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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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In Re Application of )

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WASTE MANAGEMENT OF )

) Docket No. TG-120033

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WASHINGTON, INC. )

7

d/b/a WM Healthcare Solutions )

of Washington )

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8

HEARING, VOLUME II

9

Pages 24 - 101

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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2:40 P.M.

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AUGUST 8, 2012

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Washington Utilities and Transportation Commission

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1 JUDGE KOPTA: Let's be on the record in  
2 Docket TG-120033, encaptioned In Re Application of  
3 Waste Management of Washington, Inc., d/b/a  
4 WM Healthcare Solutions of Washington. This is  
5 Administrative Law Judge Gregory Kopta. We are here  
6 on cross-motions for resolution of discovery disputes,  
7 and we will first start by taking appearances,  
8 beginning with the applicant.

9 Ms. Goldman?

10 MS. GOLDMAN: I'm sorry, I stepped away  
11 from my phone.

12 Jessica Goldman here, Your Honor, on behalf of  
13 Waste Management of Washington, Inc.

14 JUDGE KOPTA: And for Stericycle?

15 MR. JOHNSON: Thank you, Your Honor.  
16 Steve Johnson on behalf of Stericycle of Washington,  
17 Inc.

18 JUDGE KOPTA: And for WRRRA, et al.?

19 MS. WOODS: James Sells on behalf of  
20 WRRRA and four other companies.

21 JUDGE KOPTA: And for Staff.

22 MS. WOODS: Good afternoon, Your Honor.  
23 I'm Fronda Woods, Assistant Attorney General for  
24 Commission Staff.

25 JUDGE KOPTA: All right. Thank you.

1           While we were off the record, we had a  
2 discussion about modifying the current procedural  
3 schedule. There is agreements to move the current  
4 hearing dates to the first full week of December of  
5 2012. The parties will confer and come up with  
6 revised deadlines for the other filing requirements  
7 under the procedural schedule, and will provide that  
8 to the Commission tomorrow. And I will be issuing an  
9 order modifying the procedural schedule accordingly.

10           As I had cautioned, I originally scheduled  
11 this proceeding for three days of hearing. I am  
12 willing to schedule an entire week for the hearing,  
13 but only under extraordinary circumstances will I  
14 extend that time. I am asking the parties to prepare  
15 their cases accordingly so that we can complete this  
16 case, the evidentiary hearings, within that week.

17           So with that taken care of, we will move to  
18 the motions to compel. I don't have a particular  
19 preference about which motion we start with, but since  
20 Waste Management is the applicant, then I might as  
21 well start with them. I do not intend to issue an  
22 order as a result of these motions, I intend to make  
23 rulings on the record, unless there is some reason  
24 that a written order is required. I'm just letting  
25 you know that right now.

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1           The second thing I wanted to let you know is  
2   that I have read the papers, and what I propose to do  
3   is to go through the individual requests that are at  
4   issue and to deal with each of those, or perhaps in  
5   groups, depending on how they are presented, and to  
6   rule on each of those seriatim.

7           MR. JOHNSON: Your Honor, this is Steve  
8   Johnson for Stericycle. Just one question on process  
9   here. I'm wondering if it wouldn't make sense for  
10   both Waste Management and Stericycle to make some sort  
11   of overview statement about where these motions take  
12   us and how they might be resolved, and then perhaps  
13   proceed to the individual requests and your -- then  
14   perhaps argument on them.

15           I'm just wondering if we do each one seriatim,  
16   are we going to argue about each one, or are we going  
17   to -- how is this going to -- are we going to come out  
18   the other side of this? That's what I'm basically  
19   getting at. I was hoping that by sort of starting  
20   with some kind of overview statement on both sides, we  
21   might kind of create a framework in which we could see  
22   daylight more clearly.

23           JUDGE KOPTA: Whatever is going to get  
24   us to a resolution of these issues, or at least  
25   present me with the information that I need to resolve

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1     them, I'm fine with.  What I don't want is, number  
2     one, a repetition of what you have already written,  
3     and number two, accusations of bad faith from either  
4     side.  I'm not interested in either of those two  
5     things, and that won't move the ball forward.

6             If you have some general comments that you  
7     think will help me have the information I need to  
8     resolve them, then I'm willing to listen to general  
9     statements, if that is going to help out.

10            Is that something that makes sense to you,  
11  Ms. Goldman?

12                    MS. GOLDMAN:  Yes, that's fine, Your  
13  Honor.

14                    JUDGE KOPTA:  And If you would move a  
15  little closer to the phone, you are a little bit  
16  faint.

17                    MS. GOLDMAN:  Is that better?

18                    JUDGE KOPTA:  Perfect, thank you.

19                    All right.  Do you care which motion we start  
20  with, whether it's Stericycle's or Waste Management's?  
21  Is there a preference of the parties?

22                    I don't hear any preference.

23                    Well, Mr. Johnson, since you requested a  
24  general statement, I'm going to let you make a general  
25  statement first, and then I will allow Ms. Goldman to

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1 make a general statement, and the other two parties if  
2 they so choose.

3 MR. JOHNSON: Okay. Thank you very  
4 much, Your Honor.

5 Steve Johnson for Stericycle. I wanted to  
6 just first of all kind of apologize for the kind of,  
7 in some ways, complicated and somewhat disorderly pile  
8 that we have put on your desk. I think one of the  
9 reasons we are in this situation is that we were  
10 operating with a fairly truncated schedule, and we  
11 were looking at a potential deadline prefiled  
12 testimony in mid August, and we were jamming up  
13 against that. And then we finally -- you know, we  
14 came to terms with an idea of trying to extend to  
15 August 31, give us a little breathing room. Still we  
16 have sort of this compressed schedule.

17 We ended up, then, Waste Management and  
18 ourselves, agreeing to bring these motions, but really  
19 on a rather short turnaround on -- the supplemental  
20 filings were both made by agreement on July 27th,  
21 which is a Friday, and then we needed to file our  
22 motions by Tuesday, which resulted I think in some  
23 failure to connect in all respects. But also I'm  
24 thinking that if we had a little more extended time,  
25 as we now think we will have, we might be able to



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1 resolve these -- some of these issues, by either more  
2 refined data requests or negotiation or whatever.

3 And so my thought is to describe some general  
4 subject matters. But we do need guidance from Your  
5 Honor with respect to the subject matters that are  
6 sort of fair game for this hearing. And with that,  
7 I -- I am thinking that perhaps we could move on to  
8 having the parties either refine their data requests  
9 to get more precisely what they want or need or agree  
10 on production. So that was my thought.

11 I've got a list of what I think are sort of  
12 the subject matters that we are trying to get at, and  
13 would like to have a chance to just explain those, and  
14 then the data requests fit into those general  
15 categories.

16 So first of all, you know --

17 JUDGE KOPTA: Let me stop you there --

18 MR. JOHNSON: I'm sorry.

19 JUDGE KOPTA: -- and ask Ms. Goldman,  
20 does that approach make sense to you?

21 MS. GOLDMAN: No, Your Honor. We would  
22 like to have a ruling. I have to say that we have now  
23 engaged in several lengthy phone conversations, and  
24 you have seen the exchange of correspondence. I think  
25 at this point, we just -- certainly for purposes of

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1 Waste Management's motion. If Stericycle would like  
2 to discuss further, or further refine its data  
3 requests, we would not object to that at all. We  
4 would like a ruling as to our motion. I believe that  
5 these issues are ripe, I believe that they are framed.  
6 We have, to my knowledge -- unless Stericycle is  
7 willing to change its position on any of them, we are  
8 ready for resolution.

9 MR. JOHNSON: Your Honor, I don't think  
10 my suggestion was necessarily inconsistent with  
11 Ms. Goldman's.

12 JUDGE KOPTA: And all I'm doing is  
13 trying to sort of flesh out how people want to proceed  
14 here, because I can do it either way. Given, quite  
15 frankly, Waste Management's assertion that many of  
16 these have not already been discussed informally, then  
17 that would certainly be my preference, to not go  
18 individually. But instead, if you want to discuss  
19 general subject matter, particularly for those that  
20 you have not yet had an opportunity to fully discuss  
21 informally, then I'm willing to do that, as opposed to  
22 simply saying it's not yet before me.

23 MR. JOHNSON: Well, Your Honor, on those  
24 matters, I think the ones that are the most specific  
25 as to that are issues that arose out of the filing on

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1 the 27th by Waste Management, resulting in a Friday  
2 afternoon filing with a Tuesday motion needing to be  
3 filed. I think it's clear that on those particular  
4 matters, that they are fairly presented and accurately  
5 described and that they are ready for ruling as much  
6 as anything else in the catalog of disputes.

7 This is a result of the schedule that we had  
8 agreed on in terms of filing of these motions to  
9 compel and the over 500 pages of material that Waste  
10 Management produced at the end of the day on Friday  
11 the 27th. I don't think it's necessarily appropriate  
12 to defer with respect to those items as such. I think  
13 they are as fairly in front of you as any other item.

14 JUDGE KOPTA: Okay. Well, if we are  
15 going to start with Waste Management's motion, then  
16 why don't we hold off on the general guidance that you  
17 were looking for until we discuss Stericycle's motion,  
18 Mr. Johnson. Because it sounds to me like Waste  
19 Management wants determination on each of the data  
20 requests that they have included in their motion, and  
21 so that would be a walk-through kind of situation.

22 MR. JOHNSON: Okay, Your Honor. Is it  
23 the case that we will present argument on each one?

24 JUDGE KOPTA: Well, at this point, I  
25 don't know how long we are planning on being here this

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1 afternoon, but we can have a brief discussion. If you  
2 have anything more to say, other than what you have  
3 already said in your papers, I really want to avoid  
4 any repetition. Because, as I say, I have read what  
5 you have written, and I don't need to hear it more  
6 than once.

7           So let's just walk through Waste Management's  
8 motion, beginning with Data Request No. 1.  
9 Ms. Goldman, is there anything more that you wanted to  
10 say in support of your request for -- that the  
11 Commission compelled response, for an additional  
12 response to Request No. 1?

13           MS. GOLDMAN: If I may, just a  
14 couple sentences generally.

15           The discovery -- and I will do my very best  
16 not to repeat. I appreciate your attention to the  
17 papers we have filed.

18           The discovery that we are seeking addresses  
19 the issue of rebutting Stericycle's contention set  
20 forth in Paragraph 7 of its protest, that it will be  
21 financially harmed to the detriment of the public's  
22 interests if Waste Management is permitted to compete  
23 with Stericycle statewide. As a result of such  
24 competition, Stericycle's contention is that its costs  
25 will materially rise and that its revenues will

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1 materially decline. What these nine data requests  
2 that we are speaking relief on go to is unpacking  
3 and drilling down on that information so that we can  
4 effectively analyze and rebut their contention, which  
5 we believe the evidence will indeed rebut.

6           The contention that is made in Stericycle's  
7 opposition brief focuses their concern that they --  
8 their concern that the largely rural territory that is  
9 covered by Waste Management's application is the  
10 subject of their concern. And so many of these data  
11 requests do actually go to the issue of impact in  
12 rural areas and trying to test that assertion.

13           It's also worthy of note that Stericycle has  
14 taken a position in its 2010 annual report that it has  
15 significant -- it makes significantly higher gross  
16 margins with its small quantity customers relative to  
17 its large quantity customers. That doesn't surprise  
18 us. We believe that the data will reflect that fact.

19           In addition, the general evidence that  
20 Stericycle has submitted so far indicates to us that  
21 Stericycle's revenues have increased markedly since  
22 Waste Management began competing with Stericycle in  
23 the G-237 territory. We are very anxious to see these  
24 numbers and have an opportunity to test them. What we  
25 are looking for here is information that goes to

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1 testing the costs, the profits and the impact to the  
2 public that would result from competition, from  
3 statewide competition, with Waste Management.

4 Data request No. 1 we have agreed to refine to  
5 a smaller set, the information we need, which we have  
6 defined as the balance sheet, a typical, standard type  
7 of financial documentation kept for corporate  
8 entities, which Stericycle claims does not exist. The  
9 purpose of this, as we have stated, is to confirm that  
10 the recitation of assets employed in regulated  
11 services, that they have submitted as an exhibit, is  
12 matched by their internal bookkeeping, because we  
13 believe that those assets actually are in fact used  
14 for both regulated and nonregulated operations.

15 JUDGE KOPTA: Mr. Johnson?

16 MR. JOHNSON: Well, I will speak to the  
17 last point first, Your Honor. We already provided  
18 extended lists of assets and a depreciation schedule  
19 in response to Waste Management's request. The data  
20 that Ms. Goldman now seeks in the form of a balance  
21 sheet, apparently she seeks to confirm what we gave  
22 her already is actually valid and an appropriate  
23 response to her earlier data request. My way of  
24 thinking, that makes it completely redundant.

25 Our thought is that what she is -- what they

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1 are really looking for is what she said in her letter,  
2 and I quoted extensively in my memo, which is, they  
3 are looking to, in essence, create a rate case and  
4 audit Steri -- have a situation where a very  
5 interested competitor wants to audit Stericycle's  
6 profitability and cost allocation methodology. It's  
7 our position that that's not an appropriate thing for  
8 Waste Management to do in the context of this  
9 proceeding. That's a matter for the Commission.

10 I mean the notion of -- our position is not  
11 that Stericycle is going to be driven out of business  
12 by Waste Management, let's be clear about that. It's  
13 not that they will lose -- that the territory involved  
14 here will lose a service provider. It's that by  
15 cutting revenues, the cost per unit of revenue and the  
16 cost per unit of waste will be -- will increase, and  
17 of course the revenues would decrease. The question  
18 is whether that creates a feasible profit potential  
19 for Waste Management or for Stericycle.

20 What we are saying is fundamentally to  
21 maintain the current level with two carriers serving  
22 the territory will require either service cuts or rate  
23 increases. We would like the opportunity to show  
24 that. The balance sheet does not go to that at all.

25 JUDGE KOPTA: All right. I'm going to

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1     assume that this is primarily a dispute between Waste  
2     Management and Stericycle, unless I hear otherwise  
3     from Commission Staff or WRRRA.

4                     MS. WOODS:  It's entirely a dispute  
5     between them, but obviously we are interested in the  
6     outcome.

7                     JUDGE KOPTA:  I say that at this point  
8     because I don't mean to ignore you if you have  
9     anything.  If I don't ask you, then please wave your  
10    hand, but otherwise I'm going to be pretty much  
11    looking at Mr. Johnson or the ceiling, because that's  
12    where Ms. Goldman is talking from.

13                    On this one, I have to agree with Stericycle.  
14    They've given the information.  I don't see a balance  
15    sheet as some kind of confirmation.  This is something  
16    that goes to several in these requests.  I'm not going  
17    to order somebody to provide additional information as  
18    a check on information that they have already  
19    provided.  If you don't trust each other, that's fine,  
20    but I don't have any basis for the Commission not to  
21    trust that you are providing the information that's  
22    been requested.  I'm going to deny No. 1.

23                    The next one is Data Request No. 2.  Did you  
24    want to say anything specific about this, Ms. Goldman?

25                    MS. GOLDMAN:  Just that apparently



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1 Stericycle is taking a position that it is incapable  
2 of generating information which would be necessary for  
3 a rate complaint by the UTC itself. They say that  
4 this is an incredibly burdensome undertaking. Other  
5 than me saying what I have already said, which is we  
6 are shocked by what these numbers suggest, I would  
7 request leave to take the deposition of Ms. Walker, to  
8 understand what it is that would be involved, because  
9 we don't think this is accurate.

10 JUDGE KOPTA: Mr. Johnson?

11 MR. JOHNSON: Well, Your Honor, all I  
12 can do is tell you what the advisors for Stericycle  
13 have told me, and that is what is in our materials.  
14 But beyond the issue of the burden involved, what  
15 Ms. Walker has said is that Stericycle's systems are  
16 not set up to generate this kind of report. The fact  
17 that Waste Management's are, because it is a Class A  
18 carrier and has implemented frequent general rate  
19 increases over the years, doesn't say anything about  
20 what it would take for Stericycle to generate such a  
21 report. That goes to the issue of burdensome. But  
22 the issue of relevance is more critical here, to my  
23 way of thinking.

24 This goes right to the heart of what we think  
25 Waste Management is trying to do, which is basically

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1 to poke around in Stericycle's financial information,  
2 to essentially audit the annual report and audit  
3 Stericycle's compliance with its rates, on the theory  
4 that somehow Stericycle is overearning and hiding  
5 profits and so on and so forth. There's not a shred  
6 of basis for that. So on relevance grounds and on  
7 burdensomeness grounds, we continue to object.

8 JUDGE KOPTA: I am also going to deny  
9 the request to compel any kind of additional response  
10 to this data request. I have no reason to doubt the  
11 declaration that Stericycle does not maintain this in  
12 the ordinary course of its business. I don't think  
13 discovery is an appropriate means of getting them to  
14 create documents, it's to get copies of documents.  
15 Whether or not they should, whether or not it's a good  
16 business practice, is not something that's before me  
17 and not something at issue in this proceeding.

18 I also find that it is of marginal relevance,  
19 because unless Stericycle is putting at issue in this  
20 docket its profitability, as I read the statute, one  
21 of the factors that the Commission needs to consider  
22 is -- I'm going to read it: The present service and  
23 the costs thereof for the contemplated area to be  
24 served.

25 Cost, not profitability. I think information

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1 about costs is certainly relevant, the current  
2 services that are provided is certainly relevant. But  
3 getting more into financial information, I don't  
4 think, and I'm not going to allow, at least at this  
5 stage, a dispute over extraneous issues, which is what  
6 I consider this to be.

7 I will say, however, that I am taking  
8 Stericycle's representations as to what it intends to  
9 present on its face. If, however, there is testimony  
10 filed that touches on profitability or anything that a  
11 price-out would be germane to, then I will certainly  
12 entertain a motion to strike based on my ruling here.  
13 It works both ways.

14 Data Request No. 7. Ms. Goldman?

15 MS. GOLDMAN: Yes, thank you.

16 Well, unfortunately we kind of get into a he  
17 said, she said on this one. I must say that, as I  
18 have indicated in my exchange with Mr. Johnson, that I  
19 have copied all the other parties on, my typical  
20 approach to discovery disputes and discovery  
21 conferences is to document what happened. I told him  
22 this. I think it serves everybody well, so everybody  
23 is on the same page, and we are all in agreement as to  
24 what we said and what we agreed to do. In this case,  
25 that certainly proved to be a useful tool.

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1           In my July 17th letter confirming our --  
2    indicating what my concerns were about Data Request  
3    No. 7, I asked for answers to the five questions which  
4    I have set forth in Paragraph 9 of my brief. In a  
5    response to that, on July 19th, Mr. Johnson said to me  
6    that he would provide the requested summary of the  
7    arrangements between Stericycle and Stericycle, Inc.

8           In our subsequent conference regarding the  
9    telephone conference, I wanted to confirm that what he  
10   was saying is that he was going to provide the  
11   information, answers to those five questions that I  
12   had posed, and he indicated that he would be doing so  
13   when we spoke. My letter of July 24th confirmed as  
14   much.

15           He has submitted to you his July 25th e-mail  
16   to me, alleging all kinds of mischaracterizations in  
17   my letters without specifying any of them. He didn't  
18   include the response that I sent to him immediately  
19   thereafter, copying the other parties on, in which I  
20   indicated to him that if -- if I had mischaracterized  
21   anything, I wanted him to let me know now. The  
22   purpose of this exercise is to make progress and  
23   understand what each other's positions are, and that I  
24   was going to be moving forward, and my client was  
25   going to be moving forward based on my understanding

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1 of what we had each agreed to do. And that if there  
2 was something that I had neglected to say or I had  
3 stated incorrectly, I wanted to know now, so that we  
4 could govern ourselves accordingly, and that we  
5 wouldn't be waiting until a motion was filed to learn  
6 what it was. I never received any such clarification.  
7 Now he is taking this position that this conversation  
8 never took place.

9 We would request the answers to those five  
10 questions regarding the Morton facility, which were  
11 discussed twice in the discovery conference in which  
12 he agreed to provide the answers to, which help to  
13 explain how Stericycle is allocating the costs at the  
14 Morton facility, through which it runs the biomedical  
15 waste that it collects in the state of Washington.

16 JUDGE KOPTA: Mr. Johnson?

17 MR. JOHNSON: Your Honor, I don't really  
18 want to debate who said what.

19 JUDGE KOPTA: I would rather you didn't,  
20 actually.

21 MR. JOHNSON: Right, I have no interest  
22 in that. My only point in writing back to Ms. Goldman  
23 as I did was to say, look, let's produce, let's not be  
24 posturing with respect to -- I objected to her  
25 characterization of our positions, I didn't think it

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1 was accurate. Rather than sort of engaging in a  
2 back-and-forth, you know, war of letters, I said,  
3 okay, let's just produce and see where we are, and  
4 then we will go on from there to the motion to compel.  
5 It was all in a very short time period in the week of  
6 the 23rd of July, with supplemental production due by  
7 agreement on the 27th, and on to the motions to  
8 compel. I didn't think it was necessary.

9 Now, I think the substance, I would say, is we  
10 have already produced this material. It is in -- you  
11 know, we talk about it in our opposition on this data  
12 request. We produced the total Morton costs, we  
13 produced total Morton costs allocated to Washington  
14 regulated waste, we produced volumes of waste. As I  
15 recall, we produced it in pounds, as well as in  
16 containers, in response to the Data Request No. 1, and  
17 then Data Request No. 7. I have supplemented the data  
18 request within this week to provide some of the  
19 material. In my supplemental response it said, To be  
20 provided. We have provided it.

21 I think we have provided what Ms. Goldman  
22 wanted in substance. I don't agree that there was an  
23 agreement to do more. Frankly -- again, this is the  
24 kind of issue that perhaps she and I should have taken  
25 up outside of this hearing.

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1 MS. GOLDMAN: May I respond?

2 JUDGE KOPTA: Yes, I was going to ask  
3 you whether you agreed with that characterization of  
4 what they have provided.

5 MS. GOLDMAN: I don't, Your Honor.  
6 These are really simple questions which require like  
7 three-word responses. If somehow I have missed them,  
8 he can just provide me what the answers are.

9 We don't know what the price per ton charged  
10 to Stericycle for processing is, and if he could  
11 identify for me what that price is and where he has  
12 provided it, then I would shut up. The same with all  
13 of the other questions that we have asked here.

14 They have provided some information regarding  
15 the number of containers that are processed through  
16 Morton. Which doesn't really help us at all, because  
17 we don't know what the size of the containers are, we  
18 don't know what the volume of the containers is. You  
19 know, the number itself is useless to us in trying to  
20 drill down and to understand what those costs are.

21 These are five very specific not complicated  
22 questions. If he thinks he has already provided the  
23 answers to them, then it should be no burden at all  
24 just to actually answer them in numeric order.

25 MR. JOHNSON: Your Honor, I don't think

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1 we need an order for that purpose. I mean, on Page 10  
2 of my opposition to Waste Management's motion,  
3 Paragraph 15, we recite, I think accurately, that we  
4 have provided in substance all of the data that Waste  
5 Management now requests, including the weight of all  
6 weight processed at the Morton facility, the weight of  
7 all Washington state waste processed, and the total  
8 costs of the Morton facility, from which the  
9 percentage of Washington state waste and cost per ton  
10 could be calculated.

11 JUDGE KOPTA: This one I think is a  
12 little closer call. It's hard for me at this point,  
13 because I don't know what information has actually  
14 been provided, and I'm not going to wade through  
15 everything that has been provided back and forth  
16 between the parties on this. I do think that to the  
17 extent that the Morton facility costs are part of the  
18 costs that Stericycle incurs to provide its biomedical  
19 waste collection services in Washington, more  
20 specifically in the territory for which Waste  
21 Management has applied, that certainly is something  
22 that the Commission needs to consider, and that is  
23 certainly something that is -- reasonable information  
24 to provide.

25 This one I am going to reserve ruling on. I



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1 would rather you all work this out. If there is still  
2 a continuing dispute over the information that has  
3 been provided, whether it is responsive to the  
4 request, then you can notify me subsequently, and I  
5 can, if I need to, resolve it at that point.

6 I would say at least the first three questions  
7 that are included in Paragraph 9 of Ms. Goldman's  
8 motion is information that I would expect to be  
9 provided. I am a little less confident in the next  
10 two, because it's getting outside of what I think is  
11 what is the issue, which is what are the costs to  
12 provide service in Washington. I will give you that  
13 general guidance. As I say, if there is continuing  
14 dispute over what has been provided and what should be  
15 provided, then we can tee that up later.

16 MR. JOHNSON: Your Honor, can I just  
17 speak to one thing about the cost issue, as you see as  
18 relevant based on the -- I think on the terms of RCW  
19 81.77.040?

20 JUDGE KOPTA: Certainly.

21 MR. JOHNSON: Basically, I don't think  
22 that can mean the costs of existing service providers  
23 when you are seeking overlapping authority. The  
24 reason I say that is because, as Your Honor pointed  
25 out in one of your earlier orders, if there's no

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1 objection by a competing carrier, all of that  
2 information that's required to obtain a certificate  
3 under 81.77.040 can be provided by declaration. That  
4 means, to my way of thinking, that all of that  
5 information is within the purview of the applicant. I  
6 don't think they are talking about -- that 81.77.040  
7 is speaking to the costs of competing service  
8 providers that are already out there in the territory.

9           It is for that reason, among others, that  
10 Waste Management shouldn't be able to audit  
11 Stericycle's costs in order to enter the -- you know,  
12 to invent some claim about Stericycle's profitability  
13 or anything else.

14           JUDGE KOPTA: I'm simply looking at the  
15 words of the statute which say, The present service --  
16 which I interpret to mean Stericycle's service that it  
17 is providing currently -- and the costs thereof for  
18 the contemplated area to be served. In my mind, that  
19 specifically refers to the costs that you currently  
20 face to provide the service in the area for which  
21 Waste Management wishes authority to provide service.

22           I notice that that, in contrast to some of the  
23 other things in that paragraph, does not say as set  
24 out in an affidavit or a declaration. I'm not  
25 necessary certain that that is something within the

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1 applicant's knowledge, but rather would be in the  
2 knowledge of the company that is currently providing  
3 the service, or the Commission, to the extent that the  
4 Commission has that kind of information as a result of  
5 rate cases or investigations or anything else.

6 At this point, that is where I am coming from.  
7 I don't think that profitability is one of the things  
8 that is listed in this statute. That's not to say  
9 that it might not be something that comes up in  
10 another context. All I'm going for right now is to  
11 make sure that we cover the areas covered by the  
12 statute, so that's why I give the guidance that I do.

13 So the next request, No. 14. Ms. Goldman?

14 MS. GOLDMAN: Yes, your Honor.

15 No. 14 requests the volume of waste collected  
16 in the entire state. We have received that  
17 information for 2011 and 2012, but Stericycle takes  
18 the position that -- in your comments during the  
19 discovery conference regarding WRRRA, the WRRRA parties'  
20 motion to compel or to seek relief, that you indicated  
21 that there was a restriction on years prior to 2011.  
22 It was our understanding that you were asking the  
23 parties to rely on the information in the annual  
24 reports to the degree that historic information was  
25 necessary to unwind these numbers.

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1           As you know, this is -- Stericycle is a  
2 Class C company, so the information that we have asked  
3 for here, the volume of biomedical waste, is not  
4 present in their annual reports, contrary to those of  
5 the other protestants and of Waste Management.

6           JUDGE KOPTA: Mr. Johnson, I am not  
7 going to worry about consulting with you, because I  
8 will clarify what I meant, which was consistent with  
9 your understanding.

10           My informal guidance, I stated that I didn't  
11 think that information beyond two years in the past is  
12 something that is sufficiently relevant that I would  
13 compel that information. That is a view I continue to  
14 adhere to now. I am going to deny this one.

15           I understand that I explained that one of the  
16 bases for my determination was that this information,  
17 some of this information at least would be available  
18 in annual reports. That was not the sole basis of my  
19 decision or my guidance. Rather, it was that I think  
20 that a temporal limit on information is appropriate,  
21 and two years, I think, is plenty.

22           So No. 15.

23           MS. GOLDMAN: No. 15, Your Honor, is the  
24 volume of waste collected by Stericycle in 2011 and  
25 2012. We will strike our request for 2009 and 2010,

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1 assuming your ruling is consistent with the prior one.

2 JUDGE KOPTA: It would be.

3 MS. GOLDMAN: Okay.

4 And we had asked for this information assuming  
5 that Stericycle knew where it was the only game in  
6 town, but it apparently did not. In our discovery  
7 conferences, I offered up an alternative, which was  
8 not all inclusive but was meant to be a good gauge on  
9 that territory, by looking to the two footnotes in my  
10 earlier brief, along with the cities of Bellingham and  
11 Moses Lake. The footnotes contain the list of entire  
12 counties where Stericycle is the only provider  
13 of biomedical waste services. Footnote 15 is a list  
14 of individual hospitals where that is the case.

15 I have gone back and spent ten minutes on the  
16 Internet, double-checking the counties for each of  
17 those cities that are referenced in that Footnote 15,  
18 and of them, 25 of those generators are outside the  
19 counties identified in Footnote 13 because of the way  
20 that the various territories are broken down. Those  
21 individual entities may be served only by Stericycle.

22 So we sought a combined -- that combined  
23 information, and Stericycle was only willing to  
24 provide the information as to the several entire  
25 counties.

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1 JUDGE KOPTA: Mr. Johnson?

2 MR. JOHNSON: Your Honor, the original  
3 request was for territory in which Stericycle was the  
4 only service provider. Frankly, we thought Footnote  
5 13 was an attempt to describe that territory or a  
6 reasonable proxy for it. We had expressed difficulty  
7 in trying to identify the territory which we are the  
8 only service provider, largely because of Waste  
9 Management's irregular authority, and very complex  
10 authority I might say, if you have ever tried to parse  
11 it. I never have and I never hope to.

12 So now they came back and said, well, Footnote  
13 13 has all these counties we looked at. We thought,  
14 well, they are trying to describe the territory, and  
15 if that's the territory, we will respond. We  
16 responded with data for the counties and the cities  
17 that were requested.

18 Ms. Goldman also wanted data for these 52  
19 customers. We looked at those 52 customers, and we  
20 noticed some of them were in Tacoma, which is in  
21 Pierce County, which, at least to our understanding,  
22 is within Waste Management's existing authority, and  
23 it is within the scope of the map showing their  
24 existing authority, that they attached to their  
25 application. We frankly could not understand how this

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1 list of customers related to the request.

2 We said, Can you explain that to us?

3 Ms. Goldman was a little bit impatient that we didn't  
4 see it her way, but she never did. We said, Well, we  
5 don't get it. And so if it's not relevant to the  
6 request, if it's not an effort to describe the  
7 territory in which Stericycle is the only service  
8 provider, then we don't see its relevance to the  
9 proceeding. And so we responded to the one and didn't  
10 on the other.

11 JUDGE KOPTA: Do you have anything else

12 Ms. --

13 MS. GOLDMAN: Can I respond, Your Honor?

14 JUDGE KOPTA: Yes.

15 MS. GOLDMAN: Thank you.

16 Well, notably, Steve doesn't deny that the  
17 list of hospitals in Footnote 15 are hospitals that  
18 may be serviced only by Stericycle. He is not denying  
19 that.

20 MR. JOHNSON: I have no idea, frankly,

21 Jessica.

22 MS. GOLDMAN: Well, your client does,

23 though.

24 And I can tell you, if you would like, what

25 the 25 are that are -- because there is some

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1 duplication, some of these hospitals do show up in a  
2 county that was referenced in Footnote 13, but the  
3 majority of these hospitals do not. They show up in  
4 territory that is not in a county that is  
5 exclusively serviced by Stericycle. The point of  
6 this, as you have indicated, was to create an  
7 effective proxy for Stericycle, and the information  
8 that we seek is identical.

9                   JUDGE KOPTA: What I'm going to say, I  
10 think that it is appropriate to ask for this  
11 information for the service territory that you have  
12 asked for. It seems to me that there's no  
13 disagreement on that. What the disagreement on it is,  
14 is whether this list of hospitals is an appropriate  
15 proxy for that.

16                   I don't want to get into customers. I don't  
17 think that's appropriate, I don't think that's the  
18 best way to do it. I will throw it back to the  
19 parties. You need to work out a way to figure out how  
20 to describe and how to define the service territory.  
21 I think the information requested is relevant, and I  
22 think that it is something that is -- potentially  
23 leads to the discovery of admissible evidence, which  
24 is the standard here. But I think that you need to  
25 refine the request to make sure that you are talking



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1 about the geographic area, and that Stericycle can  
2 provide the information requested for that service  
3 territory.

4 MS. GOLDMAN: Your Honor, may I make one  
5 additional comment?

6 JUDGE KOPTA: You may.

7 MS. GOLDMAN: We are not seeking  
8 individual information by hospital. We are seeking  
9 one here, it's a lump sum number. What we are asking  
10 for would not reveal how much Madigan Army Medical  
11 Center in Fort Lewis generated. What we are asking  
12 for here is for the entire territory. Because there  
13 are these pieces of counties which don't fall within  
14 Footnote 13, that's why Footnote 15 is necessary. The  
15 lump sum, the single number that they provide for 2011  
16 and 2012 reflects everything and doesn't allow Waste  
17 Management to drill down.

18 JUDGE KOPTA: I understand your concern.  
19 All I am saying is that it is clear to me that by  
20 listing these hospital, that's not an accurate proxy  
21 of that service territory. You are just going to have  
22 to come up with a different way of doing it. I am  
23 going to leave that up to you.

24 I think if the authority that Waste Management  
25 currently has is sufficiently Byzantine, that it's

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1 difficult to understand exactly where the geographic  
2 service territory is. And it's incumbent upon Waste  
3 Management to describe that service territory to  
4 Stericycle so it knows exactly the geographic area in  
5 which its information is requested.

6           The burden is on Waste Management to provide  
7 an accurate description of the area in which they are  
8 asking for this information. Once that happens, then  
9 I think that Waste Management is entitled to the  
10 information that it is requesting.

11           MS. GOLDMAN: Your Honor, would it be  
12 sufficient to say, for example, the City of Fort Lewis  
13 or the City of Anacortes or the City of Sedro Woolley,  
14 which are each identified in reference to these  
15 various hospitals? Would that be sufficient?

16           JUDGE KOPTA: If that is a service  
17 territory that is consistent with the information or  
18 the data request that you have propounded, and it is  
19 within Stericycle's exclusive service territory, then  
20 yes, it would be, at least in my view. Like I say,  
21 maybe you don't have to give it in metes and bounds or  
22 longitude and latitude, but I think you just need to  
23 find a way to identify to Stericycle what geographic  
24 area you are talking about.

25           MR. JOHNSON: Your Honor, just so we

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1 don't get further tangled on this one. I think  
2 Ms. Goldman mentioned that 25 of the 52 hospitals are  
3 outside Footnote 13. That means 27 are inside. So by  
4 definition, we are talking redundant data. I'm trying  
5 to figure out what the dickens is going to materialize  
6 from a listing of these cities, some of which are in;  
7 some of which are out. Maybe if she can identify  
8 cities that are outside, and we can confirm that and  
9 understand it, we can deal with it. As the list is  
10 presently described, I am just befuddled by it.

11 JUDGE KOPTA: Well, I leave that to you  
12 all. I think, as I said, the onus is on Waste  
13 Management to define the area that they are looking  
14 for this information. Certainly to the extent that  
15 Stericycle has greater knowledge of areas in which it  
16 is the sole provider of this type of service, then  
17 that onus shifts to them. Between the two of you, I  
18 expect you to come up with a way to identify those  
19 areas, and I expect Stericycle to provide the  
20 information requested for those areas.

21 No. 16. Ms. Goldman?

22 MS. GOLDMAN: 16 is volume collected  
23 by -- well, initially we asked for by county, and  
24 Stericycle advised us that they can't provide that  
25 information, because they can't determine the counties

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1 in which they provide service. So we offered up as a  
2 proxy, the use of ZIP codes. The information here is  
3 trying to get at this particular claim that harm is  
4 going to be suffered in rural areas, and suggesting  
5 that Waste Management is trying to -- will of course  
6 be cream-skimming here to not service these rural  
7 areas. I assume that prior to 2011 is off the table  
8 pursuant to your earlier order, so the issue here is  
9 2011 and 2012.

10 Stericycle complains that if they provide us  
11 that information by ZIP code, we will then have the  
12 keys to the kingdom, and we are going to be able to  
13 cherry-pick their best customers. It kind of  
14 contradicts itself, because presumably in the large  
15 areas, large geographic areas where the large  
16 generators exist, there will be multiple ones in the  
17 ZIP codes. It's my understanding that the issue would  
18 arise in areas where there's only one generator in a  
19 ZIP code, and that presumably is the rural generator  
20 which is not going to be the cream of Stericycle's  
21 crop.

22 JUDGE KOPTA: Mr. Johnson?

23 MR. JOHNSON: Your Honor, let me clarify  
24 one thing. We have been able to figure out how to  
25 collect our data by county. That's why we were able

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1 to do the 13 -- or the 22 counties. Whatever it was  
2 in Footnote 13. We did that by searching the Internet  
3 and finding a county linking ZIP codes. We do collect  
4 our data by ZIP code, but we now have the capability,  
5 assuming that the ZIP code allocation by county that  
6 we have pulled off the Internet is accurate, to do it  
7 by county.

8 Now, our objection remains, however, that by  
9 giving the data by county, because there are only --  
10 in many of these counties there are only one or a few  
11 small towns, that we are basically just showing a  
12 perfect picture of our existing business, Stericycle's  
13 existing business in these counties. We think that  
14 will give Waste Management an incredible leg up, if  
15 the application is granted, to market its services to  
16 Stericycle's customers. Data by ZIP code is even more  
17 refined, as you well understand, and would pinpoint  
18 large volume customers, all customers presumably,  
19 because again, they cluster in towns and cities.

20 So our fundamental point here is not that we  
21 can't collect it. We can collect it by ZIP code, we  
22 have determined how ZIP codes can be converted into  
23 counties. Our fundamental objection is that this data  
24 is too detailed to be relevant to the case, and it has  
25 tremendous competitive -- potential for tremendous

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1 competitive harm to Stericycle.

2 We think that the composite data for the  
3 territory that we have been talking about is what is  
4 relevant. And what we should be looking at is  
5 composite data for cost, for revenue, for other  
6 factors that are relevant to impact on rates, impact  
7 on service and so forth. That's what we would  
8 anticipate presenting at the hearing.

9 JUDGE KOPTA: Again, this one is a  
10 closer call. I am tempted to have the same  
11 determination I did on the last one. It sounds to me  
12 like the ZIP code option is the only one that was  
13 offered as an alternative to the counties, and that  
14 was not an acceptable option, but now the county is no  
15 longer a problem. I do think the information  
16 requested is germane. I mean that's not asking for  
17 the identity of customers. I understand that there  
18 may be circumstances in which it is possible to divine  
19 which customer or customers it is in a particular area  
20 given the small number, but I don't really think that  
21 that's enough of a concern. If there is that few  
22 customers in that area, it's not going to be tough to  
23 figure out who that is without this information.

24 I am going to compel that this data be  
25 provided on a county level as requested for the years

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1 2011, 2012.

2 MS. GOLDMAN: Thank you.

3 JUDGE KOPTA: No. 20.

4 MS. GOLDMAN: Your Honor, 20 requests  
5 information about customer complaints, as does 21.  
6 The difference between the two is that 20 is directed  
7 at Stericycle's services directly, and 21 requests  
8 complaints regarding the Morton facility through which  
9 it processes the biomedical waste it collects in  
10 Washington. Initially, Stericycle did not object to  
11 either of these.

12 The complaint is a pretty standard-worded  
13 English language. We didn't define it to mean a UTC  
14 complaint, we simply said customer complaint. No  
15 objection was taken. Based on the WACs, it is  
16 inappropriate for an objection to be raised at this  
17 late state.

18 In any event, the argument that Stericycle has  
19 made is, you know, what's good for the goose is good  
20 for the gander. Waste Management has requested  
21 information about complaints and so has Stericycle.  
22 Waste Management has objected to Stericycle's request.  
23 Both parties request -- Waste Management timely  
24 objected. Both parties now take the position that it  
25 is burdensome, and it is not likely to lead to

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1 the discovery of admissible evidence. The legal  
2 standard, however, under which each of the parties is  
3 seeking this information is different, and that's what  
4 distinguishes Waste Management's obligations here and  
5 Stericycle's.

6 Waste Management needs to prove at the hearing  
7 that the service that is being provided by Stericycle  
8 is not to the satisfaction of the Commission. In the  
9 prior decisions that we have cited in our brief, and  
10 many others, the Commission has made clear that  
11 complaints made to the company, and a history of  
12 complaints, and how the company deals with customer  
13 complaints and its customers is relevant to that  
14 question of whether the service is satisfactory to the  
15 Commission.

16 On the other side, what Stericycle is seeking  
17 information about is to rebut Waste Management's proof  
18 that it is regulatorily fit, that Waste Management can  
19 establish regulatory fitness. Regulatory fitness does  
20 go directly to the Commission, the Commission's  
21 findings of regulatory violations, and thus it is the  
22 complaints that have been made to the Commission  
23 itself and addressed by the Commission which are  
24 relevant.

25 JUDGE KOPTA: Mr. Johnson, has



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1 Stericycle reviewed its records and responded to these  
2 requests?

3 MR. JOHNSON: Yes, your Honor.

4 JUDGE KOPTA: That's all I'm going to  
5 ask for, and it's going to work both ways, so keep  
6 that in mind for your -- I am not going to get into  
7 credibility, of whether the company has done  
8 everything that it could do. I am going to assume at  
9 this point, unless I have evidence to the contrary,  
10 that both sides are making reasonable efforts to  
11 discover this information. If they say they have no  
12 complaints, no records of complaints, no documents of  
13 complaints, then I think that's a response that I'm  
14 going to let stand. I'm going to deny this.

15 MS. GOLDMAN: Your Honor?

16 JUDGE KOPTA: And it's the same one for  
17 21.

18 MS. GOLDMAN: Your Honor, may I clarify?  
19 We have had several discussions since about what is  
20 meant by complaint. Stericycle does not take the  
21 position that there are no customer complaints that  
22 have been made directly to it. It simply says we are  
23 not going to look through the call center where those  
24 customer complaints and any other calls from customers  
25 would have been received. Neither party here is

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1 taking the position that there aren't complaints made  
2 by customers.

3 JUDGE KOPTA: And I'm not saying that  
4 they are. I'm just saying that as long as both sides  
5 make a reasonable effort to look through their records  
6 to determine whether they have received any complaints  
7 from customers, I think that's responsive to the  
8 requests from both parties.

9 So No. 22.

10 MS. GOLDMAN: Your Honor, I know I risk  
11 beating a dead horse here. May I just add one  
12 additional thing?

13 JUDGE KOPTA: You may.

14 MS. GOLDMAN: Neither of the parties has  
15 taken the position that they have made a reasonable  
16 effort. Both parties have said it is too burdensome  
17 to do this, and we are not going to do it. There has  
18 been no effort to review the documents that each party  
19 acknowledges and that Stericycle acknowledges exists  
20 for the information requested.

21 JUDGE KOPTA: So are you conceding that  
22 Waste Management has not made a reasonable effort to  
23 respond to Stericycle's request for customer  
24 complaints?

25 MS. GOLDMAN: I am clearly taking the

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1 position that Waste Management objected to the  
2 burdensomeness and the lack of relevance and has not  
3 searched its documents on the basis of those  
4 objections which were timely made.

5 MR. JOHNSON: Your Honor, if I might?

6 JUDGE KOPTA: Please.

7 MR. JOHNSON: It's our position that we  
8 have searched all of the records that are reasonably  
9 likely to produce a record of a complaint and that  
10 these call service logs -- we tried to articulate for  
11 Waste Management an issue with respect to those logs  
12 so that they would know what our position was with  
13 respect to them, that they are not a place where we  
14 are likely to find complaints. We haven't looked, but  
15 we do not think it is required by the data request.  
16 We just made that clear to them, and now apparently it  
17 is being used against us.

18 JUDGE KOPTA: I asked Mr. Johnson  
19 whether the company has made a reasonable request  
20 [sic] to find those documents and he said yes. I am  
21 willing to accept that representation. We can deal  
22 with the other issues at the time. I expect that one  
23 of the things that a company regulated by the  
24 Commission will do will keep track of customer  
25 complaints. That's one of the major obligations that

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1 a regulated company has. I come in with that  
2 assumption. If Stericycle represents that it has made  
3 a reasonable search of its records for any customer  
4 complaints and has provided whatever responsive  
5 information it has to Waste Management, that is the  
6 end of the matter.

7 So now we move to 22. Ms. Goldman?

8 MS. GOLDMAN: Yes, your Honor. 22  
9 concerns alleged violations of law by Stericycle at  
10 the Morton facility. Despite Stericycle's response  
11 that no such documents existed in its objection to  
12 producing information regarding the Morton services  
13 that are provided to its Washington customers, we  
14 discovered independently information that indicated  
15 that there has been.

16 Stericycle has now agreed that yes, indeed,  
17 there are three times since January of 2009 in which  
18 the Department of Ecology, for one, has alleged  
19 violations of law by Stericycle, and has attested in  
20 the declaration of Mr. Philpott that that is the case.  
21 We have now learned of a fourth event, which is a  
22 complaint that was filed this year, in January,  
23 January 24th of 2012, alleging further violations  
24 regarding the failure to comply with dangerous waste  
25 at the Morton facility. We are left in a quandary

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1 here, that we don't feel comfortable with the fullness  
2 and the completeness of the production we received.

3 MR. JOHNSON: Your Honor.

4 JUDGE KOPTA: Yes.

5 MR. JOHNSON: First of all, Ms. Goldman  
6 is absolutely wrong with respect to her representation  
7 that Stericycle objected on the basis that no  
8 documents existed. We never made such a  
9 representation, and that's just flat out false. What  
10 we said was we didn't think it was relevant. Now, we  
11 reviewed that position and decided to produce the  
12 information with respect to an effluent discharge  
13 issue at the Morton facility, and that data has been  
14 provided.

15 I'm not aware of the order that Ms. Goldman  
16 refers to, but we did produce documentation with  
17 respect to an ongoing issue with the Department of  
18 Ecology with respect to the characterization of waste  
19 going into the Morton plant from -- mostly it appears  
20 to be sharps waste. For some reason, the Department  
21 of Ecology wants Stericycle to characterize that  
22 waste, rather than the hospitals, in terms of its  
23 potential toxicity, and then it has to do with  
24 effluent discharges.

25 Waste Management has exactly the same issue.

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1 They have -- and we have substantial documentation  
2 with respect to Waste Management's effluent discharge  
3 problem and its waste characterization problem. It is  
4 true that Waste Management produced one such document.  
5 We have many more.

6           You know, we're trying to provide the  
7 information that would allow Waste Management to be  
8 aware of and see the nature of the Department of  
9 Ecology inquiries and their subsequent orders. If we  
10 missed one, you know, Ms. Goldman can bring it to our  
11 attention. We will be happy to talk to her further  
12 about producing anything further in relation to that  
13 matter that we have.

14           Mr. Philpott's declaration, I think, was made  
15 in good faith in the sense that he believed, as I did  
16 when I prepared his declaration, that we had disclosed  
17 all of the orders from the Department of Ecology  
18 related to that matter.

19           JUDGE KOPTA: Well, I don't see any  
20 benefit of ordering you to provide information that  
21 you have already provided. I will again accept  
22 Stericycle's representation that it is making  
23 reasonable efforts. I know sometimes even reasonable  
24 efforts miss things. I am not prepared at this  
25 juncture to assume that that is any indication that

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1 Stericycle is doing less than making reasonable  
2 efforts here.

3           The Morton facility, as I understand it,  
4 that's owned by an affiliate; is that correct, it's  
5 not part of Stericycle?

6           MR. JOHNSON: That's correct, Your  
7 Honor. That was the basis of our original objection.  
8 We decided we were being hypertechnical there, and we  
9 would provide the information. Ms. Goldman had access  
10 to it anyway through the Department of Ecology, as we  
11 do to Waste Management's problems with the Department  
12 of Ecology.

13           JUDGE KOPTA: That's another reason why  
14 I am less inclined to press this, because as we get  
15 farther afield from the regulated utility, then it  
16 becomes more of a marginally, if relevant, issue at  
17 all.

18           On this one, I am going to deny the motion.

19           And that completes all of Waste Management's  
20 motion.

21           Sherrilyn, do you need a break?

22           THE COURT REPORTER: (Shakes head.)

23           JUDGE KOPTA: I would just as soon push  
24 on since we are already 15 minutes past the time that  
25 I anticipated that we would be. Perhaps I shouldn't

0071

1 say "anticipated," I should say "scheduled."

2 Now we can move to Stericycle's motion. As to  
3 that, Mr. Johnson, did you want to address this  
4 somewhat differently and ask for general guidance on  
5 some of these?

6 MR. JOHNSON: Your Honor, what I would  
7 like to do is describe generally the subject matters  
8 that are involved, and then perhaps we can go through  
9 these with some -- you know, specifically each one,  
10 but with the background of the general overview.

11 JUDGE KOPTA: All right. Go ahead.

12 MR. JOHNSON: Okay, Your Honor.

13 So fundamentally, the applicant's services or  
14 proposed services are what are at issue in an  
15 application case. A key issue that we are trying to  
16 understand with respect to Waste Management services  
17 are its -- what I called its bundled service  
18 offerings; that is, it apparently is offering a  
19 combination of regulated and nonregulated service,  
20 some covered by a single contract.

21 We have asked Waste Management, for example,  
22 to identify its affiliates involved in biomedical  
23 waste collection in the state of Washington or any  
24 aspect of it, and we have asked Waste Management to  
25 describe the services it offers. It has not described



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1 these bundled services in response to our data  
2 request.

3 One example is a contract that was produced on  
4 July 27 between WM Healthcare Solutions, Inc., a  
5 Delaware corporation, and Skagit Valley Hospital.  
6 Now, when we asked for affiliates of Waste Management  
7 involved in provided services in the state, the only  
8 reference to an affiliate was WM Healthcare Solutions,  
9 Inc., providing -- serving as a resource and  
10 providing -- what was it? It's the response to Data  
11 Request No. 1, saying what WM Healthcare Solutions,  
12 Inc., a subsidiary of Waste Management, serves as a  
13 resource and informational support service for Waste  
14 Management of Washington.

15 So we have a contract that seems to, on its  
16 face, say that there's an affiliate providing bundled  
17 services, including biomedical waste collection, to  
18 Skagit Valley Hospital, a hospital within the state of  
19 Washington.

20 Now, it's possible, because I know something  
21 about how forms are used in the industry and  
22 elsewhere, that it is in fact WM Healthcare Solutions  
23 of Washington or it is Waste Management of Washington  
24 that is providing the service. In either case, either  
25 they haven't identified their affiliate or they

0073

1 haven't identified a service that they are providing.

2           We are very much interested in these bundled  
3 services, because we have also provided information  
4 and obtained information that Waste Management is  
5 providing discounts on unregulated service in order to  
6 induce medical waste customers to switch their medical  
7 waste service to Waste Management. In our view, that  
8 is a rebate. It's just like saying I'll give you 50  
9 bucks if you move your service to me. If you discount  
10 recycling by 50 bucks a ton or 50 bucks a month, you  
11 have given a dollar inducement to the generator, and  
12 it's a discount on their medical waste service.

13           We are very much interested in bundled  
14 services. We are very much interested, and we think  
15 we have a right to be, in this rebating issue, in  
16 terms of Waste Management apparently using non --  
17 discounts on nonregulated service to attract regulated  
18 service. We are also very concerned and interested in  
19 what Waste Management considers sharps recycling under  
20 this so-called ecoFinity -- that's small e-c-o,  
21 capital F-i-n-i-t-y -- ecoFinity program provided by  
22 Waste Management in conjunction with Becton Dickinson,  
23 a medical device manufacturer.

24           In that context, that program could also be  
25 used as a device to provide a discount on regulated

0074

1 service. It also, in our view, is a  
2 mischaracterization of something that is biomedical  
3 waste. Waste Management is considering it to be  
4 recycling, and therefore not subject to  
5 Commission oversight, not subject to the tariff  
6 requirements, not subject to Commission regulation.

7 We are trying to address recycling as a part  
8 of a bundled service offering that may include  
9 discounts. We are trying to address sharps recycling  
10 through the ecoFinity program and its potential  
11 involvement in the rebating program, but also it's  
12 sort of mischaracterization.

13 Finally, we -- not finally, but a couple more  
14 points. We see the issue of gener -- generate a need  
15 for service that we -- that is not being currently  
16 provided by existing carriers as a fundamental issue  
17 in the satisfactory service calculation. Waste  
18 Management has acknowledged receiving oral input from  
19 some generators who are dissatisfied with the existing  
20 service. We have asked for documents related to that  
21 and have received nothing. What we are looking for is  
22 a full production of the documents that would be  
23 relevant to customer dissatisfaction so that we can  
24 understand what is behind that -- those contentions.

25 Finally, we -- as I mentioned earlier, Your

0075

1 Honor, we are raising the issue of financial  
2 feasibility of Waste Management's service. The  
3 purpose of that is not as has been suggested, to go  
4 behind your order on fitness, financial fitness, or to  
5 circumvent that order. The purpose is to be able to  
6 show potential impact, what we think is the likely  
7 impact of allowing a second statewide carrier into  
8 this particular territory covered by the application.  
9 You just have to look at the map to see that it is not  
10 highly urbanized. It's a generally rural area. We  
11 intend to argue that Waste Management's -- the  
12 granting of Waste Management's application would  
13 result in higher costs per unit, lower revenues per  
14 unit. These are all sort of straightforward points.

15 We need to understand what Waste Management  
16 has contemplated, what it has planned, what it intends  
17 to do, what it projects in terms of its operations and  
18 the feasibility of those operations. I think that  
19 that is required by Commission precedent as well, that  
20 the applicant come in and show its plan for entering  
21 service and bringing its operation to profitability  
22 within some reasonable period of time.

23 What we are definitely not arguing about,  
24 we're not seeking information about, is whether Waste  
25 Management has the resources to start up and maintain

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1 service for a reasonable period of time while it  
2 determines if it can make those -- that service  
3 profitable. That is what financial fitness is about,  
4 and Your Honor has issued a ruling on that. We are  
5 not addressing that here.

6           Anyway, with that preamble, if I could go  
7 through the --

8           JUDGE KOPTA: Before we go there, I am  
9 going to give Ms. Goldman an opportunity to provide  
10 any response that she wants to make to those general  
11 comments.

12           MS. GOLDMAN: Thank you, Your Honor.

13           We've addressed briefly in our brief some of  
14 these legal arguments that Steve is making. We are  
15 going to take these issues on directly, and they will  
16 be fully addressed in briefs to Your Honor. This is  
17 really an issue about getting at discovery. I don't  
18 want to belabor our opposition to those legal  
19 arguments, but I do want to address briefly this  
20 notion of financial feasibility being a legal issue  
21 that would entitle Stericycle to the discovery you  
22 have previously prohibited.

23           Steve says that what he is trying to get at  
24 here is the likely impact of a second carrier. You  
25 just have to look at the map, he says, and it's a

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1 generally rural area, and it's going to result in a  
2 higher cost per unit and a lower revenue per unit.

3 Now, nobody here is in a better position to  
4 understand and analyze the effect of additional  
5 compensation than is Stericycle, the current provider  
6 of these services, and the one who fully, apparently,  
7 presumably understands what its costs per unit and its  
8 revenue per unit is. There's absolutely no need to  
9 get at evidence from Waste Management to address those  
10 issues.

11 I will say I am really concerned by the fact  
12 that he mentioned revenue per unit. I don't want to  
13 get lost in the weeds here with the reference that we  
14 have been making earlier to profit. You have ruled  
15 that profit here is not relevant. You know, to the  
16 degree that we are talking about revenue per unit, the  
17 amount of money that Stericycle makes on these  
18 services, that is information that we have requested,  
19 which, based on my understanding of your prior order,  
20 has been denied. The lower revenue per unit should be  
21 completely irrelevant.

22 JUDGE KOPTA: All right. Before we go  
23 into more specifics, I do want to make a couple of  
24 observations. One is that, unlike Waste Management,  
25 Mr. Johnson, you did not break them down by individual

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1 requests, which makes it very difficult for me. You  
2 tended to lump them together. I am not going to go  
3 one by one, but I will go through them in the way that  
4 you have presented them.

5           The second observation that I would make is  
6 that you asked in general that documents that Waste  
7 Management has provided to you be specifically  
8 identified to the data requests that they are  
9 responsive to. That's not something that Waste  
10 Management responded to. I will say right now that I  
11 think that that is a reasonable expectation. To the  
12 extent that Waste Management has not done that, then I  
13 would require that Waste Management do so. I think  
14 it's not a reasonable practice to dump a bunch of  
15 documents on someone saying here's responses to all of  
16 your data requests. I think that matching the  
17 documents to the responses is a reasonable expectation  
18 of Stericycle.

19           And the third general observation that I would  
20 make is that Waste Management, in response to many of  
21 the first grouping of data requests that Stericycle  
22 identifies, states that there was no meet and confer  
23 on most of those. I would want to ask first off, is  
24 that your understanding, Mr. Johnson? Because I am  
25 not prepared to rule on something that the parties

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1 have not made a reasonable effort to resolve  
2 informally, before bringing it before me.

3 MR. JOHNSON: Your Honor, I would say  
4 that as far as the Data Requests No. 1 through 4 are  
5 specific issues, have arisen out of the materials  
6 submitted to us on the 27th of July. We filed our  
7 motion on the 31st by agreement, so we haven't had a  
8 chance to talk about that. You know, we are busy  
9 preparing our motion, we're in the middle of -- I  
10 think it's a reasonable request.

11 Now, this is pretty straightforward. This  
12 agreement that they produced indicates that they have  
13 an affiliate doing business in Washington directly  
14 related to biomedical waste collection, or Waste  
15 Management is doing it itself. In either case, they  
16 haven't disclosed in responses to these first data  
17 requests and they should do so. It's pretty  
18 straightforward.

19 I understand your basic point, and I am not  
20 disagreeing with it. I think in this particular case,  
21 just to move the thing along, perhaps we could get  
22 over that hurdle.

23 JUDGE KOPTA: Well, at this point, I am  
24 not going to engage in mediating informal means of  
25 narrowing or responding to these data requests. One



0080

1 of the other aspects of the lack of meet and confer is  
2 that you argue that you've got a boatload of  
3 documents, that you are not even sure how responsive  
4 things are. That is a red flag to me, that I think  
5 you need to do more in looking at those documents,  
6 certainly after Waste Management has identified which  
7 ones are response to which data request, to know  
8 whether or not the information that you are asking for  
9 has been provided.

10           Again, I don't want to engage in an exercise  
11 that's not necessary for me to engage in, that is  
12 really instead, incumbent on the parties. So to the  
13 extent that there has been no meet and confer on Nos.  
14 1 through 4 and 6 through 7, 11, 13 and 19, and these  
15 are ones that Waste Management has identified, then I  
16 am not prepared to rule on those at this point, but  
17 would instead instruct the parties to continue to  
18 discuss those. If necessary, you can bring back any  
19 disputes that you continue to have on those data  
20 requests. Now that we have more time, for better or  
21 worse, you will be able to do that.

22           I will reserve any ruling on those until I  
23 have heard additionally from the parties that you have  
24 worked to resolve them informally and have reached an  
25 impasse and are unable to do so.

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1 MS. GOLDMAN: Your Honor?

2 JUDGE KOPTA: Yes.

3 MS. GOLDMAN: I think a couple -- at  
4 least my notes reflect two data requests were excluded  
5 from your list. Do you mind just repeating for the  
6 record, so I can confirm that I have accurately taken  
7 down what you have said?

8 JUDGE KOPTA: I'm basing it on what you  
9 represented, Ms. Goldman. If I have missed two, then  
10 it is because my notes are inaccurate. What I have  
11 down are Nos. 1 through 4, 6 and 7, 11, 13, and 19.

12 MS. GOLDMAN: Your Honor, there's also  
13 17 and 27.

14 JUDGE KOPTA: All right, then, we will  
15 add 17 and 27 to that list.

16 MS. GOLDMAN: Thank you.

17 JUDGE KOPTA: Which brings us to No. 10,  
18 which I believe has to do with contracts that you have  
19 asked for, Mr. Johnson.

20 MR. JOHNSON: Yes, Your Honor.

21 JUDGE KOPTA: And I believe that Waste  
22 Management's response was that they have provided  
23 those contracts. Is that something you are still  
24 continuing to dispute?

25 MR. JOHNSON: I think this is something

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1 we ought to be able to handle off line, Your Honor. I  
2 think what was produced was particular contracts for  
3 particular customers, which we associated with other  
4 data requests, rather than this one. We did not get  
5 form contracts, as such, of any kind.

6 JUDGE KOPTA: Well, then, it sounds to  
7 me like that's something you think you can work out,  
8 and I do not need to rule on that one.

9 MR. JOHNSON: Okay.

10 JUDGE KOPTA: No. 15, I think also 18  
11 had to do with some manuals that you had requested.  
12 Again, Waste Management has said they have provided  
13 you what they have. Is that something that is still  
14 in dispute?

15 MR. JOHNSON: As far as 18 is concerned,  
16 they have made that representation in Mr. Jeff  
17 Norton's declaration. We are satisfied with that  
18 representation.

19 MS. GOLDMAN: I may be confused here,  
20 but that's not what Data Request No. 18 concerned. It  
21 concerned the ecoFinity program, unless I'm mistaken.

22 MR. JOHNSON: Let's make sure we are  
23 referring to the right one.

24 JUDGE KOPTA: Well, again, I admit my  
25 notes may have been a little bit cryptic. I think it

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1 was 15 that there were manuals, and it sounds like --

2 MS. GOLDMAN: Yes, your Honor, that's  
3 correct.

4 JUDGE KOPTA: -- like 15 was --

5 MS. GOLDMAN: 15 was the --

6 JUDGE KOPTA: 15 there's no need for a  
7 ruling, but 18 is something else.

8 MS. GOLDMAN: Yes, your Honor. There's  
9 a list of questions that Stericycle asked in our  
10 discovery conference that Waste Management answer, and  
11 we have point-blank answered each one of them.

12 MR. JOHNSON: Your Honor, what they  
13 haven't done is produce documents that are responsive.  
14 I think what we think is appropriate in response to  
15 this data request is to produce documents that  
16 describe all of the relationships involved in the  
17 ecoFinity program, including contracts with customers,  
18 contracts with the folks in California who are engaged  
19 in the actual processing of the containers, the people  
20 that are involved in the so-called recycling of these  
21 products. And presumably Waste Management has  
22 documentation with respect to all of that, and it  
23 should be produced.

24 JUDGE KOPTA: Ms. Goldman?

25 MS. GOLDMAN: Yes, your Honor. We have

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1 produced quite a few documents. We have produced, to  
2 my understanding, the documents with the only  
3 Washington generator that is currently using this  
4 service, so the issue regarding contracts with third  
5 parties, I believe is quite far afield. The materials  
6 we have provided describe exactly what it is that  
7 Waste Management is offering in the partnership, and  
8 we have provided the documentation that has been  
9 provided to potential generators regarding what it is  
10 that Waste Management offers and where it goes and how  
11 it is treated.

12 I believe that we have provided sufficient  
13 information to give Stericycle everything it needs to  
14 know about this process, and anything further is  
15 burdensome and seeks information that is retained by  
16 third parties.

17 MR. JOHNSON: Your Honor, the key point  
18 here is that, in Ms. Goldman's opposition to our  
19 motion, she very specifically indicated that this is a  
20 feature that Waste Management will argue makes its  
21 services unique and different, something that  
22 Stericycle doesn't offer. We need to be able to  
23 understand fully what that is, and that means to  
24 follow this material as it moves down through the  
25 processing in Vernon, California, through the Red Bag

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1 Solutions' machinery down there, on to the recycler,  
2 Talco, so that the generators that are potentially  
3 interested in this service, or this facet of Waste  
4 Management's program, can know what is actually  
5 happening to their material.

6 It's one thing to have promotional material.  
7 It's another thing to show what is really happening,  
8 in terms of following the material to its reuse, if  
9 that is what's happening.

10 JUDGE KOPTA: I'm not going to require  
11 them to provide you with customer contracts, just as I  
12 am not requiring you to give your customer contracts  
13 to them. I think that's not necessary. And I also  
14 think going that far downstream is getting farther  
15 afield than is necessary. I am going to deny the  
16 motion as to No. 18.

17 That goes next, then, I believe to 24 through  
18 26, which has to do with public need, which is  
19 customer complaints; is that right?

20 MR. JOHNSON: That's right, Your Honor.  
21 And the more specific request that we seek you to  
22 address is that they produce documents, including the  
23 internal communications and communications with  
24 generators that reflect this information that's been  
25 provided to me.

0086

1                   JUDGE KOPTA:  And, Ms. Goldman, would  
2  you like to respond more directly here?  I understand  
3  we had a discussion about this in the context of  
4  requests that you had made to Stericycle on customer  
5  complaints.  Did you want to elaborate on your  
6  objections to these data requests here?

7                   MS. GOLDMAN:  Yes.  I think this is a  
8  different issue.  I think this has to do with  
9  dissatisfaction with Stericycle, not dissatisfaction  
10 with Waste Management.  I believe Stericycle is asking  
11 Waste Management here for evidence that Waste  
12 Management is aware of, of dissatisfaction in the  
13 marketplace with the incumbent provider.

14                  Waste Management has listed all of the  
15 communications it has had with the Washington  
16 generators who have complained to Waste Management and  
17 has attested to the fact that those communications  
18 happened orally.  There are no documents.  No  
19 documents have been exchanged by the generators and  
20 Waste Management.  What I understand Steve is also  
21 asking for here are internal documents referencing  
22 those.  As I understand it, his intention would be to  
23 use those internal documents to show them to the  
24 generators and use them to hold their feet to the fire  
25 regarding comments that they made.

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1           Our position, first of all, is, you know,  
2 internal documents is a burdensome request to search  
3 for any possible reference to communications from  
4 generators. In any event, these aren't communications  
5 that included the generator. They are not going to be  
6 useful in trying to pin down a generator as to what he  
7 or she said based on what some internal Waste  
8 Management document says about it. Frankly, I'm not  
9 aware of any such documents, and none have come to  
10 light in the searches that we did perform. We don't  
11 think this is remotely relevant or useful, and we do  
12 think it is burdensome.

13           MR. JOHNSON: Your Honor, the key point  
14 is that they say the statements made to them by the  
15 generators were oral, but we presume that there is  
16 some reference to those statements and description of  
17 those statements in communications internal to Waste  
18 Management that would give us a clearer understanding  
19 of what the oral report was with respect to  
20 dissatisfaction. That seems to be directly relevant  
21 and can't be that burdensome to identify particular  
22 communications related to the generators that they  
23 have already listed and identified in their responses.

24           MS. GOLDMAN: Your Honor, if I may.  
25 That's exactly what we provided in our discovery



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1 response. We explained what the generators said, what  
2 their complaint was about the service specifically.  
3 It's my understanding, from the discussion on Waste  
4 Management's motion to compel, that there is little  
5 inclination here to allow this kind of double, triple  
6 checking to make sure we are telling the truth. We  
7 have specifically stated what each of these generators  
8 complained about. They've got that.

9 JUDGE KOPTA: All right. Thank you,  
10 Ms. Goldman. I agree with you. Just as I said with  
11 respect to your motion to compel customer complaints,  
12 I am satisfied that you have provided the information  
13 that is requested to the best of your reasonable  
14 ability to do so. I'm not going to second-guess  
15 whether you have made sufficient efforts. The motion  
16 as to these data requests is denied.

17 MR. JOHNSON: Your Honor, the only thing  
18 I would say with respect to that point is if  
19 Ms. Goldman actually reviewed the internal  
20 documentation and then prepared the responses, I would  
21 agree with you completely and accept that. The  
22 question is, did she review internal correspondence  
23 that --

24 JUDGE KOPTA: Mr. Johnson, you didn't  
25 represent that you reviewed all of the customer logs

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1 either, and I am letting you get away with that. I  
2 don't see that I am going to treat Waste Management  
3 any differently than I treated you.

4 MR. JOHNSON: I wouldn't expect that,  
5 Your Honor.

6 JUDGE KOPTA: I would hope not.

7 So next, 29, 35 and 36, dealing with financial  
8 feasibility. You discussed this in your opening. Did  
9 you have anything further that you wanted to say?

10 MR. JOHNSON: No, Your Honor. I think I  
11 have covered that, so you understand our point.

12 It does go to this notion, and this is a  
13 firmly held view on Stericycle's side, that the only  
14 way for Waste Management to do this in a feasible way  
15 is to basically pick off the low-hanging fruit in  
16 the adjacent urban areas to their existing G-237, and  
17 essentially take little or no action to extend their  
18 service into the far-flung corners of the state.  
19 That's what we anticipate. We are partly looking to  
20 see their budgeting and planning and their  
21 projections, how that would address that issue.

22 JUDGE KOPTA: Ms. Goldman, anything  
23 further on that? I know that you addressed it also  
24 in --

25 MS. GOLDMAN: Simply to respond to this

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1 notion that Waste Management may be planning on  
2 cream-skimming. Obviously, to the degree that Waste  
3 Management or Stericycle or any of the other service  
4 providers here act in a way that is inappropriate or  
5 violates these obligations to provide service within a  
6 territory, the Commission has full authority to  
7 prosecute that conduct.

8 Waste Management has absolutely no such  
9 intentions here, so the information that they are  
10 trying to get at is part of that bundle which -- as  
11 was held in In re Ryder Distribution is an issue that  
12 should be -- or so interrelated that they should be  
13 discussed together, and that evidence of the  
14 feasibility is fully within Stericycle's own books.

15 JUDGE KOPTA: Once again, I agree with  
16 you, Ms. Goldman. I think this is information that I  
17 would include within the information that I excluded  
18 from discovery. While it may be technically separate,  
19 it is so related that it is essentially one and the  
20 same area, from my perspective.

21 In addition, I think that Stericycle has  
22 sufficient information of its own to know what the  
23 costs are in the service territory that it is  
24 currently serving, and what the feasibility is of  
25 providing service at the less than -- all of the

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1 customers that it currently serves. So whatever plans  
2 that Waste Management has or whatever kind of analysis  
3 it has undergone, I think it's not germane, so I am  
4 going to deny the motion as to 29, 35 and 36.

5 MR. JOHNSON: Your Honor, if I could  
6 just make one point, that 36 is different from 35. 35  
7 goes to existing studies and analyses and 36 goes to a  
8 projection.

9 I think I am accurately describing the  
10 Commission's precedence that suggests that an  
11 applicant has a duty to come forward to show the  
12 feasibility of its operations at the hearing. If we  
13 are not permitted to -- again, is it your ruling,  
14 then, that we are nonetheless not permitted to  
15 conduct discovery on -- to request that they generate  
16 that projection before we walk in the door or see  
17 their prefiled testimony?

18 JUDGE KOPTA: I think it is incumbent on  
19 them to make the demonstration under that statute.  
20 Again, I am excluding this from discovery, I'm not  
21 excluding it from their burden to demonstrate what  
22 they need to demonstrate. I'm not saying it's  
23 irrelevant, it's just that it's not within the purview  
24 of discovery as I have had restricted it.

25 So the last grouping is Nos. 18 and 20 through

0092

1 22, which --

2 MR. JOHNSON: 18, I think we already  
3 addressed, Your Honor.

4 JUDGE KOPTA: All right. That's right,  
5 we did.

6 MR. JOHNSON: But I think you are  
7 correct, it's 20 through 22.

8 JUDGE KOPTA: Okay.

9 MR. JOHNSON: And those deal with this  
10 issue of using recycling discounts to --

11 JUDGE KOPTA: Right. And again --

12 MR. JOHNSON: -- induce service switch.

13 JUDGE KOPTA: Yes, I think you addressed  
14 that had in your opening comments as well. I don't  
15 need to hear anything more on that. I think that  
16 that's farther afield than we are going here.

17 If you have concerns about what Waste  
18 Management is doing, you can always file a complaint.  
19 This is not an opportunity to provide every problem or  
20 objection you have to what Waste Management is doing.  
21 I'm not going to allow us to fall that far afield, so  
22 I'm denying this, the motion as to 20 through 22.

23 MR. JOHNSON: So, Your Honor, just so  
24 that I understand your ruling. This goes directly to  
25 regulatory fitness, if they are violating the tariff

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1 requirements.

2 JUDGE KOPTA: If you are aware of those,  
3 I am not saying that you cannot provide testimony on  
4 that. Although, I am not saying at this point that I  
5 would allow it, I am just saying at this point that I  
6 am not going to compel discovery on it.

7 MR. JOHNSON: So we are entitled to  
8 raise it at the hearing, but we are not entitled to  
9 determine the facts that would allow us to raise it  
10 effectively?

11 JUDGE KOPTA: What I am saying is I am  
12 not at this point precluding you from including it in  
13 your testimony. That doesn't mean that I would not  
14 entertain a motion to strike. At this point, I don't  
15 see that it is sufficiently relevant. This is not an  
16 occasion to air every complaint. I don't want to hear  
17 from Waste Management about your profitability and  
18 your overearning. And I don't want to hear from you  
19 about what you think Waste Management is doing wrong  
20 in its current service territory. That's not what we  
21 are here to talk about.

22 MR. JOHNSON: Your Honor, I understand  
23 that. Can I just give you a little sort of  
24 perspective on where I'm coming from?

25 If you look at our --

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1                   JUDGE KOPTA: I know where you are  
2 coming from, and I understand --

3                   MR. JOHNSON: Let me just add one little  
4 wrinkle that perhaps you haven't heard about yet.

5                   Under RCW 81.77.040 if you read far enough  
6 down, you find that the Commission has the authority  
7 to issue certificates with conditions. It is my  
8 thought that regulatory fitness is certainly an issue.  
9 But if there is evidence presented at the hearing that  
10 an applicant is engaged in some kind of activity that  
11 is contrary to the statute and the Commission's rules,  
12 that even if the Commission ultimately determines that  
13 the application should be granted, that it has the  
14 ability, and in fact in that case, it should attach  
15 conditions.

16                   And I think this would go back to like the  
17 Ryder case, which I was also involved in, where  
18 Stericycle was dinged for a particular agreement with  
19 a subsidiary of the Washington Hospital Association,  
20 and was required to change the practice, you know, in  
21 an order issued in an application case.

22                   So that is where I am coming from, both  
23 regulatory fitness and the notion that this is a  
24 proper subject for a condition if the Commission so  
25 chooses.

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1                   JUDGE KOPTA:  And I appreciate that  
2  that's where you are coming from.  I assumed that  
3  that's where you were coming from.  I'm not in any  
4  way, shape or form alleging that you are using this  
5  forum improperly.  That's not what my purpose is.  My  
6  purpose at this point is to try and keep us focused on  
7  the issues.  And to the extent that you have  
8  information that Waste Management is operating  
9  illegally or unlawfully or inconsistent with  
10 Commission rules or its own tariff, then I am not  
11 saying that you cannot provide that information.

12                   What I am saying is that I am not going to  
13 sanction an exploratory effort to try and look behind  
14 Waste Management's practices to find those kinds of  
15 things.  I understand that you believe that you have  
16 seen smoke and you are looking for the fire.

17                   MR. JOHNSON:  We have, actually, a  
18 declaration in the file that supports the notion that  
19 Waste Management has in fact offered a  
20 recycling discount to Northwest Hospital as an  
21 inducement for them to move their waste collection  
22 service to Waste Management.  That's not hypothetical,  
23 it's not speculation, it's particular people having  
24 told particular people of the facts.  We have put that  
25 on the table in connection with our request for a



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1 leave to take a deposition.

2 JUDGE KOPTA: And we will deal with that  
3 next. At this point, I am not going to compel a  
4 response to those requests.

5 MS. GOLDMAN: Your Honor, I just want to  
6 make sure that the record is clear. I don't know if  
7 you actually ruled on No. 18. I believe your order  
8 was that --

9 JUDGE KOPTA: Yes, I did rule on No. 18  
10 earlier, when we were talking about that, and the  
11 motion was denied.

12 MS. GOLDMAN: Thank you, Your Honor.  
13 I'm sorry, I missed that.

14 JUDGE KOPTA: That's all right. I am  
15 sure you will pore over the transcript of this. I  
16 expect to see my own words quoted back to me numerous  
17 times.

18 MR. JOHNSON: Well, Your Honor, that's  
19 what my notes show.

20 JUDGE KOPTA: Well, then, it must be  
21 right.

22 MS. GOLDMAN: Thank you.

23 JUDGE KOPTA: I'm going to go ahead and  
24 take up the motion for leave to take depositions as  
25 well. I'm not sure whether the parties contemplated

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1 that, given that Waste Management's response came  
2 after the time when you all had talked about  
3 responding to cross-motions. I don't know what the  
4 parties had in mind, but since we are here, since I  
5 have looked at it, since it is related, then I'm going  
6 to take it up. I think we have largely just talked  
7 about it.

8 As to taking depositions of potential Waste  
9 Management witnesses, it sounds to me like there is no  
10 objection to doing that. I have no problem with the  
11 parties making their own arrangements to take  
12 depositions should they so choose. I don't see a need  
13 to order that if the parties are already in agreement.  
14 Given that we will be pushing the schedule out, I am  
15 assuming that you can arrange for a mutually  
16 convenient time.

17 I caveat that with saying that the Commission  
18 rules contemplate that I could schedule a deposition  
19 conference in which I play mediator. That I am not  
20 terribly willing to do. If you feel the need to do  
21 that, then you can revisit it. But no, I will  
22 probably say no. So if you can arrange it between  
23 yourselves, that's perfectly fine with me.

24 As to a deposition of nonparty witnesses, as I  
25 said, I think that is beyond the scope of this

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1 proceeding and I only very, very, very reluctantly  
2 would agree to compel someone who is not a party  
3 witness to be subject to a deposition. Under these  
4 circumstances, I am not willing to do so.

5 I will deny that motion and allow the parties  
6 to make their own arrangements with respect to  
7 depositions.

8 I believe that is everything, unless there is  
9 something else, Mr. Sells. It looks like you want to  
10 talk after all of this time.

11 MR. SELLS: I am just trying stay awake,  
12 Your Honor.

13 JUDGE KOPTA: I'm sorry I'm not more  
14 scintillating.

15 MR. SELLS: Just one question and  
16 comment. I think I understood that all five days of  
17 hearing would be held here in Olympia --

18 JUDGE KOPTA: That is correct.

19 MR. SELLS: -- in this very room.

20 There are going to be, I suspect, numerous  
21 witnesses from Eastern and Central Washington and  
22 South and North. The parties have very, very  
23 informally previously discussed perhaps doing  
24 perpetuation depositions, perhaps doing telephone, or  
25 whatever other electronic devices I'm not aware of

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1 exist. I guess I just want to let Your Honor know  
2 that we are talking -- or at least I am talking about  
3 it, and that we may be coming back to you, or not,  
4 with a request to proceed in that manner. At least  
5 two of them would be party witnesses but fairly minor  
6 party witnesses.

7 JUDGE KOPTA: Again, whatever the  
8 parties can agree to among themselves I have no  
9 problem with. If you get the information that you  
10 need, and we shorten the hearing by having  
11 perpetuation depositions, I am all for that. I am  
12 also willing to have people appear by telephone,  
13 particularly nonparty or shipper-type witness  
14 testimony, or generator, in this case, testimony. I'm  
15 not going to make people come all the way to Olympia  
16 from Moses Lake unless they are a party. I will have  
17 no problem with that.

18 Hopefully, the parties can agree on that since  
19 I assume it will benefit all parties to be able to  
20 have that kind of accommodation to witnesses and  
21 others who they want testimony from to support their  
22 positions.

23 MR. SELLS: Thank you.

24 JUDGE KOPTA: Anything else?

25 Hearing none --

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1 MS. GOLDMAN: Nothing further, Your  
2 Honor.

3 JUDGE KOPTA: I'm sorry, what?

4 MS. GOLDMAN: Nothing further,  
5 thank you.

6 JUDGE KOPTA: All right. Thank you.  
7 Then we are adjourned.

8 MR. JOHNSON: Thank you, Your Honor.

9 (Hearing adjourned at 4:22 p.m.)

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3 STATE OF WASHINGTON

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I, Sherrilyn Smith, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript is

9 true and accurate to the best of my knowledge, skill

10 and ability.

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SHERRILYN SMITH

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