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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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STERICYCLE OF WASHINGTON, INC., )

5

Complainant, )

6

v. ) Docket No. TG-121597

7

WASTE MANAGEMENT OF WASHINGTON, )

8

INC, d/b/a WM Healthcare )

9

Solutions of Washington, )  
Respondent. )

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11

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ADMINISTRATIVE LAW JUDGE ADAM TOREM

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9:59 A.M.

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MARCH 7, 2013

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Washington Utilities and Transportation Commission

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1 OLYMPIA, WASHINGTON; MARCH 7, 2013

2 9:59 A.M.

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5 JUDGE TOREM: Let's go on the record.

6 This is Judge Torem in TG-121597. It's  
7 Thursday morning, March the 7th, and I have all the  
8 parties on the conference line with me to discuss the  
9 proposed discovery plan. We will just quickly take on  
10 the record, appearances.

11 For Stericycle today?

12 MR. JOHNSON: Your Honor, this is Steve  
13 Johnson on behalf of Stericycle of Washington, Inc.

14 JUDGE TOREM: And for Waste Management?

15 MS. GOLDMAN: Good morning, Your Honor,  
16 Jessica Goldman on behalf of Waste Management, and  
17 with me is in-house counsel Andrew Kenefick.

18 JUDGE TOREM: And for Commission Staff?

19 MR. SMITH: Steve Smith, Assistant  
20 Attorney General for the Commission Staff.

21 JUDGE TOREM: We are getting back  
22 together today based on the conversation I had with  
23 the parties on February the 8th, suggesting that we  
24 compose a discovery plan. It looks like everything  
25 was submitted as requested. There must have been some

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1 work done together in advance, because most of the  
2 topics are agreed, as far as I can tell.

3 Let me walk through the plan, Mr. Johnson,  
4 that you submitted and indicate -- it looks like Waste  
5 Management is in agreement with the reason for  
6 discovery, at least as to the anticompetitive conduct  
7 complaint, but not necessarily because of the  
8 precedent-setting case. We only really need one prong  
9 there. I was in agreement. Staff didn't make a  
10 position, but I was in agreement as to the  
11 anticompetitive conduct item. And, Mr. Smith, on  
12 behalf of Staff -- Staff had previously to your entry  
13 to the case, pointed out that this would be  
14 precedential in a rulemaking situation, but they had  
15 asked the Commission not to set on the recycling  
16 matter any numerical standards that might carry over  
17 or prevent the Commission from acting separately.

18 Did you want to take a position as to which  
19 portions of discovery rules should be referred to?

20 MR. SMITH: Yes, your Honor. I agree  
21 with Ms. Goldman on this. As you pointed out, Staff  
22 has always asked that the decision in this matter be  
23 confined strictly to its facts. It's not at our  
24 urging that this would be designated as precedential.

25 MR. JOHNSON: Your Honor, this is Steve

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1 Johnson. Can I just speak briefly to this?

2 JUDGE TOREM: Yes, please.

3 MR. JOHNSON: Well, in our view, it  
4 already is precedential. In our motion for summary  
5 determination, we asked the Commission to follow the  
6 prior medical waste rulings in which recycling of only  
7 a small portion of infectious medical waste would not  
8 suffice to warrant a classification of the material as  
9 recyclable material. It may be neither here nor there  
10 in terms of where we go with the discovery plan, but  
11 in our view, this case is already precedential.

12 JUDGE TOREM: I think I'm going to leave  
13 that up to further proceedings. Again, as to the  
14 discovery plan, I tend to agree with you, that it's  
15 probably neither here nor there. We only need one  
16 prong of the rules to authorize discovery beyond  
17 subpoenas. Since we all agree that this is an  
18 anticompetitive conduct case, even with the other  
19 claim, we will invoke the discovery rules with that  
20 prong. If this case goes up on appeal and the  
21 Commissioners make it precedential with their  
22 endorsement or modification of whatever I do in my  
23 forthcoming initial order, it may yet become  
24 precedential in all eyes.

25 The next part of this, I thought that the

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1 two-phase discovery looked good and I wanted to  
2 approve that. There was a question as to the response  
3 time for data requests.

4 MR. JOHNSON: I don't think there is,  
5 Your Honor. I think we both agree to 30 days. We've  
6 agreed to that, with Waste Management in any event.

7 JUDGE TOREM: You have agreed on it.  
8 The usual rule -- and I went over this with  
9 Mr. Van Kirk last time. Our rule is 480-07-405(7)(b)  
10 is usually ten business days. The only question I had  
11 was this one said 30 days, which I took to mean 30  
12 calendar days.

13 MR. JOHNSON: That would be correct,  
14 Your Honor, is our understanding.

15 JUDGE TOREM: Ms. Goldman?

16 MS. GOLDMAN: And ours as well.

17 JUDGE TOREM: Usually if it's over ten,  
18 it defaults to calendar days, but I wanted to get that  
19 on the record as well.

20 Waste Management had asked that the  
21 depositions of any of their witnesses be limited to  
22 seven hours. Ms. Goldman, can you speak a little bit  
23 more as to why that number?

24 MS. GOLDMAN: Well, our feeling is that  
25 the discovery that should be relevant to the issues

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1 that have been outlined both in your decision on the  
2 motion for summary determination in the other claim,  
3 are fairly limited. Written discovery should largely  
4 be able to address that, and that narrow deposition  
5 follow-up would be appropriate.

6           Based on our experience in the last proceeding  
7 we had with Stericycle, Stericycle prefers to do very  
8 broad-based discovery, including deposition discovery,  
9 and so it would be our proposal that seven hours  
10 should be more than sufficient, and that if it is not,  
11 that's an issue that counsel can take up. And if  
12 there is agreement to extend because there is  
13 justification and the parties agree that we move  
14 forward, and if not, that it leaves open for Waste  
15 Management the right to object to further discovery  
16 and to make its case why sufficient time has been  
17 allowed.

18                   JUDGE TOREM: Mr. Johnson?

19                   MR. JOHNSON: Yes, your Honor. This  
20 goes to sort of a difference of view, perhaps, in  
21 terms of what this discovery plan is intended to  
22 accomplish. Our view is that discovery is authorized  
23 under WAC 480-07-400, and that that rule describes the  
24 proper limits of discovery in the case.

25                   All of our discovery is subject to objection

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1 by Waste Management. If Waste Management thinks that  
2 there is an abuse of depositions of its witnesses, it  
3 has the ability to raise that issue and cause us to  
4 come in to see Your Honor to sort the matter out. We  
5 don't think that a prior regulation that narrows  
6 discovery beyond what WAC 480-07-400 permits is  
7 appropriate without any showing of -- that there has  
8 been any kind of abuse of discovery.

9 Ms. Goldman may think seven hours is  
10 sufficient, and it may turn out to be sufficient. But  
11 we want to reserve our rights under the discovery  
12 rule, as the Commission has articulated it in the WAC,  
13 and proceed accordingly to do this case with as much  
14 dispatch as we can. We do not think that a prior  
15 limitation absent a showing of abusive discovery is  
16 appropriate.

17 JUDGE TOREM: All right. That sounds  
18 very reasonable to me, Mr. Johnson, so long as the  
19 parties do restrain themselves. I don't want to set a  
20 prior limit, but I do want to encourage that  
21 depositions be as concise as possible. When you do  
22 note a deposition, particularly those that we are  
23 going to potentially be noting of any third parties,  
24 that you notify the witness approximately how long the  
25 deposition might take, for their own courtesy, and for



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1 any that I would be required to approve under the  
2 rules for third parties, that I be advised as well the  
3 extent of the deposition and length of time you  
4 suggest should be set aside for that.

5 MR. JOHNSON: Your Honor, in the case of  
6 third-party witnesses, I think that's a perfectly  
7 sensible way to proceed. And we will be happy to, of  
8 course for their benefit, as well as your own,  
9 identify what we think the amount of time required  
10 would be. Of course, as we provide in the plan, those  
11 would be subject to your approval in any event.

12 With respect to Waste Management's witnesses,  
13 it seems that -- I don't think we've provided for  
14 prior approval, and I don't think it would be  
15 necessary or appropriate, and I think we can sort of  
16 work that with Ms. Goldman and Commission Staff  
17 counsel, to try to make this thing as efficient and as  
18 painless for all concerned as we can.

19 JUDGE TOREM: I think that's the general  
20 goal here from the discussion.

21 Ms. Goldman, do you have anything else?

22 MS. GOLDMAN: Yes, your Honor. I think  
23 it's important to be clear that 480-07-400 is not a  
24 carte blanche authorization for whatever depositions  
25 of whatever length are desired by Stericycle, it just

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1 authorizes depositions subject to, of course, the  
2 presiding officer's control. One of the purposes, as  
3 I understood it here, of this discovery plan was to  
4 anticipate issues based on our past experience as  
5 litigants with each other and the time and resources  
6 that we consumed of the Commission based on our  
7 inability to agree on reasonable bounds of discovery  
8 last time. That was my understanding of what the  
9 purpose of this plan was, is to head off what may --  
10 you know, the issues that may arise.

11 My concern remains that discovery without  
12 limitations will be unbridled based on our past  
13 experience, and so that absent limitations, we are  
14 then stuck in a position of objecting and saying,  
15 okay, we're not going to allow the witness any further  
16 depositions and motion practice. We would request  
17 that limitations be imposed subject to being revisited  
18 to the degree that a justification can be made for  
19 additional need.

20 Depositions are not very common in proceedings  
21 before the Commission, and so our concern is that this  
22 turns into the type of case that's litigated in civil  
23 court.

24 JUDGE TOREM: Certainly, the Commission  
25 does not want to see a civil court type of proceeding

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1 and its associated litigation nightmares come before  
2 it. You're right, Ms. Goldman, that this is the  
3 purpose of the discovery plan. I don't want to unduly  
4 limit a deposition to a certain number of hours in  
5 advance.

6 I just don't know yet, and maybe we can get  
7 into this a little bit further when we look at the  
8 rules specifically on deposition, that's WAC  
9 480-07-410. The first paragraph states, "Who may be  
10 deposed." The first sentence indicates, "A party may  
11 depose any person identified by another party as a  
12 potential witness."

13 It occurred to me when I read that in context  
14 of the discovery plan, that no witness lists have yet  
15 been filed, so no depositions are yet authorized in  
16 this matter, even if the discovery plan is approved,  
17 as I intend to issue another written order today or  
18 tomorrow, adopting and putting those portions that  
19 we've agreed on or that I think are correct into  
20 action.

21 So it leaves the question as to who are the  
22 potential witnesses that are going to be preidentified  
23 from Waste Management that this would now authorize  
24 the deposition of.

25 The rule goes on to say that a party such as

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1 Stericycle can depose anybody else who is not  
2 identified as a potential witness, but it requires  
3 approval from the presiding officer on a finding that  
4 this identified person appears to possess information  
5 significant to the party's case. I read that to mean  
6 it doesn't just apply to third parties, but it would  
7 apply to any other potential witness that Waste  
8 Management doesn't identify.

9 I don't know in this case, Ms. Goldman, who  
10 you planned on calling, but --

11 MR. JOHNSON: Your Honor, this is Steve  
12 Johnson.

13 MS. GOLDMAN: I'm sorry, Your Honor --

14 MR. JOHNSON: If I could just speak to  
15 that for a second.

16 MS. GOLDMAN: Well, can I answer the  
17 question, Steve?

18 MR. JOHNSON: Well, I think --

19 MS. GOLDMAN: Can I answer the question?

20 MR. JOHNSON: -- that the identification  
21 of witnesses in this case is likely to emerge from our  
22 data requests.

23 JUDGE TOREM: It may. What I want to  
24 see is if Ms. Goldman already knows who they intend to  
25 call as a witness. If that's going to be a data

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1 request is one thing, but perhaps the required filing  
2 with the Commission of potential witnesses be done by  
3 all parties in the next few weeks, and that way we  
4 know originally who is going to be fair game, if you  
5 will, for a deposition from Waste Management's own  
6 employees, and then for third parties, what other  
7 limitations I might need to put on for those  
8 witnesses.

9 Ms. Goldman?

10 MS. GOLDMAN: Yes. Thank you, Your  
11 Honor. I think the rule definitely maintains control  
12 of the depositions with you. We are not in a position  
13 at this point to identify the potential witnesses.  
14 What I was hoping that we were providing as a workable  
15 option to Stericycle here, was basically the  
16 equivalent of a 30(b)(6) type of situation. We would  
17 give seven hours to depose whichever Waste Management  
18 witnesses they wished in that time frame, without  
19 having them justify each of the -- the need for each  
20 of those. But if that restriction is something that  
21 is going to be objected to by Stericycle, then I think  
22 we would request that the process that you have  
23 identified be the one that's used.

24 I don't know that we are going to be ready in  
25 two or three weeks to identify potential witnesses,

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1 and if we are going to be bound by them for purposes  
2 of not being able to supplement. That's typically  
3 something that happens later on, once the discovery is  
4 complete, and the way the phase discovery here is  
5 being proposed, the discovery is going to continue for  
6 several more months.

7 JUDGE TOREM: I don't intend to limit  
8 witnesses to whatever list might be filed next week or  
9 the week after. What I was looking for is a  
10 preliminary identification of those witnesses. If I  
11 asked you today, if we were going to schedule the  
12 evidentiary hearing, how many days do you need, you  
13 would have to have in mind which witnesses you might  
14 be calling and how long direct and cross-examination  
15 might take.

16 Ms. Goldman, it's not to limit the parties to  
17 the names presented today for a hearing that won't be  
18 until at least August or September at the earliest,  
19 but simply to get the ball rolling on allowing  
20 Stericycle to say are those the people that we want to  
21 depose, and are there any other witnesses that they  
22 would have to identify that might have, as it says,  
23 information significant to their case. If that's the  
24 case and they are not listed, as I read this rule, I  
25 would have to preapprove any deposition, whether it be

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1 a Waste Management employee not listed on the witness  
2 list or a third party.

3 MS. GOLDMAN: That makes sense, Your  
4 Honor.

5 MR. JOHNSON: Your Honor, again, Steve  
6 Johnson. It seems to me the way we need to proceed is  
7 with data requests and identification of persons with  
8 knowledge within Waste Management and its affiliates,  
9 and then move on from there to -- that would be an  
10 identification of witnesses with relevant knowledge.  
11 And then from that, we could proceed under 480-07-410  
12 to identify or to depose the relevant Waste Management  
13 witnesses with knowledge.

14 JUDGE TOREM: And how would the  
15 Commission be notified of those potential witnesses so  
16 that we would know that 410 had been satisfied?

17 MR. JOHNSON: Well, I guess part of it,  
18 Your Honor, is how much management of this process you  
19 want to engage in. I mean, lots of times discovery  
20 sort of takes place between the parties, unless  
21 there's an issue that needs to be brought to the  
22 attention of the Commission or a court. I would  
23 suggest that that could work here.

24 If you want to review and approve every  
25 deposition, we can certainly proceed in that way.

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1           On the other hand, you know, once Waste  
2 Management has identified people with knowledge of the  
3 claims or the underlying factual circumstances, then  
4 we should be able to go ahead and do depositions of  
5 those folks that are employed by Waste Management or  
6 its affiliates without troubling the Commission,  
7 subject to Ms. Goldman's right to object and take the  
8 matter up with you.

9           JUDGE TOREM: And I would be --

10          MS. GOLDMAN: Your Honor.

11          JUDGE TOREM: Yes, go ahead.

12          MS. GOLDMAN: I'm sorry, go ahead.

13           I think that we are -- we can largely agree  
14 with that, but I think the burden is on them, not on  
15 us. What I would suggest is that, absent agreement  
16 with Waste Management and with Commission Staff's  
17 counsel, that they need to bring it to you and comply  
18 with the rules, and they need make their  
19 justifications. That's what the rule requires.

20           We are certainly willing to hear from  
21 Stericycle and to work cooperatively as much as  
22 possible. But absent agreement as to the deponent,  
23 and based on Stericycle's rejection of our offer of a  
24 seven-hour deposition, then I think the rule requires  
25 Stericycle to come forward and make its justification.



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1                   MR. JOHNSON: Well, Your Honor, I of  
2 course don't agree with that. I think that once we  
3 have identified witnesses with relevant knowledge,  
4 that the rule permits a party to make that -- you  
5 know, to conduct depositions if discovery depositions  
6 are being permitted. That's what 480-07-410 seems to  
7 say. "A party may depose any person identified by  
8 another party as a potential witness." A potential  
9 witness is --

10                   MS. GOLDMAN: "If the presiding officer  
11 approves."

12                   MR. JOHNSON: No, the first sentence  
13 doesn't include that.

14                   MS. GOLDMAN: Right. I think we are  
15 talking about the second sentence, because we have  
16 already discussed the potential witness list as being  
17 sufficient to justify a deposition.

18                   MR. JOHNSON: Your Honor, the thing that  
19 concerns me here is that the burden being placed on  
20 Stericycle to justify discovery. We have filed a  
21 complaint alleging anticompetitive behavior by Waste  
22 Management. We want to conduct discovery with respect  
23 to that complaint. We had originally taken this issue  
24 to the Commission Staff. We would have been happy if  
25 the Commission Staff would have just dug into these

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1 issues themselves. They requested that we proceed by  
2 complaint. We have done so. Now we need a chance to  
3 pursue the claims that we have brought so that we can  
4 determine the facts and present those to the  
5 Commission for a ruling.

6           Putting the burden on the complainant to get  
7 the permission from the respondent to conduct  
8 discovery seems like it is setting -- you know,  
9 putting the discovery rules on their head here.

10           JUDGE TOREM: Well, I think it is  
11 getting a little further afield than I wanted to as  
12 to -- you do have agreement on more things than this  
13 past exchange just reflects. You both have agreed  
14 that discovery is now appropriate in the case. Based  
15 on the complaints filed, Waste Management does have an  
16 obligation and a burden to respond to those discovery  
17 requests that I'm going to approve subject to the  
18 limitations set out in 480-07-400 as to reasonability.

19           I think we both agree, and we are talking  
20 around it in a circle a little bit as to,  
21 authorization now is going to be given for depositions  
22 as well that don't need further approval from me as  
23 the presiding officer as to Waste Management employees  
24 that are potential witnesses. The rule is clear,  
25 though, that I do need to -- anybody that is not a

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1 potential witness for Waste Management, and that would  
2 include third parties, as I am going to limit it  
3 further here, do require the Commission's approval of  
4 each and every deposition of those potential third  
5 parties. That's not going to happen until Phase 2 of  
6 this discovery. I think how the parties handle  
7 Phase 1 will indicate how much of a hold needs to be  
8 put on discovery, how much of a limitation in addition  
9 to what's in the rules already.

10           So I want to recommend two things. First that  
11 the parties consider, before you get started on  
12 anything, or maybe in conjunction with the first round  
13 of data requests, the opportunity that is there in  
14 480-07-415, for a discovery conference. I would like  
15 all the attorneys and in-house counsel and maybe some  
16 of the key witnesses that might be identified in that  
17 first set of data requests to get in the same room and  
18 see if we can avoid a lot of paper by just some  
19 informal discussion, so that everybody knows without  
20 necessarily filtering from attorney to client just  
21 what Stericycle is looking for from the company, from  
22 Waste Management.

23           Some of that stuff may be easily and  
24 voluntarily provided right then and there or promised  
25 without the need for formal DRs and depositions. The

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1 remainder of the material that may not be so quickly  
2 forthcoming or is a little bit more intricate should  
3 be reduced to data requests and perhaps perused in a  
4 deposition of a reasonable time length.

5 I think that's what we are trying to do here,  
6 is figure out just where those restrictions can be.  
7 If the DRs are going to be sufficient, Mr. Johnson, to  
8 identify those potential witnesses, and they are Waste  
9 Management employees, then no, I don't need to approve  
10 each and every deposition subject to the objections  
11 that might be made by Waste Management as to length or  
12 burdensomeness, if that's even a word. I think we can  
13 approve that. Those depositions would all go on until  
14 the end of June, subject to the extensions that you  
15 have identified in your proposal.

16 It's that second phase that I think I will  
17 have a lot more involvement after the 1st of June  
18 through the beginning of August, when you want to  
19 start sending out data requests, subpoenas and  
20 deposition notices to third parties.

21 MR. JOHNSON: Your Honor, Steve Johnson  
22 again for Stericycle. I think we are in complete  
23 agreement on the third-party situation, and that that  
24 would require your authorization before any such  
25 depositions could be taken. I think we are all in

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1 agreement on the Phase 2 third-party depositions. And  
2 I think that the approach you suggest on the Phase 1  
3 depositions of Waste Management employees, which I understand  
4 to mean that you would authorize us to proceed on  
5 those, subject to Ms. Goldman's right to object to any  
6 abuse.

7 MS. GOLDMAN: And, Your Honor, my  
8 understanding is that you are also saying that Waste  
9 Management has -- will be identifying who the  
10 potential witnesses are. It is only as to the  
11 witnesses identified as potential hearing witnesses  
12 that there is no need for further attention by you.

13 JUDGE TOREM: That would be correct. My  
14 question for the two of you is, do I need to set a  
15 deadline for submission of a preliminary witness list,  
16 or I take it that the first DR is going to be who are  
17 your potential witnesses and that response will govern  
18 who is out there.

19 Really, I'm not suggesting that Waste  
20 Management should say we don't have any witnesses, get  
21 approval for each one. That defeats the purpose of  
22 some, what should be obvious witnesses, you might need  
23 to call.

24 MR. JOHNSON: Your Honor, again I'm not  
25 quite clear how this works, because in fact Waste

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1 Management -- the burden to establish the facts to  
2 support the complaint is on Stericycle. Stericycle  
3 has to come forward with evidence and witnesses to  
4 support its claim. It's only through discovery that  
5 we will be able to identify Waste Management personnel  
6 that have knowledge, that this -- potentially it would  
7 be Stericycle calling those witnesses, rather than  
8 Waste Management. Waste Management -- if I were  
9 representing Waste Management, I would say Waste  
10 Management has no witnesses. You know, it's your  
11 problem, Stericycle, to come up with a showing to  
12 support your complaint. We're sitting here waiting  
13 for you to do so, and at the point where you do, we  
14 will perhaps identify witnesses in July or August, but  
15 not before then.

16 JUDGE TOREM: I agree that's a potential  
17 reading of the rule. I don't think that it is going  
18 to do anything but delay things if we interpret it  
19 that way. There's a necessity to this case that some  
20 Waste Management employees testify. Maybe it's just  
21 simply we should look at this as an acknowledgment by  
22 Waste Management that certain of its employees have  
23 information that will be relevant and significant to  
24 the subject matter in this complaint, and that those  
25 folks I encourage to be agreed upon as witnesses who

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1 will be made available to answer data requests and if  
2 necessary, be deposed.

3 Ms. Goldman, what's your position on that?

4 MS. GOLDMAN: Well, Your Honor, I  
5 think -- you know, it's my intention to continue to  
6 try and work cooperatively to provide information. We  
7 are not trying to gum up the works here. We're  
8 just -- you know, we have posttraumatic stress so  
9 you'll forgive us. We have differed significantly in  
10 our notions of what is necessary and what is  
11 reasonable and that is the concern here.

12 You know, Steve may be very right as to who  
13 the potential witnesses Waste Management is going to  
14 be in a position to identify in a month. It may be  
15 that we truly will have no witnesses in our case in  
16 chief at the hearing, because we are indeed on the  
17 other side of the burden of proof and will be likely  
18 having a rebuttal case. I think that is precisely  
19 what the rule contemplates, though, is two types of  
20 witnesses: One that is identified by another party as  
21 a potential witness, and those who are not but who the  
22 other party believes has information -- has  
23 information that is significant to its case.

24 And so we -- I can commit to you we will work  
25 to reach agreement with Stericycle as to who -- who

1 are the witnesses that have information significant to  
2 Stericycle's case, and to avoid having to come to you  
3 unless we have a material disagreement on that. If we  
4 get a list of -- from Stericycle requesting, you know,  
5 the depositions of two people or three people, I have  
6 a high degree of confidence that we can reach an  
7 agreement. That is not what I'm anticipating here,  
8 Your Honor. I'm a little bit at a loss to make a  
9 commitment, other than to rely on the rights and  
10 obligations that are set forth in 480-07-410.

11 MR. JOHNSON: Your Honor, if I just  
12 might comment a little bit here. Ms. Goldman sort of  
13 reaches back to a methodology that she is attempting  
14 to create with respect to prior proceedings and abuse  
15 of discovery in those proceedings which are completely  
16 speeches. The fact is that we have no desire to gin  
17 around on this case any more than is necessary to  
18 establish the facts that are relevant to the case.

19 We originally brought this as a -- on a motion  
20 for summary determination because we thought at least  
21 one of our claims would not require discovery and  
22 would not require any of this process. But Your Honor  
23 has decided that that's not the case, denying our  
24 motion and denying Waste Management's motion. At this  
25 point we are required, if we are going to proceed with



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1 the claims, to establish the facts, and we need to be  
2 able to do that. We have no interest and no desire to  
3 do anything more than what is required to establish  
4 the claims that we have presented in our complaint.

5 The notion that we are sort of going to run  
6 amuck here and have scores of Waste Management  
7 witnesses on our witness list is ridiculous. Frankly,  
8 Your Honor wouldn't permit it anyway. We need to be  
9 sort of sent off to do discovery in a rational,  
10 reasonable way. Ms. Goldman and I and Mr. Van Kirk  
11 can undoubtedly work together to get this done in a  
12 relatively efficient way. I don't think we need  
13 supervision in advance of all -- you know, of Waste  
14 Management personnel depositions. If Ms. Goldman  
15 thinks we do, she can bring it to you.

16 JUDGE TOREM: I appreciate a very fine  
17 point, the rehash we have already done on past  
18 experience. I've heard that before, we don't need to  
19 talk about it any more today. That's why we are  
20 having this discussion.

21 I agree with both of you, though, that -- as  
22 to who -- how to interpret the rule as to who is a  
23 potential witness. Given the context, I am not going  
24 to require filing of a preliminary witness list. I  
25 wanted to explore that with you. We have hit that

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1 issue sufficiently to see it from all angles.

2           What I do suggest, though, is that if there is  
3 any objection as both parties have indicated, it just  
4 be brought to me as to why the person has potentially  
5 information that's significant to your case,  
6 Mr. Johnson. If I hear that, then I will authorize  
7 the deposition with any necessary limitations once it  
8 is brought to my attention.

9           Ms. Goldman, I'm not going to take up Waste  
10 Management's request to limit things to a certain  
11 number of hours, because I simply don't have the  
12 ability right now to know if seven hours would be  
13 sufficient for a party who is bringing a complaint and  
14 has the burden of making its case before the  
15 Commission. I don't want to be having to say, well,  
16 one more hour, two more hours. What I'm hoping is  
17 that Mr. Johnson and Mr. Van Kirk, in working with you  
18 and Waste Management's witnesses, will get as much  
19 information as possible in advance, use whatever  
20 deposition techniques and skills they have to be  
21 direct and to the point and limit them to an  
22 appropriate number of hours. Whether seven is enough  
23 or not, I don't want to pass judgment on at this time.  
24 I won't set any time limitations in advance, but I  
25 will count on Mr. Johnson's pledge on the record today

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1 to keep things reasonable.

2 It sounds as though, as far as the depositions  
3 go, then, that we are in agreement as to what's going  
4 to happen with Phase 1 and Phase 2. Staff has  
5 requested to become a copied party on all of the data  
6 requests submitted by third-party witnesses and also  
7 to be invited to the depositions.

8 Mr. Smith, did you want to be invited also to  
9 the Waste Management depositions or just the  
10 third-party depositions if any are authorized?

11 MR. SMITH: Your Honor, we would request  
12 to be notified and allowed to attend any deposition.  
13 I'm not -- I think we probably will, but there may be  
14 some we forego, but I would like to have that  
15 opportunity.

16 JUDGE TOREM: Do the parties have any  
17 objections to Staff's participation?

18 MR. JOHNSON: Absolutely not, Your  
19 Honor.

20 MS. GOLDMAN: Not from Waste Management.

21 JUDGE TOREM: Then I will include that  
22 in my order as well.

23 Looking through the rest of the items here, as  
24 to the discovery conference, Mr. Johnson, did you  
25 think that was going to be a tool you were going to

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1 take advantage of?

2 MR. JOHNSON: Well, Your Honor, I tend  
3 to think that rather even -- even less formal process  
4 is more likely to be used and useful. I mean  
5 Ms. Goldman, Mr. Van Kirk and I, Polly McNeill also on  
6 Ms. Goldman's side of things, have a lot of experience  
7 dealing with each other now over the last year and  
8 more. I think we can probably work this thing  
9 together cooperatively by picking up the phone and  
10 having conversations.

11 If something more formal in the way of a  
12 discovery conference -- you know, I have to sort of go  
13 back and look at that procedure to see whether --  
14 again, whether I think that would be particularly  
15 useful. I have a hunch that less -- even less formal  
16 process is more likely to be appropriate and useful in  
17 this case. I just think we should sort of take it  
18 down the road and see how far we get.

19 JUDGE TOREM: I am going to recommend  
20 one in my order but not require one at this time. If  
21 we need to revisit that we will, if any discovery  
22 disputes come up.

23 The lists of topics, it sounded as though  
24 there was general agreement on those. The Staff  
25 recommendation was to limit the -- limiting the

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1 language on these. Stericycle was reserving its right  
2 to conduct discovery outside that list and Staff had  
3 suggested that perhaps that be subject to agreement of  
4 the parties and/or approval from the presiding  
5 officer. I liked Staff's recommendation on that, and  
6 I am going to adopt that as part of my order.

7           And there was one additional item in Waste  
8 Management's response I wanted to take up with you,  
9 Mr. Johnson. In their Paragraph 12, it suggested that  
10 the discovery topics be limited to Waste Management of  
11 Washington.

12                   MR. JOHNSON: Yes, your Honor. May I  
13 speak to that?

14                   JUDGE TOREM: Yes.

15                   MR. JOHNSON: There's nothing to suggest  
16 that the -- for example, the ecoFinity program, what I  
17 believe is a national program, may well be based on  
18 arrangements put in place by the parent entities of  
19 Waste Management of Washington. For example, Waste  
20 Management Healthcare Solutions, Inc., a Texas entity,  
21 seems to be very much involved in the medical waste  
22 side of the waste management operation and is very  
23 likely to have been the party that dealt with Becton  
24 Dickinson on this ecoFinity program.

25                   I don't think there's any basis to limit. I

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1 mean, Waste Management should be able to act for its  
2 affiliates, and information available to its  
3 affiliates should be available to Waste Management of  
4 Washington. I think we should be entitled to have  
5 that information if relevant, you know, to the extent  
6 relevant. Again, Ms. Goldman can always object to a  
7 request as beyond the bounds and kick the matter to  
8 Your Honor.

9 JUDGE TOREM: When I first read that  
10 concern, I was thinking about it from a jurisdictional  
11 point of view, and then I also wondered about --  
12 Ms. Goldman, maybe you can answer this question.  
13 Certainly some of the items that were in the first  
14 bullet point addressed what came out in Order 2, the  
15 Becton Dickinson and Talco Plastic's involvement in  
16 the recycling and the ecoFinity program. Whether that  
17 information is provided via Waste Management of  
18 Washington or directly from those companies remains to  
19 be seen, whether those third parties need to be  
20 involved in the second phase of discovery. Were you  
21 objecting to them being before the Commission?

22 MS. GOLDMAN: Your Honor --

23 JUDGE TOREM: I'm not sure how to put  
24 that.

25 MS. GOLDMAN: I'm sorry, I didn't mean

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1 to interrupt.

2 JUDGE TOREM: Go ahead.

3 MS. GOLDMAN: I was suggesting both from  
4 a jurisdictional perspective and from a  
5 burdensomeness, the only entity over which the  
6 Commission has jurisdiction is Waste Management of  
7 Washington, Inc. The company to which Mr. Johnson  
8 refers is not a Washington company and is not before  
9 this Commission. I do believe that this is going to  
10 be largely third-party discovery. The information and  
11 the kind of -- certainly, if I look at the kind of  
12 questions that you posed in your order, I think  
13 largely that is not information that Waste Management  
14 has at all, that those are -- that is information that  
15 is going to reside, if at all, with the third parties  
16 who are actually conducting those pieces of the  
17 recycling work. And there has been -- you know, so to  
18 the degree Waste Management of Washington, Inc., has  
19 the information, of course it will comply with the  
20 reasonable discovery requests. My objection is  
21 two-pronged.

22 I guess to complete my thoughts, the -- to the  
23 degree that there is a need to conduct discovery over  
24 any other Waste Management entity, that entity is a  
25 third party and the same justification needs to be

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1 made to Your Honor as would be the case with any other  
2 third party. And the same type of Commission control  
3 needs to be exercised, you know, where service of  
4 process is made being a completely separate issue.

5           Again, it is my goal, as it always has been,  
6 to work cooperatively, and I'm hopeful that we can, to  
7 get whatever information we have, whatever limited  
8 information we have in house that may answer the  
9 questions you have posed. My client is Waste  
10 Management of Washington, Inc. I don't represent any  
11 other entity.

12           MR. JOHNSON: Your Honor, if I might  
13 just speak for a moment. Waste Management of  
14 Washington, Inc. offers this ecoFinity program in the  
15 state of Washington. This program is actually  
16 implemented by a variety of Waste Management entities  
17 and these third parties. My understanding of your  
18 order on the motions for summary determination is that  
19 the information that's in the hands of Waste  
20 Management's affiliates in terms of its dealings with  
21 Talco Plastics and Becton Dickinson is relevant to  
22 this case, and we ought to be able to have access to  
23 it.

24           My view is that Waste Management of  
25 Washington, the entity that is before the Commission,



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1 should be required to obtain that information from its  
2 affiliates. We can direct the inquiries to Waste  
3 Management of Washington, but we will be requiring,  
4 and I think that at least the Commission should be  
5 requiring Waste Management of Washington to obtain the  
6 information that's available to its affiliates. To  
7 the extent that this is insufficient to provide the  
8 information that Your Honor has indicated is necessary  
9 to decide the ecoFinity claim, we need to be able to  
10 reach these third parties as well, and that would  
11 include Talco Plastics and Becton Dickinson.

12           Again, I think it is the case that they are  
13 third parties. If the information is truly not  
14 available to Waste Management of Washington through  
15 its affiliates by informal means, you know, inquiry to  
16 its contractual partners, then we may need to go to  
17 those third parties. But absent that, Waste  
18 Management should be required to obtain the  
19 information that's available to its affiliates  
20 concerning its contractual arrangements with these  
21 third parties.

22           JUDGE TOREM: I know that the statute  
23 and the various prongs of our rule defining what is  
24 solid waste collection versus recycling may  
25 contemplate other companies participating in the

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1 processing and accepting of the shipments. We talk  
2 about the intent of the shippers, and I don't think  
3 that's necessarily the regulated company, so the rules  
4 do anticipate information available from third parties  
5 being presented to the Commission for evaluation and  
6 for the ultimate decision that has to be made. That's  
7 exactly what was missing the last time around.

8 I think, Mr. Johnson, your assumption that we  
9 need that information is correct and it's reasonable.  
10 How we go about getting that remains to be seen.

11 So I don't think, Ms. Goldman, that I can  
12 limit the topics in Paragraph 12 only to Waste  
13 Management of Washington, simply because I don't know  
14 that Waste Management of Washington will be providing  
15 all the information that a third party might. If, as  
16 Mr. Johnson suggests, you have access to portions of  
17 the contract that can be shared or other things that  
18 another party doesn't object to as confidential or  
19 otherwise needing protection or limited distribution,  
20 then it should probably be provided in the course of  
21 this discovery without the need for and approval of a  
22 third-party subpoena or a third-party deposition.

23 So I just encourage you to consider this from  
24 the point of view of the information the Commission  
25 said it needed in its last order and where is the best

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1 place to find that information. If your company, your  
2 client has it, certainly it would be provided in the  
3 course of a data request. If it can be relayed to  
4 another party who likely has the information and you  
5 can serve as a courier of that information to respond,  
6 perhaps that's a way to go about it as well, without  
7 having to put a third-party data request directly to  
8 those companies that are not in Washington state and  
9 not regulated by the Commission.

10 So we'll see how that works out. I just  
11 wanted to at least address that concern that was  
12 stated in your response to the proposed discovery  
13 plan.

14 Were there any other items that Waste  
15 Management wanted to bring up before I take the matter  
16 under consideration and issue a discovery order?

17 MS. GOLDMAN: I think there's one  
18 additional one, Your Honor, and that is our Paragraph  
19 10.

20 JUDGE TOREM: Yes, I'm looking at that  
21 now. When I read your Paragraph 10, your position  
22 that the topics identified on the unlawful rebating  
23 claim should be limited to Waste Management customers  
24 to whom Waste Management has done two things: One,  
25 solicited, offered or provided commercial recycling

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1 services. And second, solicited, offered or provided  
2 regulated biomedical waste services.

3 It appeared to me that's exactly what  
4 Mr. Johnson's proposal in his Paragraph 10 was looking  
5 at. That he was trying to identify medical waste  
6 generators to whom you have solicited, offered or  
7 provided commercial recycling services. That covers  
8 your first point. And you are saying biomedical waste  
9 as well. That seems to be the crux of the complaint  
10 here by its general subjects. I don't know if it had  
11 to be explicitly stated. Is that what you were  
12 looking for, is an additional, not just commercial  
13 recycling, but also biomedical waste had to be offered  
14 to make that third party relevant, Ms. Goldman?

15 MS. GOLDMAN: Your Honor, when we  
16 initially read Paragraph 10, it was not -- it appeared  
17 to us that it could be more broadly read. Obviously,  
18 Waste Management provides recycling services to lots  
19 of companies that don't have biomedical waste  
20 services, and it provides garbage services all over  
21 the state. We have a concern here that this could be  
22 more broadly read than is actually relevant to the  
23 proceeding. As you noted initially, you know,  
24 Mr. Johnson and I did engage in collaborative effort.  
25 He presented me with his draft, and then I commented

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1 on it. He made several important substantial  
2 revisions, which I very much appreciated, but this was  
3 one he rejected. That gave me particular concern that  
4 we weren't misreading our concern of overbreadth with  
5 10 because he rejected it.

6 MR. JOHNSON: Your Honor, if I might  
7 just speak to this. The only -- I think we are really  
8 talking about angels on the head of a pin here. I  
9 think we really are talking about the same group of  
10 potential parties with knowledge or with information.  
11 The difference I think that I have is the references  
12 to Waste Management customers, to whom. Now,  
13 customers assumes a contractual relationship. We  
14 are -- I think our Paragraph 10 refers to medical  
15 waste generators.

16 JUDGE TOREM: It does.

17 MR. JOHNSON: They have solicited,  
18 offered or provided commercial recycling services.  
19 Clearly, as Your Honor has indicated, it's the  
20 combination of these two that we are addressing in our  
21 complaint on the rebating claim. We don't need to  
22 know everything Waste Management is doing on recycling  
23 if it isn't involving medical waste generators, nor do  
24 we have any interest in their solid waste operations.

25 We are focused on, as the first bullet point

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1 under our Paragraph 10 indicates, medical waste  
2 generators to who Waste Management has solicited,  
3 offered or provided commercial recycling services.  
4 These generators, however, may or may not have become  
5 Waste Management customers.

6 JUDGE TOREM: That's how I read this.  
7 Mr. Johnson, how I read this, is that you understood  
8 that we weren't going to let willy-nilly discovery of  
9 Waste Management's overall operations go on. It  
10 wouldn't be relevant to the complaint.

11 MS. GOLDMAN: Your Honor?

12 JUDGE TOREM: Yes, Ms. Goldman, go  
13 ahead.

14 MS. GOLDMAN: I think perhaps we can  
15 wordsmith this to clarify this. If you look at the  
16 first bullet point, that would include, for example, a  
17 medical waste generator who is presently in  
18 Stericycle's -- is not in Waste Management's  
19 territory, so it's an entity that Waste Management  
20 cannot provide biomedical waste services to. And  
21 there likely are entities that are in -- outside of  
22 the G-232 boundaries that -- G-237, I probably messed  
23 that number up, boundaries where simply recycling  
24 services are offered and that's not relevant. The  
25 issue here is the alleged tying of recycling and

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1 biomedical waste services.

2           Perhaps, if we look back to my Paragraph 10, I  
3 think Mr. Johnson's point about customers is well  
4 taken. My concern here is that we are talking about  
5 entities. We can take out the Waste Management  
6 customers and say, you know, limit it to Washington  
7 entities to whom Waste Management has done both these  
8 things. It has to be the combination, the combo offer  
9 which triggers the relevance.

10           MR. JOHNSON: Your Honor, my thought is  
11 let's -- again, this -- I think there is general  
12 agreement here. We could play with the text further,  
13 if you wish. On the other hand, I think we have a  
14 pretty good meeting of the minds here as to what is  
15 relevant. We do not want to engage in irrelevant  
16 discovery. If Ms. Goldman thinks we have strayed over  
17 the boundary of relevance, she can kick it back to  
18 Your Honor. I just hesitate to think that we should  
19 wordsmith this Paragraph 10 in any greater detail for  
20 the time being. Let's let it go and let Ms. Goldman  
21 raise the issue if she thinks we have gone off the  
22 deep end.

23           JUDGE TOREM: I think that's exactly  
24 what I want to do, is allow the language that  
25 Mr. Smith proposed, that this list can be changed by

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1 agreement to be read in such a fashion that -- as you  
2 have indicated before, you are working together, it  
3 sounds to me today being reasonably worked to protect  
4 clients from any discovery abuses, and recognizing  
5 what is relevant to the complaint can be done, but  
6 just with the short deadlines we had here weren't --  
7 the wordsmithing wasn't fully accomplished to  
8 everybody's satisfaction.

9 I think there is a meeting of the minds here,  
10 Ms. Goldman, as to what is relevant. If it turns out  
11 that there is a disagreement that can't be settled  
12 within a couple of days of back and forth, then we can  
13 get into the individual data request or related  
14 discovery tool, and I can settle it as needed  
15 according to the rules. Does that satisfy Waste  
16 Management's concerns?

17 MS. GOLDMAN: Well, Your Honor, I would  
18 simply say if there's a meeting of the minds, then  
19 your order should reflect it. I think the whole  
20 purpose of this exercise was to try to avoid and to  
21 head off. As I understood it, you didn't understand  
22 why we were including No. 10 because it seemed obvious  
23 to you that that was a prerequisite. I'm thinking  
24 that if we simply substitute my language, you know,  
25 the Waste Management customers with entities, that



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1 that will make plain the obvious, that there has to be  
2 an offering of both those services. That means that a  
3 medical waste generator to whom Waste Management has  
4 never offered biomedical waste services, there is no  
5 basis for conducting discovery regarding the  
6 commercial recycling services which lawfully has been  
7 provided, the nonregulated commercial recycling  
8 services which have been offered to that nonbiomedical  
9 waste customer of Waste Management's, where the  
10 biomedical waste is either being performed by  
11 Stericycle or by one of the smaller providers.

12 If there's a meeting of the minds, Your Honor,  
13 I would encourage you to include that in the order. I  
14 think it will save you time.

15 MR. JOHNSON: Your Honor, I think I  
16 agree with Ms. Goldman with the change that she  
17 suggested to her Paragraph 10, that works fine. I  
18 think that's what our first bullet point says, but if  
19 she thinks some further elaboration or restatement is  
20 appropriate, then I don't have a problem with that.

21 JUDGE TOREM: So, Ms. Goldman, I'm not  
22 going to wait for the transcript on this. I'm looking  
23 back to your Paragraph 10 now. Your suggestion is  
24 that be an entity --

25 MS. GOLDMAN: So my suggestion --

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1 JUDGE TOREM: Go ahead, I'll just take a  
2 note.

3 MS. GOLDMAN: So my suggestion is if you  
4 go to the second line, Should be limited to, and  
5 strike out Waste Management customers, and in its  
6 place put in entities. So should be limited to  
7 entities to whom Waste Management has done both  
8 things.

9 JUDGE TOREM: Mr. Johnson, is that what  
10 you are agreeing as well?

11 MR. JOHNSON: I think that works.  
12 That's the way I read our intention under the first  
13 bullet point, so...

14 JUDGE TOREM: All right. Then I --

15 MR. JOHNSON: If Ms. Goldman says it  
16 needs to be tied together to come within the scope of  
17 our claim.

18 JUDGE TOREM: All right. Then I will  
19 make that notation in the order modifying the list  
20 with that item there.

21 So from Waste Management's perspective, any  
22 other concerns?

23 MS. GOLDMAN: Your Honor --

24 MR. KENEFICK: If I may, Your Honor --

25 MS. GOLDMAN: Go ahead.

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1                   MR. KENEFICK:  -- this is Andrew  
2   Kenefick, in-house counsel with Waste Management.  
3   With respect to Paragraph 12, I did want to at least  
4   make a comment there because one of the concerns that  
5   animated our response there is -- well, one, there is  
6   a technical issue, jurisdiction, whether or not  
7   Ms. Goldman is representing any entity outside of  
8   Waste Management of Washington, Inc., which she is  
9   not.

10                   But as a practical matter, one of the concerns  
11   that that extension of the term Waste Management to  
12   all Waste Management entities raises is the potential  
13   that any discovery requests made pursuant to this  
14   section will -- could entail Waste Management having  
15   to go out and seek -- you know, find documents that  
16   are -- you know, any Waste Management subsidiary  
17   anywhere in the United States.

18                   JUDGE TOREM:  Well, I don't --

19                   MR. KENEFICK:  And I assume --

20                   JUDGE TOREM:  Mr. Kenefick --

21                   MR. KENEFICK:  -- you know, there's  
22   going to be a relevance claim, and we could object  
23   based on relevance.  I'm hoping that that is not what  
24   is intended, because certainly that would make this a  
25   massively burdensome exercise.

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1                   JUDGE TOREM: Well, I'm sure that  
2 Mr. Johnson would agree that the caption of this case  
3 is a complaint against Waste Management of Washington,  
4 Inc., doing business as WM Healthcare Solutions of  
5 Washington. It is obvious to me that all of this  
6 would be directed at Waste Management of Washington.  
7 As he has already stated on the record today, it is  
8 clear that this recycling program follows from  
9 Washington, out of the state, down to at least  
10 California, so there will be some extra territorial  
11 information that they desire to obtain and that the  
12 Commission is quite interested in further exploring  
13 within the limits of its jurisdiction.

14                   We recognize the intrastate nature of some of  
15 this transportation, and yet without encouraging the  
16 parties to literally make a federal case out of it, we  
17 are talking about Washington rules that have to be  
18 interpreted in a broader context but still with  
19 respect to our jurisdictional limits.

20                   Mr. Johnson, I already know that -- you don't  
21 have to repeat what you have already said. The intent  
22 is not to cause Mr. Kenefick to have to reach out to  
23 each and every one of his other state entities, but if  
24 there is an obvious connection to the ecoFinity  
25 program as it's being implemented in this case before

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1 this Commission in the state of Washington, there may  
2 be some information that's common outside of the state  
3 that needs to be provided.

4 Mr. Johnson, did I capture that correctly?

5 MR. JOHNSON: I think that's exactly  
6 right, Your Honor.

7 JUDGE TOREM: So, Mr. Kenefick, with  
8 that as a limitation, I don't know how else we can  
9 proceed. We can't keep it strictly within Washington,  
10 because some of this biomedical waste gets shipped out  
11 of state, as admitted already and acknowledged by the  
12 company.

13 MS. GOLDMAN: Your Honor, if I might --

14 MR. JOHNSON: Your Honor, let me just  
15 reassure Mr. Kenefick that we have no idea of sort  
16 of -- initiating some kind of discovery that deals  
17 with, you know, the myriad Waste Management entities  
18 throughout the country and their relationship with  
19 these programs. We are interested in the relationship  
20 between the Washington activity and the ecoFinity  
21 program as implemented through Waste Management's  
22 affiliates and its contractual partners, and that's  
23 it.

24 MR. KENEFICK: I appreciate that, guys.

25 MS. GOLDMAN: And, Your Honor --

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1 JUDGE TOREM: Go ahead, Ms. Goldman.

2 MS. GOLDMAN: Your Honor, if I might  
3 chime in here. I also want to make sure that we are  
4 preserving our right to object to having to produce  
5 information that we lack. So the entity here to whom  
6 discovery can properly be addressed is Waste  
7 Management of Washington, Inc., and it may be that  
8 with limited effort and not undue burden, we can get  
9 information outside of that corporation to the degree  
10 it's available. However, I want to leave open for us  
11 the -- our right to object, that we have no obligation  
12 to do that.

13 The data requests require an entity to provide  
14 information that it has. It does not require that  
15 entity to go out and do additional fact finding or to  
16 generate information. As long as we are clear that we  
17 have that standard right that is always objectionable  
18 in civil cases, then I think we can proceed, hopefully  
19 with a reasonable resolution when we see the actual  
20 data requests.

21 JUDGE TOREM: I appreciate the sentiment  
22 there. No one is trying to foreclose objections that  
23 are reasonable and stated in such a way. I do  
24 encourage, because of the themes that are in this case  
25 that involve more than Waste Management of Washington,

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1 Incorporated, that your company, your client  
2 cooperate, as you have suggested you would, within the  
3 limits of reasonability.

4           When we get to Phase 2 of discovery, we will  
5 see what power the Commission has to obtain  
6 information from third parties and perhaps just how  
7 much information might be voluntarily or informally  
8 provided to Stericycle to prove their case. This is a  
9 difficult position, because the Commission doesn't  
10 necessarily have the power over the third parties, but  
11 would require some sort of evidence to prove up the  
12 allegations that Stericycle has made against Waste  
13 Management.

14           We recognize that there is some difficulty  
15 here and that Waste Management of Washington, Inc. may  
16 not have every bit of information. But if it can be  
17 provided short of a third-party subpoena or  
18 deposition, I would rather see it provided in that  
19 fashion. If you need to object, you can under the  
20 grounds as irrelevant or similar to the ones you have  
21 just stated. I guess those will be --

22           MS. GOLDMAN: Thank you, Your Honor.

23           JUDGE TOREM: Those will just be issues  
24 we will have to see how they can be resolved in  
25 advance.

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1 MS. GOLDMAN: And hopefully we won't  
2 need to go there.

3 JUDGE TOREM: I hope so too.

4 Let me check with Staff quickly, and then I  
5 can tell you what I intend to do.

6 Mr. Smith, anything else?

7 MR. SMITH: Your Honor, I have just one  
8 clarification. If the parties, Waste Management and  
9 Stericycle, resolve informally or through a discovery  
10 conference who the Waste Management deponents will be,  
11 do those depositions still require your approval?

12 JUDGE TOREM: No, they would not.

13 MR. SMITH: All right. Thank you.

14 JUDGE TOREM: With that clarification,  
15 what I intend to do is memorialize those portions of  
16 the discovery plan in an order that are agreed, and  
17 then the ones that we have discussed today, I think  
18 you know where I stand on most of them. I think we  
19 have a meeting of the minds generally, but I am not  
20 going to limit the amount of time on those Waste  
21 Management employee depositions as requested.

22 At this time I am still debating, and I don't  
23 know what to tell you until I get it in writing and  
24 sign it, whether I'm going to require for the  
25 third-party depositions that the -- any subpoenas be



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1 signed, as suggested by Waste Management, by me as  
2 presiding officer. That's something I want to mull  
3 over a little further, but it won't be -- I may just  
4 simply reserve that, to see how it goes before  
5 June 1st arrives and that becomes a relevant issue in  
6 any case.

7 I think the rest of it should be pretty  
8 obvious. The order should be finished this afternoon  
9 and out no later than tomorrow. If you are getting  
10 ready to send data requests, I think tomorrow  
11 afternoon you can be ready to do so, Mr. Johnson.

12 MR. JOHNSON: Thank you, Your Honor.

13 JUDGE TOREM: Ms. Goldman, Mr. Kenefick,  
14 anything else from Waste Management today?

15 MR. KENEFICK: Not from me, thank you.

16 MS. GOLDMAN: No. Thank you, Your  
17 Honor.

18 JUDGE TOREM: Thank you, Mr. Smith, for  
19 your input as well, I value it. We will get the  
20 discovery order out and get the next phase of the case  
21 going.

22 What I anticipate is checking in with the  
23 parties at some point, maybe you will check in with me  
24 and let me know, we'll have another status conference  
25 in the months ahead, hopefully not to resolve

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1 discovery disputes, but simply to adapt a procedural  
2 schedule based on how things are going, sometime in  
3 June. If there is a need to talk before then, you  
4 will let me know.

5 MS. GOLDMAN: We will. Thank you, Your  
6 Honor.

7 MR. JOHNSON: Thank you.

8 JUDGE TOREM: Thank you. It's a little  
9 after eleven o'clock. I appreciate the use of an  
10 hour's time. We are adjourned.

11 (Status Conference adjourned 11:00 a.m.)

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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do hereby certify that the foregoing transcript is

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true and accurate to the best of my knowledge, skill

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and ability.

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SHERRILYN SMITH

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