

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1 has participated in these proceedings routinely for
2 many years, and its participation is often in the
3 public interest, which is one of the two standards.
4 Whereas they might not have a substantial interest in
5 the factual aspects of the case, they certainly do have
6 an interest in the legal outcomes. So that's the basis
7 for my ruling.

8 MR. KARGIANIS: I appreciate your ruling,
9 Your Honor, and I subscribe to it, and I welcome
10 Mr. Sells' participation on the public interest aspect.
11 I've been around Mr. Sells. He's very competent and
12 will add, I think, real value to the hearing.

13 JUDGE MOSS: And he has a good sense of
14 humor. I would like to talk with you about what we
15 need to do. We do sometimes proceed in these cases
16 with prefiled evidence, whether that be in the form of
17 testimony or exhibits or both. In other situations, we
18 may proceed with live testimony.

19 So I want to hear from the parties in terms
20 of what their preferences are and what they anticipate
21 we need in terms of time frame, that sort of thing.
22 Mr. Wiley, you seem ready to go so I will hear first
23 from you.

24 MR. WILEY: One procedural issue, Your Honor,
25 in terms of the docket for my application. My

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1 application is unopposed. We are in an Ashbacker
2 situation, so admittedly, that's fairly unique. I was
3 thinking that as far as the evidence of need in an
4 unopposed application is concerned that maybe written
5 evidence would be most efficient in the application in
6 which I am the sole, unopposed applicant.

7 Clearly because this is an Ashbacker case, I
8 think we are going to have to have some evidence about
9 the comparative fitness experience and other issues
10 that have already been addressed from the principles of
11 my client company in terms of the Olympic Disposal
12 management, but I think the evidence of need for my
13 portion of the application, I think would be most
14 efficiently handled through written submissions.

15 JUDGE MOSS: You are planning to call three
16 witnesses, I believe?

17 MR. WILEY: I'm down to two now, I think,
18 Your Honor, an operating and probably a financial
19 witness.

20 JUDGE MOSS: How about your client,
21 Mr. Kargianis?

22 MR. KARGIANIS: On the application of
23 Mr. Wiley's client, I would move to intervene in
24 opposition thereto, and since the matters have been
25 consolidated and since the same jurisdictional area is

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1 involved, and insofar as I don't conceive of the
2 Commission issuing duplicative certificates in favor of
3 both parties, that the matter should be set on for
4 hearing simultaneously on a consolidated basis as they
5 have, and the same rules of evidence should apply to
6 both applicants.

7 I don't see Mr. Wiley's clients able to come
8 in without establishing necessity for the service area,
9 and if he wants to rely on written testimony, so be it,
10 but I don't think that the standard for him should be
11 any less than the standard for us.

12 JUDGE MOSS: I don't think there will be any
13 lesser standard applied, and I think both parties will
14 be able to stipulate to the needs of the service, I
15 would think. You are seeking to have the authority to
16 do it, so I don't see any disagreement on that point.
17 Is there an existing contract for the service, by the
18 way?

19 MR. KARGIANIS: I don't think there is.

20 MR. WILEY: I don't believe there is, Your
21 Honor, a contract. I want to be careful about
22 describing that on the record because there was a past
23 contract, as I understand it, so I don't think at the
24 present time there is a current contract. But there
25 is, and I should have referenced for the record, I have

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1 the TCG number on the temporary certificate, which was
2 issued on July 6th, 2009, by the Commission. It's
3 TCG-63635.

4 Your Honor, do you want me to respond to his
5 motion to intervene or --

6 JUDGE MOSS: I don't see a need for that,
7 because the way I'm viewing this case is we are all
8 here on a consolidated basis, and we are going to hear
9 the witnesses and we are going take the evidence, and
10 if you want to present a portion of your evidence in
11 writing and present a portion of your evidence with
12 live witnesses, I'm agreeable to that, and you will
13 make out your cases as you will, and Mr. Kargianis will
14 do with it what he will, and the same rule applies to
15 you.

16 MR. KARGIANIS: I appreciate that. In answer
17 to one thing that Mr. Wiley raised, as far as the
18 contract is concerned, my understanding is that there
19 has not been a contract extant about ten years, so it
20 will be an interesting study as to what exactly the
21 contractual situation is there.

22 JUDGE MOSS: I don't see the parks service
23 here today.

24 MR. WILEY: I don't think there is a dispute,
25 Your Honor, as to whether there is a current contract,

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1 when it expired or when it lapsed.

2 MR. KARGIANIS: I just wanted that clear on
3 the record that there was no current contract.

4 MR. WILEY: Your Honor, one final point I
5 would raise, because I think the rules are very clear
6 on this issue, and they were amended in the early part
7 of 2001 or 2003, WAC 480-70-106, two "B" talks about
8 failure to file a protest, and as I recall, the rule
9 was amended after some case decisions to make it clear
10 that if you do not protest within the 30-day period,
11 you may not participate in any way further in the
12 proceeding.

13 So I think I'm going to watch, I'm going to
14 be vigilant about Mr. Kargianis turning into a
15 protestor or intervenor in our application case. I
16 understand, as you point out, that this will be a
17 comparative analysis, but sometimes, there is a fine
18 line, and I will urge you to police that in terms of
19 enforcing that rule as well.

20 JUDGE MOSS: I appreciate you bringing that
21 to my attention, and as it appears, I will be just
22 quite blunt about it, I haven't done one of these cases
23 in a long time, and I don't believe I've done one since
24 this law changed, but I notice there is a separate
25 provision in WAC 480-70-106 for intervention.

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1 Whereas we typically are in these proceedings
2 on the basis of an applicant and protestant, it appears
3 there is a contemplation in the new rule that there be
4 a third class, and that would probably explain your
5 request to be an intervenor as opposed to a protestant.
6 So I think to that extent, we are concerned with that.
7 I will grant your motion to intervene because I want to
8 have full participation as we consider these competing
9 applications for authority.

10 As you know, Mr. Wiley, the Commission's
11 paramount interest is the public interest here, so I
12 want to have the best possible record upon which I can
13 make some sort of initial determination, and then the
14 Commission will have the ultimate say in a final order
15 depending on the petitions for review or what have you.
16 With that, do you think the rule contemplates something
17 other than that?

18 MR. WILEY: Yes. I read the rule in an
19 application case, and I will see if there is some case
20 law interpreting that, but if you fail to protest
21 within the 30-day period, you may not participate in
22 any fashion as a protestant, applicant or any other
23 fashion. In other words, this was a catch-all rule to
24 prevent exactly that; exactly people who did not timely
25 protest cannot then participate as an intervenor, and

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1 that's how I read the rule. I think that's the
2 understanding that most of us have, but I think that's
3 an issue that we should continue to address in this
4 proceeding.

5 JUDGE MOSS: Interesting legal point,
6 Mr. Wiley, but the rule is pretty clear. I think it's
7 any person other than the applicant and protestants to
8 an application, so clearly, it's contemplating some
9 third class of participant there, and I think the
10 limitation is that that person can't broaden the issues
11 in the proceeding, but in terms of participating in the
12 issues that are there before us, I don't see a
13 limitation, but if you want to brief that.

14 MR. WILEY: I'll go back to the history of
15 the adoption of the rule, and also we had this come in
16 up in a medical waste case where someone intervened the
17 day of the hearing, the first day of hearing, and that
18 was an issue, so I think that was the Sure Way or --
19 case.

20 JUDGE MOSS: If you want to file a motion, I
21 will be happy to consider it, and of course
22 Mr. Kargianis will have an opportunity to respond to
23 that.

24 MR. KARGIANIS: Your Honor, I appreciate your
25 ruling. I would merely add that one is the specific

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1 rule regarding intervenors, the third class, but we can
2 certainly cover that in our responsive brief should
3 Mr. Wiley undertake filing any further matters.

4 JUDGE MOSS: Now, will you be putting on
5 witnesses, sir?

6 MR. KARGIANIS: Your Honor, I was
7 contemplating putting on three witnesses. We would
8 like to have the same opportunity to put either live or
9 by certificate or by affidavit witnesses. I would
10 anticipate at this point in time that we would have at
11 least one live witness other than the applicant
12 himself.

13 As far as exhibits are concerned, I would
14 take advantage of the Court's offer to submit those by
15 way of prefiled exhibits. There is no use bringing on
16 anything other than the financial statements on file,
17 the equipment list, etcetera, but I would like to keep
18 this strictly on the need of the service.

19 JUDGE MOSS: That's fine. It sounds like you
20 are contemplating similar presentations. What sort of
21 time do you all wish to have to prepare your written
22 submissions and get those in?

23 MR. WILEY: I want to clarify Mr. Kargianis's
24 last comment. I had understood we were going to
25 present the need evidence in writing based on your

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1 earlier ruling. Is that what you were saying?

2 MR. KARGIANIS: I said need or live.

3 MR. WILEY: Our motion, Your Honor, would be
4 to put the shipper evidence in prefiled form or some
5 sort of written testimony. I don't think we need the
6 shipper here since we both, as you suggest, would
7 acknowledge a need for the service.

8 JUDGE MOSS: Again, and I will encourage you,
9 of course, and I'll just do it now, and that is to
10 stipulate to what you can, and if that's an area you
11 have to consideration as to what you can stipulate,
12 fine.

13 MR. KARGIANIS: Let's see if we are on the
14 same wave length here. You are talking, I assume,
15 about the need for the service, period; right?

16 JUDGE MOSS: Yes.

17 MR. KARGIANIS: As opposed to commentaries on
18 the adequacy of whatever has been provided in the past.

19 JUDGE MOSS: That's a separate question.

20 MR. KARGIANIS: Under that circumstance
21 certainly, we can stipulate to that.

22 JUDGE MOSS: I think you would be able to do
23 so, and that's fine. I'm not going to tie you -- if
24 the need appears for a witness to be brought forward on
25 the subject, then we will do that, but it doesn't seem

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1 to me that's going to be necessary. The question of
2 financial fitness, managerial fitness, all that sort of
3 stuff, we will want to bring in some sort of your
4 company personnel to testify in those areas.

5 MR. KARGIANIS: Thank you very much.

6 JUDGE MOSS: So are parties going to require
7 discovery in this case?

8 MR. WILEY: Your Honor, I think that we can
9 have discovery on the hearing record, I would assume,
10 because this is not a complaint case, and as you know,
11 most transportation cases don't trigger the discovery
12 rule, so I don't see a need for that unless
13 Mr. Kargianis thinks there should be.

14 MR. KARGIANIS: Well, normally I wouldn't
15 contemplate discovery, but let's see how this develops
16 as we move along. If we find a need for it, we will
17 ask.

18 JUDGE MOSS: Let's handle it that way, but
19 perhaps that will become part of your discussion off
20 the record, which we will do momentarily so that you,
21 if you can, come to agreement on some sort of schedule
22 on which both of you would prefer to go forward to meet
23 the needs of you clients and your own schedules as busy
24 lawyers, I'm sure. So do we need to have any further
25 discussion about process before we go off the record

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1 and let do you that?

2 MR. KARGIANIS: Nothing from the Applicant,
3 Your Honor.

4 MR. WILEY: Calendar for you in terms of what
5 you are looking for.

6 JUDGE MOSS: I've got hearings, I think they
7 are in January. Let me check here.

8 MR. KARGIANIS: This year is kind of filling
9 up for me.

10 MR. WILEY: First half of December is
11 probably the best.

12 MR. KARGIANIS: Not for me. I have a trial,
13 and then the 12th we are leaving for a preplanned
14 vacation, and then Christmas comes in there.

15 MR. WILEY: January?

16 MR. KARGIANIS: January.

17 MR. WILEY: And you say --

18 JUDGE MOSS: I have hearings beginning on
19 January the 19th in a general rate proceeding, so I
20 will be busy the prior week as well, which would make
21 it difficult, but I could have a hearing the week of
22 January 4th.

23 I think we should probably avoid the time
24 just before the New Years holiday, but if we are just
25 going to have a one-day hearing and you wanted to have

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1 it in the early part of the week of the 25th, I
2 wouldn't mind that either. February is looking pretty
3 open.

4 MR. KARGIANIS: The week of the February of
5 25th would be the best for me, Your Honor.

6 MR. WILEY: I'm out of town until about the
7 26th of January. The first week in February is wide
8 open, Your Honor.

9 JUDGE MOSS: I'm open the first week of
10 February as well.

11 MR. KARGIANIS: You want it now, because it
12 will just take me a moment to check my calendar, Your
13 Honor. It looks good, Your Honor.

14 JUDGE MOSS: What day do you all want?

15 MR. WILEY: Tuesday the 2nd of February in
16 Olympia?

17 JUDGE MOSS: Probably a day would be enough?

18 MR. WILEY: With the shipper evidence coming
19 in in writing, I think you are right.

20 JUDGE MOSS: I will reserve the facilities
21 for two days, but we will set it on the 2nd. Do we
22 need any other procedural dates, a date for written
23 submissions, for example?

24 JUDGE MOSS: Why don't we go off the record
25 and let you figure out what you want to do in that

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1 regard.

2 MR. KARGIANIS: How much time do you normally
3 need to get written submissions, Your Honor, ten days?
4 What's best for you?

5 JUDGE MOSS: A week in advance is fine for
6 me. The 26th of January then?

7 MR. KARGIANIS: Sure.

8 JUDGE MOSS: I don't think we need any other
9 dates, do we? If you want to file motions and so
10 forth, I will leave the timing of that to your
11 discretion, and of course the rules provide for
12 response time and so forth.

13 MR. KARGIANIS: Very good, Your Honor.

14 JUDGE MOSS: Anything else, gentlemen?

15 MR. WILEY: I don't think so.

16 JUDGE MOSS: Thank you for being here today.
17 I appreciate you appearing in person, and it's good to
18 see you all. I look forward to helping you resolve
19 this. Thank you very much.

20 (Prehearing conference adjourned at 1:57 p.m.)

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