BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

|  |  |  |
| --- | --- | --- |
| In Re Application ofWASTE MANAGEMENT OF WASHINGTON, INC., d/b/a WM Healthcare Solutions of Washington |  | Docket No. TG-120033DECLARATION OF michael a. weinstein regarding waste management’s fitness |

I, Michael A. Weinstein, declare as follows:

1. I am the Senior Pricing Manager for the Waste Management of Washington, Inc. (“Waste Management”) and I make this declaration on personal knowledge.
2. I graduated from the University of Texas in 1977 with a Bachelor of Business Administration with a major in accounting. I am a Certified Public Accountant. I obtained a license to practice public accounting in Texas in 1981 and in Washington in 1982. Neither license presently is active as I am no longer in public accounting but in private practice. From 1977 through 1982, I worked as a public accountant with the following accounting firms: Peat Marwick Mitchell (now KPMG), Laventhol and Horwath, and Alexander Grant (now Grant Thornton). From 1982 through 1985, I was employed as a Controller for a real estate investment firm in Seattle. In 1985, I became Controller for Bayside Waste Hauling & Transfer, Inc. (“Bayside”) in Seattle. In this position, I managed an accounting staff of ten with operations in three states and I handled rate filings for Bayside in Washington State. In 1987, Waste Management, Inc. (“WMI”) acquired Bayside and I joined WMI as a Special Projects Controller from 1987 through 1993. In that capacity, I was in charge of WMI’s regulatory affairs for Washington State. In 1993, I was promoted to Northwest Region Accounting Center & Special Projects Controller. In that capacity, in addition to continuing with my responsibilities for all of WMI’s rate filings in Washington State, I also provided general ledger, payroll, accounts payable and state and local tax support service for WMI’s operations in Washington, Oregon and Idaho.
3. I have served as Senior Pricing Manager for Waste Management since 2004. I provide financial and rate analysis for operations in Washington, Oregon, and Idaho. I prepare rate filings for the UTC and I also perform financial analysis on municipal bids, proposals and acquisitions.

# The Cost of facilities

1. Waste Management has been providing solid waste services in Washington for more than 40 years. Waste Management presently provides solid waste services to approximately 583,000 customers throughout its Certificate No. G-237 territory. Waste Management has approximately 1,400 employees. Its Certificate No. G-237 gross revenues in 2011 were $122,000,000.
2. In 2011, Waste Management had revenues of $115,240 from its regulated biomedical waste (“RMW”) services. Waste Management’s 2011 expenses associated with its RMW services were $610,922. Of these, $283,707 were fixed costs, primarily comprised of insurance and safety expenses, depreciation expenses, office and administration, license fees, and management fees. Waste Management had variable expenses from its RMW business of $327,285 for 2011. Variable expenses, which go up or down dependent on the size of the customer base, included drivers’ wages and benefits, truck operating costs, repair and maintenance expenses, disposal and processing fees, selling and advertising costs, and taxes. After accounting for federal income tax expense, in 2011 Waste Management had a net loss of $322,239 from its RMW services. This loss was absorbed by WMI. By the end of 2011, Waste Management had 178 RMW customers. A true and correct copy of an Income Statement I prepared reflecting the revenues and expenses of Waste Management’s 2011 RMW business is attached hereto as Exhibit 1.
3. For the first eight months of 2012, Waste Management had revenues of $326,219 from its RMW services. Waste Management’s expenses associated with those RMW services were $799,783. Of these, $291,088 were fixed costs. Waste Management’s RMW business had variable expenses of $508,695 for the first eight months of 2012. After accounting for federal income tax expense, Waste Management had a net loss of $307,817 from its RMW services in the first eight months of 2012. This loss was absorbed by WMI. By the end of August 2012, Waste Management had 187 RMW customers. A true and correct copy of an Income Statement I prepared reflecting the revenues and expenses of Waste Management’s RMW business from January through August 2012 is attached hereto as Exhibit 2.
4. The present value of the costs associated with the facilities and equipment utilized to perform RMW services is accounted for on its own separate general ledger that rolls up into the corporate entity known as Waste Management of Washington, Inc. This corporate entity maintains 35 separate general ledgers for the various operations it has in Washington State to assure that the costs of each operation are accounted for correctly and are not subsidized by another operation. The costs incurred for Waste Management’s RMW business for the eight months ending in August 2012 as reflected on Exhibit 2, show Waste Management’s actual labor costs, processing costs from WM Healthcare Processing (an operating division of Waste Management), container costs, truck rental costs, truck operating and maintenance costs and associated business taxes and other administrative fees and overhead. The processing cost charged to RMW is inclusive of the amortization of the capital investment in WM Healthcare Processing which is presently $1,732,000.
5. I have projected the costs and revenues for Waste Management’s RMW business from January 2013 until statewide authority is assumed to have been granted in June 2013, thereafter until this business is assumed to achieve profitability in June 2015, and continuing until the end of 2015. Attached hereto as Exhibit 3 is a true and correct copy of the worksheet I prepared which shows on a monthly basis the projected costs for Waste Management’s RMW labor, processing, containers, truck rentals, truck operating and maintenance and associated business taxes and other administrative fees and overhead.
6. For the year 2012, Waste Management’s revenues have increased at an average rate of approximately 4% per month. If statewide authority is granted in mid-2013, I project that this historic monthly growth rate will increase to 10% per month based on the anticipated RMW business which will come to Waste Management from existing customers who have additional facilities outside Waste Management’s present territory and based on the anticipated RMW business which has been promised by generators who have statewide operations serviced by incumbent service providers and who will move all of their business to Waste Management if this application is approved . I project that after one and a half years of 10% monthly growth, Waste Management’s monthly growth rate will decline somewhat due to market saturation beginning in January 2015. *See* Ex. 3 (Assumptions – Monthly Growth in Revenue).
7. Waste Management obtained from the UTC the annual reports which Stericycle filed with the UTC from 2001 through 2011. I have reviewed each of these reports and have prepared a spreadsheet comparing the growth in Stericycle’s reported expenses and revenues throughout this period. A true and correct copy of this spreadsheet is attached hereto as Exhibit 4. In 2011, Stericycle had nearly $14 million in annual revenue for its Washington business. In 2001, Stericycle’s annual revenue was $6.6 million. This represents an average annual growth rate of nearly 8% with effectively little to no competition.
8. Based on my knowledge of the RMW business and my experience with Waste Management’s regulated solid waste business, I project that the fuel and labors costs will increase but not at the same percent as associated revenues due to economies of scale, as Waste Management’s routes become denser (and serve more customers). I have projected 1.33% monthly increase in fuel and labor costs when revenue growth is anticipated to be 4% per month and when revenue growth is at 10% per month I have projected fuel and labor cost growth of 3.33% per month. I have projected an additional 30% growth in costs for an additional truck and an additional employee every three months. *See* Exhibit 3 (Assumptions – Monthly % increase in Fuel costs, Monthly % increase in Labor Hours, Additional head count and truck required by 30% increase in growth). I have assumed that Waste Management’s processing fees will be $0.24 per pound and as such this fee will represent approximately 40% of Waste Management’s tariffed RMW revenue at the end of 2015, when I project the operations will achieve a margin between 6 and 7 percent. *See* Exhibit 3 at 5 (Net Income before taxes of 6.4%). This percentage is similar to that of Stericycle. *See* Exhibit 4 at 2 (Net Operating Income of 6.3% in 2011). By the end of 2015, I project that Waste Management’s labor costs will be approximately 20% of its tariffed RMW revenue, again similar to those of Stericycle. *See id.* (Driver Wages of 20.8% in 2011).
9. By mid-2015, I project that Waste Management will become profitable and will have secured approximately one third of the market. *See* Exhibit 3 at 4 (June 2015 monthly revenue of $500,723). I project that in 2015 the Washington RMW services market reasonably can exceed $20 million. Some of this market share will come from Stericycle. Attached as Exhibit 5 is a true and correct copy of a spreadsheet I created based on the revenue reported in Stericycle’s Annual Reports for 2001 through 2011 which show an average annual increase in revenue of 7.54% which I have applied to the years 2012 through 2015 (2015 annual revenue of $18,337,273). I project that by 2015, the market will expand by at least an additional $1.7 million as a result of an aging population and the implementation of the Affordable Care Act. If Waste Management is successful in achieving its projections, Stericycle would still have more than two thirds of the 2015 market which I expect reasonably would yield annual revenue to Stericycle in the neighborhood of $14 million ($20,000,000 – ($500,723 x 12) = $13,991,324), a bit more than what Stericycle has presently.
10. In order to establish a meaningful alternative to Stericycle’s dominance in the marketplace, Waste Management was compelled to file a tariff similar to the rates currently charged by Stericycle. I believe that these rates will be compensatory after start-up much in the same way that these rates are assumed to be compensatory for Stericycle. My projection that Waste Management will achieve profitability for its RMW business by mid-2015 based on the tariff rates confirms that the tariff rates are compensatory, allowing Waste Management a reasonable rate of return in the six to nine percent range. *See* Ex. 3 at 5 (Net income before taxes for December 2015 is 6.4% of revenue).

# waste management’s assets

1. Attached hereto as Exhibit 6 is a true and correct copy of Waste Management’s Annual Report for 2011 filed with the UTC on June 25, 2012. As reported, in 2011 Waste Management operated 622 commercial motor vehicles and employed 852 commercial vehicle drivers. *Id.* at WM000159. It had total solid waste operating revenues of $334,451,354 and net income of $16,034,533. *Id.* at WM000164. In 2011, Waste Management served 1,420,098 Washington customers. *Id.* at WM000165. The Annual Report for 2011 also reflected total assets of $413,671,588. *Id.* at WM000160. Included in this total was $1,757,265 of assets related to the collection and processing of RMW.
2. WMI is a Fortune 200 company with operations in nearly every state in the United States and nearly every province in Canada. As reported in its Form 10K for 2011 which was filed with the Securities and Exchange Commission, WMI had revenues of $13.4 billion and assets totaling $22.6 billion. The Form 10K is included beginning at page 80 (WM000529) of WMI’s Annual Report, a true and correct copy of which is attached as Exhibit 1 to the Declaration of Jeff Daub. Though the first 6 months of 2012, as reflected in its second quarter Form 10Q which was filed with the Securities and Exchange Commission, WMI had revenue of $6.8 billion and assets of $22.7 billion. A true and correct copy of the referenced Form 10Q is attached hereto as Exhibit 7. As it has done to date, WMI will absorb the cost of any expansion in the number of employees and vehicles necessary for Waste Management to provide statewide RMW service until Waste Management achieves profitability.

# utc complaints

1. I am responsible, on behalf of Waste Management, for addressing with the UTC any consumer complaints lodged with the UTC.
2. On June 26, 2012, Stericycle requested of the UTC copies of all complaints filed with the UTC “regarding Waste Management of Washington, Inc. since 2001.” The UTC subsequently produced to Waste Management all of the public records the UTC had produced in response to Stericycle’s request for public records from 2001 through June of 2012. In addition, in response to Waste Management’s public records request, the UTC produced complaints about Waste Management up to August of 2012.
3. In 2001, the UTC received 27 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 60% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
4. In 2002, the UTC received 30 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 37% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
5. In 2003, Waste Management provided service to 517,860 regulated solid waste customers. That year, the UTC received 47 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 60% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
6. In 2004, Waste Management provided service to 528,253 regulated solid customers. That year, the UTC received 96 consumer complaints. The UTC upheld the propriety of Waste Management’s conduct in 71% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
7. In 2005, Waste Management provided service to 521,668 regulated solid waste customers. That year, the UTC received 56 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 50% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
8. In 2006, Waste Management provided service to 533,467 regulated solid waste customers. That year, the UTC received 24 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 54% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
9. In 2007, Waste Management provided service to 543,154 regulated solid waste customers. That year, the UTC received 63 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 65% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
10. In 2008, Waste Management provided service to 555,220 regulated solid waste customers. That year, the UTC received 31 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 60% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
11. In 2009, Waste Management provided service to 540,967 regulated solid waste customers. That year, the UTC received 38 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 55% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
12. In 2010, Waste Management provided service to 564,013 regulated solid waste customers. That year, the UTC received 21 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 71% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
13. In 2011, Waste Management provided service to 583,934 regulated solid waste customers. That year, the UTC received 22 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 36% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
14. Up until August of 2012, the UTC has received 9 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 33% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
15. Throughout the twelve years which were the subject of Stericycle’s public records request and up to August, the UTC received 464 consumer complaints regarding Waste Management’s regulated solid waste services. The UTC upheld the propriety of Waste Management’s conduct in 60% of these complaints. Waste Management timely and properly addressed the remaining complaints in accordance with UTC direction.
16. On July 25, 2012, Waste Management’s drivers went on strike for eight days, causing numerous regulated solid waste customers to have missed collections during that period.  Approximately 150 customers filed complaints with the UTC for service deficiencies during the work stoppage.  Waste Management is working with those customers and with the UTC staff to resolve those complaints.  None of the complaints were from RMW customers and no RMW customers had missed pickups.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 1st day of October, 2012, at \_\_\_\_\_\_\_\_\_\_\_\_, Washington.

Michael Weinstein

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method indicated below, pursuant to WAC 480-07-150.

|  |  |
| --- | --- |
| Washington Utilities and Transportation Commission1300 S. Evergreen Park Dr. SWPO Box 47250Olympia, WA 98504-7250360-664-1160records@utc.wa.gov | 🞎 Via Legal Messenger🞎 Via Facsimile🗹 Via Federal Express🗹 Via Email |
| Gregory J. KoptaAdministrative Law JudgeWashington Utilities and Transportation Commissiongkopta@utc.wa.gov | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹 Via Email |
| Fronda WoodsAttorney General’s Office of WashingtonPO Box 40128Olympia, WA 98504(360) 664-1225fwoods@utc.wa.govbdemarco@utc.wa.gov | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹 Via Email |
| Stephen B. JohnsonJared Van KirkGarvey Schubert Barer1191 Second Avenue, Suite 1800Seattle, WA 98101(206) 464-3939sjohnson@gsblaw.comjvankirk@gsblaw.comvowen@gsblaw.comdbarrientes@gsblaw.com*Attorneys for Stericycle of Washington, Inc.* | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹 Via Email |
| James K. Sells3110 Judson StreetGig Harbor, WA 98335(360) 981-0168jamessells@comcast.netcheryls@rsulaw.com*Attorney for Protestant WRRA, Rubatino, Consolidated, Murrey’s, and Pullman* | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹 Via Email |

DATED at Seattle, Washington, this 1st day of October, 2012.

Lisa Tardiff