

Exhibit No. MAW-1T
Docket No. TG-181023
Witness: Michael Weinstein

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of:

DOCKET TG-181023

SUPERIOR WASTE & RECYCLE LLC

**for Authority to Operate as a Solid Waste
Collection Company in Washington**

Direct Testimony of

MICHAEL A. WEINSTEIN

On behalf of Waste Management of Washington, Inc.

May 15, 2019

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1 In 1987, Waste Management, Inc. (“WMI”) acquired Bayside and I joined WMI as
2 a Special Projects Controller from 1987 through 1993. In that capacity, I was in
3 charge of WMI’s regulatory affairs for Washington State. In 1993, I was promoted
4 to Northwest Region Accounting Center & Special Projects Controller. In that
5 capacity, in addition to continuing with my responsibilities for all of WMI’s rate
6 filings in Washington State, I also provided general ledger, payroll, accounts
7 payable, and state and local tax support service for WMI’s operations in
8 Washington, Oregon, and Idaho.

9
10 **Q. What are your primary responsibilities for Waste Management?**

11 A. I have served as Senior Pricing Manager for Waste Management since 2004. I
12 provide financial and rate analysis for operations in Washington, Oregon, and Idaho.
13 I prepare rate filings for the Washington Utilities and Transportation Commission
14 (“Commission” or “UTC”) and I also perform financial analysis on municipal bids,
15 proposals, and acquisitions.

16
17 **Q. Why is Waste Management involved in this proceeding?**

18 A. Superior Waste & Recycle, LLC (“Superior”) filed its application to provide
19 service in part of unincorporated Kitsap County in direct competition with Waste
20 Management, very shortly after its sole owner and employee, Daniel Stein, was
21 cited by the Commission for providing the same services in the same territory in

1 violation of Washington law and Waste Management's exclusive authority to
2 provide the service.¹

3 On February 20, 2019, Waste Management protested Superior's application
4 and reaffirmed its commitment to providing solid waste collection service to the
5 Commission's satisfaction. In doing so, Waste Management seeks to prevent the
6 likely escalation of prices and possible erosion of service that would result from
7 allowing Superior's competing service.

8
9 **Q. What are the subjects of the testimony you are offering today?**

10 A. I will testify about Waste Management's history of providing solid waste and
11 recycling collection service to the satisfaction of the Commission; Waste
12 Management's willingness to provide the service proposed by Superior to the
13 Commission's satisfaction; and some of the concerns Superior's application raises
14 about the need for its proposed service and its ability to meet all the requirements of
15 providing that service.

16
17 **Q. Is Waste Management presenting the testimony of any other witnesses?**

18 A. Yes. Robert Rutledge, Waste Management's district manager for Brem-Air
19 Disposal, will also testify. He is responsible for overseeing Waste Management's
20 day-to-day operations in Kitsap County, including the entirety of Superior's

¹ See generally *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against, Daniel Stein d/b/a Seabeck Waste & Recycle*, Docket TG-180181, Order 02 – Initial Order Classifying Respondent as a Solid Waste Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance (December 10, 2018) (the “Cease and Desist Order”).

1 proposed service territory. He will testify regarding the logistical and safety aspects
2 of providing solid waste service like that proposed by Superior.

3
4 **II. WASTE MANAGEMENT HAS A LONG HISTORY OF PROVIDING SOLID**
5 **WASTE SERVICE TO THE COMMISSION'S SATISFACTION**

6
7 **Q. Does Waste Management hold a certificate of public convenience and necessity**
8 **from the UTC for solid waste collection in the same geographic area as that**
9 **covered by Superior's application?**

10 A. Yes. Waste Management holds UTC certificate G-237, attached hereto as
11 Exhibit MAW-2. That certificate grants Waste Management authority to collect
12 solid waste in unincorporated areas of Kitsap County, including all of the proposed
13 service territory of Superior.² Waste Management is the only solid waste hauler
14 authorized to serve the area in which Superior proposes to operate.

15
16 **Q. What is the significance of Waste Management holding an exclusive certificate**
17 **for solid waste hauling in the area Superior proposes to serve?**

18 A. I am not a lawyer, but I understand from my involvement in previous certificate
19 cases that under Washington law, the Commission can only grant Superior's
20 application if Waste Management does not object to Superior's application or if the

² Exh. MAW-2 at 17 of 20; *compare* Superior proposed territory map *with* Waste Management service territory map for Kitsap County, *available at* https://www.utc.wa.gov/regulatedIndustries/transportation/TransportationDocuments/G237_Waste%20Management%20of%20Washington,%20Inc.%20-%20Kitsap.pdf.

1 Commission finds that Waste Management will not provide service to the
2 Commission's satisfaction.

3 As a practical matter, allowing competition in providing such services tends
4 to result in duplication of services and, in turn, increased rates for everyone. Thus,
5 exclusive service by Waste Management, subject to the regulation of service and
6 pricing by the Commission, supports universal, non-discriminatory service at
7 reasonable prices. In addition, Waste Management's G-certificate is a valuable
8 asset to the company, and allowing another hauler to provide competitive service
9 would erode the value of that asset and undermine the certainty of Waste
10 Management's business decisionmaking, which relies on the predictable customer
11 base afforded by exclusive service.

12
13 **Q. Does Waste Management object to Superior's application and proposed
14 service?**

15 A. Yes.

16

17 **Q. In the area Superior proposes to serve, is Waste Management providing solid
18 waste service to the satisfaction of the Commission?**

19 A. Yes, I have every reason to believe that the Commission is satisfied with the solid
20 waste service Waste Management is currently providing in that area.

21

22 **Q. Please describe your experience with Waste Management's Commission-
23 regulated solid waste service.**

1 A. I have been with Waste Management for 32 years, plus two years before that with
2 its predecessor, Bayside. During those 34 years, regulatory affairs, including
3 relations with the Commission, have always been under my responsibility. I have
4 been Waste Management's principal contact for rate filings and other tariff revisions
5 for all of the company's Commission-regulated tariffs, and have testified before the
6 Commission on a wide range of regulatory matters.

7
8 **Q. Does Waste Management currently offer specialized services to customers in**
9 **Superior's proposed territory who cannot or prefer not to move their solid**
10 **waste and recycling to standard Waste Management collection points?**

11 A. Yes. Item 80 of the Brem-Air tariff (UTC Tariff 20, page 19) offers both carry-out
12 and drive-in collection service for an added charge. Under the carry-out service,
13 Waste Management will move garbage, recycling, and yard waste carts up to 100
14 feet to where collection vehicles can reach them. The added charge is just 45 cents
15 per cart per pickup. Where private roads and driveways accommodate safe access
16 and turnaround for its collection vehicles, Waste Management also offers drive-in
17 service. Under that service, the collection vehicle will drive up to one mile off the
18 public road to collect the customer's waste. The charge ranges from as little as
19 \$1.60 per pickup (not per cart) for drive-ins of up to 250 feet, up to as much as \$50
20 (\$5 per 1/10 mile, up to a maximum of 1 mile).

21
22 **Q. Have you received any indication that Waste Management is not currently**
23 **providing service to the Commission's satisfaction, either in the area Superior**

1 **proposes to serve or in any of Waste Management’s other Commission-**
2 **jurisdictional territories?**

3 A. No. I am not aware of any communication or proceeding, either formal or informal,
4 from the Commission or Staff suggesting that the Commission is not satisfied with
5 Waste Management’s solid waste service. In particular, I have not received any
6 indication from the Commission that Waste Management’s carry-out and drive-in
7 service options do not satisfactorily serve customers who cannot or prefer not to
8 move their waste containers to usual Waste Management collection points.

9
10 **Q. Have you ever had any indication that the Commission was not satisfied with**
11 **the availability or terms of Waste Management’s solid waste collection?**

12 A. No. In my 34 years with the company, the Commission has never initiated an
13 enforcement action or investigation, or even given Waste Management a warning,
14 related to the general availability and terms of its service to customers. Waste
15 Management does receive occasional complaints from customers dissatisfied with
16 the particulars of their waste collection, and Waste Management strives to improve
17 any isolated shortcomings and accommodate each customer’s needs within the
18 limits of safety and reasonable cost. As far as I know, the Commission has never
19 expressed dissatisfaction with Waste Management’s level of service or its efforts to
20 meet its customers’ waste collection needs.

1 **III. WASTE MANAGEMENT IS WILLING AND COMMITTED TO**
2 **CONTINUE PROVIDING SERVICE TO THE COMMISSION’S SATISFACTION**

3

4 **Q. Is Waste Management willing to provide service to the Commission’s**
5 **satisfaction within the territory that Superior proposes to serve?**

6 A. Yes. Waste Management takes its public service obligation and its relationship with
7 the Commission very seriously. If the Commission determines that there is a need
8 for the particular service Superior proposes, Waste Management is willing to
9 provide that service, subject to Waste Management’s right to decline service due to
10 reasonable concerns for the safety of customers, Waste Management employees,
11 and the general public.

12

13 **Q. Does Superior’s application raise a legitimate need for service beyond Waste**
14 **Management’s current offerings?**

15 A. We are still working to determine that. Based on the anecdotal accounts included
16 with Superior’s application, there may be some customers unable to move their own
17 solid waste and recycling to Waste Management’s existing collection points, even
18 with the benefit of Waste Management’s existing carry-out and drive-in services.
19 However, Waste Management’s records suggest that the number of customers who
20 fall into this category is very small, much smaller than Superior’s existing customer
21 base. In my 34 years of preparing tariffs and testifying before the Commission, I
22 have never seen anyone request or offer the particular, highly specialized services

1 Superior proposes, above and beyond the carry-out and drive-in service Waste
2 Management already offers.

3 Instead, much of Superior's proposed service may simply be in direct
4 competition with Waste Management's existing offerings. Further, it appears that
5 Superior offers its collection service in waste cans, which are more difficult to move
6 than the rolling carts used by Waste Management. If Superior's customers knew
7 that rolling carts are provided as part of their Waste Management service, some of
8 them might not even require carry-out or drive-in service.

9
10 **Q. When you investigated the number of customers Waste Management is unable**
11 **to serve with carry-out or drive-in service, what did you discover?**

12 A. Waste Management does not directly track cases in which it cannot provide a
13 service requested by a customer. However, a search of Waste Management's
14 customer database, conducted at my direction, showed that in the past two years,
15 Waste Management has received only three *total* requests for carry-out or drive-in
16 service in the proposed Superior service territory.³ In one case, Waste Management
17 is now providing the requested drive-in service, and in another case we were able to
18 change a customer's pickup location as requested without adding any additional
19 service or charges. In just one case in two years, Waste Management was unable to

³ Superior's proposed service territory is not precisely defined or mapped. Waste Management's database searches reflect our best efforts to locate the extent of Superior's proposed territory based on the map and geographic description included in the application materials. Exhibit MAW-3 to my testimony shows the precise area covered by Waste Management's database search. If needed, Waste Management would be happy to check and (if needed) update its conclusions if and when Superior defines its proposed territory more precisely.

1 provide requested drive-in service due to lack of turnaround room for the collection
2 truck.

3
4 **Q. What service does Waste Management propose to add in response to**
5 **Superior's application?**

6 A. It may not be necessary to add any service. The Commission only has jurisdiction
7 over hauling solid waste on public roads for compensation. If Superior were willing
8 to limit its service to hauling customer waste and recyclables on private property *to*
9 the public roads but not *on* them, Waste Management would have no objection, and
10 does not believe that service would require a G-certificate or fall under Commission
11 jurisdiction. I have seen advertising for a company called Trash Maidz that appears
12 to offer almost exactly that service in southern California, so it appears to be a
13 viable model, at least under certain circumstances.

14 However, Waste Management is considering how it could best and most
15 affordably serve customers for whom existing carry-out or drive-in service is not an
16 option, if the Commission believes it necessary. One option would be to use
17 smaller, specialized collection vehicles that could traverse smaller or rougher roads
18 and turn around in tighter locations than standard Waste Management collection
19 trucks. Mr. Rutledge will testify about the options Waste Management is
20 considering in that regard.

21 Another option would be to offer hauling from the customer's home to
22 regular Waste Management collection points (much like the Trash Maidz model) as
23 an optional add-on service. Under that option, Waste Management might use

1 standard light-duty vehicles to move material to where standard collection trucks
2 can pick it up, rather than purchasing specialized collection vehicles that would
3 carry the solid waste all the way to the transfer station.

4 Separate from the current docket, Waste Management is considering the
5 submission of new or revised tariff sheets to implement a new service. We received
6 Superior's list of customers just a week ago, and are actively working to determine
7 what new service, if any, might be required to serve those locations safely and
8 economically. In the meantime, Waste Management would appreciate any guidance
9 about what type of service would be most satisfactory to the Commission. The
10 order addressing Superior's application would be a good opportunity to provide
11 such guidance.

12

13 **IV. SUPERIOR'S APPLICATION DOES NOT DEMONSTRATE FITNESS,**
14 **WILLINGNESS, AND ABILITY TO PROVIDE SATISFACTORY SERVICE**

15

16 **Q. Please briefly describe the service for which Superior seeks a certificate.**

17 A. It appears that Superior is seeking general authority to provide municipal solid
18 waste and recycling collection within its proposed territory.

19

20 **Q. Even if Waste Management were not willing to provide service to the**
21 **Commission's satisfaction, do you believe Superior's application meets the**
22 **requirements for the Commission to issue a certificate?**

1 A. No. Superior's application and business practices raise a number of doubts about its
2 readiness and willingness to meet the Commission's requirements and the public
3 service obligations that come with a certificate.

4

5 **Q. Please summarize those concerns.**

6 A. I have not analyzed every regulatory requirement or aspect of Superior's proposed
7 operations, but a number of shortcomings are fairly obvious. These include:

- 8 • the lack of any backup plan for service when Mr. Stein or his one
9 collection truck is unavailable;
- 10 • doubts about Superior's capacity to fulfill the unconditional service
11 obligation that comes with a certificate;
- 12 • Superior's failure to keep businesslike records and the lack of any
13 evidence that Superior has the resources or experience to conform to the
14 Commission's Uniform System of Accounts (USOA) for solid waste
15 companies;
- 16 • doubts about whether Superior's cost projections are realistic;
- 17 • lack of any plan to maintain a business office as required by the
18 Commission;
- 19 • Mr. Stein's recent history of offering solid waste service in violation of
20 state law and Commission regulation without a certificate, including
21 actively poaching customers from Waste Management; and

1 • the very limited evidence suggesting that Superior is meeting a need that
2 cannot be met by Waste Management.

3

4 **Q. Please elaborate on your concerns about Superior's lack of backup plans.**

5 A. According to Superior's application and business plan, its equipment includes only
6 one collection vehicle, a ¾ ton pickup. There is no indication of how Superior will
7 serve its customers in the inevitable event that the truck requires unplanned
8 maintenance. Similarly, Superior's work force consists of just Mr. Stein, who will
9 be responsible not only for all collection and disposal but also all of Superior's
10 regulatory compliance obligations. Nothing in the application or business plan
11 explains what would happen to Superior's customers if Mr. Stein were not
12 personally able to do everything required of Superior. In fact, as Mr. Rutledge
13 testifies, when he raised this concern, Mr. Stein shrugged it off by saying he had
14 never been sick. That is obviously not a contingency plan.

15

16 **Q. What are your concerns with Superior's ability to fulfill its unconditional
17 service obligation, if it were to receive a certificate?**

18 A. With a certificate comes an unconditional obligation to serve all members of the
19 public under the terms of the tariff. Today, Superior has just 53 customers, nearly
20 all of them concentrated in one small portion of Superior's much larger proposed

1 service territory.⁴ However, by Superior's estimate, its customer base might grow
2 to as many as 1,000 customers,⁵ which would presumably be far more
3 geographically dispersed. Upon receiving a certificate, Superior would be obligated
4 to serve every eligible customer who requests service in its proposed territory, no
5 matter how numerous and how distant from Superior's nucleus of existing
6 customers. Superior offers no plan for how it would accommodate such growth.

7
8 **Q. Please describe Superior's failure to keep businesslike records.**

9 A. In discovery, Waste Management learned that Superior (including operations by
10 Mr. Stein in his individual capacity and/or d/b/a Seabeck Waste & Recycle) has
11 been providing solid waste collection service since January 1, 2015.⁶ Yet Superior
12 has no records of how much it has billed or collected for its services,⁷ nor of
13 Superior's transfer station tickets for disposal of the waste or recyclable materials
14 collected.⁸ This is an extremely basic shortcoming in maintaining records. It seems
15 very unlikely that, if it received a certificate, Superior would be able to go from not
16 maintaining even the most basic financial records to suddenly complying with the
17 Commission's detailed Uniform System of Accounts for solid waste collection

⁴ Attached as Exhibit MAW-3 is a map generated by Waste Management, showing the locations of Superior's customers superimposed on a shaded area representing Superior's proposed territory, as best Waste Management can determine it from Superior's filings.

⁵ See business plan filed with Superior's application at 2.

⁶ Exhibit MAW-4 at 2 (Superior response to Waste Management's Data Request No. 0012). Exh. MAW-4 is an excerpt containing selected Superior responses to Waste Management's data requests.

⁷ Exhibit MAW-4 at 2 (Superior response to Waste Management's Data Request No. 0010).

⁸ Exhibit MAW-4 at 2-3 (Superior responses to Waste Management's Data Request Nos. 0013, 0017, and 0018).

1 companies. None of the application materials give any indication that Superior has
2 any plan to meet those requirements, or is even aware of them.

3
4 **Q. What are your doubts about whether Superior's financial projections are**
5 **realistic?**

6 A. In addition to the concerns above about Superior's ability to remain viable in the
7 face of a more numerous and diffuse customer base, Superior's financial projections
8 also seem to ignore the sizeable costs of such an operation. Without doing a
9 comprehensive analysis, it jumps out at me that the estimated operating costs
10 include nothing for outside professional services, even though the business plan
11 acknowledges the likely need for services like accounting, financial, and legal.⁹

12
13 **Q. What are your concerns about Superior's ability to maintain a business office**
14 **as required?**

15 A. The Commission requires each traditional solid waste company to maintain a
16 regular business office meeting a variety of requirements, including regular business
17 hours for at least four hours a day, Monday through Friday, and other customer
18 service and informational requirements.¹⁰ It is unclear how Superior would meet
19 those requirements with no employees other than Mr. Stein. Further, the address
20 Superior gives in its application appears to be in a residential area, raising doubts

⁹ Business plan filed with Superior's application at 2, 5.

¹⁰ See WAC 480-70-361.

1 about whether zoning regulations will allow Superior to meet the Commission's
2 office requirement without significant added costs of an office elsewhere.

3 In the recent case, discussed below, where the Commission fined Mr. Stein
4 for operating without a certificate, Mr. Stein apparently testified that he did not
5 receive either of two letters sent to him by the Commission, and that his mail service
6 is not very reliable.¹¹ That testimony shows that the Commission's business office
7 requirements are not just a regulatory box to check, but directly implicate Superior's
8 ability to conduct its business and comply with the Commission as required by law.
9 But Superior doesn't seem to have a plan to comply, let alone to do so without
10 grossly exceeding its cost projections.

11
12 **Q. What are your concerns about the business practices of Superior and**
13 **Mr. Stein?**

14 A. Just a few months ago, the Commission determined that Mr. Stein had been
15 providing solid waste collection service without a certificate, in violation of state
16 law. In doing so, he ignored warnings from the Commission—he even claimed that
17 he found it unbelievable that solid waste collection could be subject to Commission
18 regulation.¹² He apparently also told prospective customers to lie to Waste
19 Management when canceling their service, which I assume was an attempt to avoid
20 putting Waste Management on notice of Mr. Stein's unlawful competition.¹³

¹¹ Cease & Desist Order at ¶¶ 4, 7, 19.

¹² Cease & Desist Order at ¶¶ 7, 19.

¹³ Cease & Desist Order at ¶¶ 5, 6.

1

2 **Q. Do you believe Superior's application sufficiently supports the issuance of a**
3 **certificate for the service Superior proposes?**

4 A. No. While the application includes a number of letters of support, it is not clear that
5 those individuals' needs are truly not met by Waste Management's existing service
6 offerings. As I describe above, Waste Management's records show only one
7 instance in the last two years in which Waste Management could not fulfill a request
8 for carry-out or drive-in service. Nevertheless, now that Waste Management has
9 received Superior's full customer list, it is in the process of evaluating options for
10 additional services at those locations and is committed to serving the public,
11 including Superior's customers, to the Commission's satisfaction.

12

13 **Q. Please summarize your overall concern about Superior's fitness, willingness,**
14 **and ability to provide the service for which it seeks a certificate.**

15 A. It seems unlikely that Superior is in a position to correct all the shortcomings and
16 uncertainties identified above, even if Waste Management were not providing
17 service to the satisfaction of the Commission. While any one of the concerns I raise
18 might be corrected, together they create grave doubt that Superior understands, let
19 alone can meet, the obligations that would come with that certificate. I therefore
20 urge the Commission to deny the application.

21

22 **Q. Does this conclude your direct testimony?**

23 A. Yes.