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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-091259
For an Extension of Certificate)	Volume III
No. G-251 for a Certificate of)	Pages 38 - 124
Public Convenience and)	
Necessity to Operate Motor)	
Vehicles in Furnishing Solid)	
Waste Collection Service.)	

8

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 III
No. G-9 for a Certificate of)	Pages 38 - 124
Public Convenience and)	
Necessity to Operate Motor)	
Vehicles in Furnishing Solid)	
Waste Collection Service.)	

13

An evidentiary hearing in the above matter
 was held on April 15, 2010, at 1:40 p.m., at 1300
 South Evergreen Park Drive Southwest, Olympia,
 Washington, before Administrative Law Judge ADAM TOREM.

18

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21

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23

Kathryn T. Wilson, CCR

Court Reporter

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1 WASHINGTON REFUSE AND RECYCLING ASSOCIATION,
2 by JAMES K. SELLS (via bridge line), Attorney at Law,
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1 P R O C E E D I N G S

2 JUDGE TOREM: Good afternoon. I'm
3 Administrative Law Judge Adam Torem. We are going to
4 convene an evidentiary hearing in Docket TG-091019.
5 That is the case of Murrey's Disposal Company, Inc.
6 They filed an application for the extension of their
7 existing G-certificate, which is G-9, back on June
8 26th, 2009. That has been consolidated with Docket
9 TG-091259, a competing application from West Waste and
10 Recycling, Inc. That was filed for an application to
11 extend their authority under Certificate G-251 back on
12 August 5th, 2009. Today is April 15th, 2010. It's now
13 about 1:45 in the afternoon.

14 In this case, both the applicants are seeking
15 authority in Jefferson County for a portion of Section
16 12, Township 27 North, Range 10 West. This is known as
17 the Hoh quadrant of Olympic National Park. This is
18 essentially the entry road into the visitors center for
19 the National Park Service there at Olympic National
20 Park. The National Parks Service is requiring
21 certificated hauler authority for common carrier
22 authority for summer service June, July, August,
23 September, for regular container service, and is also
24 seeking occasional service throughout the remainder of
25 the year. Both applicants seek to provide that.

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1 When Murrey's Disposal filed their
2 application in June, there was no protest filed to
3 that, and I also have clarified they have a temporary
4 permit that was issued under Docket TG-091018. That
5 docket was published on July the 6th, 2009, I believe
6 approving the temporary permit, and I will let the
7 applicant in that case explain if that's relevant
8 whatever to today's determination.

9 Murrey's then filed a protest of the West
10 Waste application on August 17th, and then WRRRA filed
11 for intervention in the West Waste case ten days later
12 on August 27th, 2009. On September the 16th, 2009,
13 Order 01 in these proceedings consolidated the two
14 dockets and set a prehearing conference to be held on
15 October the 12th, 2009, in front of Judge Dennis Moss.
16 Judge Moss conducted a prehearing as scheduled. At
17 that time, he granted the WRRRA's intervention. He
18 granted a verbal petition from West Waste to intervene
19 in the Murrey's docket, and he also set some filing
20 deadlines for early January of 2010 and then scheduled
21 a hearing for February 2nd of this year.

22 Shortly after the filing deadlines were met
23 with some testimony prefiled, Ms. Phaedra Fuller of the
24 National Parks Service provided testimony for both
25 applicants on January the 26th and, on January 27th,

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1 the parties asked that I suspend the schedule in favor
2 of settlement discussions, and I was substituted as a
3 hearing officer at that time. We set a status
4 conference for February the 22nd, and at that time
5 spoke with the parties and determined they needed a
6 little bit more additional time to continue their
7 negotiations. I set a deadline of March 29th and asked
8 the parties to have a settlement filed by that date, or
9 in the alternative, be ready to go to hearing today.

10 I know Mr. Wiley requested a status
11 conference on the 26th. I was on the way to the
12 airport and summarily denied that, and so told him to
13 file a settlement or not. There was no settlement
14 filed, so on the 2nd of April, I set a deadline for
15 some additional exhibits. Those were filed on April
16 12th as required, and I understand Mr. Kargianis was a
17 day late but not a dollar short. Everything came in
18 the next day, and I don't anticipate any objections
19 from Mr. Wiley or from Mr. Sells. If those are to be
20 made, we should have that discussion shortly.

21 We had a prehearing discussion today to go
22 over what issues might be presented. We looked at WAC
23 480-70-091. This is the administrative code provision
24 that handles certificates of this sort and the
25 requirements in Subparagraph 3. My understanding from

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1 a discussion with counsel for both applicants was that
2 the eight subparagraphs under Sub 3 are all uncontested
3 and that we were going to introduce witnesses and swear
4 them in to sponsor the exhibits that had been provided.
5 Therefore, the record in this case and legal
6 explanations as to the type of authority here, being
7 common carrier authority, which is Paragraph 3(c), and
8 we would also clarify Ms. Fuller's declarations
9 previously filed in January would provide the needed
10 evidence under Paragraph 3(f), a statement of
11 conditions that justify the proposed service, and
12 counsel also informed me that this description of
13 Section 12, Township 27 North, Range 10 West may seem
14 overbroad, but the actual service is actually what I
15 described earlier along the road picking up dumpsters
16 on the exit and entrance to the park, not the entire
17 quadrant.

18 So let me take appearances and take the
19 witnesses and have them sworn in. I can have each
20 counsel call them up by name, explain their position,
21 and spell their name for the record. I don't know how
22 many questions, if any, we will have for them. For
23 Murrey's?

24 MR. WILEY: Your Honor, David Wiley, attorney
25 for the Applicant Murrey's Disposal, Inc., d/b/a

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1 Olympic Disposal, and I have one other notation for the
2 record when we are done with appearances.

3 MR. KARGIANIS: Your Honor, my name is George
4 Kargianis with the Kargianis Law Firm. I am the
5 counsel, and I am appearing for and on behalf of West
6 Waste Recycling, Inc. My offices are 41st floor of the
7 Columbia Center, 701 Fifth Avenue, Seattle, 98104.

8 JUDGE TOREM: Appearing by telephone today,
9 Mr. Jim Sells?

10 MR. SELLS: If Your Honor please, James Sells
11 appearing on behalf of intervenor Washington Refuse and
12 Recycling Association. Same address and other
13 information as are on the record.

14 JUDGE TOREM: Mr. Wiley?

15 MR. WILEY: In the interest of a full record,
16 I did want to note that after the Prehearing Conference
17 Order No. 2 was issued on or about October 12th or 13th
18 after the hearing, I filed a letter with the Commission
19 dated October 23, 2009, which sought to preserve an
20 objection to the ruling granting intervention status to
21 West Waste in our hearing. I noted I wouldn't take an
22 interlocutory appeal because of cost and time delay,
23 but we still preserve our objection based on the
24 grounds I indicated in that letter. I do have a copy
25 of it with me if it's not in your file.

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1 JUDGE TOREM: I have a copy. I reviewed it,
2 and I didn't mention it because it was in the record,
3 and I wasn't thinking that at my level today that I was
4 being asked to disturb Judge Moss's earlier ruling, so
5 I was preserving it for appeal.

6 MR. KARGIANIS: Your Honor, just one comment
7 from the Applicant, West Waste. I would like to look
8 at Bonnie applications not as competing applications
9 but applications for concurrent service for the benefit
10 of the sole beneficiary, whatever initial authority
11 issues, to wit, the park, give the park the opportunity
12 to basically pick and choose a contract without any
13 limitations or restrictions as to any one particular
14 carrier.

15 JUDGE TOREM: I understand. Let me make sure
16 I understand, Mr. Kargianis. You are drawing the
17 distinction between the Commission making the National
18 Park Service's choice for them but providing only one
19 certificated hauler, or certificating both as equally
20 qualified and then letting the competition at the
21 contract level be the deciding issue.

22 MR. KARGIANIS: I couldn't have put it any
23 better.

24 JUDGE TOREM: Mr. Wiley, let me have you call
25 your witnesses forward.

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1 MR. WILEY: Kent Kovalenko and Jason Pratt,
2 K-o-v-a-l-e-n-k-o and P-r-a-t-t.

3 JUDGE TOREM: Mr. Kargianis?

4 MR. KARGIANIS: I have Brent Gagnon,
5 G-a-g-n-o-n. Mr. Gagnon is slightly hard of hearing,
6 Your Honor, so if we could all bear that in mind.

7 JUDGE TOREM: Mr. Sells, you had indicated
8 you were not going to necessarily call any witnesses.

9 MR. SELLS: That's correct; I don't intend
10 to.

11 MR. KARGIANIS: I indicated for the record I
12 was going to call an additional witness in addition to
13 Mr. Gagnon either in person or by sworn affidavit, and
14 I have consulted with Mr. Wiley, and we have decided
15 that in the state of the record, that witness would not
16 be required to be in attendance.

17 JUDGE TOREM: Is that Ms. Fuller?

18 MR. KARGIANIS: No. It would be Mr. Turner,
19 Michael Turner. In our witness and exhibit list of
20 West Waste Recycling, we indicated under the witness
21 list that we would be calling Brent Gagnon, owner of
22 West Waste, and Michael Turner, concessionaire with
23 Arrowmark, and we just advised the judge that we are
24 not calling Mr. Turner at this time nor are we
25 presenting sworn affidavits on his behalf.

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1 JUDGE TOREM: So I'm going to swear in the
2 witnesses.

3
4 Whereupon,

5 THE WITNESSES,
6 having been first duly sworn, were called as witnesses
7 herein and were examined and testified as follows:

8
9 JUDGE TOREM: Witnesses can take their seats,
10 and we will call them forward as necessary, maybe one
11 at a time as counsel quickly create a record, and have
12 you verify the documents to be marked as exhibits, and
13 we haven't premarked the exhibits with
14 Commission-issued numbers. I know the parties have
15 attached some numbers.

16 MR. WILEY: They should be disregarded for
17 our the purposes.

18 MR. KARGIANIS: No objection. Or you could
19 mark Mr. Wiley's 1-A and ours 1-B, etcetera.

20 JUDGE TOREM: That may be a convention we
21 adopt. We need to determine where that prefiled
22 testimony of Ms. Phaedra Fuller will be marked. I know
23 both of you had marked this as a separate exhibit.

24 At this time, Mr. Wiley, if you want to give
25 me your perception on the legal issues remaining in the

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1 case, or do you want to go over those uncontested items
2 under the WAC we described earlier and submit the
3 exhibits for your clients?

4 MR. WILEY: It might make sense to do the
5 latter first and sponsor the exhibits, and would you
6 like me to propose how the sequence in which I will
7 offer them? Because it's based on the witnesses, it's
8 not the way that we filed them.

9 JUDGE TOREM: That's fine. I'll turn it over
10 to counsel for each of your clients and have you
11 present in whatever order you please, but let's make
12 sure we document so that when the court reporter takes
13 it down and I might review the transcript later, I know
14 what exhibit we are talking about and so will everyone
15 else.

16 So if you want to call your witnesses up to
17 those chairs, Mr. Kovalenko and Mr. Pratt can testify
18 and answer your questions. Make sure the red light is
19 on on the microphone in front of you, and I will ask
20 that when you are done giving the testimony that
21 Mr. Kargianis will be entitled to ask you some
22 cross-examination if there are any as will Mr. Sells.

23 So this is for Docket TG-091019. Mr. Wiley,
24 go ahead.

25

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1 DIRECT EXAMINATION

2 BY MR. WILEY:

3 Q. Mr. Kovalenko, could you spell again your
4 last name for the record?

5 A. It's K-o-v-a-l-e-n-k-o.

6 Q. What is your business address, please?

7 A. 2058 West Edgewood Drive, Port Angeles,
8 Washington, 98363.

9 Q. What is your title?

10 A. I'm the district manager.

11 Q. For what company?

12 A. For Murrey's Olympic Disposal.

13 Q. How long have you been at Murrey's and
14 Olympic?

15 A. A little over six years.

16 Q. How long have you been in the solid waste
17 collection industry?

18 A. Just a little under 20 years.

19 Q. When did your tenure at Olympic Disposal
20 begin?

21 A. March of 2004.

22 Q. What did you do immediately prior to that?

23 A. I was a driver supervisor for Murrey's
24 Disposal in Fife.

25 Q. Do you have a general knowledge of Murrey's

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1 Olympic service within the national park, that being
2 the Olympic National Park?

3 A. Yes.

4 Q. How long has your company served the Olympic
5 National Park?

6 A. Best of my knowledge, our company and
7 companies beforehand, I believe that we've been
8 servicing the national park for 15 or 20 years, maybe
9 more.

10 Q. Do you currently have a certificate that
11 would set forth authority pertinent to your service in
12 the Olympic National Park?

13 A. Yes, a common carrier permit.

14 Q. Calling your attention to G-9, what is that,
15 please?

16 MR. WILEY: Your Honor, if anybody else needs
17 copies, I've got some, so please let me know.

18 MR. KARGIANIS: Your certificate then
19 pertains to everything but the Hoh quadrant?

20 MR. WILEY: Correct.

21 Q. (By Mr. Wiley) If you could, could you
22 identify that for the record, Mr. Kovalenko?

23 A. This would be our common carrier permit.

24 Q. Without asking you to be a legal expert in
25 the meets and bounds descriptions, could you point to

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1 where Clallam and Jefferson counties are and any other
2 pertinent areas, calling your attention to Page 3, for
3 instance, and Page 4?

4 A. Yes.

5 Q. Could you just allude on the record so we
6 know where that is?

7 A. Starting on Page 3 through Page 4 is the
8 outline boundaries for Jefferson County and Clallam
9 County area.

10 Q. You mentioned your company has served the
11 Olympic National Park for the last 15 to 20 years. Do
12 you have authority as a contract holder as well for the
13 park in addition to the common carrier authority you
14 just referred to?

15 A. Yes, for common carrier, yeah, third
16 paragraph on Page 4.

17 Q. In addition to the previous description on
18 Page 3, you are pointing to Page 4 where, please?

19 A. Third paragraph, garbage and refuse
20 collection service at the Makah Air Force Base, Neah
21 Bay, and the contract with the United States government
22 and in the Olympic National Park, Port Angeles, and the
23 contract with the National Park Service.

24 Q. Could you tell us how the issue of requiring
25 additional common carrier authority in the Hoh quadrant

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1 came to your attention and a little background?

2 A. Dave Colthorp is my point of contact with the
3 National Parks. For quite some time we've been talking
4 back and forth about getting a new contract out to us,
5 and through the Parks looking at the geographic areas
6 with the UTC, they found out that that particular area,
7 the Hoh, was not covered under anybody's common carrier
8 area.

9 Q. When did you learn of that lack of authorized
10 service as a common carrier in the Hoh quadrant?

11 A. Mid June sometime is when we received the
12 letter.

13 Q. Could you give us a year?

14 A. 2009.

15 Q. When you received the letter, what did you do
16 in response?

17 A. We notified the Washington Utilities and
18 Transportation Commission and our attorney.

19 Q. Then what steps did you take to secure
20 authority in that area?

21 A. We filed a temporary certificate.

22 Q. Prior to that time, were you aware of any gap
23 in your common carrier authority in this remote Hoh
24 quadrant?

25 A. No, we were not.

0055

1 Q. Do you have any exhibit that details where
2 there is current service within the Olympic National
3 Park?

4 A. Yes, we do. We received it from --

5 Q. Can you identify that exhibit, please, by
6 title?

7 A. Olympic National Park Service Areas, solid
8 waste certificate authority.

9 MR. KARGIANIS: Is that an exhibit?

10 MR. WILEY: It was Exhibit 7.

11 JUDGE TOREM: I'm going to mark the
12 Certificate G-9 as Exhibit 1-A, and what you had
13 submitted as Exhibit 7, I'll mark as Exhibit 2-A, and
14 that is titled Olympic National Park Service Area, and
15 it's a one-page document.

16 Q. (By Mr. Wiley) Can you tell us where that
17 exhibit originated, please?

18 A. This came out of the commissioner's office.

19 Q. Do you mean the Commission staff?

20 A. Yes.

21 Q. Do you know what it was prepared in response
22 to?

23 A. Service areas for the National Park.

24 Q. Who made the inquiry, you or the National
25 Park Service?

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1 A. National Parks did.

2 Q. Now, backing up again, tell us what you did
3 in mid June in response to the letter.

4 A. When we got the letter, we notified the
5 Washington Utilities and Transportation Commission and
6 notified our attorney to try to find out what was going
7 on so we could file for a temporary permit.

8 Q. Did you, in fact, immediately do that?

9 A. Yes, we did.

10 Q. Were you issued temporary authority by the
11 WUTC?

12 A. Yes, we were.

13 Q. Calling your attention to another exhibit
14 that I've handed you, could you tell us what that is,
15 please?

16 A. This is our temporary authority.

17 MR. WILEY: Your Honor, if I could have that
18 marked next.

19 JUDGE TOREM: That will be Exhibit 3-A, and
20 it looks like it's Temporary Certificate No. TCG-63635,
21 dated July 6th, 2009.

22 Q. (By Mr. Wiley) Is that the authority you
23 operated upon within the Hoh corridor last season?

24 A. Yes, it is.

25 Q. Could you please describe the service that

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1 you provide in the Olympic National Park as a whole and
2 distinguish it, if there is any, what the Hoh quadrant?

3 A. At the campgrounds, we provide mainly
4 two-yard rear-load dumpsters for trash service, and
5 then we offer front-load equipment.

6 Q. Just as long as that's sufficient for the
7 record, can you physically describe that a little bit
8 more in terms of are you they drop-box containers?

9 A. They are two-yard rear-load containers that
10 are about four-and-a-half-feet wide, three feet tall,
11 about two feet deep. Most of them are on wheel casters
12 so they can be moved around, and basically, the truck
13 backs up to them and the driver pushes them in the back
14 of the truck where they hook up to the containers and
15 then dump it in the back of the truck.

16 Q. In terms of proposed service or other present
17 service feasibility, have you recently decided to
18 provide any supplemental or enhanced service to the
19 park?

20 A. Yes. Looking and offering front-load service
21 to the National Parks, to the campground areas.

22 Q. What sort of benefit or efficiencies do
23 front-load containers have for the park?

24 A. Well, they are much more quick to empty.
25 Rather than having three two-yard containers laid out

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1 in an area, we can put one six-yard container. It's
2 much less intrusive on the campers. We can get in
3 there, dump six yards in a minute versus the three
4 two-yard at a certain location that would take eight to
5 ten minutes to dump.

6 Q. What type of front-load container size with
7 the Hoh quadrant at issue in this application use in
8 your view?

9 A. We would be looking anywhere from three
10 yards, four yards, and six yards containers in that
11 location.

12 Q. Can you identify some of the pertinent
13 equipment proposed for the Hoh quadrant and possibly
14 also relevant to the Olympic National Park service that
15 you have historically provided on the exhibit that I'm
16 handing to you next?

17 MR. WILEY: It would be the exhibit next in
18 line mentioned denominated equipment list.

19 JUDGE TOREM: Previously marked as Exhibit 6,
20 it will be marked as Exhibit 4-A.

21 Q. (By Mr. Wiley) Looking at that exhibit, and
22 I believe you had gotten it marked ahead of time as
23 well to expedite things, can you demonstrate some of
24 the pertinent equipment you just talked about?

25 A. Yes. The trucks are listed above -- you want

0059

1 me to read them?

2 Q. If you could just point out some examples of
3 the equipment you just referred to.

4 A. On the first page, the 1998 Volvo, which is a
5 front-load truck. Also, the 2009 Peterbilt on the
6 bottom is actually a front-load truck. The rear-load
7 trucks we are currently using, 2007 rear-load, 2007, so
8 this front page is primarily a list of our powered
9 vehicles or trucks.

10 Q. With respect to the containers that you
11 testify, the two-, four-, and six-yarders, where do we
12 find those on Exhibit 4-A?

13 A. Page 3 and 4 is a list of most of our
14 equipment, two-yard, three-yard, four-yard, and
15 six-yard containers.

16 Q. How many trucks do you have in the Olympic
17 fleet in the Clallam and Jefferson County region?

18 A. We have 11 rear-load trucks, backers, and we
19 have two front-load trucks.

20 Q. Do you anticipate any problem in expanding
21 service if required for the Olympic National Park out
22 of your existing equipment?

23 A. No, I don't.

24 Q. Could you tell us why you are here today in
25 support of the application?

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1 A. We would like to make our temporary permit
2 permanent just to make sure there is no gaps in our
3 service levels.

4 Q. Do you envision this application as having
5 any impact on the service you provide to the Olympic
6 National Park?

7 MR. KARGIANIS: I'll object as to form. I
8 don't understand the question.

9 Q. What benefit do you understand as the
10 applicant that the expansion of your certificate would
11 have for the Olympic National Park?

12 MR. KARGIANIS: I'm going to object to his
13 speaking for the park. I don't know that he can speak
14 of a benefit to the park. That would come from the
15 operational witness for the park I would imagine.

16 JUDGE TOREM: Objection sustained. I think
17 we will rely on Ms. Fuller's declaration to answer
18 that.

19 Q. (By Mr. Wiley) If this application were to be
20 denied, what impact would it have on your company?

21 A. Well, it would leave gaps in our service
22 levels that would kind of make an island within our
23 common carrier permit as well as in the sense of -- I
24 guess that's what was answered before.

25 MR. WILEY: No further questions, Your Honor.

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1 I offer Exhibits 1-A through 4-A.

2 MR. KARGIANIS: No objection.

3 MR. SELLS: No objection.

4 JUDGE TOREM: So those will be admitted.

5 Mr. Kargianis, do you have cross-exam?

6 MR. KARGIANIS: Thank you, Your Honor.

7

8

9

CROSS-EXAMINATION

10 BY MR. KARGIANIS:

11 Q. You indicated that you don't envision a gap
12 as far as service is concerned, and basically, sir, how
13 large is the Hoh River quadrant service area; that is,
14 where containers would be dropped and picked up? Can
15 you give it to me in terms of square miles?

16 A. I don't know the Hoh quadrant.

17 Q. I'm just talking about the service area of
18 the campground?

19 A. It's probably, I'm going to say, a mile and a
20 half, two miles.

21 Q. So it's a small portion of the entire
22 quadrant; would that be a fair statement?

23 A. Yes, where the campgrounds is.

24 Q. And that's where the principle activity is
25 located; is that correct?

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1 A. Correct.

2 Q. And that's where you drop your units off
3 currently; is that correct?

4 A. Correct.

5 Q. Can you give the judge some idea as to how
6 many units you drop off in a given week in the summer
7 season?

8 A. We usually have ten two-yard containers
9 there.

10 Q. And those are then distributed around the
11 camp area; is that correct?

12 A. Correct.

13 Q. As far as the revenue is concerned, I notice
14 in your application that you have scheduled, at least
15 for the year '08, revenues in excess of a million
16 dollars. For the purpose of just comparison, can you
17 tell us what your annual revenue is from that portion
18 of the park, or can you break it down for us?

19 MR. WILEY: I think the next witness may be a
20 better person to answer that.

21 MR. KARGIANIS: I would be happy to defer to
22 that.

23 Q. (By Mr. Kargianis) You indicated, sir, that
24 you are currently willing to drop off two-, four-, or
25 six-yard containers. Has there been a request for

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1 four-yard or six-yard containers to date?

2 A. No. I've been talking with my employer Tom
3 to contact.

4 Q. So what you are saying is that your company
5 will accommodate the Park Service insofar as their
6 requirements are concerned; is that correct?

7 A. Correct.

8 Q. As a common carrier, you hold yourself out
9 ready, willing, and able to accommodate a shipper; that
10 is, a person requiring your service, with the amount
11 and type of equipment that's required, not only the
12 containers, but also the type of equipment required to
13 to go in, pick up the drop-off boxes, and take them
14 out; correct?

15 A. Correct.

16 Q. By the way, do you have any reason to believe
17 that West Waste does not do the same thing in their
18 operation?

19 A. Absolutely not.

20 Q. As far as dispatching of equipment is
21 concerned, from what area is the exhibit dispatched?
22 Do you have a staging area near Forks, Washington, or
23 is the equipment dispatched from Port Angeles?

24 A. From Port Angeles.

25 Q. Basically, there is no direct access to this

0064

1 particular Hoh quadrant, but basically, you have to go
2 from Port Angeles past Forks and up the Hoh River Road
3 past the campsite; correct?

4 A. Correct.

5 Q. Can you tell the judge, if you would, how
6 many miles that dispatching takes?

7 A. I'm going to guess probably right around 75,
8 78 miles.

9 Q. So the equipment that you haul down to the
10 Hoh River quadrant then is dedicated specifically for
11 that particular campground, is it not?

12 A. Correct.

13 Q. So there isn't any pickup or drop-off in
14 between for that equipment?

15 A. For the stuff at the Hoh?

16 Q. Yes.

17 A. No.

18 Q. Where do you actually dispose of that
19 material?

20 A. In Port Angeles.

21 Q. So it's a round-trip, basically, for that
22 container; correct?

23 A. Correct.

24 Q. Now, you mentioned a David Colthorp. Did I
25 hear that name correctly?

0065

1 A. Yes.

2 Q. Could you spell that for me, sir?

3 A. C-o-l-t-h-o-r-p.

4 Q. What was his position again?

5 A. He's my point of contact.

6 Q. Do you know that he's retired now?

7 A. No, I did not.

8 MR. KARGIANIS: For the record, there will be
9 testimony he's no longer with the Park.

10 JUDGE TOREM: Any other questions?

11 MR. KARGIANIS: I believe not; thank you,
12 Your Honor.

13 JUDGE TOREM: Mr. Sells?

14 MR. SELLS: No, Your Honor.

15 JUDGE TOREM: Thank you, Mr. Kovalenko.

16 Mr. Wiley, should we proceed to Mr. Pratt?

17 MR. WILEY: Yes.

18 JUDGE TOREM: The next exhibit we are going
19 to mark is 5-A.

20

21

22 DIRECT EXAMINATION

23 BY MR. WILEY:

24 Q. Would you please provide your title and job
25 responsibilities for the record?

0066

1 A. Jason Pratt, P-r-a-t-t. I'm the division
2 controller for Murrey's Disposal Company, Inc., and
3 Murrey's Olympic Disposal, and job titles, I'm
4 responsible for the oversight of all monthly
5 financials, billing activities, and all auditing
6 activities for those companies.

7 MR. WILEY: Your Honor, it might expedite if
8 we would mark and identify the consolidated balance
9 sheet of Olympic Disposal, the income statement of
10 Murrey's Disposal, and the reported independent
11 registered public accounting firm in sequence.

12 JUDGE TOREM: I have a consolidated balance
13 sheet that was offered as proposed Exhibit 3. We'll
14 mark that as Exhibit 5-A, a two-page document. Exhibit
15 6-A will be the 2009 year income statement. It was
16 offered as proposed Exhibit 4 but it's now 6-A.

17 Turning then to the report of the independent
18 registered CPA firm Price, Waterhouse, Coopers and the
19 consolidated balance sheets that are part of their
20 report, those were offered as proposed Exhibit 5, and
21 they will be marked as Exhibit 7-A at this time, and
22 there is a total of six pages. Those have been
23 premarked.

24 Q. (By Mr. Wiley) Mr. Pratt, could you please
25 describe your job responsibilities at Olympic Disposal?

0067

1 A. Again, I oversee all monthly financial
2 activities in preparation of the monthly close, all
3 billing-related activities, and auditing functions.

4 Q. Do you assist and prepare or oversee the
5 preparation of those monthly records of Murrey's
6 Olympic?

7 A. Yes. I prepare, review, and sign off on
8 those financials.

9 Q. Have you reviewed the financial exhibits that
10 were offered into the hearing record today?

11 A. Yes, I have.

12 Q. Could you just briefly tell us in your own
13 words what they are, 5-A, 6-A, and 7-A?

14 A. Exhibit 5-A is a consolidated balance sheet
15 for Olympic Disposal. 6-A is a 12/31/09 annual income
16 statement for Murrey's Disposal Company, Inc., and
17 Murrey's Disposal, d/b/a Olympic Disposal.

18 The consolidated balance sheet 5-A is purely
19 for Olympic Disposal, the d/b/a portion of Murrey's.
20 Typically, we do not prepare a financial statement for
21 Olympic Disposal only; that is, for Murrey's, as they
22 are filed under the G-9 permit, and 7-A is the 12/31/08
23 annual report 10-K for Waste Connections, Incorporated.

24 Q. Tell us about Exhibit 6-A. What is that
25 prepared from, if you would?

0068

1 A. Exhibit 6-A is part of the Murrey's Disposal
2 Company, Inc., WUTC annual report for 12/31/09.

3 Q. And that's the latest annual report?

4 A. That is the report due May 1st and has been
5 filed.

6 Q. And the consolidated balance sheet 5-A
7 represents the breakout of Olympic Disposal assets from
8 Murrey's?

9 A. Correct. Exhibit 5-A is the breakout of
10 Olympic Disposal only.

11 Q. And 7-A is what, please?

12 A. 7-A is the 10-K for 12/31/08 for Waste
13 Connections, which is the parent company of Murrey's
14 Disposal Company, Inc., and Murrey's Disposal, d/b/a
15 Olympic Disposal.

16 Q. And in summary, what do Exhibits 5-A, 6-A,
17 and 7-A, what are they offered to show?

18 A. In my opinion, they prove the financial
19 wherewithal for Murrey's Olympic Disposal, Murrey's
20 Disposal Company, Inc., G-9, and Waste Connections,
21 Incorporated, again, as having the financial
22 wherewithal to provide the service for that portion of
23 the Olympic National Park.

24 Q. Could you please address the acquisition of
25 new equipment by Olympic in terms of resources and how

0069

1 you handle the acquisition or substitution of equipment
2 within your operating territory?

3 A. Olympic Disposal, the district manager and I
4 prepare a capital budget of which there are trucks,
5 containers, etcetera, purchased annually for that
6 entity depending on need. We are also able with our
7 size and depending upon contracts and where they may be
8 located to transfer equipment in and out.

9 So it's my opinion that Waste Connections is
10 certainly able to supply the necessary containers, both
11 front-load and rear-load, and collection vehicles to
12 service that area of the National Park.

13 Q. As we went on the record, we discussed the
14 issue of a tariff that's in place for Murrey's Olympic
15 and its current update. Could you please, for the
16 record, just identify what page container service is
17 referenced within Murrey's Disposal, d/b/a Olympic
18 Disposal's current tariff?

19 A. This is Page No. 1, Tariff Number 23,
20 TG-091728.

21 Q. Calling your attention to the second page,
22 could you identify what item in the tariff that is?

23 A. That is Page No. 35-A, Tariff No. 23.

24 Q. As a common carrier, do you apply all rates
25 indicated in your tariff to common carrier service?

0070

1 A. That's correct.

2 Q. What have you done with respect to the -- you
3 heard Mr. Kovalenko's testimony about the introduction
4 of front-load containers. What have you done with
5 respect to the addition of front-load containers from
6 the financial side? Have you financed them? Have you
7 moved them from another operation?

8 A. At this time, Mr. Kovalenko and I have
9 purchased some front-load containers of varying sizes,
10 and within the past month, we've submitted capital
11 requests, which are in various stages of approval, to
12 purchase additional front-load containers to be
13 utilized at the park.

14 Q. So you have existing front-load containers
15 and you are acquiring additional; is that correct?

16 A. Yes.

17 MR. WILEY: No further questions, Your Honor,
18 I offer Exhibits 5-A through 7-A.

19
20

21 CROSS-EXAMINATION

22 BY MR. KARGIANIS:

23 Q. For the record, if I might, I would just like
24 to know a little bit more about your companies if you
25 will bear with me, please. Murrey's Disposal Company,

0071

1 Inc., is the parent company, is it not?

2 A. Murrey's Disposal Company, Inc., is the G-9
3 holder, and Olympic Disposal is a d/b/a of Murrey's
4 Disposal Company, Inc.

5 Q. So Olympic Disposal, is that a separate
6 corporation or just a d/b/a?

7 A. A d/b/a.

8 Q. So what is a consolidated financial statement
9 for? Is that for service areas, or is it for different
10 companies?

11 A. The consolidated Exhibit 6-A?

12 Q. Yes.

13 A. Exhibit 6-A would be the consolidated
14 financial for Murrey's Disposal Company, Inc.,
15 primarily based out of Pierce County and then Olympic
16 Disposal based out of Jefferson and Clallam.

17 Q. So Murrey's is not a separate, stand-alone
18 company but an operation of Murrey's, but books and
19 records are kept separately for it; is that correct?

20 A. Correct.

21 MR. WILEY: Object to the form, Your Honor.

22 JUDGE TOREM: You are asking if Olympic was
23 kept separately under Murrey's which is the larger
24 company?

25 MR. KARGIANIS: Yes, I would like to correct

0072

1 that.

2 Q. (By Mr. Kargianis) The consolidated financial
3 statement then reflects the operations of Murrey's
4 Disposal Company, Inc., and in addition, reflects or
5 breaks out the revenues of the Olympic Disposal
6 operations in Clallam and Jefferson County; is that
7 correct?

8 A. I may have not totally understood the
9 question. Exhibit 6-A was filed due to the fact that
10 that is the presentation and the form to the WUTC in
11 terms of G-9.

12 JUDGE TOREM: Let me be sure I'm following
13 along. Mr. Kargianis, if you are looking at Exhibit
14 6-A, and it says Murrey's Disposal, Incorporated, G-9,
15 that's the one that shows solid waste operating
16 revenues of under 25 million dollars; is that right?

17 MR. KARGIANIS: Yes.

18 JUDGE TOREM: And you are asking about the
19 Olympic Disposal balance sheet, which shows assets
20 under equities, total liabilities and equities on the
21 second page of 5.1 million dollars?

22 MR. KARGIANIS: What I'm trying to figure out
23 is whether or not 6-A reflects all operations of
24 Murrey, including the d/b/a, and I assume it does.

25 MR. WILEY: We would stipulate that it does.

0073

1 It's the whole certificate.

2 JUDGE TOREM: Mr. Pratt, just to be clear,
3 6-A is prepared for the Commission because that's how
4 the certificate is issued under G-9; is that right?

5 THE WITNESS: That's correct.

6 JUDGE TOREM: Certificate G-9 includes not
7 only Murrey's but its subsidiary of Olympic, the d/b/a
8 Olympic.

9 THE WITNESS: That is correct.

10 MR. WILEY: Division is the best way to refer
11 to that, Your Honor.

12 Q. (By Mr. Kargianis) As I understand it, It's
13 not a separate operating company. It's a division
14 under Murrey's; is that correct?

15 A. Correct.

16 Q. And you have certain accounting controls to
17 determine the profitability of that particular
18 operation; is that not correct?

19 A. That's correct.

20 Q. Similarly, if additional equipment is
21 required, then you look to the service requirements of
22 that particular operation and the economies of scale,
23 whether or not additional equipment is justified for
24 that particular operation and the needs of your
25 customers; is that not correct?

0074

1 A. That's correct.

2 Q. But ultimately, that decision is made
3 centrally where, in Tacoma by the officers of Murrey's
4 on your recommendation?

5 A. Actually, that's made in a couple of areas
6 but most notably but Mr. Kovalenko.

7 Q. I notice in looking at 2-A where it sets out
8 the solid waste certificate authority by the
9 certificated companies that in addition to Murrey's,
10 there are other companies mentioned; to wit, Lemay
11 Disposal. Is that part of Murrey's, or is Murrey's
12 part of Lemay Disposal?

13 A. They are each separate entities. Waste
14 Connections is the parent of both, two separate
15 G-certificates.

16 Q. What's the name again?

17 A. Waste Connections, Incorporated.

18 Q. Are they a Washington corporation or a
19 national company?

20 A. They are a national company of which
21 Washington is part of the northern Washington division
22 of the western region of Waste Connections.

23 Q. Just for my information, how large is Waste
24 Connections in terms of geographic scale and secondly
25 in terms of annual revenue?

0075

1 MR. WILEY: I do think this is going a bit
2 far afield. We do have an exhibit that shows the
3 parent company's financial position, which we wanted to
4 submit, but to talk about their scale of operations, I
5 think we are belaboring the record here.

6 MR. KARGIANIS: I'm not trying to belabor the
7 record. I'm just trying to get an idea of the size of
8 the parent company. Is it multistate in nature? Does
9 it operate throughout the United States? Are their
10 operations in the millions? Where are we?

11 JUDGE TOREM: Mr. Pratt, if you can give a
12 quick summary, we will move on to the next range of
13 inquiry after that.

14 THE WITNESS: Waste Connections is a national
15 company. As to the exact number of states, I'm unsure
16 of that, but we have a presence throughout the west
17 coast, central, and southern part of the United States
18 with the exception of the eastern half of the United
19 States. As is stated or referenced in Exhibit 7-A,
20 2008 revenues were roughly \$1,049,000,000.

21 MR. KARGIANIS: Thank you sir, for clarifying
22 file that. I have nothing further.

23 JUDGE TOREM: Mr. Sells, any questions?

24 MR. SELLS: No, Your Honor.

25 JUDGE TOREM: Are there any objections to the

0076

1 admission of Exhibits 5-A, 6-A, and 7-A?

2 MR. KARGIANIS: None, Your Honor.

3 JUDGE TOREM: Hearing none, those three are
4 admitted. Mr. Wiley, any redirect?

5

6

7

REDIRECT EXAMINATION

8 BY MR. WILEY:

9 Q. Mr. Pratt, you were asked about
10 decision-making on equipment and operations. You
11 indicated that Mr. Kovalenko would have a large role in
12 that part. Could you clarify that please? Are
13 operational decisions and requests for equipment made
14 at the district level?

15 A. That is correct. Again, Mr. Kovalenko being
16 the district manager and myself being the division
17 controller, we again have a budget that we develop each
18 year, but in terms of capital expenditures, timing,
19 dollar amounts, that's made at the local level, and
20 quite frankly, that's the Company's philosophy.

21 MR. WILEY: No further questions.

22 JUDGE TOREM: Any further cross-exam for this
23 witness?

24 MR. KARGIANIS: No, Your Honor

25 MR. SELLS: No, Your Honor.

0077

1 JUDGE TOREM: Mr. Wiley, was there anything
2 else you wanted to present?

3 MR. WILEY: None. For the fitness,
4 willingness, and ability for the applicant, Olympic
5 Disposal, no.

6 JUDGE TOREM: Let's turn back to the
7 need-for-service issue, and I have before me the
8 four-page declaration from Phaedra Fuller, and this is
9 the one that's actually dated January 25th, 2010, and
10 it refers in the last question to conclude your
11 testimony in support of Olympic Disposal's application.
12 Do you move its admission at this time?

13 MR. WILEY: I do.

14 MR. KARGIANIS: No objection.

15 JUDGE TOREM: It's marked 8-A. Mr. Sells,
16 any objection?

17 MR. SELLS: No, Your Honor.

18 JUDGE TOREM: It will be admitted. Was there
19 any other evidence to be put on for your client,
20 Mr. Wiley?

21 MR. WILEY: Not at this time, Your Honor.

22 JUDGE TOREM: Let's shift gears to Docket
23 TG-091259. Mr. Gagnon has been sworn. I'll ask
24 Mr. Kargianis to proceed through the same presentation
25 of exhibits, unless anybody needs a break at this time.

0078

1 We've been going for about an hour.

2 MR. KARGIANIS: It's your call, Your Honor.

3 (Discussion off the record.)

4 MR. KARGIANIS: At this point in time, I
5 would call Brent Gagnon.

6

7

8 DIRECT EXAMINATION

9 BY MR. KARGIANIS:

10 Q. Would you state your full name and
11 professional business address for the record?

12 A. Brent Gagnon. Name of the company is West
13 Waste and Recycling, 272 La Push Road, Forks,
14 Washington, 98331.

15 Q. Tell us, sir, what is your position with West
16 Waste and Recycling, Inc?

17 A. I'm the president. I'm the chief cook and
18 bottle washer.

19 Q. Are you the sole stockholder?

20 A. Yes.

21 Q. Who assists in that operation at your office?

22 A. Robin Ostlund is my secretary. She's here
23 today.

24 Q. What's her position and responsibilities
25 there?

0079

1 A. She's secretary, bookkeeper, timekeeper.

2 Q. How many employees do you have?

3 A. Ten.

4 Q. What do these employees do? Are they

5 principally drivers and operators?

6 A. Drivers -- we have more than one business
7 that we run, so it's not really correct to say ten for
8 West Waste, but three garbage collection drivers. We
9 have one man that runs the transfer station, a couple
10 of mechanics.

11 Q. Where is your transfer station located, sir?

12 A. 272 La Push Road, Forks.

13 Q. So it's in Forks, Washington; correct?

14 A. Yes.

15 Q. Where are your principle offices located?

16 A. Same address.

17 Q. In respect to the operation involved in the
18 so-called Hoh quadrant, how far is your transfer
19 station from the campgrounds there to which you propose
20 service?

21 A. Approximately 20 to 25 miles.

22 Q. How far is your office then where your
23 equipment is situated from that area?

24 A. The same.

25 Q. Basically, how would you describe Clallam and

0080

1 Jefferson counties from the standpoint of population?
2 Is it very heavily populated, or would you identify it
3 as being sparsely populated?

4 MR. WILEY: Objection, foundation. I would
5 like to get a bit more parameter on this question.

6 MR. KARGIANIS: I think he's qualified. He
7 lives there. He works there. I'm asking if it's a
8 busy metropolitan area or essentially rural as opposed
9 to an urban area.

10 MR. WILEY: My objection went to the
11 population quantification portion of the question.

12 JUDGE TOREM: Mr. Gagnon, can you describe
13 the area to the best of your ability, and if there is a
14 need, if you use any specific numbers, explain how you
15 came to them.

16 THE WITNESS: It's very sparse. I've seen
17 more cars go by this street outside here than we see in
18 a week.

19 Q. (By Mr. Kargianis) What's the population of
20 Forks?

21 A. Population of Forks is 3,500.

22 Q. So basically, what is the principle
23 occupation, based on your knowledge, of the people in
24 that area?

25 MR. WILEY: Your Honor, I don't know that

0081

1 this is --

2 MR. KARGIANIS: I would be happy to make an
3 opening statement to cut it short. I believe that the
4 evidence of record if this individual were allowed to
5 testify, and I'm trying to shorten it up, would show
6 that Clallam and Jefferson County, the site of the
7 Applicant's operation, is a sparsely populated area;
8 that it's essentially a rural area with little or no
9 manufacturing or industrial base. Its principle
10 commercial activities consist of tourism, which is
11 seasonal, and logging and forest-related operations
12 which are essentially in a depressed mode based on the
13 economy that we are undergoing at this current time.

14 The Applicant has been in operation since
15 1994. It's principle, Brent Gagnon, has worked hard to
16 build up his business since the authority was issued,
17 and he is basically concentrating on servicing the
18 area, which as he indicated earlier, is sparsely
19 populated and has approximately ten- to fifteen
20 thousand people in that entire area that he services;
21 that is, the Clallam, Jefferson area that he services.

22 Each potential account is vital. New
23 business is almost nonexistent. There has not been a
24 great influx of new business or for that matter
25 population of the area in the current economic

0082

1 condition --

2 MR. WILEY: Your Honor, I would like to
3 interpose an objection at this point. This is
4 apparently an opening statement in the middle of direct
5 examination of a witness. It's sounding like an offer
6 of proof. Where it's going, I don't know. We've
7 already indicated fitness, willingness, and ability
8 isn't contested, so I do object to this.

9 MR. KARGIANIS: Then I'll go back --

10 JUDGE TOREM: Let me rule on the objection.
11 Mr. Wiley, I took his opening statement to be an offer
12 of proof of the sorts of questions he was going to
13 delve into with this witness, and I simply sustained
14 the objection in form, but in substance, I'll ask you
15 based on your other comment that none of this is
16 contested, would you stipulate to most of the proposed
17 facts that he offered as to the foundational facts?

18 I understand there will be a decision to be
19 made from the Bench at some point, probably in writing,
20 as to whether all of that adds up to a need for a
21 certificate to be issued to Mr. Gagnon's company or
22 not. As to the underlying facts as to the rural nature
23 of the county, of Clallam and Jefferson, as to the
24 limited population and the limited number of accounts,
25 do you stipulate to that?

0083

1 MR. WILEY: Your Honor, it's a difficult
2 question because I don't know what is being offered to
3 show. Some of that I think you could take official
4 notice of in terms of the statistics on population, the
5 manufacturing sector, etcetera. It's what conclusions
6 you draw from that objective data that I'm objecting to
7 because I don't think it's relevant to the issues in
8 this proceeding.

9 MR. KARGIANIS: I think that goes to
10 correction of the weight as opposed to the
11 admissibility. I'm merely trying to speed this matter
12 up by showing why he is pursuing this application, what
13 his motivation is, and that may or may not go to the
14 need. This is merely background information.

15 MR. WILEY: I think there is an assumption
16 for all applicants for certificates of public
17 convenience and necessity before this commission that
18 it's for the benefit of their own personal and business
19 needs and the proposed customers they service. That's
20 a given for all applicants, I believe, so I don't think
21 that's getting us anyplace.

22 MR. KARGIANIS: That's judgemental.
23 Fortunately, Mr. Wiley is not the one who is going to
24 make the decision, and I think a certain amount of
25 latitude should be allowed to us for at least putting

0084

1 on the flavor of our application and the reasons we are
2 here, and that's all we are doing.

3 MR. WILEY: I think that's more in the form
4 of post-legal argument, but I don't think we need to
5 belabor the record.

6 MR. KARGIANIS: I would ask that the judge
7 rule on my ability to proceed.

8 JUDGE TOREM: Mr. Wiley, I think there is a
9 limited amount of this information that will prove
10 relevant to allow the basis of any arguments that might
11 be requested in posthearing brief or in a closing
12 statement.

13 So in order to make sure Mr. Kargianis is not
14 going to be arguing facts that are not in the record
15 and subject himself to another potential objection of
16 that nature, I'll overrule your objection in substance
17 as to this, but Mr. Kargianis, I'll direct you to
18 perhaps ask the question of your witness in a narrative
19 form, and I'll have Mr. Gagnon respond to the more
20 general question and tell me in his answer his
21 motivation and as many supporting relevant facts as he
22 can interject into a narrative, and I'll ask Mr. Wiley
23 to give him some latitude without interruption knowing
24 that if he does interrupt, chances are I'm going to
25 overrule the objection anyway, but if you need to make

0085

1 one for the record, I'm willing to hear to some limit a
2 couple of minute piece on why you are applying and how
3 important this is to you.

4 Then we will go back to the items that are in
5 the administrative code provisions, Mr. Kargianis, go
6 through, I think it's going to be five proposed
7 exhibits for your client. So if you will pose the
8 appropriate questions to Mr. Gagnon, we can proceed.

9 Q. (By Mr. Kargianis) Mr. Gagnon, you heard
10 part of my opening statement, or offer of proof. Would
11 you agree, sir, that this is a sparsely populated area?

12 A. Yes, sir.

13 Q. Would you also agree that new business is
14 rather in short order; that is, not forthcoming;
15 correct?

16 A. Not much new business, not much building.

17 Q. Insofar as mandatory pickup service is
18 concerned, does either Clallam or Jefferson County
19 mandate pickup of garbage and/or refuse in your service
20 area?

21 A. No.

22 Q. So basically then, would you tell the
23 commission how you build up your business and what's
24 required, in effect, to sustain your business?

25 A. We started the business in '94. We've worked

0086

1 very hard to get the customers that we have. We are in
2 competing territory, so I'm competing against the
3 service level of the other company. We feel that we
4 provide good service level.

5 Q. How important to you is new business and your
6 ability to obtain business to sustain your operation?

7 A. We are referring to the park?

8 Q. Yes, sir..

9 A. It's important to me. We travel within the
10 area of all the campgrounds that are out in our
11 permitted area. We travel within five miles of this
12 particular site.

13 Q. Why do you travel there? Do you have
14 customers on that particular road?

15 A. We have customers up that road. As far as
16 there is customers, there is nothing past there, no
17 customers past there.

18 Q. So how far up that road do you go and how
19 many customers do you have up there?

20 A. We go about six to seven miles and roughly
21 eight to a dozen customers. It's very sparse.

22 Q. So you are in and out of there anyway;
23 correct?

24 A. Yes, sir, weekly.

25 Q. Insofar as your company is concerned, would

0087

1 you state whether or not you are ready, willing, and
2 able to provide any type of drop-off equipment that's
3 required by the Park Service should they require four-
4 or six-yard containers?

5 A. Yes. We have two, four, six-yard rear-load
6 containers.

7 Q. Insofar as your equipment is concerned, do
8 you modify or upgrade your equipment as is required to
9 maintain the service requirements of your customers and
10 potential customers?

11 A. Yes, we do.

12 Q. Do you feel you are financially ready,
13 willing, and able to acquire such additional equipment
14 should service requirements mandate that equipment?

15 A. We have all the containers that are necessary
16 at this time, and we have trucks that can service this
17 area at this time.

18 Q. Basically, if a customer requests a
19 particular type of equipment, what is your policy as a
20 company?

21 A. We would take care of the customer as their
22 needs.

23 Q. Have you heard any request or demand for
24 front-wheel loader, and what is a front-wheel loader as
25 opposed to a rear-wheel loader?

0088

1 MR. WILEY: Object to the form, Your Honor,
2 and I don't know what "heard any request" means in the
3 context of this application.

4 Q. Have you talked to any customers in the park
5 about the type of equipment that would be required to
6 service these customers?

7 A. No.

8 Q. In the eventuality that a request for a
9 particular type of equipment is made, what's your
10 position?

11 A. We would weigh out the request, and we would
12 get what they requested if it was within our means.

13 Q. Do you feel you have the wherewithal to
14 acquire equipment that's required?

15 A. Yes.

16 MR. KARGIANIS: We have submitted various
17 exhibits, Your Honor, including what has been marked in
18 our filing Exhibit 1, which is a copy of...

19 JUDGE TOREM: I'm going to mark as Exhibit
20 1-B the existing Certificate G-251.

21 MR. KARGIANIS: Your Honor, it might make a
22 lot more sense if you would just identify the exhibits
23 that we've filed and we would offer them. It's their
24 certificate. It's the equipment list. It's the
25 financial statement.

0089

1 JUDGE TOREM: I'll do that. So 1-B is going
2 to be Certificate G-251. That's one page.

3 MR. KARGIANIS: And that is your certificate;
4 correct?

5 THE WITNESS: Correct.

6 JUDGE TOREM: Exhibit 2-B is also one page.
7 It appears to be a business license.

8 MR. KARGIANIS: That is your business
9 license?

10 THE WITNESS: Correct.

11 JUDGE TOREM: Exhibit 3-B is the financial
12 statements for the year ended December 31st. It
13 appears to be six total pages.

14 MR. KARGIANIS: Those are true and correct,
15 are they not, sir?

16 THE WITNESS: Yes, sir.

17 JUDGE TOREM: Then what's marked as Exhibit
18 4-B looks to be an equipment list, two pages.

19 MR. KARGIANIS: And that is equipment used
20 and maintained by your company; is that not correct?

21 THE WITNESS: Yes, sir.

22 JUDGE TOREM: Those are all the exhibits
23 other than the declaration from Ms. Fuller, which I'll
24 mark as Exhibit 5-B.

25 MR. KARGIANIS: I'll offer Exhibits 1-B

0090

1 through 5-B at this time.

2 JUDGE TOREM: Any objections?

3 MR. WILEY: None, Your Honor.

4 MR. SELLS: None, Your Honor.

5 JUDGE TOREM: So to be clear, the testimony
6 from Ms. Fuller was filed on January 26th. That's a
7 three-page document. It will be marked as Exhibit 5-B,
8 and those five exhibits are now admitted. Any other
9 testimony, Mr. Kargianis?

10 MR. KARGIANIS: Yes, one last question.

11 Q. (By Mr. Kargianis) Would you tell the judge
12 in your own words why you are filing this application
13 and why you feel this application would be in your
14 company's best interest?

15 MR. WILEY: I will make an objection to the
16 latter part of the question. That's the objection that
17 Mr. Kargianis had of my witness that you sustained in
18 terms of the effect of granting this application on the
19 Company. I certainly don't object to the first part.

20 MR. KARGIANIS: I think the objection was to
21 the effect it would have on the park.

22 JUDGE TOREM: Mr. Kargianis is correct. I
23 believe we allowed the answer to the latter question,
24 which was the effect on the Company.

25 MR. WILEY: Could we take the questions one

0091

1 at a time, Your Honor, and I'll see if I have an
2 objection. It was a compound question.

3 JUDGE TOREM: I can sustain that objection.

4 Q. (By Mr. Kargianis) Why are you pursuing this
5 application?

6 A. Because the area of the park that we have
7 applied for is within, just about within, the
8 boundaries of our permit as it stands now in the
9 western portion of Clallam and Jefferson County.

10 Q. Why do you think that's significant?

11 A. We are already serving most of the areas. We
12 drive right through all the areas. We drive very close
13 to this particular area, and it only makes sense to
14 have it.

15 Q. Go ahead. This is your chance to tell your
16 story.

17 A. It would help our business. We applied for
18 the contract in 1995 when it was issued to Olympic
19 Disposal, and we were second bidders at that time.
20 I've been trying to get the park to put this contract
21 back up since 2000, and it has not been done yet.

22 Q. If the contract is put up, do you intend to
23 bid on it?

24 A. Correct.

25 Q. As far as you are concerned, do you feel you

0092

1 are qualified to provide that type of service?

2 A. Yes, sir.

3 Q. Is this the type of business that would be
4 important to your company?

5 A. Yes, sir.

6 Q. Having in mind your prior comments regarding
7 the condition, economic condition of that particular
8 area, would this be an important source of revenue for
9 your company?

10 A. Yes, it would.

11 Q. Would it enable you to continue to service
12 and provide service to this sparsely populated area?

13 A. Yes, it would. In 1995 when the contract was
14 issued, the contract belonged to another company at
15 that time. When they lost the contract, I bought all
16 the equipment from him, all the dumpsters from him, so
17 we have the dumpsters that used to be in the park
18 before Olympic Disposal got the contract.

19 Q. As I understand it, the contract has expired
20 and Olympic Disposal is operating currently on a
21 temporary authority; is that correct?

22 A. That's the way I understand it.

23 Q. Do you have any understanding or information
24 as to when the contract will be put out for bids?

25 A. In speaking with Ms. Fuller --

0093

1 MR. WILEY: Objection, Your Honor. This is
2 going to need, and it is also hearsay, and I really
3 think it's going beyond the scope of the direct on the
4 fitness, willingness, and ability.

5 MR. KARGIANIS: I'm asking him if he has any
6 idea when this contract will be up for bid, and if it
7 goes up to bid, what is your intention.

8 JUDGE TOREM: The objection is sustained. I
9 don't think it's relevant.

10 MR. KARGIANIS: I will withdraw the question.

11 JUDGE TOREM: If the Park Service puts the
12 contract out next week or next year, it's not going to
13 affect my decision, is it?

14 MR. KARGIANIS: It won't, Your Honor. That
15 would complete my testimony of this witness, Your
16 Honor.

17 JUDGE TOREM: Mr. Gagnon, if you will direct
18 your attention to Mr. Wiley, he has some cross-exam.

19

20

21 CROSS-EXAMINATION

22 BY MR. WILEY:

23 Q. You mentioned that you had some businesses,
24 plural. The only one that I understood was the West
25 Waste, the solid waste business. You have a transfer

0094

1 station as well?

2 A. Yes, sir.

3 Q. Is that the other business that you were
4 referring to when you said you had ten employees and
5 that you had other businesses?

6 A. We also have West Waste Pumping, which is
7 septic pumping, and West Waste Sanitation, which is
8 sani-cans.

9 Q. The transfer station, what corporation owns
10 or operates the transfer station?

11 A. West Waste and Recycling, Inc.

12 Q. So that's the regulated solid waste company;
13 correct?

14 A. Yes.

15 Q. Do you prepare financial statements that
16 separate out the solid waste collection operations from
17 the transfer station operations?

18 A. I believe so.

19 MR. WILEY: He's looking to the audience.

20 THE WITNESS: I'm looking to my bookkeeper.

21 Q. (By Mr. Wiley) You don't know?

22 A. Ask that question again.

23 Q. Do you prepare separate financial statements
24 for the transfer station as opposed to solid waste
25 collection?

0095

1 A. I can tell you how much income the transfer
2 station brings in and how much the collection company
3 brings in.

4 Q. That's a bit further than I wanted to go. I
5 just wondered if you had separate books and records for
6 the transfer station.

7 A. It's all in one bucket.

8 Q. Who sets the rates at the transfer station in
9 Forks that you operate? Is that in Clallam County?

10 A. West Waste and Recycling sets the rates. We
11 are in the city limits of Forks, so we need to be
12 authorized by the city to set that rate.

13 Q. So are you saying that Clallam County or the
14 City of Forks do not buy ordinance establish the rates
15 that are charged at your transfer station?

16 A. I believe that's correct.

17 Q. So you could charge anybody anything at your
18 transfer station as long as it complied with the posted
19 schedule that you set?

20 MR. KARGIANIS: I'll object to relevancy of
21 it setting the rates set.

22 MR. WILEY: Your Honor, he's injected some of
23 the rates in terms of the frequency of the service, the
24 proximity. I'm just wondering who sets the rates of
25 the transfer station, which is a very material part of

0096

1 the service for solid waste collection customers.

2 MR. KARGIANIS: I think the question has been
3 answered. I withdraw my objection, Your Honor.

4 Q. (By Mr. Wiley) Mr. Gagnon, my question is,
5 is it correct that you can charge whatever you wanted
6 to anybody who used your transfer station as long as it
7 complied with the posted rate schedule at your transfer
8 station?

9 A. As long as it complied with the posted rate
10 schedule. I believe our rates are in our tariff.

11 Q. That wasn't my question. It was whether you
12 could set the rates or a county or city set them for
13 you, and I think you've answered my question that you
14 alone can set those rates.

15 A. I believe that's correct.

16 Q. Calling your attention to the financial
17 statement that you filed in this matter --

18 MR. WILEY: Your Honor, I got behind on the
19 marking. The financial statement is...

20 JUDGE TOREM: Exhibit 3-B.

21 Q. The last page of that financial statement,
22 it's correct, is it not, that your net income reported
23 for the year 2009 was \$58,000?

24 A. I believe so.

25 Q. How much are new trucks that you testified

0097

1 you would be willing to acquire, typically?

2 A. Usually around \$100,000.

3 Q. Calling your attention to Exhibit 4-B, which
4 is your equipment list, I'm not seeing any -- I'm
5 trying to go down through this. Are there three
6 trucks? How many trucks do you have in your fleet?

7 A. Rear-load trucks?

8 Q. Yes.

9 A. Three.

10 Q. How many front-load trucks do you have?

11 A. None.

12 Q. What year are your rear-load trucks? Are
13 they indicated there?

14 A. You are looking at that sheet list there?

15 Q. Yes.

16 A. The 2000 International, the '01
17 International, and '03 International.

18 Q. So your most recent truck is that '03
19 International?

20 A. Correct. It's actually an '05, but the truck
21 salesman got me.

22 Q. Should we correct Exhibit --

23 A. It's licensed as an '03.

24 Q. You also mentioned that in answer to your
25 counsel's question that there was no mandatory service

0098

1 in Clallam or Jefferson County, I think your testimony
2 was. In your experience, is mandatory service usually
3 a function of a municipal law rather than a county law?

4 A. I think that's correct.

5 Q. So in other words, the mandatory services
6 ordinances are by cities and not by counties.

7 A. I believe so.

8 Q. I was a little confused by the end of your
9 testimony regarding the '95 contract, and I don't want
10 to get into it other than to clarify your statement
11 about whether -- I don't understand if this is your
12 first application for authority in the national park or
13 if you had applied before. I wasn't tracking your
14 testimony.

15 Is this your first application with the
16 Washington Utilities and Transportation Commission to
17 have authority within the Olympic National Park?

18 A. We applied for --

19 Q. Can you answer yes or no first and then you
20 can explain? Is this the first application that you
21 made with the Washington Utilities and Transportation
22 Commission for solid waste certificate authority within
23 the Olympic National Park?

24 A. We have solid waste authority in other
25 portions of the Olympic National Park.

0099

1 Q. But my question is the application for
2 authority, so this is not your first application, I
3 think you are answering my question.

4 A. I believe that would be correct.

5 Q. When you testified about other sectors, and I
6 believe one of the exhibits by Olympic shows the
7 sectors of the park. You have two sectors of the park;
8 correct, currently?

9 A. Lake Crescent and Ozette. Can I mark on
10 here?

11 Q. Yes.

12 A. We have this one, this one, this one, this
13 one, this one. (Witness indicating.)

14 MR. KARGIANIS: Can you list them in the
15 record?

16 THE WITNESS: Lake Crescent, Storm King; Lake
17 Crescent, Fairholm; Sol Duc, Ozette, Mora, and
18 Kalaloch.

19 Q. Those are areas you are currently serving
20 within the national park; correct?

21 MR. KARGIANIS: I object to the question.
22 Are those areas within the national park that he
23 currently holds authority?

24 MR. WILEY: He has shown he holds authority,
25 Your Honor.

0100

1 MR. KARGIANIS: Was that your question?

2 Q. (By Mr. Wiley) My question was, so you are
3 currently serving within these areas of the national
4 park that the exhibit reflects; is that correct?

5 A. It's a confusing question. I have authority
6 in those areas.

7 Q. But you are not serving.

8 A. But I'm not serving.

9 Q. What areas of the park are you currently
10 serving is my question then?

11 A. I do not have a contract with the park.

12 Q. But you have common carrier authority, do you
13 not?

14 A. Yes.

15 Q. Is your understanding of Washington law that
16 you can serve within a territory whether you have a
17 contract or not?

18 A. Now it is. It wasn't when we got our permit
19 in 1994.

20 Q. And that's where my question is going. Did
21 you apply in 1995, which is the date you reference, for
22 service within the entire Olympic National Park?

23 A. That's not the correct date.

24 Q. When was it?

25 A. '94.

0101

1 Q. Did you apply in '94 for the entire national
2 park?

3 A. No.

4 Q. Then when you said that you want to serve the
5 park under the complete contract, was that statement
6 with respect to having authority issued by this
7 commission for the entire park?

8 A. Can I talk now?

9 Q. If you don't understand the question, just
10 tell me.

11 MR. KARGIANIS: Go ahead and answer the
12 question, if you can.

13 JUDGE TOREM: Mr. Gagnon, I think the
14 question is asking you to clarify your intent when you
15 are speaking about a contract with the national park,
16 which areas you are seeking to serve.

17 THE WITNESS: The whole quadrant.

18 JUDGE TOREM: You are seeking only to serve
19 the Hoh quadrant, not the other areas of the park that
20 Mr. Wiley just had you list where you already have
21 authority but are not serving.

22 THE WITNESS: I already have authority but am
23 not serving the Olympic National Park in those areas.
24 We are just applying for the Hoh quadrant.

25 JUDGE TOREM: So this is a very limited

0102

1 contract for which you are hoping to apply. It's
2 essentially the Hoh quadrant campgrounds we've
3 described.

4 THE WITNESS: The contract with the park
5 involves all seven of those campgrounds. The only one
6 that is not in our territory at this time is the Hoh
7 quadrant.

8 JUDGE TOREM: So you are seeking to serve all
9 the campgrounds?

10 THE WITNESS: Within our territory.

11 JUDGE TOREM: Which would be the Hoh quadrant
12 you are seeking and the other six we just described.

13 THE WITNESS: Correct. We can't even bid on
14 it.

15 JUDGE TOREM: Let me back up because now I'm
16 confused.

17 MR. KARGIANIS: I have an objection, Your
18 Honor --

19 JUDGE TOREM: I'm not going to hear it quite
20 yet because we've already gone over this, and I'm not
21 going to have late objections now.

22 MR. KARGIANIS: I'm not objecting, but I know
23 the client has been confused by the question. I
24 appreciate what you are trying to do.

25 JUDGE TOREM: It appears then the issue

0103

1 before me is carrier authority in one quadrant of the
2 park where there is none, and both companies are
3 seeking it.

4 THE WITNESS: Correct.

5 JUDGE TOREM: I get that. Mr. Wiley's
6 question is if you get the certificated authority from
7 me and the Commission for the Hoh quadrant, what
8 business do you intend to apply for a contract with the
9 park?

10 THE WITNESS: I intend to apply for those
11 overlapping areas, park campgrounds.

12 JUDGE TOREM: So in sum, you intend to
13 compete with Olympic for all the campgrounds in the
14 park for which you have certificated authority.

15 THE WITNESS: Correct.

16 MR. WILEY: Thank you, Your Honor. That's
17 exactly where I was going.

18 JUDGE TOREM: Mr. Wiley, anything else on
19 cross?

20 MR. WILEY: No. We are done.

21 JUDGE TOREM: Mr. Sells, any other questions
22 I can phrase for you?

23 MR. SELLS: Just one if everyone can hear me.

24

25

1 CROSS-EXAMINATION

2 BY MR. SELLS:

3 Q. Mr. Gagnon, would it be correct to state that
4 whomever is awarded either this authority or contract,
5 it should be through a G-certificate?

6 MR. KARGIANIS: Do you understand the
7 question?

8 THE WITNESS: It's confusing.

9 MR. SELLS: Let me restate it.

10 Q. (By Mr. Sells) Do you believe in order for
11 either you or WCI to serve this territory that you or
12 WCI should hold or be issued a G-certificate?

13 A. I believe the answer is yes.

14 MR. SELLS: That's all I have; thank you.

15 JUDGE TOREM: Thank you, Mr. Sells. Are
16 there any other follow-up questions for this witness?

17 MR. KARGIANIS: No, Your Honor. Thank you
18 for clarifying the last go-around here.

19 JUDGE TOREM: So I've got the five exhibits.
20 If I hadn't already said they were admitted, Exhibit
21 1-B through 5-B, there were no objections. Those
22 included Ms. Fuller's declaration. They are admitted.
23 Is there any other testimony for your client,
24 Mr. Kargianis?

25 MR. KARGIANIS: Not at this time, Your Honor.

0105

1 JUDGE TOREM: Mr. Sells, I know your client,
2 the WRRRA, were not offering specifically any witnesses
3 or any documentary evidence. Is that still the same
4 case?

5 MR. SELLS: That is correct, Your Honor.

6 JUDGE TOREM: It appears that all the parties
7 have put on the evidence necessary, and I want to turn
8 back to the attorneys. Let me again restate my
9 understanding of the situation. The Parks Service
10 wants to have a certificated hauler in the Hoh
11 quadrant, and at this point, the Commission has not
12 extended any such certificated authority to any of the
13 companies wishing to compete there.

14 MR. KARGIANIS: That's correct, Your Honor.

15 JUDGE TOREM: That's the main issue in front
16 of me. However, the question then for both companies
17 that wish to compete is when the Parks Service puts
18 this contract up, it would involve more than just the
19 Hoh quadrant. It would involve the entire park and all
20 of its campgrounds, and this remaining piece of the
21 puzzle would allow both companies to tell the park in
22 good faith that they have the ability to compete for
23 all areas of the park, at least from Commission's
24 perspective, on equal footing and will leave it up to
25 the financial bids of both companies to come out low

0106

1 and qualified in the eyes of the federal government.

2 I see Mr. Gagnon shaking his head.

3 Mr. Kargianis, is that your understanding?

4 MR. KARGIANIS: Yes, Your Honor.

5 JUDGE TOREM: I would only be empowered to
6 assist with the issue. The second is a contract issue
7 for somebody else; is that correct?

8 MR. KARGIANIS: That's the way I understand
9 it, Your Honor, and that's all we are asking for is the
10 ability to at least compete for the contract, and we
11 would abide by whatever the Park Service's decision is.

12 JUDGE TOREM: Mr. Wiley?

13 MR. WILEY: As I understand your premise,
14 Your Honor, it would be to compete for the contract and
15 all areas in which they hold overlapping G-certificate
16 authority.

17 MR. KARGIANIS: Correct.

18 JUDGE TOREM: The issue before me is when I
19 look at WAC 480-70-091 to look at both applicants.
20 You've both stipulated that each has satisfied the
21 requirements needed for an application in 3-A through
22 "H." Am I to understand that either of you objects to
23 the Commission extending overlapping authority to the
24 other, or is this one of those where I'm going to hear
25 legal arguments or brief following the witness

0107

1 testimony today as to why one seems to want to have
2 sole authority for this area. Mr. Wiley?

3 MR. WILEY: Your Honor, I think you've raised
4 the central legal issue, which is it's the Commission
5 who consolidated these applications as contemporaneous
6 applications, so under Commission case law, there is a
7 comparative analysis that's performed.

8 The next issue for you as you go through that
9 analysis is whether the applications are mutually
10 exclusive or if more than one certificate could be
11 issued in this unique circumstance, and as you know,
12 the Commission disfavors overlapping certificates in
13 most circumstances, but this is an area where there is
14 no existing common carrier service provider, so in that
15 way under RCW 81.77.040, there is not a territory
16 already served from the statutory language.

17 If you, in fact, take the position that on
18 review of the record and the law and evidence that only
19 one certificate can be granted, then, of course, we as
20 Olympic Disposal assert we are the more worthy,
21 experienced, and established candidate for that
22 certificate. We also think that as part of that
23 analysis, whether you go there or not, you have to also
24 consider the federal law on permitting of federal
25 facilities, which is clearly, the great body of law is

0108

1 that the federal facilities must follow state and local
2 law with respect to certification of a solid waste
3 collection service.

4 So you've got a lot of issues before you. We
5 also think the issue of the Commission case law about
6 relative rates of the parties is not at all relevant in
7 entry application, and I can cite authority on that
8 issue as well. Those are sort of my summary legal
9 issues.

10 MR. KARGIANIS: Your Honor, first all I want
11 to commend Mr. Sells and Mr. Wiley in trying to work
12 through what would normally be a very thorny issue. I
13 respect their professionalism, and I would second the
14 comment made by Mr. Wiley that this represents a unique
15 circumstance insofar as neither party is authorized to
16 service within that particular quadrant. The Park
17 Department requires the G-Certificate as a precursor to
18 a successful bid submittal, so we do have a situation
19 where we both require the underlying authority in order
20 to bid.

21 And as David pointed out, there is no
22 existing service being rendered or authorized in the
23 area, and I think under the circumstances, given the
24 conditions, that the Commission well could issue
25 concurrent jurisdiction or authority in the area. I

0109

1 think each of us by stipulation would say that we are
2 uniquely qualified, but the fact remains that by our
3 stipulation, we have given at least the judge in this
4 case the basic foundation that both sides are qualified
5 to hold the authority, and we would ask the Commission
6 to grant our authority, and we would indicate that upon
7 a grant of authority to us that we will have no
8 objection to the grant of authority to the other
9 applicant.

10 At least that would put the parties in a
11 position to compete and to bid for service, and the
12 Parks Service then through this process that it set up
13 for service within its area would have the benefit of
14 what it would consider to be the best qualified bidder,
15 so with that, I would thank the Commission, and will
16 await the decision of the judge in this matter.

17 JUDGE TOREM: Mr. Sells?

18 MR. SELLS: Thank you. If Your Honor please,
19 very briefly, I can't disagree with anything that
20 either attorney has said, but we do want the record to
21 reflect that dealing with federal government on
22 contracts is sometimes the most difficult thing that
23 any of our members or other service companies get
24 themselves involved in.

25 JUDGE TOREM: Mr. Sells, as you know, my

0110

1 service as a JAG in the Air Force Reserve makes me
2 uniquely qualified to understand the nature of the
3 conundrums of federal contracting, particularly my time
4 as a contracting officer, I can only echo what you are
5 saying.

6 MR. SELLS: You have nothing but my sympathy
7 there. WRRRA's point is that whomever serves this area
8 and however they serve it, via a contract or simply by
9 their authority, the government does not have the
10 authority to deal with a non-G-certificate carrier. So
11 if there is one authority granted here, fine. If there
12 is two authorities granted here, fine, but one or two
13 of those are those folks that the contracting officer
14 is going to have to deal with, and I'm not going to
15 bore anybody with all the garbage sites and all of
16 that, but that's the whole point here as far as we are
17 concerned.

18 JUDGE TOREM: Mr. Sells, as a trade
19 association representative today, let me ask your
20 insight on what I've marked as Exhibit 2-A, and we just
21 referred to with Mr. Gagnon noting six different
22 segments of the park where he has authority, but he's
23 not competing now because he doesn't hold a contract.

24 Each one of those, the authority is
25 overlapping with the proposed competitor here for the

0111

1 Hoh forest sector, Murrey's Disposal and West Waste in
2 six different areas that he's named and I won't relist
3 for you, have overlapping authority, but it appears
4 that only Murrey's Disposal doing business as Olympic
5 has the contract, and putting the contract back up for
6 bid again, as the parties anticipate will occur, the
7 only way there could be a true competition is if there
8 are two holders of this authority. Is that how you
9 understand the problem here?

10 MR. SELLS: I think it is; although, I guess
11 my understanding of this particular application was
12 that it involved this campsite or area, sector within
13 the park itself. Any company with authority can
14 certainly attempt to gain customers within their
15 certificated area, whether it's through contract with
16 the federal government or soliciting customers.

17 There are overlapping authorities within the
18 state, very, very few of them, and I think
19 Mr. Kargianis and Mr. Wiley know this better than I,
20 but it's been the Commission's position over the years
21 that overlapping authority is not necessarily a good
22 thing and does not work out to the best of the
23 customers because then we have what we have tried to
24 avoid as a regulated industry. If there is overlapping
25 authority, the customers are up for grabs, subject to

0112

1 tariffs.

2 JUDGE TOREM: Thank you. Bear with me,
3 Mr. Sells. I think, counsel, I want to ask before I
4 take the matter under advisement for your views on what
5 Mr. Sells just indicated about the Commission not
6 generally favoring overlapping authority, but I would
7 like to see some briefing as to how we have six
8 overlapping authorities within this national park and
9 argue to me why there should or shouldn't be a seventh,
10 because there seems to me some way of an appeal, at
11 least on a common sense basis, if not one in law or
12 regulation, which again may not be based on common
13 sense, as to why the entire park shouldn't be treated
14 uniformly and let the competition fall, not here in
15 Olympia but out there at the headquarters of the park
16 where these decisions are made.

17 MR. WILEY: You've broadened your question,
18 Your Honor.

19 JUDGE TOREM: This is a decision that I
20 recognize. I may be making a decision on behalf of the
21 National Park Service, and I'm not going to have the
22 Commission act as a proxy unless there is a legal basis
23 to do so, so I'm tipping my hand as to where I think
24 the appropriate decision-maker is.

25 On a business matter as to rates and

0113

1 competition and the rest, if you are equally able to do
2 it, there is no reason that I can see commonsensically
3 not to issue two certificates, so that tells you that
4 if you want one and the other party not to have one,
5 Mr. Wiley, I need to know the legal basis on which my
6 comparative analysis as required by the rule, but you
7 went so far as to say an overlapping certificate would
8 be okay, but you haven't cited me to the authority and
9 to the elements on which I would make a decision that's
10 appropriate in this case.

11 MR. WILEY: If I can answer some of your
12 concerns, Your Honor, and I'm only taking your question
13 going to the Hoh quadrant. The question of the park as
14 a whole is a whole different matter because then there
15 is incumbent providers, and you get into a whole
16 different analysis.

17 I was talking about another issue that we
18 have to address so I didn't hear all of what Mr. Sells
19 was saying, but I do think that it's correct that the
20 Commission historically in neighborhood curbside
21 service disfavors overlap. In other circumstances
22 where there is no incumbent provider, and that's the
23 caveat I put on all of this, and you are dealing with a
24 specialized service, such as drop-box containers, the
25 Commission has historically considered overlapping

0114

1 authorities as not being inconsistent with the public
2 interest.

3 So if we are talking about the Hoh sector,
4 which is what my comments are limited to, I do think
5 you have the discretion, because the territory is not
6 presently served, to authorize that and to facilitate
7 what the Park Service might want in the Hoh sector as
8 far as overlapping bits.

9 Two other complications I want to mention,
10 first of all, 81.28.080 allows for different rate
11 treatment for federal government under statute, so
12 they've already got a different statute. It's not the
13 kind of regulatory regime that applies to all common
14 carrier, garbage carrier, so that answers one of your
15 questions right there. There is more leeway to the
16 carrier than the federal government.

17 Number two, one of the concerns that I've had
18 throughout ever since, and I've raised this to counsel
19 before today, there is a bit of inconsistency in the
20 shipper testimony. Knowing you, you probably already
21 spotted it, but it's in the testimony filed by West
22 Waste from Phaedra Fuller, who was also our witness,
23 where at Line 5, she indicates -- it's on Page 3 --

24 JUDGE TOREM: Exhibit 5-B.

25 MR. WILEY: -- where she indicates that she

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1 prefers that only one permit or certificate be issued
2 in this quadrant. That is contrary to my
3 understanding, and I believe Mr. Kargianis also
4 concurs, and it was on the basis of that testimony that
5 we clearly wanted to have an argument on the
6 alternative where you found only one certificate could
7 be granted and that it could only be granted on a
8 comparative application.

9 If you take that testimony as need verbatim,
10 then that concerns us, and we very strongly argue that
11 we are the more qualified applicant, but that's not to
12 refute the premise that we think you can issue
13 overlapping certificates in this rare instance where
14 the territory isn't already served and where it's one
15 limited sector for very specialized service to one
16 customer, that being the federal government.

17 MR. KARGIANIS: Judge, I agree with what
18 Mr. Wiley is saying. I think what she was saying is
19 she prefers one contract as opposed to having a
20 contract with two different carriers within the park.
21 I think that was inartfully put, but that's my
22 understanding. It's Mr. Wiley's understanding, and I
23 think it's her understanding. She doesn't want to deal
24 with two contractors; she wants one.

25 JUDGE TOREM: Mr. Wiley, I'm looking back at

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1 what has been marked as Exhibit 8-A, also Page 3. The
2 contradicting testimony that you obtained from her the
3 day before says on Line 11 through 14, "Would
4 authorization of duplicating service in the Hoh
5 quadrant be of any benefit and/or convenience to the
6 Park Service?"

7 Her answer: "Only to the extent that it would
8 allow us to have overlapping service providers who then
9 compete on the economics or pricing of the Hoh quadrant
10 service which admittedly is not a heavily utilized
11 section of the park."

12 MR. KARGIANIS: That's our understanding.

13 MR. WILEY: That's our understanding.

14 MR. KARGIANIS: I know you called for briefs
15 on the matter, but I don't think that from the
16 appellate for petition for reconsideration basis or
17 whatever that any of the parties here would disagree
18 that all we are asking for is an opportunity to tee up
19 to try to satisfy the requirements of the government
20 that the parties bidding for a contract within the park
21 have the underlying G-Certification, and I think it's
22 just an oversight on the part of both carriers and the
23 certificates, if you would, that we don't happen to
24 have this one additional critical area, and frankly, we
25 are supporting their application as much as they are

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1 supporting our application. I think we just really
2 want to go forward and compete on a contract basis.

3 JUDGE TOREM: If he were supporting your
4 application, I haven't heard it yet today. I think
5 that would have been the settlement you both proposed,
6 but it hasn't gotten there, so now I have the decision,
7 and the briefing I'm referring to, I would like to know
8 how we got the six overlapping areas, and if you simply
9 want to send a letter explaining to me the Commission
10 decisions, either in open meeting or otherwise, how we
11 had these overlapping areas in the park, I would be
12 interested, and if you want to through counsel make a
13 statement or proffer now, that would help me
14 understand.

15 What I'm referring to, Mr. Wiley, treating
16 the entire park equally, it's up to the Park Service in
17 that contract whether it's going to be competition in
18 just the Hoh sector or all the campgrounds. I
19 understood the intent from your potential competitor is
20 if they put up a contract where he has authority, he's
21 going to compete. He wants customers. I get that.
22 This is one area that neither of you, aside from your
23 temporary authority issued last summer, have permanent
24 authority without competition. There is no monopoly
25 been issued in the Hoh quadrant to date. You are

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1 asking me to issue a monopoly, and if I do, to you.

2 MR. WILEY: No. I'm saying that you can
3 issue -- we are not opposed to overlapping
4 certificates, but if you under the Ashbacker statute
5 and your reading the case law believe you can only
6 issue one certificate in a comparative application that
7 it be to us, and I also want to make very clear we
8 believe the Hoh is a unique sector because it's not
9 authorized to the rest of the park. What's done there
10 configured by bidding or otherwise is totally
11 fact-specific on those sectors. For instance, at the
12 headquarters in Port Angeles, there are whole other
13 reasons why there should only be one provider. Our
14 statement here today is only for the Hoh sector.

15 JUDGE TOREM: I don't mean to give you the
16 impression I'm looking at the rest of the park, but I'm
17 trying to understand those areas which are similar
18 potentially to how this comes out that already have an
19 overlapping issue.

20 MR. WILEY: The only one that's indicated
21 right now is Hoh. Everything else is in status quo.

22 JUDGE TOREM: Go back to Exhibit 2-A, which
23 you submitted. There are six areas where he has
24 authority but no contract. If I understood the
25 testimony, the reason he has no contract is because the

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1 contract that was put out includes not only the Hoh but
2 those other six areas. Mr. Gagnon, was that your
3 testimony?

4 THE WITNESS: Can I say something?

5 JUDGE TOREM: Please.

6 THE WITNESS: You might be a little bit
7 mistaken. There is basically not six overlapping
8 areas. There is one overlapping area, and those six
9 campgrounds happen to be within it. We are overlapping
10 from Lake Crescent west, western Clallam and Jefferson
11 County. Those six campgrounds happen to be in it.

12 JUDGE TOREM: My question to you is those six
13 campgrounds are on the same contract, are they not,
14 with the campground in the Hoh quadrant.

15 THE WITNESS: Correct.

16 JUDGE TOREM: So you can't compete for the
17 Hoh quadrant without certificated authority, which if I
18 grant that to you and to Olympic, you then can compete
19 for all seven campgrounds.

20 THE WITNESS: Correct.

21 JUDGE TOREM: And if I grant it only to you,
22 then the Park Service is in a pickle because they can
23 only give you that quadrant and only Olympic the
24 others. So I could really screw this up for the Park
25 Service, Mr. Wiley, and force their contracting officer

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1 to seek out advice from their JAG.

2 MR. WILEY: I know your focus on the
3 contracting issue for obvious reasons based on your
4 other familiarity --

5 JUDGE TOREM: That's the end result here is
6 both of you want to compete for a contract that I have
7 no authority to see or otherwise.

8 MR. WILEY: I would say that you should be
9 guided by the common carrier obligation that is before
10 you in terms of certificates as common carriers. We
11 don't have to have contracts as common carriers. What
12 practically that means in terms of how they configure
13 any, quote/unquote, bid is really the Park Service's
14 rendition, and they are very distracted by the stimulus
15 law and other things going on in terms of
16 appropriations right now and have been flat-footed on
17 this and some other projects for many, many months.

18 Your Honor, I really think it's a simpler
19 analysis as to common carrier authority in an area
20 which no one has a certificate and basically just
21 deciding if you can issue overlapping certificates in
22 that one corridor.

23 JUDGE TOREM: My understanding is that that's
24 not what your client wants me to do.

25 MR. WILEY: No, Your Honor. What I said is

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1 it's territory unserved. We think in this unique
2 circumstance you could issue overlap and that we only
3 in this corridor have no objection to overlapping being
4 issued.

5 I think what you were getting somewhat
6 distracted in terms of my argument is my point was if
7 you decide that only one could be issued under your
8 comparative Ashbacker analysis, we wanted it to be us.

9 JUDGE TOREM: The relief you are seeking is
10 that I perform the Ashbacker analysis based on the
11 facts in the record, and if I come to the conclusion
12 that I must issue only one certificate at that point,
13 you are taking an adversarial stance against
14 Mr. Kargianis's client.

15 MR. WILEY: Yes, and I believe he agrees with
16 that, do you not, Mr. Kargianis?

17 JUDGE TOREM: Mr. Wiley though, until I reach
18 such a decision, you fully support that both competing
19 companies need not compete in the analysis, just be
20 compared, go through the Ashbacker analysis, and the
21 only reason if the factor turns away from an
22 overlapping authority, then you want to say, "But we
23 can do it better."

24 MR. WILEY: Yes, and Your Honor, I would cite
25 you to the, in re: Belairco case, Application B-313.

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1 It's Order SBC 468, from May 1990. I was involved in
2 that case. It's a commercial ferry case, but the
3 Commission looked at Ashbacker and in that case decided
4 they were not precluded from issuing duplicating
5 authorities, so I wanted you to be aware that there has
6 been some previous analysis of an exclusive authority
7 statute.

8 MR. KARGIANIS: Your Honor, just so I'm
9 perfectly clear, I heard David Wiley indicate that he
10 had no objection and was supporting concurrent grants
11 of authority, but if the Department in its wisdom held
12 otherwise, then he felt his company was the superior
13 one who should be granted the singular authority.

14 Given the reverse side of the coin, that's
15 precisely our position, so when I stated that I heard
16 Mr. Wiley agreeing with me, I think it was to the
17 point, the limited point that he is supportive of the
18 concurrent grant of authority as we understand it, so I
19 think, and I heard that also in what Mr. Sells had to
20 say because of the uniqueness of the situation.

21 So if the judge in his wisdom decides along
22 those lines, then I think we can move forward without
23 fear of criticism from any party here. If you can't
24 find your way there, then I guess we put the issue to
25 you as to which of the two applicants is, shall we say,

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1 more favorably -- you are more inclined to grant the
2 authority to to the exclusion of the other, but I think
3 all we are trying to do is tee this matter up so that
4 the Park Department has indicated in her statement can
5 have the competitive advantage of qualified individuals
6 for the service they seek, and that would be our
7 position too.

8 MR. WILEY: Nicely put.

9 JUDGE TOREM: That solved the mystery. I was
10 trying to determine where the competition in this
11 courtroom today was, and it's really just telling me do
12 the Ashbacker analysis, and only if I get to the point
13 where I say I must only issue one certificate, now we
14 have an argument and I compare the testimony.

15 Up until now, Mr. Wiley, I just wasn't clear,
16 so I guess I'm more surprised as to why that wasn't put
17 in an as a stipulation --

18 MR. WILEY: We did make effort.

19 Mr. Kargianis and I will assure you that that was
20 worked through.

21 JUDGE TOREM: I've got eight exhibits that
22 have been admitted on behalf of Mr. Wiley's client,
23 five admitted on behalf of Mr. Kargianis' client. I've
24 heard from counsel for all three parties, including
25 Mr. Sells for the WRRRA. The position of the WRRRA is

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1 that whoever gets authority needs a G-certificate to
2 provide the service to the federal government. Both of
3 you desire such authority. Both of you are not opposed
4 to the other receiving overlapping authority if the
5 legal scheme allows. The decision for me is to get
6 into the legal scheme and figure out what the heck the
7 Ashbacker syndrome is and make an appropriate decision.

8 If I find I can't issue two overlapping
9 certificates, then I need to choose, based on the
10 comparison analysis set out by law, who is the better
11 company to serve in this Hoh quadrant. We are
12 adjourned.

13 (Evidentiary hearing adjourned at 3:45 p.m.)

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