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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION  
1-360-664-1222

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In re application of )  
Waste Management of Washington, ) DOCKET TG-120034  
Inc., )  
for a temporary certificate to operate as )  
a solid waste collection company under )  
RCW 81.77. )

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VOLUME I

Pages 1 through 35

The above-entitled cause came on for hearing before the  
HONORABLE GREGORY J. KOPTA, at the Washington Utilities and  
Transportation Commission, Richard Hemstad Building, 1300 S.  
Evergreen Park Drive Southwest, Room 206, Olympia,  
Washington, commencing on Tuesday, April 10, 2012, at 1:30  
p.m.

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1 A P P E A R A N C E S

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25 PULLMAN DISPOSAL SERVICE, INC:

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APPEARANCES (CONTINUED)

2

ALSO PRESENT:

3

MARTIN LOVINGER

4

BRAD LOVAAS

5

MIKE PHILPOTT

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JEFF NORTON

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MICHAEL WEINSTEIN

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1 OLYMPIA, WASHINGTON; APRIL 10, 2012

2 1:30 P.M.

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5 THE COURT: Let's be on the record. We are in  
6 Docket TG-120033 entitled In the Matter of the Application  
7 of Waste Management of Washington, Inc., dba WM Healthcare  
8 Solutions of Washington for an extension of certificate G237  
9 for Certificate of Public Convenience and necessity to  
10 operate motor vehicles and furnishing solid waste collection  
11 service.

12 Today is Tuesday April 10th, 2012. It's now 1:30  
13 in the afternoon, and we are here in the Commission's  
14 hearing room in Olympia, Washington convened for a  
15 prehearing conference.

16 I am Administrative Law Judge Gregory J. Kopta  
17 presiding over this matter. Let's start by taking  
18 appearances, and we will begin with the applicant.

19 MS. GOLDMAN: Good afternoon. Jessica Goldman.

20 THE COURT: Use your microphone there. The red  
21 light's on. It's on.

22 MS. GOLDMAN: Am I on?

23 THE COURT: Yes, you are.

24 MS. GOLDMAN: All right. Jessica Goldman from  
25 Summit Law Group on behalf of Waste Management, the

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1 applicant. And with me is my partner, Polly McNeill. And  
2 Mike Weinstein and Jeff Norton are behind me.

3 THE COURT: Thank you. For protestants,  
4 Mr. Sells.

5 MR. SELLS: Thank you. If your Honor please,  
6 James Sells, attorney, appearing on behalf of protestants  
7 Washington Refuse and Recycling Association, Rubatino Refuse  
8 Removal, Inc., Consolidated Disposal Services, Inc.,  
9 Murrey's Disposal, Inc., and Pullman Disposal, Inc.

10 THE COURT: All right. Thank you. And for  
11 Stericycling.

12 MS. MCNEILL: Thank you, your Honor. I'm Stephen  
13 B. Johnson with Garvey Schubert Barer representing  
14 Stericycle of Washington, Inc. And with me is my colleague  
15 Jared Van Kirk. Also in the hearing room is Michael  
16 Philpott with Stericycle.

17 THE COURT: Thank you. And for Commission staff.

18 MS. WOODS: Good afternoon, your Honor. I'm  
19 Fronda Woods, Assistant Attorney General. I'm here on  
20 behalf of Commission staff in the Spartan matter, which is  
21 Docket TG-112025.

22 I'm here because the notice of prehearing  
23 conference stated that there would be discussion of whether  
24 that matter ought to be consolidated with the Waste  
25 Management matter. Staff has not entered a notice of

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1 appearance in the Waste Management matter.

2 THE COURT: Okay. Thank you. Is it your  
3 intention to participate in the Waste Management docket if  
4 they are not -- if it is consolidated with the Spartan  
5 Environmental docket?

6 MS. WOODS: No, not at this time, your Honor.

7 THE COURT: Okay. Thank you. Does anyone else  
8 wish to make an appearance at this time? Hearing none, we  
9 will proceed.

10 I gather since no one entered an appearance  
11 seeking to intervene that no one wants to intervene in this  
12 proceeding; is that correct? Again, hearing nothing, I will  
13 assume not.

14 Protestants already have party status, so that  
15 takes care of the parties. And since we have the parties  
16 set in TG-120033, then I want to take up the matter of  
17 potential of consolidating this docket with Docket  
18 TG-112025, in the application of Spartan Environmental.

19 As Ms. Woods noted, as well as in the notice of  
20 prehearing conference, there was a separate notice in that  
21 docket stating that we would be considering consolidation of  
22 these two cases.

23 It seems to me that the primary issue in both  
24 cases is whether to permit competitive statewide authority  
25 in biomedical waste collection. And it makes -- would make

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1 sense, at least at my preliminary view, to have these  
2 matters considered together.

3 But obviously I want to hear from the parties to  
4 see if there's any objection to consolidation or any other  
5 concerns that they should have should these be consolidated.  
6 Let's start with the applicant. Ms. Goldman.

7 MS. GOLDMAN: We oppose consolidation. While  
8 there may at first blush be some issues of law that are  
9 common to both cases, we think that they're going to end up  
10 looking very different, both from an issue of proof and  
11 issue of discovery.

12 In the Spartan case, you have an entity that is  
13 wholly unknown both to the other parties and to the  
14 Commission. And in the case of Waste Management, you have a  
15 certified -- a holder of a certificate that has been  
16 providing service throughout much of the State of Washington  
17 for many, many years.

18 THE COURT: That beep just means someone's on the  
19 bridge line, so those of you who are not familiar, just kind  
20 of pause and go on after it completes.

21 MS. GOLDMAN: Nothing's going to explode?

22 THE COURT: No, no. Not so far as I know.

23 MS. GOLDMAN: So for those reasons, Waste  
24 Management does not think that there would be much  
25 synergistic commonality between the two matters and that

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1 they're actually going to end up being very different  
2 caliber.

3 THE COURT: Well, are you aware that, under  
4 Commission rules, if two companies ask for overlapping  
5 authority, that if they're not consolidated, then the second  
6 in line has to wait until the first in line's proceeding is  
7 completed before being having their application considered?

8 MS. GOLDMAN: No, I was not familiar with that  
9 rule. And it's my expectation and hope that they might be  
10 proceeding in parallel, if not conjoined.

11 THE COURT: Anyone else want to weigh in on this?  
12 Mr. Johnson.

13 MS. MCNEILL: Your Honor, thank you. Steve  
14 Johnson for Stericycle of Washington. We don't see much  
15 value in the concept of consolidating. We think that the  
16 actual factual material will be different. They are very  
17 different applicants, so the potential for sort of overlap  
18 in the factual context is pretty minimal.

19 Certainly your Honor is correct that there are  
20 some potentially significant legal overlaps between the two  
21 cases, and it would be my thought that the Commission  
22 would -- would -- the same hearing officer should decide  
23 both cases, and they should be decided in a sense as  
24 companion cases.

25 I think the Commission's rule that the second to

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1 file should follow can be -- can be adhered to in the  
2 context of staggering the hearings. This one we're just now  
3 getting into the prehearing conference on April 10. The --  
4 as I recall, the prehearing conference on the other case was  
5 back on, what was it, February 1st.

6 So if we stagger the hearings as the prehearing  
7 conferences have been staggered, as the docketing notices  
8 have been staggered, I think that you're going to come to a  
9 point where you can issue decisions largely simultaneously  
10 without avoiding -- while still giving respect to the  
11 Commission's rule about allowing precedence to the first to  
12 file.

13 THE COURT: Well, in both cases isn't the -- is  
14 one of the issues or at least in my mind the major issue,  
15 but we can dispute that, whether the existing certificate  
16 holder is providing service to the satisfaction of the  
17 Commission?

18 MR. JOHNSON: Your Honor, that's absolutely right,  
19 but there's no reason to believe that the two applicants  
20 will approach that in the same way. Presumably they each  
21 think that they have something to offer the generators of  
22 the State of Washington or we wouldn't have these  
23 applications.

24 But whether they're going to be the same in terms  
25 of what they think the public need is is not being satisfied

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1 currently by Stericycle I think we're guessing at this point  
2 in time. I -- I suspect they're going to approach that  
3 issue quite differently.

4 THE COURT: Mr. Sells, do you have any opinion on  
5 this issue?

6 MR. SELLS: Well, yeah. I'll pile on. Very  
7 briefly. Part of our concern is that we really don't know  
8 what's going on with Spartan. We haven't had much  
9 communication. There has been discovery sent out.

10 The fact that Spartan has -- excuse me -- has not  
11 petitioned to intervene in this matter I think tells us  
12 something. I'm not sure exactly what that is, but I -- like  
13 the others, I see these two applications as entirely  
14 different, and where Spartan is going with its application I  
15 have no idea.

16 I know exactly where Waste Management is going  
17 with its application, and I think that to tie the anchor  
18 maybe of Spartan to Waste Management and the other parties  
19 here would, rather than save time and effort, would probably  
20 add to it.

21 And I agree with Steve Johnson that there is a  
22 difference in time here. We're probably going to know a lot  
23 more if and when the data request answers are returned.  
24 They're just -- they're just entirely different. We have an  
25 unknown quantity and a very well known quantity that's going

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1 to take probably a much different tack than Spartan,  
2 assuming Spartan takes any tack in here.

3 THE COURT: Ms. Woods.

4 MS. WOODS: Thank you, your Honor. Staff is in  
5 general agreement with the applicant and the protestants.  
6 Staff would not recommend consolidation of these matters,  
7 and I'll try to provide some legal citations that may or may  
8 not be helpful.

9 The Commission's rule on consolidation is WAC  
10 480-07-320, and that provides the Commission may consolidate  
11 in its discretion two or more proceedings where the facts or  
12 principles of law are related.

13 And as the parties have been discussing, there's  
14 not very much relationship, it doesn't appear to us, in the  
15 facts between the two applications. They are very different  
16 companies.

17 RCW 81.77.040 sets out the factors that need to be  
18 considered in an application for a solid waste certificate.  
19 Many of them focus on the financial condition of the  
20 applicant and the applicant's experience. That evidence is  
21 likely to be very different in the two cases, and we don't  
22 see efficiencies in consolidation.

23 The statute also sets up some criteria when an  
24 applicant seeks to serve in a territory already served by an  
25 existing certificate holder, which is what we have here.

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1 And the burden of proof is on the applicant to demonstrate  
2 that the existing provider will not provide service to the  
3 satisfaction of the Commission.

4 That may appear on its face to be a common issue  
5 of law, but as the parties have suggested already, it may  
6 be -- it may be different evidence that the two applicants  
7 would be looking at or trying to provide on that issue.

8 To help the Commission understand what -- what  
9 kinds of factors have been considered in the past on that  
10 issue, I'll cite a couple of provider orders that I can  
11 provide to the administrative law judge, if desired. I have  
12 provided copies to the attorneys that are here previously.

13 One of them is in re application of Ryder  
14 Distribution Resources, which I think is Stericycle  
15 actually, order MBG 1761. That's a decision dated August  
16 11th, 1995. The other one is in re Sherway Medical  
17 Services, order MBG number 1663, decided November 19th,  
18 1993.

19 There's the -- Judge Kopta indicated a little  
20 while ago about when you have competing applications,  
21 there's some -- they need to be sequenced. I would like to  
22 point out that in prior orders, the Commission has indicated  
23 favoring a policy of competition in the biomedical waste  
24 area, so this is not a situation where the Commission has to  
25 decide between one application or the other.

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1           I think either application can be looked at on its  
2 own merits, and if the Commission wanted it, it could grant  
3 both of them a -- it could deny both of them. So there  
4 isn't the kind of policy consideration in the normal  
5 traditional solid waste arena in these biomedical waste  
6 cases, at least that's the -- the view of staff.

7           I would recommend taking a look at the order that  
8 the Commission issued last year, Stericycle versus Waste  
9 Management, Docket TG-110553 issued on July 13th, 2011.  
10 That order describes the policy of encouraging competition  
11 in the biomedical waste area. It cites some prior orders as  
12 well. So I'm hoping that might be helpful.

13           THE COURT: Well, if you would provide those other  
14 two orders that you referenced, that would be helpful. I  
15 didn't mean to cut you off, though. Is that -- did you --  
16 what you'd like to say?

17           MS. WOODS: That's what I had to say. Thank you,  
18 your Honor.

19           THE COURT: Okay. Does the applicant agree with  
20 staff's view of the legal landscape, that there's no legal  
21 prohibition to Waste Management or any other company  
22 providing biomedical waste services in the territory of the  
23 company that's already providing that service as a matter of  
24 statute?

25           MS. GOLDMAN: Yes, we do agree. Obviously we're

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1 before the Commission, so the Commission will be ruling on  
2 that issue. But clearly the Commission has stated its  
3 preference for a competition, and we don't see any problem  
4 with the two applications being judged on their merits.

5 And if found, certainly we believe that Waste  
6 Management will establish its ability to provide service to  
7 the satisfaction of the Commission and the other statutory  
8 elements. And if Spartan is able to do that, then there  
9 would be no reason why both applications should not be  
10 granted.

11 THE COURT: And Mr. Johnson, do you agree?

12 MR. JOHNSON: Yeah, your Honor, if I could comment  
13 on that. We do not agree. We most vehemently do not agree.  
14 There have been a couple of occasions when the Commission  
15 has used loose language inconsistent with its statutory  
16 authority to discuss its interest in competition.

17 In fact the decided cases in this area are much  
18 less favorable to the position that was outlined by  
19 Ms. Woods than she has disclosed to your Honor. The decided  
20 cases indicate that the criteria to be applied in a medical  
21 waste case are different from the solid waste context, and  
22 to that extent, I agree with the comments that have been  
23 made before, that within the -- within the scope of the  
24 Commission's prior decided cases, it is possible to grant  
25 both applications that we are discussing today.

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1           It is not that it is impossible to do that. It is  
2 not a case where granting one forbids granting the other.  
3 However, the Commission's decided cases specifically speak  
4 to the criteria that must be found before granting  
5 overlapping authority, and they speak to it in terms of  
6 public need and a question of whether there is a difference  
7 in service that is sufficient to warrant the grant of an  
8 application because there's a public need for that  
9 difference in service.

10           And when I spoke a little earlier about the  
11 difference in proof that might be presented on the issue of  
12 service to the satisfaction of the Commission, it was  
13 exactly that that I was thinking about.

14           The issue is what does the applicant bring to the  
15 table that existing carriers don't already provide, and that  
16 is in fact what the Commission's prior medical waste  
17 decisions address uniformly.

18           In those cases where they have allowed overlapping  
19 authority to be granted, they have found that there was a  
20 public need for something unique or different about the  
21 service that the applicant was bringing to the state. And  
22 in fact in the Ryder case which, as Ms. Woods points out, is  
23 really a case dealing with Stericycle's entry into the  
24 marketplace, Stericycle's application was protested by  
25 existing carriers, one of which had statewide medical waste

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1 collection authority at that time, and the Commission  
2 decided that for the reasons laid out in great detail in  
3 that order that Stericycle would be permitted to enter  
4 because it brought something new and different to the -- to  
5 the state that the generators of the state expressed a need  
6 for. It's as simple as that.

7 And we're going to find out whether these  
8 applicants can make that kind of a showing, but there's no  
9 general notion of Commission policy that competition is to  
10 be -- is to be favored inconsistent with the statute that  
11 binds the Commission in its decision making on these  
12 applications.

13 THE COURT: Mr. Sells.

14 MR. SELLS: Thank you. If your Honor please, let  
15 me thank Ms. Woods for a trip down memory lane. I was  
16 involved in all of those cases, and some before that, and  
17 would make the comment that a lot of the testimony and I  
18 think a lot of the reason that there was overlaps were  
19 granted involved disposal, customers requesting a particular  
20 type of disposal or not wanting a particular type of  
21 disposal.

22 And I suspect that that will be an issue in  
23 these -- these hearings as well. I think the Commission can  
24 grant all the medical waste certificates that it wants to,  
25 but I don't think it will. I don't think they're going to

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1 put -- the Commissioners are going to put forth five or six  
2 medical waste carriers in one small area.

3 If both of these are -- are granted, meaning  
4 Spartan and Waste Management, there will be areas where  
5 there's four service providers, and Mr. Johnson is correct,  
6 the Commission is going to have to look at what the  
7 shippers, what the medical community in those areas want.

8 And that's another reason why these two should not  
9 be heard. In general I would agree that the -- the  
10 Commission clearly has stated that there will be competition  
11 if the proper showing and if the proper proof is presented.  
12 And that's a big if.

13 THE COURT: I see. Well, and this is one of the  
14 reasons that it seemed the consolidation might be a good  
15 idea, because there's obviously a difference of opinion of  
16 how to interpret the statute.

17 And if it were a situation in which the Commission  
18 were to interpret the statute as Mr. Johnson suggests, then  
19 if neither applicant is seeking to do anything different  
20 than what's being done now, then that would basically end  
21 both applications at this point.

22 So I would hate to have to go through two separate  
23 proceedings to relitigate this same issue only to have the  
24 same decision reached two different times over a space of  
25 much longer period.

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1           So one possibility would be to have a briefing in  
2 both dockets to address the statutory interpretation as to  
3 what the Commission's limitations are under the statute, how  
4 it should be interpreted, and whether it is, as Mr. Johnson  
5 suggests, a limitation on the Commission's ability to grant  
6 other applications or whether the Commission can and should  
7 interpret the statute more broadly, as staff has suggested,  
8 and allow competitive entry without any kind of showing that  
9 the new service would be any different than what's being  
10 offered currently. So unless anyone has any thought about  
11 doing that. Mr. Johnson.

12           MR. JOHNSON: Yes, your Honor. I do have one  
13 thought on that. And that is I think, you know, the  
14 testimony of generators is going to be quite important  
15 ultimately.

16           I don't know exactly the strategy that Waste  
17 Management will follow or that the Spartan Environmental  
18 folks will follow, but I would think that the Commission  
19 would want to hear from the medical community and the  
20 generator community before reaching any decision on  
21 statutory interpretation.

22           It's not an abstract question, I think. I think  
23 it's more a question of in a context where, you know, we  
24 have a real service meeting real needs and there's a  
25 proposal to -- to add something, either add a competitor or

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1 add something with a little twist to it or another feature,  
2 you know, what do the -- what do the generators think?

3 So I guess that's my only on the -- as a lawyer  
4 and in the abstract, I see the idea of sort of confronting  
5 this issue and addressing it, I'm wondering if that -- if we  
6 wouldn't all be better off ultimately to have the testimony  
7 of generators before making that decision.

8 THE COURT: Ms. Goldman.

9 MS. GOLDMAN: It's our position that that puts the  
10 cart before the horse. I think there is a legal question  
11 here to be decided, and perhaps on a motion for summary  
12 determination, as to what the legal standard is going to be.  
13 And that is wholly irrespective of whatever the testimony  
14 may be from the shippers.

15 As you've laid out what the possible dispute would  
16 be, it is one of law, and it seems like it would be in the  
17 best interests of all of us to know what it is that we're  
18 going to be having to prove up, both for those of us who  
19 have the burden of proof and for those who are going to be  
20 conducting discovery, so that we can understand the scope.

21 I will -- I will note that we had a chat among  
22 counsel yesterday to discuss what -- what we envisioned for  
23 discovery here, and we're worlds apart in what we think is  
24 going to be necessary. And it's our desire here for  
25 discovery to be appropriate and to be complete based on what

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1 the legal standard is going to be.

2           And so we would be fully in favor of early motion  
3 practice to determine what that would be, and that is  
4 something that, if it made sense to the Commission, could  
5 certainly be consolidated for purposes of that legal  
6 determination, and you can either punt what happens next or  
7 just determine that the next step would be bifurcated when  
8 it comes to proving up the facts.

9           THE COURT: Well, and that's one of the concerns  
10 that I have is making sure that we're dealing with the  
11 proper standard, because if we're -- have different  
12 interpretations of the statute, and we have discovery all  
13 over the map, then the Commission ultimately decides how  
14 it's going to interpret the statute, there would be a fair  
15 amount of wasted effort or at least potentially wasted  
16 effort.

17           So my inclination at this point, I will take the  
18 issue under advisement, but I will tell you right now my  
19 inclination would be to have some kind of briefing on the  
20 interpretation of the statute and what an applicant needs to  
21 show in order to be able to provide service in a territory  
22 in which there is an existing service provider.

23           So for right now we will not consolidate these  
24 matters, at least totally. But I will give the matter some  
25 more thought and issue an order promptly. As Ms. Goldman

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1 referenced, discovery, I believe this is an appropriate case  
2 for it to be available, so the Commission's discovery rules  
3 will be available.

4 Which would bring us to schedule, except there's  
5 something I noticed in the application that Waste Management  
6 filed that sort of struck me. You included an application  
7 for temporary certificate.

8 Is Waste Management intending to pursue both a  
9 temporary certificate and an extension of this existing  
10 certificate?

11 MS. GOLDMAN: The temporary was denied, and -- and  
12 I'll defer to Polly.

13 MS. MCNEILL: Polly McNeill for Waste Management.  
14 The temporary application was denied. We did not file any  
15 motion for reconsideration nor do we plan to file an appeal.  
16 It's possible that we may file another temporary application  
17 in the course of these proceedings, but we have not, and we  
18 would certainly make everyone aware of that if we were going  
19 to do it.

20 So I think for now you can consider this just to  
21 be an application for a permanent authority, and I just  
22 would have saw as an extension of an existing service  
23 provider's operations which are currently already throughout  
24 the state, so --

25 THE COURT: Okay. I just wanted to make sure that

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1 I understood what the scope of what we were dealing with is.  
2 So we will just be dealing, at least for now, with the  
3 extension of the existing certificate.

4 So scheduling. I gather from Ms. Goldman's  
5 comments that there probably is not a proposed schedule that  
6 you're willing to provide to me. So let us be off the  
7 record for a moment and have some discussions about that.  
8 We'll be off the record.

9 (A break was taken from 1:58 p.m.  
10 to 2:39 p.m.)

11 THE COURT: Let's be back on the record. During  
12 the break the parties discussed schedule, and as I  
13 understand it, were not able to agree, so I'm going to allow  
14 each of them to explain what their proposals are and any  
15 explanation they choose to provide, beginning with  
16 Ms. Goldman.

17 MS. GOLDMAN: Thank you. We see the needs for  
18 discovery in this matter as being pretty straightforward.  
19 This involves the application by a -- not a new entrant.  
20 Waste Management is a certified service provider. It is  
21 currently providing medical waste collection services  
22 throughout most of Washington, including most of the highly  
23 populated areas of Washington.

24 It's an entity that is known well to all of the  
25 protestants and to the Commission, and we think that the

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1 issues will be narrow as to factual discovery. So based on  
2 that, it's our proposal that pre-filed testimony be due on  
3 August 1st, that a second round of rebuttal pre-filed  
4 testimony be due on September 14th, and that the hearing be  
5 scheduled for October 1st.

6 We would also propose that the parties submit  
7 cross-briefing on May 1st regarding the legal standard  
8 that's going to be applicable here based on the initial  
9 discussion that we had with your Honor, and that responses  
10 to the degree necessary be cross-filed on May 15th.

11 THE COURT: All right. Mr. Johnson, your  
12 proposal.

13 MR. JOHNSON: Thank you, your Honor. Steve  
14 Johnson for Stericycle. I think what Ms. Goldman has  
15 described is sort of a perfunctory schedule that does not  
16 allow Stericycle the opportunity it seeks for a full and  
17 fair hearing on the issues that are relevant to the  
18 statutory grant of overlapping authority.

19 What we're asking for is, however, not that  
20 different from what they are suggesting. We just think we  
21 need a fuller opportunity for discovery, for the preparation  
22 by experts, and to allow us to get to know Waste Management  
23 in more detail than we do now.

24 Ms. Goldman likes to think that everybody knows  
25 Waste Management. Waste Management has not been in the

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1 medical waste business for 15 years. They came in a year  
2 ago. They've been providing service for one year.

3 As far as I know from their application, I think  
4 they have three collection trucks and, you know, we're not  
5 talking about Waste Management, the empire, here. We're  
6 talking about their medical waste collection service, and we  
7 want to dig into that and figure out what they're doing, how  
8 they're doing it, whether the service that they're providing  
9 meets the standard for a grant of overlapping -- overlapping  
10 authority.

11 What we would suggest for a schedule is that we  
12 have, you know -- and this does take into account somewhat  
13 people's vacation schedules in August. I think what we want  
14 is what we would suggest is pre-file -- a deadline for  
15 pre-filed testimony being October 1st with rebuttal  
16 testimony by November 1st.

17 And these are -- these dates are not picked to  
18 coincide with the correct days of the week, but perhaps your  
19 Honor could adjust that if you -- if you see this schedule  
20 as something reasonable. And the hearing could start as  
21 early as November 15th. So pre-filed testimony, first  
22 round, October 1; second round, November 1; hearing,  
23 November 15.

24 With respect to the briefing that Ms. Goldman  
25 suggests, I guess I'm a little unclear whether under the

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1 Commission's rules there should be a motion made. I guess  
2 under the notion that we filed briefs at the front end and  
3 then we file cross-replies, then everybody gets two briefs,  
4 there's something to be said for that. But I'm kind of  
5 thinking this is sort of a disembodied procedure without a  
6 particular motion on the table.

7 Or perhaps if the -- if the -- if your Honor  
8 requests us to file briefs along these lines, it's perfectly  
9 okay, but it seems a little disconnected.

10 THE COURT: Well, our anticipation would be to --  
11 our speaking of a royal we. My anticipation would be that  
12 as part of the prehearing conference order that there would  
13 be an identification of the issue or issues to be briefed,  
14 so certainly we could use the convention of cross-motions on  
15 those issues or simply accept that the Commission asked for  
16 briefing on those issues. That's how they would be teed up.

17 But do you have any concerns with the dates that  
18 Ms. Goldman has suggested for those briefs based on our  
19 earlier conversation about what we would be addressing?

20 MR. JOHNSON: Your Honor, I do. May 1, that's  
21 less than a month away. I don't think that allows us  
22 sufficient time to brief this. If it is your Honor's desire  
23 to have this issue dealt with at the front end of things, we  
24 ought to allow sufficient time to brief it correctly.

25 You know, we are also presumably going to be in

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1 the middle of preparing discovery on -- and data requests  
2 for Waste Management. We don't see it as quite as simple as  
3 Ms. Goldman thinks our task is as far as changing the name  
4 on the Spartan discovery request.

5 We think Waste Management is quite a different  
6 critter than Spartan Environmental, and I think even  
7 Ms. Goldman has acknowledged that. So we need to prepare  
8 appropriate data requests for Waste Management in the same  
9 time period, and -- and apparently, if we go down this line,  
10 brief -- providing briefing as well.

11 So I would suggest that we set it out at least six  
12 weeks from today to give some -- you know, provide some  
13 allowance for that.

14 THE COURT: Okay. And last but not least,  
15 Mr. Sells.

16 MR. SELLS: Thank you, your Honor. Just a couple  
17 things. Remind the court and the parties of a -- well, it's  
18 an international conference for solid waste that takes place  
19 between May 1st and May 5th.

20 And looking down my list, as a general rule,  
21 everyone on that list goes, and I will be there as well, and  
22 it's out of state. And then secondly, June 20th through  
23 June 24th is the WRRR annual convention being held in  
24 Bellevue this year, and would be a very difficult time to  
25 corral any of my people.

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1           And I -- and I should add, even though I have  
2 small companies in here comparative to these other two, I do  
3 note that they're in Everett, Ephrata, Puyallup and Pullman.  
4 So there may well be some travel and some communication  
5 difficulties along the line, so anything towards a little  
6 extra time towards that would be helpful for me.

7           My data requests are going to be confined to the  
8 areas of those four companies, because I'm sure that  
9 Stericycle is going to cover the statewide thing very well.  
10 So I have a little bit easier task there, but sometimes that  
11 would make it difficult for my members. Thank you.

12           THE COURT: All right. Thank you. Well, I have  
13 the parties' proposals. We'll issue a decision as part of  
14 the prehearing conference order, which should come out  
15 within the next few days. Is there anything else that we  
16 need to discuss while we're here?

17           MR. JOHNSON: Your Honor, there is just one point  
18 that I neglected to make with respect to the pre-file  
19 testimony. I think the parties were in agreement with  
20 respect to the Spartan case, and I hope they are with  
21 respect to this one, that any generator testimony that would  
22 be presented would be presented live, and that it's only  
23 when we're talking about pre-file testimony, we're only  
24 talking about company witnesses and experts.

25           MS. GOLDMAN: I think we can leave that issue to

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1 be teed up later. I don't know that we're ready to make  
2 that commitment at this point, but I think we can certainly  
3 address it. It is our expectation that certainly company  
4 testimony would be provided pre-filed. We have a couple  
5 other issues.

6 MR. JOHNSON: Well, just if I might just speak a  
7 little bit more to that point just so your Honor understands  
8 our position. Our position is that, to the extent generator  
9 testimony is relevant, we think it's highly relevant to any  
10 issue of public convenience and necessity that you have  
11 basically the public coming before the Commission.

12 And in that context, for the public to be -- to be  
13 heard correctly and accurately it should -- their testimony  
14 should not be filtered through pre-filed testimony prepared  
15 by the lawyers.

16 THE COURT: Well, and that assessment has been the  
17 Commission practice, so I don't have any concerns in terms  
18 of that. I don't know that we need to address it at this  
19 point, but my anticipation is any testimony that would come  
20 from generators or the public, to the extent that it needs  
21 to be considered in the hearing as opposed to public  
22 comment, would be live at the hearing, so that's not a  
23 concern. Ms. Goldman.

24 MS. GOLDMAN: Our concern really is going to boil  
25 down to whether it's live or telephonic. So I think that

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1 we're certainly willing to wait to see if that's even an  
2 issue that we need to address.

3 We do have one other issue that we'd appreciate  
4 your Honor addressing in the prehearing order, and that is  
5 we would request that any requests for documents to the UTC  
6 be made by formal data request so all of the parties see  
7 them instead of as a matter of public record requests, which  
8 allows us all to be on the same playing field as far as  
9 documents that are being requested of the UTC.

10 THE COURT: That's generally the practice in  
11 litigated proceedings, but obviously I'm not sure that I can  
12 foreclose anyone from making a public records request. I'm  
13 sure there are many people that know how to make public  
14 records requests, and do so regularly, but I don't know that  
15 I at this point want to foreclose that as a possibility.

16 However, I can require that any parties that make  
17 such requests of issues that are related to this proceeding  
18 also copy other parties.

19 MS. GOLDMAN: That would be -- that would take  
20 care of the issue. Thank you.

21 THE COURT: Anyone have objection with that kind  
22 of requirement?

23 MR. JOHNSON: Not here, your Honor, for  
24 Stericycle.

25 MR. SELLS: No, your Honor.

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1           THE COURT: Okay. Thank you, then. We will do  
2 that, then. Anything else?

3           MR. SELLS: One more thing -- or Jessica.

4           MS. GOLDMAN: I just have one other question being  
5 a newcomer to this forum. Do we need authority to set  
6 depositions or is your order that discovery is triggered  
7 sufficient for any forms of discovery?

8           THE COURT: Well, you would need to look at the  
9 rules in terms of -- but I think that there is -- discovery  
10 is available in many forms, including depositions, but --

11          MS. GOLDMAN: Do we need specific permission, I  
12 guess is my question, as to -- to initiate it?

13          THE COURT: Well, you certainly can on your own  
14 agree to have depositions. If you need a subpoena, then you  
15 will have to come through me.

16          MS. McNEILL: Okay.

17          THE COURT: So there is --

18          MS. GOLDMAN: And we will need subpoenas for  
19 parties?

20          THE COURT: That would be my preference, because  
21 depositions are the exception rather than the rule in  
22 Commission adjudicative proceedings, and so --

23          MS. GOLDMAN: Okay. Thank you.

24          THE COURT: My preference is to have all of those  
25 things come through me so that I can be a bit of a

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1 gatekeeper and make sure that Commission processes are used  
2 appropriately.

3 MS. GOLDMAN: Thank you.

4 MR. SELLS: One more question, if I may, your  
5 Honor.

6 THE COURT: Uh-huh.

7 MR. SELLS: Which you probably can't answer, but  
8 maybe someone else can. Any good educated guesses on how  
9 many days of hearing? I ask that because my board is going  
10 to ask me that.

11 THE COURT: That's a good question. I think it  
12 will in all likelihood depend on the nature of the case that  
13 the parties foresee. Any thought from Waste Management or  
14 Stericycle in terms of how many witnesses, how long?

15 MS. McNEILL: Three.

16 THE COURT: Three days?

17 MS. GOLDMAN: I think it's in large measure going  
18 to be dependent on the initial decision as to what the scope  
19 of the issues are and what the elements of proof are going  
20 to be for the parties. But certainly from our perspective,  
21 I think several days would be sufficient.

22 THE COURT: Well, I would be surprised if more  
23 than two to three days would be necessary and would propose  
24 that it would be at this point scheduled for that amount of  
25 time.

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1           MR. SELLS:  And that will all be scheduled here in  
2  Olympia, as I understand it.

3           THE COURT:  That is correct.  It will be here in  
4  Olympia.

5           MR. JOHNSON:  Your Honor, this is Steve Johnson  
6  for Stericycle.  I just would mention that I think the last  
7  hearing we did took something like two weeks.  And that was  
8  involving a party that -- whose application failed in the  
9  middle of the hearing.

10           These things, to the extent we're doing --  
11  submitting rebuttal pre-filed testimony in the short time  
12  before the hearing, there's very likely to be substantial  
13  cross-examination extending over extended period.

14           I think that, you know, we can be optimistic about  
15  a few -- a few days, but I think we're talking about a week  
16  at a minimum and perhaps two.

17           THE COURT:  Well, I will consider that as I look  
18  at the case, but I appreciate everyone's thoughts.  Anything  
19  else?  Hearing nothing, we're adjourned.  Thank you.

20           (The proceedings were concluded at 2:53 PM.)

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1 C E R T I F I C A T I O N

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Kathleen Hamilton, a Certified Shorthand  
7 Reporter and Notary Public in and for the State of  
8 Washington, do hereby certify that the foregoing transcript  
9 of the hearing on APRIL 10, 2012, is true and accurate to  
10 the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand and  
12 seal this 19TH day of APRIL, 2012.

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KATHLEEN HAMILTON, RPR, CRR, CCR

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19 My commission expires:

20 APRIL 2014

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