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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION Commission

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4 In the Matter of the ) Docket No. TG-181023

Application of, )

5 )

SUPERIOR WASTE & RECYCLE )

6 LLC )

)

7 For Authority to Operate )

as a Solid Waste Collection )

8 Company in Washington )

)

9 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

10 EVIDENTIARY HEARING, VOLUME II

11 Pages 18 - 159

12 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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August 5, 2019

15

16 9:06 a.m.

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Washington Utilities and Transportation Commission

18 621 Woodland Square Loop Southeast

Lacey, Washington 98503

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25 REPORTED BY: CARMEN L. LUNDY, CCR #2287, RPR

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25 ALL WITNESSES PRESENT

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0027

1 LACEY, WASHINGTON; AUGUST 5, 2019

2 9:06 A.M.

3 --o0o--

4 P R O C E E D I N G S

5

6 JUDGE PEARSON: Good morning, today is Monday,

7 August 5th, 2019, at approximately 9:05 a.m. and we're today

8 for an Evidentiary Hearing in Docket TG-181023, which is

9 captioned In The Matter of the Application of Superior Waste

10 & Recycle, LLC for authority to operate as a solid waste

11 collection company in Washington.

12 We took care of several housekeeping matters off the

13 record this morning. The parties have stipulated to the

14 admission of all of the prefiled testimony and exhibits as

15 well as the cross-examination exhibits. And, for the court

16 reporter's benefit, I will provide you with a copy of the

17 exhibit list at the conclusion of the hearing.

18 Also, Staff's unopposed request for lead to file

19 supplemental testimony is granted. So those exhibits are

20 admitted in the record as stipulated.

21 So this morning's proceedings are going to have Superior

22 Waste's witness testifying first, followed by witnesses for

23 Waste Management, and then Commission Staff.

24 So let's start by taking short appearances. Please

25 state your name and who you represent for the record,

0028

1 beginning with Superior.

2 MR. GARG: This is Jimmy Garg, attorney for

3 Superior, the applicant of this proceeding.

4 THE JUDGE: Okay, thank you. And for Waste

5 Management?

6 MR. STANOVSKY: Walker Stanovsky from Davis Wright

7 Tremaine, LLP for Waste Management, and with me at counsel

8 table is Andrew Kenefick.

9 MR. KENEFICK: Andrew Kenefick, senior legal

10 counsel for Waste Management.

11 JUDGE PEARSON: Thank you. And for Commission

12 Staff?

13 MR. FUKANO: Harry Fukano present, Commission Staff

14 from the Utilities & Transportation Commission division.

15 JUDGE PEARSON: Okay, thank you. So, according to

16 the party's agreed order of witnesses, I believe that

17 Mr. Stein will be testifying first.

18 This is the first time we've had witnesses testify in

19 this hearing room. Would you prefer that he stay seated

20 where he is or come sit next to you? What would be...

21 (Discussion off the record.)

22 JUDGE PEARSON: All right, let's go back on the

23 record. Mr. Stein, if you could please stand and raise your

24 right hand, I'll swear you in:

25 Do you swear or affirm that the testimony that you

0029

1 give today will be the whole truth and nothing but the

2 truth?

3 MR. STEIN: I do.

4 JUDGE PEARSON: Go ahead and be seated. And,

5 Mr. Garg, if you want to introduce your witness and we'll

6 make him available for cross-examination.

7 MR. GARG: My witness is Daniel Stein, he is the

8 owner of Superior, which is the applicant in this

9 proceeding.

10 MR. STANOVSKY: One moment, Your Honor. Just so

11 we're clear, we're not doing opening statements?

12 JUDGE PEARSON: Correct.

13 MR. STANOVSKY: Okay.

14 JUDGE PEARSON: Okay, is he available now for

15 cross; do you have any corrections to his testimony?

16 MR. GARG: Mr. Stein, are there any--is there

17 anything in your direct testimony that you would like to

18 correct at this time?

19 MR. STEIN: Just minor things. I stated that full

20 size Waste Management vehicles being 52,000 GVW is actually

21 58,000 GVW. And also--I also believe that 26,000 GVW for

22 their smaller pack--their smaller trucks was 28,000 GVW. So

23 just minor things such as that. That's the first and only

24 thing that comes to mind.

25 MR. GARG: My client is ready for

0030

1 cross-examination.

2 JUDGE PEARSON: Mr. Stanovsky?

3 MR. STANOVSKY: Thank you, Your Honor. So it seems

4 the witness doesn't have a copy of the exhibits, so can we

5 get him a copy, or? I apologize. The bulk of my practice

6 has been Alaska so far and they have a copy that's

7 designated for the witness, so my apologies for not knowing

8 the procedure.

9 MR. GARG: Here's a list by numbers and then you

10 can just go off that.

11

12 CROSS-EXAMINATION

13

14 BY MR. STANOVSKY:

15 Q. Good morning, Mr. Stein.

16 A. Good morning.

17 Q. Good to see you again.

18 A. You as well.

19 Q. I would like to start, if you can find your response

20 testimony, it's DS-8T. And if you could turn to Page 7.

21 And just let me know when you're there.

22 A. DS-18?

23 Q. Eight. I'm sorry, 8. I think I said 8T but it may have

24 been only marked as 8 in the exhibit list.

25 JUDGE PEARSON: I've actually corrected that. The

0031

1 final exhibit list will reflect that it's DS-8T.

2 MR. STANOVSKY: All right. But DS-8 in that case.

3 A. Page 7.

4 Q. Page 7.

5 A. Okay, we are there.

6 Q. All right, thank you. And up at Line 6 to 8 there, you

7 see the question is: Is it your understanding that a

8 separate category for pack-out service exists; can you

9 please read your answer?

10 A. My understanding is that it does not, however, it is

11 used--however, it is used as it is a very unique and

12 specialized type of collection that requires special

13 vehicles.

14 Q. So your proposed service requires special vehicles;

15 that's correct?

16 A. My proposed service, yeah--well, yes.

17 Q. And your special vehicle is a 2017 three-quarter ton

18 Chevy Silverado pickup truck, correct?

19 A. Correct.

20 Q. Well, would you agree with me that I could probably go

21 buy a similar truck off the lot within Kitsap County today?

22 A. Yes, I do.

23 Q. So your testimony, if I understand it, is that that

24 truck that I could buy off the lot and the service you

25 provide with it is so specialized that it calls for a new

0032

1 category of UTC solid waste service?

2 A. Not based on that vehicle, no.

3 Q. Thank you. So I want to talk a little about the scope

4 of your certificate, as you understand it, that you've

5 applied for.

6 If Superior receives--and I apologize if I--I will

7 attempt to distinguish between you and Superior. Please

8 feel free to correct me if I fail to do that, but I'll do my

9 best not to use the two interchangeably.

10 So if Superior receives the certificate it has applied

11 for, is it your understanding that Waste Management would no

12 longer be allowed to offer drive-in and carry-out service in

13 Superior territory?

14 A. To the best of my understanding that is correct.

15 Q. So would you turn in DS-8 then, where we just had it

16 open, turn it to Page 8. And can you read the question and

17 answer there at the top of the page, the first one?

18 A. Question: Waste Management claims Superior does not

19 have the ability to serve the customers in Waste

20 Management's territory if Superior is granted a certificate.

21 The answer: Waste Management is again attempting to

22 confuse and muddle the matter. Superior is only attempting

23 to gain a certificate to provide pack-out and specialized

24 services to its customers.

25 Q. And my understanding is Superior has 53 customers; is

0033

1 that correct?

2 A. Correct.

3 Q. So that's a very different statement from saying that

4 your understanding is that you're seeking a certificate that

5 would exclude Waste Management from providing pack-out

6 service throughout your entire territory, isn't that?

7 A. It does seem to go against itself, it does.

8 Q. Thank you. So based on your response that you are

9 seeking a certificate that would exclude Waste Management

10 from providing these services throughout the territory, that

11 would mean that you would be seeking the exclusive

12 opportunity to provide drive-in or carry-out service even to

13 those customers this in that territory who are already

14 receiving those service from Waste Management; is that

15 correct?

16 A. To the best of my understanding, the way that UTC

17 operates, there is no other way to do it.

18 Q. And that would also be true for the potential to serve

19 those services to Waste Management customers who are

20 currently receiving curbside service, correct?

21 A. No.

22 Q. Sorry. I'm not sure we understood each other. Do you

23 understand that the certificate that you believe you are

24 seeking would exclude Waste Management from providing

25 carry-out or drive-in service to customers that it's

0034

1 currently providing curbside service to? So a current Waste

2 Management curbside customer decides they want drive-in

3 service, they would have to get it from you if your

4 certificated is granted, as you understand it?

5 A. The best of my understanding, the way the territories

6 work through the UTC, that is correct.

7 Q. Okay. Mr. Stein, when you were before the Commission at

8 your penalty case in November, do you remember testifying

9 that your goal in picking up people's waste around Seabeck--

10 MR. GARG: Objection. Relevance.

11 JUDGE PEARSON: Sorry, go ahead and finish your

12 question, Mr. Stanovsky. And, Mr. Stein, don't answer until

13 you hear the whole question, okay?

14 MR. STEIN: Okay.

15 Mr. Stanovsky Continuing:

16 Q. When you were before the Commission at your penalty case

17 in November, do you remember testifying that your goal in

18 picking up people's waste around Seabeck wasn't to have a

19 business, it was to relieve people's suffering?

20 JUDGE PEARSON: And you're objecting--

21 MR. GARG: Objection. Relevance. This matter

22 before the Court is Superior's application regarding Waste

23 Management's lack of providing customer service to its

24 customers. It doesn't have anything to do with Seabeck or

25 any previous investigation.

0035

1 MR. STANOVSKY: Your Honor, frankly, Waste

2 Management is puzzled by Superior's position that this case

3 has nothing to do with Superior. The Commission's precedent

4 is pretty clear that there are required elements to grant a

5 certificate:

6 The first is whether the incumbent is willing to provide

7 service to the satisfaction of the Commission.

8 The second is whether the public convenience and

9 necessity require the proposed service.

10 And the third is the financial and operational fitness

11 of the applicant.

12 JUDGE PEARSON: Okay.

13 MR. GARG: It still doesn't have anything to do

14 with Seabeck. It does, as you mentioned, have everything to

15 do with Superior but doesn't have anything to do with

16 Seabeck.

17 MR. STANOVSKY: So your position is that the

18 testimony given by Superior's sole employee and owner, six

19 months ago, is not relevant to Superior's proposed service?

20 MR. GARG: Correct.

21 JUDGE PEARSON: I'm going to overrule the

22 objection. You can go ahead with your question.

23 MR. STANOVSKY: Thank you, Your Honor.

24 Mr. Stanovsky Continuing:

25 Q. Mr. Stein, when you were before the Commission at your

0036

1 penalty case in November, do you remember testifying that

2 your goal in picking up people's waste around Seabeck wasn't

3 to have a business, it was to relieve people's suffering?

4 A. That has been from the very beginning of it. I...

5 THE REPORTER: Wait. What was your last word?

6 MR. STEIN: "I."

7 Q. And do you remember testifying that you would do

8 whatever it takes to meet your customers' needs?

9 A. Yes.

10 Q. Was that true?

11 A. Yes.

12 Q. Do you still feel that way?

13 A. I do.

14 Q. So, Mr. Stein, do you understand that the Commission

15 only has jurisdiction over hauling solid waste over the

16 public roads but not on private property?

17 A. I do.

18 Q. And that it wouldn't require any certificate at all for

19 someone who wanted to move people's solid waste around on

20 private property?

21 A. Yes.

22 Q. And the customers that you're concerned with, are you

23 willing to haul their waste to the Waste Management pickup

24 points and then return their carts to their houses for them

25 without hauling their waste on the public highways?

0037

1 A. No.

2 Q. So you would do anything for your customers except come

3 back a second time to take the carts back to their houses;

4 do I understand that correct?

5 A. It's not feasible.

6 Q. Thank you. So, let's go back to your response

7 testimony, Page 7 now. This is Exhibit DS-8T. Page 7,

8 Line 7--sorry. Page 7, Lines 19 to 21. Could you please

9 read the sentence starting at 19--Furthermore--the question?

10 A. Yes. Furthermore, the question of this inquiry is not

11 about Superior but whether Waste Management is meeting the

12 needs of its customers that is satisfactory to the

13 Commission.

14 Q. So your testimony is that Superior doesn't have anything

15 to prove about its own service; is that correct?

16 A. Could you restate, or repeat? Excuse me, just repeat

17 it.

18 Q. So isn't it your testimony that Superior doesn't have

19 anything to prove about its own service in this case?

20 A. If you read the whole thing, it does. I believe that

21 that does. I haven't read it but I'm just skimming over it,

22 um, it does show that Superior does have something to show.

23 It's like scripture, you can't just take one passage out;

24 you've got to read the whole thing.

25 Q. That's fair. And as a pastor's kid, I appreciate that.

0038

1 A. Sure.

2 Q. So at the penalty hearing back in November, didn't you

3 testify that when the UTC first contacted you about your

4 illegal operations, you had no idea who the UTC was?

5 A. And what was the date?

6 Q. So at the hearing in November, didn't you testify that

7 when the UTC first contacted you about your illegal

8 operations, you had no idea who the UTC was?

9 A. Correct.

10 Q. And that it all sounded like, quote, make believe and

11 made up? I can direct you to the transcript--

12 A. No--

13 Q. --if that would help?

14 A. --no, it--yeah, it was a shock.

15 Q. And that you thought it was Waste Management, not the

16 UTC on the phone, Waste Management misrepresenting itself to

17 try and scare you off?

18 A. Yes. I'm not sure of the timeline that you're referring

19 would be that particular time that I thought that. When I

20 was served papers I knew it to be true--was blown away.

21 Q. But, the question was about when you were first

22 contacted.

23 A. By UTC?

24 Q. By the UTC, yes.

25 A. I do remember that. Yeah, and that is correct.

0039

1 Q. And the testimony was that you thought it--

2 A. Yes, that is correct.

3 Q. --Waste Management pulling the trigger? Thank you.

4 So if we could turn to exhibit DS-18 now--not 8T. And

5 go to Page 7. Well, actually before we go to Page 7, let's

6 go to Page 1 of that exhibits.

7 JUDGE PEARSON: And let's just clarify, this is

8 DS-18X. It's a cross-examination exhibit.

9 MR. STANOVSKY: Yes. Thank you, Your Honor.

10 Mr. Stanovsky Continuing:

11 Q. You there?

12 A. I'm there.

13 Q. Do you recognize this document?

14 A. Yes, I do.

15 Q. And do you recognize it as the Commission's Cease and

16 Desist Order against you from late last year?

17 A. Yes, I do.

18 MR. STANOVSKY: Your Honor, I'd move to admit

19 Exhibit DS-18X.

20 JUDGE PEARSON: We've already stipulated to the

21 admission of all of these exhibits, so you don't need move

22 to admit them.

23 MR. STANOVSKY: I--I'm sorry, I thought I

24 understood that the stipulation was as to the pre-filed

25 direct testimony in exhibits.

0040

1 JUDGE PEARSON: And then we talked about

2 cross-examination exhibits.

3 MR. STANOVSKY: Okay.

4 Mr. Stanovsky Continuing:

5 Q. So as we look at this document, just to clarify, Seabeck

6 Waste in this case, that was just you using a DBA business

7 name, correct?

8 A. Yeah.

9 Q. And if you would go to Page 7 and find Paragraph 25 when

10 you get there.

11 A. Okay.

12 Q. Would you please read that paragraph?

13 A. The evidence establishes that Seabeck Waste has been

14 operating in Washington in violation of applicable laws for

15 many years and acknowledged that it was operating in

16 violation of Commission rules. Seabeck Waste ignored

17 staff's previous attempts to contact the company and provide

18 technical assistance.

19 Q. Thank you. And please look down the page to

20 Paragraph 29, and would you please read just the first

21 sentence of that paragraph?

22 A. Overall, Seabeck Waste has demonstrated very little

23 ability, or willingness, to comply with Commission

24 regulations.

25 Q. Thank you. And now let's go back to your response

0041

1 testimony, the DS-8T. Again, at Page 8.

2 So you're there at Page 8?

3 A. I'm there. Page 8, yes.

4 Q. And do you see the question that begins at Line 7?

5 A. I do.

6 Q. Would you please read the first sentence of the answer

7 there?

8 A. Superior is not currently obligated by rules and

9 regulations of UTC such as recordkeeping, office address,

10 office hours as it currently does not have a G Certificate.

11 Q. Mr. Stein, is it your understanding that the

12 Commission's rules don't apply to you if you don't have a

13 G Certificate?

14 A. They do apply, however, if I operate as I do now I'm

15 within good standing; I'm within the law. They still apply.

16 I have to be very careful about how I operate.

17 Q. Would you please find Exhibit DS-14X, and when you get

18 there turn to Page 3 and find Request 28A there. And the

19 request is: State the name and address of each person and

20 residence to which the quoted passage refers. It's

21 referring to an earlier quote from earlier in discovery.

22 The specifics don't matter but the request was for the name

23 and address of some people relevant to a statement. And I

24 would just like you to read the response there.

25 JUDGE PEARSON: I'm sorry, can tell me again which

0042

1 data request?

2 MR. STANOVSKY: This is Data Request 28A from Waste

3 Management to Superior.

4 JUDGE PEARSON: Okay.

5 A. For the record, I have no idea what you just said before

6 that, but I'll read the response.

7 JUDGE PEARSON: Mr. Stein, can you speak closer to

8 the microphone?

9 MR. STEIN: Yes.

10 Mr. Stanovsky Continuing:

11 Q. And, by all means, feel free to ask me to clarify if you

12 don't understand my question, so I appreciate that. But I

13 think it's not necessary to clarify, the context isn't

14 important; I would just ask you to read the response.

15 A. Superior objects--is it A or just the response to A?

16 Q. The response to A.

17 A. Superior objects to this request because WAC 480-70-421

18 strictly limits Superior's use of customer information and

19 providing the requested information to Waste Management is

20 not among the allowed uses.

21 Q. So, it looks to me like when Waste Management is asking

22 for details to backup your testimony, Superior's position is

23 that the Commission's regulations do apply to Superior so

24 that it can't answer; is that right?

25 A. We live in a nation of laws so we have laws on the

0043

1 books. And we use the laws--

2 Q. It's a yes or no question, Mr. Stein.

3 A. Okay. Would you please repeat it?

4 Q. Looking at this response it appears to me that Superior

5 is taking the position that the Commission's rules do apply

6 to prohibit it from disclosing customer information in

7 response to Waste Management's discovery. Isn't that what

8 this is?

9 A. It would appear that way.

10 Q. But those rules don't apply when Waste Management is

11 asking how you'll actually comply with them if you're

12 granted a certificate, as we discussed a little earlier,

13 correct?

14 A. I just find it as an interesting question. I would say

15 that, I know that my attorney has--represents me, and I

16 answer the questions and... I believe they do apply.

17 Q. Thank you. Now let's look at Exhibit DS-7. This is one

18 of the exhibits to your direct testimony. And this is the

19 article about you and this case from the Kitsap Sun, fairly

20 recently, I guess--just this last May; is that correct?

21 A. Yes.

22 Q. And would you turn to Page 4 and look about halfway down

23 the page there, there is a paragraph that starts: For the

24 past 8 months. Do you see that? So we're looking at Page 4

25 of Exhibit DS-7.

0044

1 A. I don't see it.

2 Q. So do you see the bold large text heading? Count up

3 from there three paragraphs.

4 A. Yes, I see it.

5 Q. All right. And would you just read from there to the

6 end of the section before the bold text.

7 A. For the past eights months or so, after he was ordered

8 by the State to cease and desist, he says he has continued

9 to serve his customers for free, refusing to accept payment

10 so he isn't breaking the law. Except for one customer,

11 Stein told the Commission he accepts cookies. I did that as

12 my only little protest, Stein said.

13 Q. All right, thank you. And I'm not wondering about some

14 technical violation of the law by accepting cookies as

15 compensation. But what I'd like to know is more about your

16 attitude. Because it looks like what you're protesting is

17 the Commission's order to cease and desist--

18 MR. GARG: Objection. This is something the writer

19 wrote; this is not something Mr. Stein--this is the opinion

20 of a writer, not Mr. Stein's personal opinion.

21 MR. STANOVSKY: Your Honor, we ask foundational

22 questions for this in discovery; if you give me just a

23 moment, I can find this.

24 JUDGE PEARSON: Sure.

25 MR. STANOVSKY: All right, we can come back to that

0045

1 question after I ask a couple of others. Can we please look

2 at--if Your Honor would postpone ruling?

3 JUDGE PEARSON: That's fine.

4 Mr. Stanovsky Continuing:

5 Q. So, Mr. Stein, could you turn to Exhibit DS-22X? Are

6 you there?

7 A. Yep.

8 Q. And turn to Page 2, Request No. 50-A.

9 A. Yes, there.

10 Q. And the request says--actually, before we go into A, if

11 you look at the first part of the request right after the

12 number 50, it's referring to Exhibit DS-7, the Kitsap Sun

13 article that we were just looking at; do you see that?

14 A. I do.

15 Q. And the request is: Please admit that Mr. Stein made

16 each of the statements attributed to him in the article. If

17 your response is anything other than a qualified Commission

18 (sic), please state what you believe to be the truth of the

19 matter including identification of each statement Mr. Stein

20 believes is incorrectly reported, how, and what he believes

21 he actually said.

22 Could you please read the response?

23 A. The response to A?

24 Q. Yes.

25 A. I believe the statements that are quoting me are

0046

1 correct, however, the statements being referenced were made

2 sometime back, to the best of my knowledge.

3 MR. STANOVSKY: All right. Your Honor, I think I'm

4 now prepared to ask you to overrule the objection.

5 JUDGE PEARSON: Yeah, and I will allow the

6 question.

7 MR. STANOVSKY: Thank you.

8 Mr. Stanovsky Continuing:

9 Q. So, Mr. Stein, if we can go back to Exhibit DS-7 at

10 Page 4. All right. So to get us back into the flow, would

11 you mind--I apologize--but reading the same passage,

12 beginning from, for the past eight months.

13 A. For the past eight months or so, after he was ordered by

14 the State to cease and desist, he says he has continued to

15 serve his customers for free, refusing to accept payments so

16 he isn't breaking the law. Except for one customer, Stein

17 told the Commission he accepts cookies. I did that as my

18 own little protest Stein said.

19 Q. So, as I was asking before, I'm just curious about your

20 attitude, because it looks to me your attitude,

21 specifically, toward Commission regulation, because it looks

22 to me like you're saying that you're doing that in order to

23 protest the Commission's Cease and Desist Order to stop

24 hauling waste for compensation; isn't that right?

25 A. That is correct.

0047

1 Q. Thank you. So, in discovery Waste Management asked

2 about your billing practices and you responded that you

3 destroyed all records pursuant to the Cease and Desist

4 Order; is that correct?

5 A. That is correct.

6 Q. And then later Waste Management asked you, regardless of

7 the existence of any records, could you please describe how

8 you billed your customers and collected and accounted for

9 payment before the Cease and Desist Order. And you

10 responded, didn't you: To the best of my knowledge no

11 activity occurred.

12 A. I did.

13 Q. So your answer was that you never had any billing

14 activity toward your customers?

15 A. To the best of my knowledge.

16 Q. Would you please turn to Exhibit DS-16X and find Page 8.

17 A. What page?

18 Q. Page 8. Are you there?

19 A. Yes.

20 Q. And this is a flier you used to advertise your services

21 as Seabeck; isn't that correct?

22 A. I'm showing this in my records; is that correct?

23 Q. Sixteen X, Page 8. I'm looking at a different flier.

24 Some of the numbers in this exhibit are hard to read where

25 they overlap pictures, but, one moment. The one that you're

0048

1 looking at I have marked as Page 2. The page number should

2 be at the top right corner.

3 A. Oh. Yes.

4 Q. So Exhibit DS-16X, Page 8 of 11; are you there?

5 A. I'm there.

6 Q. All right. And this is a flier you used to advertise

7 Superior services; isn't that right? I'm sorry. To

8 advertise your services as Seabeck.

9 A. Correct.

10 Q. And do you see there's three asterisks there in the

11 right column? And the third one says, doesn't it: Monthly

12 invoice with paid postage?

13 A. I see that.

14 Q. It can't be true that you sent monthly invoices as

15 advertised in this flier, and also that you had no billing

16 activity towards your customers, can it?

17 A. To the best of my knowledge, I have no recollection of

18 billing.

19 Q. So, to restate my question: It cannot be true, both

20 that you had no billing activity and that you actually

21 provided invoices as you advertised, correct?

22 A. No.

23 Q. Thank you.

24 A. Or could--so I'm confused. Can we revisit that question

25 one more time?

0049

1 Q. Sure. So you advertised monthly invoice with paid

2 postage. But in discovery when we asked about your billing

3 practices you responded that there never were any billing

4 practices. So, it can't be true that you actually provided

5 invoices, as you advertised, and also that you had no

6 billing practices; isn't that correct?

7 A. Yes, it can be true.

8 Q. Is sending an invoice a billing practice?

9 A. Yes, it is.

10 Q. And so if you sent an invoice that would be a record of

11 a billing practice?

12 A. Yes.

13 Q. And so a question that said, please describe your

14 billing practices, would require a response that said, I

15 sent monthly invoices, would, it not? If you had done that.

16 A. No.

17 Q. It would not?

18 A. There was no invoices sent, same as it's been since the

19 Cease and Desist Order. It was the same as before.

20 Q. So you never sent any invoices to any customers?

21 A. To the best of my recollection, no.

22 Q. All right. So, Mr. Stein, how did you receive payment

23 from your customers before the Cease and Desist Order?

24 A. Payment is something... There wasn't really a transfer

25 of money, it was more of friendships. It was--I didn't

0050

1 understand how to do this business. I didn't understand why

2 it existed. So, by discovering all of this throughout the

3 way, maybe--maybe boat rides from friends, making friends,

4 cookies. As silly as it sounds--as silly as it sounds.

5 Q. So you never received any money from any of your

6 customers for your services prior to the Cease and Desist

7 Order?

8 A. I did, but not for hauling garbage. It wasn't about

9 that. It was about trying to discover how in the heck do I

10 do this? How do I fit and fill this need?

11 MR. STANOVSKY: Just one moment, Your Honor.

12 Q. All right. So going back to your destruction of all of

13 your records of your previous solid waste collection, can

14 you explain why you destroyed those records?

15 A. Cease and desist. It was extremely emotional. It had

16 been years to build that. My notes, my maps--everything.

17 It was like I couldn't believe it. I just--I didn't know--I

18 didn't know how to look these people in the face and tell

19 them no.

20 Q. So, you were emotional about the need to destroy your

21 records; did I understand that right?

22 A. I was emotional about the need to cease and desist. I

23 just--I didn't understand. It took me for blindsight.

24 Q. So if I were to hand you that order, there's nothing in

25 there that tells you to destroy records; is that correct?

0051

1 A. I did look that order over after you made that argument

2 and I believe a data request, I believe it was. And it said

3 cease and desist, turn it in. Or get rid of your--get rid

4 of your e-mail address and--that was on the front page, it

5 was destroyed. It was...

6 Q. Well, all right, let's look at that order, which is

7 Exhibit DS-18X.

8 So if you could just take a minute and look at this

9 order and please indicate the passages you were just

10 characterizing.

11 MR. GARG: Objection, argumentative. I believe my

12 client has already answered this question.

13 JUDGE PEARSON: Mr. Stanovsky, I think that your

14 point has been made, and I get what you're trying to

15 establish. And I agree that nowhere in this order does it

16 instruct Mr. Stein to destroy any of his records, so you can

17 move on.

18 MR. STANOVSKY: Fair enough, Your Honor. Thank

19 you.

20 Mr. Stanovsky Continuing:

21 Q. So, Mr. Stein, you're not currently collecting any

22 compensation for your waste hauling; is that correct?

23 A. Same as always.

24 Q. Except the cookies?

25 A. I do get some boat rides out of it. I have some deep

0052

1 friendships from it, of knowledge. I've gained a lot of

2 things from this. Immense.

3 Q. But no money?

4 A. No money.

5 Q. So how do you recover the costs that you incur to

6 provide the service at the moment?

7 A. I pay for the service.

8 Q. And you don't have any plans to retroactively charge

9 your customers if the certificate is granted?

10 A. No.

11 Q. But you will begin charging them all the tariff rates if

12 the certificate were granted?

13 A. If it were granted, yes.

14 Q. So, let's look at your direct testimony, just the very

15 start, DS-1T at Page 5.

16 A. There.

17 Q. And would you read just the first sentence on Line 2?

18 A. I don't show lines, line counts on my page.

19 Q. Your copy of DS-1T doesn't have line numbers on the

20 margin?

21 A. Is this the tariff?

22 Q. No. DS-1T should be your direct testimony, the first

23 pre-filed Q and A from you.

24 A. Excuse me. I went to the wrong...

25 Q. It may be at the front of the binder, I don't know how

0053

1 yours is organized, but.

2 A. I got it.

3 Q. This will be the first notated for you.

4 A. Page 2?

5 Q. Page 5.

6 A. Okay.

7 Q. And would you please read the first sentence of Line 2?

8 A. I'm familiar with the law regarding collection of solid

9 waste. I--

10 Q. Just the first sentence. So, do you remember in

11 discovery that Commission Staff asked you to provide a copy

12 of Superior's plans to comply with UTC rules and

13 regulations, which you had referred to in your response

14 testimony?

15 A. Yes.

16 Q. And you responded that a consultant had prepared

17 administrative and financial procedures in compliance with

18 the UTC and Washington State regulations, didn't you?

19 A. I have.

20 Q. But you didn't provide those procedures as staff

21 requested, did you?

22 A. I reported to UTC staff that it was, in fact--it has

23 been completed.

24 Q. So let's look at DS-21X. You might--if you can find a

25 way to mark the first exhibit, you know, stick a Post-It or

0054

1 something in there. I can give you one.

2 A. Thank you. Look at that, we're working together.

3 Q. Yeah.

4 A. What was that again?

5 Q. So, DS-21X, Page 3.

6 A. Okay.

7 Q. And this is staff's data request to you. I'm looking at

8 No. 5, around the middle of the page there.

9 A. Yes.

10 Q. And staff asked: Please provide a copy of Superior's

11 plans to comply with UTC rules and regulations. Do you see

12 that?

13 A. I do.

14 Q. And after it says response, the second sentence in that

15 paragraph is: A consultant has prepared administrative and

16 financial procedures in compliance with the UTC and

17 Washington State regulations. But you didn't provide those

18 plans, did you?

19 A. I said looking at this, no.

20 Q. What consultant are you referring to in this response?

21 A. I would be referring to my mother.

22 Q. And would I be right to surmise that her name is

23 Caroline Stein?

24 A. You are correct.

25 Q. Did you pay anything for that service?

0055

1 A. I did not.

2 Q. Now turn the page to Page 4 of the same exhibit. And do

3 you see there's a bold underlined text that says, backup

4 action plans?

5 A. Yes.

6 Q. So it looks to me like there's a little less than a page

7 here that makes up Superior's backup action plan in case you

8 or your usual equipment is unable to provide Superior

9 service, correct?

10 A. It continues on to the next page, but I would say it's a

11 page--it's a full page.

12 Q. I'm not sure it does. You're saying under the heading,

13 Historical Success, that paragraph is part of the backup

14 action plan?

15 A. I am.

16 Q. All right. Could we agree that it's about a page?

17 A. I'd say one page, yes.

18 Q. Sure. And it says that Tammy Stein is the backup

19 driver; I understand she's your sister?

20 A. Yes.

21 Q. Does she have all the same driver training and

22 experience that you have?

23 A. She does for this.

24 Q. But not overall?

25 A. Not overall, no.

0056

1 Q. Thank you. And in discovery you told Waste Management

2 that any Superior employees will be paid in accordance with

3 federal and state laws; is that correct?

4 A. Yes, when--when employees are paid.

5 Q. And would Tammy Stein be an employee?

6 A. At some point.

7 Q. And would any other backup driver you might hire be an

8 employee?

9 A. At some point.

10 Q. But suppose the certificate were granted today and you

11 were unavailable to drive the route on the next scheduled

12 service day, would Tammy Stein then be the one to drive it?

13 A. Yes, she would.

14 Q. But not as an employee?

15 A. But not as an employee.

16 Q. Now let's look at DS-20X. And let me know when you're

17 there.

18 A. I'm there.

19 Q. Do you recognize what this is?

20 A. This would be Kitsap County--Kitsap County codes for

21 solid waste, recycling, solid waste collection. I am

22 familiar with this but I have not studied this, but it's

23 currently on my read list.

24 Q. Are you aware that state law requires UTC certificate

25 waste companies to comply with local sold waste ordinances?

0057

1 A. Yes.

2 Q. Mr. Stein, Superior's tariff doesn't propose to bill

3 customers separately for recycling service, does it?

4 A. It does not.

5 Q. So if you look at Page 3 of this exhibit, and find your

6 way to Section 040, Paragraph 1A, just a little way down the

7 page; do you see that?

8 A. What exhibit?

9 Q. The same exhibit, 20X.

10 A. 20X, Page 1.

11 Q. Page 3.

12 A. Page 3.

13 Q. Section 040, 1A. It requires single family customers to

14 receive and be billed for curbside recycling service; isn't

15 that correct?

16 A. It does.

17 Q. But your tariff doesn't make provision for that, does

18 it?

19 A. It doesn't. It was an oversight, when I wrote the

20 tariff.

21 Q. And to clarify, if we could look back at the previous

22 page, Page 2, the definition of curbside recycling near the

23 top.

24 A. Which page?

25 Q. Page 2.

0058

1 A. Page 2. Oh--I haven't requested hearing--I am kind of

2 deaf, so I apologize. I don't mean to be rude, why I

3 keep...

4 Q. By all means, let me know if you're having trouble

5 hearing me.

6 A. Okay, thank you. Page 2?

7 Q. Yes, Page 2, definition 6, near the top, Curbside

8 Recycling. If you could just read that to yourself briefly.

9 I just want to confirm that, in the context of the Kitsap

10 County code, the use of the word "curbside" is not used to

11 distinguish or separate, you know, recycling on the public

12 highway from drive-in or carry-out. It's about single

13 family residential. Does that look right? And, actually, I

14 misspoke, it's not specific to single family but it is about

15 residential garage without including or excluding drive-in

16 or carry-out.

17 A. Yeah... So what was the question?

18 Q. I'm just trying to clarify so that we're on the same

19 page, because some of the other sections talk about the

20 requirements for curbside recycling or garage service. But

21 there's nothing in the definition of curbside service that

22 says it doesn't apply to drive-in or carry-out.

23 A. Yes.

24 Q. Okay. Now let's go back to Page 3 and find our way down

25 to 1C in the middle of the page. And the last sentence of

0059

1 C, before all the small Roman numerals start, it says:

2 Material will be commingled in each collection container.

3 This is talking about recyclable material; do you see that?

4 A. Yes.

5 Q. But your customers have to sort their materials, their

6 recyclable materials, for you to be able to drop them off at

7 the Dickey Road collection facility; isn't that correct?

8 A. That is correct.

9 Q. So your service doesn't account for this requirement of

10 the Kitsap code?

11 A. I know all you want is just a short answer to this; I'd

12 love to explain it, but.

13 Q. Your counsel will have opportunity to flush it out.

14 A. Okay.

15 Q. So, no, your service doesn't conform to this

16 requirement?

17 A. It does not.

18 Q. Thank you. And you don't, yourself, sort commingled

19 materials; isn't that correct?

20 A. I do not sort, yeah.

21 Q. Thank you. So let's look a little--so let's look down

22 at 1E a little further down the page where it says,

23 Collection Containers?

24 A. Yes.

25 Q. It requires that customers be provided a minimum of one

0060

1 cart, specifically, for recycling, doesn't it? You can take

2 a minute to look at it.

3 A. Yes.

4 Q. But your proposed tariff doesn't have such a requirement

5 that each customer have one cart specific for recycling,

6 does it?

7 A. It does not.

8 Q. And, in fact, a number of your customers have only one

9 can for service of both recycling and garage; isn't that

10 true?

11 A. It is true.

12 Q. So your tariff doesn't meet this requirement in the

13 Kitsap code, correct?

14 A. I do recycle those cus--

15 Q. It's a yes or no question. Your tariff doesn't meet the

16 requirement of having a separate recycling can for each

17 customer, does it?

18 A. No.

19 Q. Thank you. Mr. Stein, do you offer compostable organics

20 collection?

21 A. No.

22 Q. Would you turn the page to Page 4 and find Section 3A on

23 that page about a third of the way down?

24 A. Okay.

25 Q. Now, have a look at that paragraph and it says, doesn't

0061

1 it, that compostable organics collection has to be available

2 to all single-family customers within a certain area. And

3 the details aren't here as to what that area is. It cross

4 references an exhibit that would show that area. But there

5 is an area within which a hauler has to offer a curbside

6 compostable organic collection; isn't that correct?

7 A. I see--I read it.

8 Q. And do you agree with me that within an area that's

9 defined by cross reference, haulers have to provide

10 compostable organic collection? Why don't I just read it.

11 A. Sure.

12 Q. Is it says, doesn't it: Curbside compostable organics

13 collection service will be available to all single family

14 and multifamily customers within the curbside collection

15 boundaries designated in Exhibit A. Did I read that

16 accurately?

17 A. You did.

18 Q. So I didn't include the exhibit in my hearing exhibit

19 and, frankly, I wish I had. Because that would make this

20 simpler. But, would you agree with me that this sys that

21 there is an area in Kitsap County within which the hauler

22 has to collect compostable organics?

23 A. I believe so.

24 Q. Do you know if any of your proposed territory is inside

25 that area?

0062

1 A. I'm currently still under review with all of this with

2 the Kitsap County code to see where my shortcomings were

3 when I wrote my tariff, so I am unaware that territory.

4 Q. So you don't know whether compostable organic collection

5 is required in part of your territory?

6 A. I do not.

7 Q. Would it surprise you to find out that compostable

8 organic collection is required in at least part of your

9 territory?

10 A. It would not.

11 Q. And, I'm sorry, just to clarify: The requirement isn't

12 within that area of compostable organic collection being

13 provided; it's that the hauler is required to offer it, just

14 for the record.

15 Mr. Stein, have you had any conversations with the

16 county about the style, color, and printing on your

17 collection containers?

18 A. I've not.

19 Q. Would you look down at Paragraph 4-A at the very bottom

20 of that page, Page 4.

21 It says a solid waste collection company has to

22 determine those features of its recycling containers along

23 with the division; isn't that correct?

24 A. Yes.

25 Q. And do you under the division to mean the Kitsap County

0063

1 solid waste division?

2 A. Yes.

3 Q. Thank you. So, you haven't done what this paragraph

4 requires; isn't that correct?

5 A. Currently, the cans are black.

6 Q. So that's a no?

7 A. That's a no.

8 Q. You have not?

9 A. I have not.

10 Q. So on Page 5 about halfway down is Section 050, and do

11 you see Paragraph 1A?

12 A. Yes.

13 Q. It requires solid waste companies to file rates that

14 encourage recycling and compostable organics collection,

15 doesn't it?

16 A. Yes.

17 Q. Could you please explain how your proposed tariff

18 encourages those services?

19 A. How my rates?

20 Q. Your tariff.

21 A. Oh, my tariff, encourages through the rate?

22 Q. I don't read this as being specific to the rate.

23 Oh, no, I'm sorry, it is. Yes. How does the rate

24 structure encourage recycling and compostable organic

25 collection?

0064

1 A. I would call it more as the service rather than the

2 rate. Service is superior, the service sells itself. How

3 the rate would?

4 Q. So there's nothing in the rate structure that encourages

5 recycling, is there?

6 A. It's a good price.

7 Q. The price in your proposed tariff is the same for

8 garbage and recycling collection; isn't that right?

9 A. Correct.

10 Q. So if I'm a customer, wouldn't I be indifferent to

11 whether I throw my aluminum cans in the garbage or the

12 recycling, from a rate perspective?

13 A. From a rate perspective.

14 Q. So your rate structure doesn't encourage recycling; is

15 that correct?

16 A. No.

17 Q. Thank you. And below that, Paragraph b, with small

18 Roman numeral 1, that says: The recycling rates in the

19 tariff must distribute the cost of single-family curbside

20 recycling among all single-family garbage collection

21 services rate payers, doesn't it?

22 A. It does.

23 Q. Can you please explain how your proposed rates do that?

24 A. Currently, the proposed rates don't meet.

25 Q. To clarify, they don't meet that requirement?

0065

1 A. They don't meet the current requirement.

2 Q. Thank you.

3 MR. GARG: Your client, my client will stipulate

4 that he's currently lobbying the Kitsap County Court?

5 JUDGE PEARSON: I'm sorry, can you?

6 MR. GARG: My client can stipulate that he's

7 currently lobbying the Kitsap County Court, if we can go to

8 move on?

9 JUDGE PEARSON: Is that acceptable to you,

10 Mr. Stanovsky?

11 MR. STANOVSKY: Yes, for the record I had--well,

12 one moment, let me confer.

13 (Counsel confer briefly.)

14 MR. STANOVSKY: Actually, Your Honor, it's about

15 four or five more questions on this exhibit. I don't think

16 they'll take that long; I'd like to get through them. I do

17 believe it's relevant to fitness for service. and Mr. Stein

18 testified that he's familiar with the laws and regulations

19 governing the service.

20 JUDGE PEARSON: Okay, so maybe you can do it a

21 little bit more quickly, just hit them as bullet points.

22 MR. STANOVSKY: Okay.

23 Mr. Stanovsky Continuing:

24 Q. So Paragraph b, small Roman 3, requires that the

25 customers have the choice of a 35- or a 64-gallon recycling

0066

1 cart for the same price. Do you see that?

2 A. Yes.

3 Q. And your tariff doesn't meet that requirement, does it?

4 A. It does not.

5 Q. And, Paragraph D, which starts at the bottom of the

6 page, it rolls over to the next page and there's several

7 paragraphs of requirements for compostable organics. But we

8 established that you don't offer that service, correct?

9 A. Correct.

10 Q. So you don't meet any of those requirements if, in fact,

11 that service is required as an offering in your territory,

12 correct?

13 A. Under the correct tariff, that is correct.

14 Q. Your proposed tariff defines a can as no more than 45

15 gallons; isn't that correct?

16 A. Yes.

17 Q. And you offer service only in cans, correct?

18 A. Correct.

19 Q. And all your customers are receiving recycling service;

20 is that correct?

21 A. Correct.

22 Q. Will you be buying recycling carts for each of your

23 customers that meet the requirements of the Kitsap code if

24 you're granted a certificate?

25 A. With that, would you mean that to be color, size, all of

0067

1 which?

2 Q. Volume?

3 A. Volume. Yes.

4 Q. That cost wouldn't be reflected in the cost information

5 you submitted with your application, would it?

6 A. Under the current tariff that I submitted, no, it does

7 not reflect.

8 Q. Well, and not just the tariff but also the supporting

9 financial information?

10 A. That would be correct.

11 Q. Do you know how much it will cost to provide a compliant

12 cart for each of your customers?

13 A. They're pretty expensive.

14 Q. About how much per cart?

15 A. I believe the carts... I believe that they were $50.00,

16 or somewhere in there, a piece. Somewhere in there.

17 Q. And roughly 50 customers, correct?

18 A. Uh-huh.

19 Q. So you'd be talking about, if I'm doing my math right,

20 around $2,500.00?

21 A. Without doing the math myself, good enough.

22 MR. STANOVSKY: You can clarify, but I think it's

23 fair for the witness to say subject to check and then...

24 JUDGE PEARSON: I can do the math, it's $2,500.

25 MR. STANOVSKY: Fair enough.

0068

1 Ms. Stanovsky Continuing:

2 Q. And if, in fact, you're required to offer compostable

3 organics that would require purchase of some additional

4 carts--

5 A. Two.

6 Q. --wouldn't it?

7 A. It would.

8 Q. And those cost also are not reflected in your--

9 A. Current tariff, correct.

10 Q. --or financial--

11 A. Or financial, correct.

12 Q. Thank you. Okay. So that's Kitsap County. In

13 discovery you identified that Superior has secured an office

14 space at the Seabeck general store, correct?

15 A. Correct.

16 Q. Who will be staffing that office?

17 A. That would be staffed by Seabeck General Store

18 employees.

19 Q. And the hours that you gave for that business office are

20 Monday through Friday, 8:00 a.m. to 5:00 p.m. with only

21 three holidays; on Christmas Eve, Christmas Day, and New

22 Year's Day, correct?

23 A. Correct.

24 Q. So if I come in at 4:00 p.m. on Thanksgiving Day,

25 Superior's office will be open and staffed by an employee at

0069

1 Seabeck Landing General Store; is that correct?

2 A. Thank you for pointing that out, it will not be.

3 Q. It will not be open on Thanksgiving?

4 A. It will not be.

5 Q. Are there any other holidays you'd like to add to the

6 list?

7 A. No.

8 Q. So if I come in the day after Thanksgiving at 4:00 p.m.?

9 A. Yes.

10 Q. And Labor Day?

11 A. Yes.

12 Q. And the staffing at all times will be by the employees

13 of the Seabeck Landing General Store?

14 A. Correct.

15 Q. And what is those individuals' training and complying

16 with a Commission's customer service requirements?

17 A. When they come in and they ask about Superior Waste &

18 Recycle, they're pointed to a bulletin board where all the

19 information that is required pursuant to, either it's a WAC

20 or an RCW--I can't state it off the top of my head--that

21 requires me to.

22 Q. And is there a physical space that will be set apart as

23 the--

24 A. Yes.

25 Q. --Superior office in that building?

0070

1 A. Yes.

2 Q. But it won't be staffed as Superior office during all

3 those times?

4 A. It will be.

5 Q. So an employee of the Seabeck Landing General Store will

6 be in that space?

7 A. Correct.

8 Q. Can you describe that space?

9 A. Warm, friendly, good people.

10 Q. Does it have walls and a door that separate it from the

11 rest of the store?

12 A. It can.

13 Q. But it doesn't at the moment?

14 A. It has both abilities.

15 THE REPORTER: Both of those, you said?

16 THE WITNESS: Correct.

17 MR. STANOVSKY: I'm sorry, I thought in your

18 correction you said, both of those. But I understood

19 Mr. Stein to say, it can have both abilities.

20 A. Yes.

21 THE REPORTER: When we get to a good stopping

22 point, could we take a break, please?

23 JUDGE PEARSON: Absolutely. Mr. Stanovsky, how

24 much--many more questions do you have?

25 MR. STANOVSKY: Enough more that we could take a

0071

1 break now. I'm through most of them but there is another

2 chunk.

3 JUDGE PEARSON: All right. Well, let's go ahead

4 and be in recess. Let's take 10 minutes--

5 MR. STANOVSKY: Sure.

6 JUDGE PEARSON: --and reconvene again here at

7 10:45.

8 MR. STANOVSKY: Thank you.

9 THE REPORTER: Thank you.

10 (Recess taken from 10:17 to 10:29 a.m.)

11 JUDGE PEARSON: And we will be back on the record

12 following a brief recess and, Mr. Stanovsky, will resume

13 your questioning where we left off.

14 MR. STANOVSKY: Thank you.

15 CROSS-EXAMINATION (Continued)

16 BY MR. STANOVSKY:

17 Q. So, Mr. Stein, we were talking about the office space

18 that Superior has secured at Seabeck Landing General Store,

19 and you indicated that the office will be staffed by the

20 store's employees.

21 A. Correct.

22 Q. How much are you paying them?

23 A. I'm not.

24 Q. And Superior is not I should ask?

25 A. Correct.

0072

1 Q. How much is Superior paying for the office space?

2 A. Zero.

3 Q. Is there any expectation it will ever have to pay for

4 office space there?

5 A. At some point I imagine it would, the store owner.

6 Q. But there's no indication of any of that in your

7 financial information submitted with your application,

8 correct?

9 A. It's been provided. I have a office location.

10 Q. But there's no costs associated with that in your

11 financial information?

12 A. Nor is there a cost for having it.

13 Q. At the moment. So, in your application--I'm going to

14 talk about your project--your proposed territory boundary

15 now. In your application it says at one point that the

16 boundary line runs from the intersection of Nolita and

17 Teague Roads, quote, eastward as the crow flies to the dead

18 end of Lewis Road West; from that point, as the crow flies

19 to the Chico Way Highway 3 cross point. Does that sound

20 right? We can look at it, if you prefer.

21 A. That's not what's on record for my tariff.

22 Q. Well, okay, let's look at it then. This is exhibit

23 DS-9X, Page 2. And let me if know when you're there.

24 JUDGE PEARSON: I'm sorry, did you say 9X?

25 MR. STANOVSKY: 9X. Yes.

0073

1 A. Yes.

2 Q. And at the bottom of the page, the very last sentence

3 says, please refer to map. But just before that, it says--

4 to be clear this is only a part of the boundary as defined

5 in your proposed tariff, but, the second to last sentence

6 says: From natural border of Hood Canal, Nolita Road

7 Northwest and Teague Road Northwest merger point, running

8 eastward as the crow flies to the dead end of Lewis Road

9 West; from that point as the crow flies to the Chico Way

10 Highway 3 cross point. Correct?

11 A. That is correct.

12 Q. So those lines, as the crow flies, what would you do if

13 you received a service request from a customer who was close

14 to that line?

15 A. I would have to refer to--refer to my map.

16 Q. And that's--that kind of question is precisely why the

17 Commissions has detailed mapping requirements; is that fair?

18 A. Fair.

19 Q. And do you understand that a map that meets the

20 Commission's requirements is required as part of a

21 certificate application?

22 A. Yes.

23 Q. And, in fact, it says that at the top of the very next

24 page on the Application Form, doesn't it?

25 A. It does.

0074

1 Q. But you haven't filed a map that meets Commission

2 requirements, have you?

3 A. It was accepted with the UTC with the Commission Staff,

4 my map was, along with the explanation.

5 Q. Is it your understanding that the map you submitted

6 meets the requirements and the Commission's regulations?

7 A. It was accepted at the UTC.

8 Q. But you don't know if it meets the Commission's

9 regulations? The regulation is cited there at the top of

10 Page 3.

11 A. I don't believe it conforms to that WAC code.

12 Q. Thank you. So what would you do if you received a

13 service request from someone outside your service territory?

14 A. I would decline them and tell them to go with whomever

15 the provider was.

16 Q. Mr. Stein, I understand you have a customer on Kings Way

17 West; is that right?

18 A. I do. Hank.

19 Q. And I understand that customer's location is near Tahuya

20 Lake; is that right?

21 A. That is correct.

22 Q. Would you turn to Exhibit DS-11X? And this is the map

23 submitted with your application, correct?

24 A. Correct.

25 Q. Could you please indicate on this map where Kings Way is

0075

1 located?

2 A. (Pointing.) Approximately.

3 Q. So could you--I don't know that there's a good way to--

4 A. (Pointing.) Approximately.

5 Q. And did I see correctly that your fingertip was outside

6 the area shaded as Superior's proposed territory?

7 A. You did.

8 Q. Thank you. Can you indicate Tahuya Lake is on the map?

9 A. (Pointing.)

10 Q. Also outside the service territory, correct?

11 A. Correct.

12 Q. But Tahuya Lake doesn't actually show up on the map?

13 A. I know where it's approximately at.

14 Q. But the map--this question is now about the map.

15 A. Yes.

16 Q. It doesn't show Tahuya Lake, does it?

17 A. It does not.

18 Q. Or Kings Way?

19 A. No.

20 Q. You said previously you would refer to the map if got a

21 customer request and you weren't sure if the customer was

22 inside or outside the territory; but, it seems like a number

23 of features that might be useful for that determination are

24 not on this map; isn't that fair?

25 A. Very.

0076

1 Q. Would you turn, please--you might need a different

2 binder for this--but if you find Mr. Weinstein's testimony

3 for Waste Management and find Exhibit MAW-3. Actually,

4 never mind, I don't think we need to do that; I'll just save

5 the time.

6 Do you understand the service territory boundaries and

7 the Commission's G Certificates to be guidelines or

8 suggestions?

9 A. No.

10 Q. But you currently--

11 A. Guidelines.

12 Q. Say again?

13 A. The territory boundaries?

14 Q. Let me say it this way: The territory boundaries and

15 the Commission's G Certificates are requirements, they're

16 not suggestions or recommendations; is that your

17 understanding?

18 A. Yes.

19 Q. But you currently have a customer that's outside your

20 proposed service territory, correct?

21 A. I do.

22 Q. Mr. Stein, when you were doing business as Seabeck, did

23 you have a business license from the State?

24 A. As Seabeck?

25 Q. Uh-huh.

0077

1 A. No.

2 Q. Did you register with the State Department of Revenue

3 for a tax registration endorsement?

4 A. No.

5 Q. Did you pay any state taxes for your business operation?

6 A. No.

7 Q. Did you collect any solid waste collection taxes from

8 your customers as required by WAC 458.20.250?

9 A. No.

10 Q. Did you pay the Business and Occupation tax, as required

11 from solid waste companies by WAC 458.21.018?

12 A. No.

13 Q. Did you know that solid waste companies are subject to

14 those taxes?

15 A. For those that collect money, yes.

16 Q. And, again, your testimony is that you've never

17 collected any money for your services?

18 A. Correct.

19 Q. Is it your understanding that no tax would be due on

20 valuable compensation other than money?

21 A. Say that again, please?

22 Q. Is it your understanding that no tax would be due for

23 valuable compensation received in a form other than money?

24 A. To clarify, you mean like the trade of goods or--

25 Q. Sure.

0078

1 A. --or tangible goods or something?

2 Q. For example.

3 A. I would--I would imagine that the State of Washington

4 would probably put a tax on that.

5 Q. Mr. Stein, are you aware that tax-paying entities in

6 Washington are generally required to maintain their

7 financial records for five years and keep them open for

8 inspection by the Department of Revenue?

9 A. Yes.

10 Q. And would it surprise you if unregistered businesses are

11 also liable for state business taxes?

12 A. Yes.

13 Q. It would surprise you if an--

14 A. Oh.

15 Q. Just to clarify.

16 A. Yeah.

17 Q. I may have worded it confusingly. Let me start over.

18 Would you expect that an unregistered business would be

19 liable for state business taxes?

20 A. If somebody was operating for compensation and not

21 paying tax and not registered and things like that, yeah, I

22 would. I would expect them--

23 Q. You would expect that they would be required to pay tax

24 even though they hadn't registered?

25 A. Yes.

0079

1 Q. You have no records of how much you billed, or collected

2 for your services, prior to the Cease and Desist Order,

3 correct?

4 A. I have no records at all.

5 Q. You don't have any records of your disposal tickets or

6 costs that you paid to dispose of your customers' wastes,

7 correct?

8 A. Correct.

9 Q. How did you destroy all those records?

10 A. Threw them away.

11 Q. In the garage or the recycle?

12 A. Cute.

13 MR. STANOVSKY: Withdrawn.

14 A. I believe garbage.

15 Q. Is it possible that those records contained evidence of

16 other violations that the Commission didn't find you guilty

17 of in the Cease and Desist Order last year?

18 A. I don't believe so. The chief reason that I was brought

19 in for was soliciting services.

20 Q. My understanding from the order was that it was for two

21 specific instances, one being on the phone with the UTC

22 staff investigator, and the other being the flier that the

23 UTC received in 2017?

24 A. Jason Hoxit, yes, believe so.

25 Q. And so there would have been no evidence other than

0080

1 those two specific instances? There were no other fliers in

2 the records you destroyed?

3 A. No other fliers?

4 Q. Fliers or advertisements?

5 A. I threw everything away.

6 Q. So you don't know?

7 A. I just, yeah, and I...

8 Q. So if you don't know isn't it possible that the records

9 you destroyed contained evidence of other violations that

10 the Commission didn't cite you for?

11 A. I don't believe so.

12 Q. But you don't know?

13 A. I don't know.

14 Q. So you can't rule it out?

15 A. I can't rule it out.

16 Q. Thank you. Okay, Mr. Stein, we talked through some

17 county requirements, State requirements. Can we please turn

18 to page--Exhibit DS-9X. This is your application again, and

19 go to Page 5. And let me know when you're there.

20 A. Okay.

21 Q. Do you see Section 8 at the bottom, Declaration of

22 Applicant?

23 A. Yes.

24 Q. And could you please read the second sentence beginning,

25 as the applicant?

0081

1 A. As the applicant for a solid waste collections company

2 certificate, I understand the responsibilities of a solid

3 waste collection company, and I am in compliance with all

4 local, State, and federal regulations governing business in

5 the State of Washington.

6 Q. And below you signed that certificate when you submitted

7 your application, correct?

8 A. Correct.

9 Q. Thank you. One other question about the office space at

10 the general store there. Do you have an agreement that

11 gives you the right to use that space or is that just

12 provided on sort of an at-will basis? Do you have a lease

13 or anything like that?

14 A. No.

15 Q. Mr. Stein, in discovery and in your financial

16 information with your application it looks like you expect a

17 business expense of $300.00 for accounting services; is that

18 right?

19 A. Yes.

20 Q. And what's the basis for that assumption?

21 A. The basis for that was, that was to include office

22 supplies. Also, if there was a program of sorts for the

23 USOA.

24 Q. You mean like software?

25 A. Yeah. Like a Quickbooks or something like that.

0082

1 Q. So not for any professional services by anyone other

2 than yourself?

3 A. Professional services as well.

4 Q. As well?

5 A. Yeah.

6 Q. So how much of the $300.00 would you expect would go

7 toward professional services?

8 A. Zero.

9 Q. And in the financial information that you submitted with

10 your application and in your follow-up conversation with

11 staff, did you include any estimate or provision for legal

12 costs?

13 A. I did not.

14 Q. Thank you. So going back briefly to the recycling

15 service, you drop-off your customers' recyclable materials

16 primarily at the Dickey Road facility, correct?

17 A. I do.

18 Q. And that facility doesn't charge for recycling drop-off,

19 does it?

20 A. Correct, it does not.

21 Q. So your rates and your financial model don't include any

22 costs of hauling and processing recyclables from the time

23 you drop them off, correct?

24 A. No, it's not--

25 Q. Sorry?

0083

1 A. --true. It's not true.

2 Q. So could you please tell us how your rates and

3 your--well, let's start with your rates. How do your rates

4 include the cost of hauling and processing recyclables after

5 you drop them off at the Dickey Road facility?

6 A. So the idea around this is, currently the way that I

7 operate is, I have to utilize the Dickey Road or Olympic

8 View transfer station as my recyclable drop off point. With

9 the certificate then, hopefully, I would be allowed to

10 drop-off the recyclables in commingled, like Waste

11 Management does, or Waste Connections, or any other company

12 out there. And those weights were taken into account when

13 the rates were made.

14 Q. Sorry, what "weights"?

15 A. Correct, weights.

16 Q. What weights were taken into account?

17 A. The weights of recyclables. Because it doesn't charge

18 by volume, to the best of my understanding, at the Olympic

19 View. I haven't--I haven't had the ability to really talk

20 with too many people at the scale house so I made an inquiry

21 once about dropping off commingled there, and it was

22 rejected. So it forced my hand to go to the Dickey Road or

23 to Olympic View in a segregated, which is not ideal.

24 Q. So just to clarify. You're saying that your rates were

25 set with the assumption that you would have to pay to

0084

1 dispose of recyclables?

2 A. Correct.

3 Q. Could you please look at DS-10X, Page 5. This is your

4 business plan. Are you there?

5 A. I am.

6 Q. Do you see halfway down it says, dump fees?

7 A. Yes.

8 Q. And just for the record at the top it says Business

9 Expenses Annually. Can you say the number that you estimate

10 annually for solid waste dump fees? About halfway down.

11 A. Dump fees--yes, got it. Yes, that would be under--

12 these are projections is what these are. So I'm waiting to

13 see that final number, but I believe that my--so the total

14 dump fees of $3,900.00. There was recyclables cost that was

15 built into that. I don't know exactly what that would be.

16 It's kind of...

17 Q. So the blank line next to recyclables doesn't indicate

18 no cost to dispose of recyclables?

19 A. No. It's yet to be seen.

20 Q. So, can you tell us how you work the cost of--the

21 anticipated cost of disposing of recyclables into your

22 rates?

23 A. My understanding is that recyclables are charged by

24 weight. They're the same as solid waste. So I took what I

25 projected to be the weight of the recyclables and then I

0085

1 added it to the cost of the solid waste dump fee. Does that

2 make sense?

3 Q. Assuming the same cost per ton?

4 A. No. I figured it would probably be a reduced rate, so.

5 I had figured that recyclables probably didn't cost as much.

6 And that's part of...

7 Q. Okay. And how do those dump fees translate into your

8 proposed tariff rates?

9 A. So the proposed tariff rates go with the cost, also all

10 the costs associated. And--okay, so your question was: Is

11 how does my recyclables come into play; is that correct?

12 Q. Well, I understand your estimate for garbage and

13 recyclables is all lumped together.

14 A. Correct.

15 Q. But, that being so, how do you allocate that anticipated

16 cost to your proposed rates? More, specifically, to your

17 customers to generate the proposed rates?

18 A. So the idea around the charge is, because of the

19 structure of the business itself, because the driveways are

20 tight, they're rough, they're hard to get to. My vehicle in

21 which I've chosen to use, which is required to use something

22 very similar to it, it doesn't have the ability of

23 squashing, you know, compaction. So space is a value, you

24 know?

25 Q. Did you use any kind of a formula or allocation

0086

1 methodology to figure out how to distribute those costs into

2 the rates?

3 A. I projected weight. That's--yeah, the weight of the

4 recyclables.

5 Q. Are you familiar with the concept of a revenue

6 requirement?

7 A. That sounds like something that might fall under the

8 USOA.

9 Q. But, it sounds like not; is that correct?

10 A. What's that?

11 Q. You're not familiar with the concept of a revenue

12 requirement?

13 A. No.

14 MR. STANOVSKY: One moment, Your Honor.

15 I have no further questions, Your Honor.

16 JUDGE PEARSON: Mr. Garg, do you have any redirect

17 for your client?

18 MR. GARG: I do, Your Honor.

19

20 REDIRECT EXAMINATION

21

22 BY MR. GARG:

23 Q. Earlier in your testimony, Mr. Stein, you mentioned that

24 your specialized service is not based on the vehicle, which

25 can be bought by anyone, what is your specialized service

0087

1 based on?

2 A. It's based on need. Need of the customers.

3 Q. Can you further describe what makes it specialized, why

4 Waste Management is unable to provide the service?

5 A. Why is Waste Management not--

6 Q. What makes your service specialized, why Waste

7 Management is unable to provide it?

8 MR. STANOVSKY: Objection, Your Honor. Compound.

9 JUDGE PEARSON: Do you want to separate questions?

10 Mr. Garg Continuing:

11 Q. What makes your service different than the service Waste

12 Management is currently providing?

13 A. There's a laundry list of reasons why. The biggest and

14 foremost reason would be that my service is outside of what

15 Waste Management will do; they won't go past one mile; they

16 won't go past one hundred feet carry-out or pack-in.

17 MR. STANOVSKY: Your Honor, objection. There was

18 no cross-examination about Waste Management's services.

19 JUDGE PEARSON: So, I think he's just trying to

20 respond to--you did ask questions about the specialized

21 nature of the service, so he's responding to that. I'm

22 going to allow it.

23 Mr. Garg Continuing:

24 Q. Go ahead.

25 A. So the service that I provide to this customer base are

0088

1 cut off. They don't have any other resource. I'm the only

2 guy; I'm the only one. And it's tough.

3 Q. Waste Management previously mentioned that if you were

4 to be granted a certificate, that you would also be taking

5 over their customers that they currently serve that they

6 provide a drive-in service to. Would you be open to taking

7 on 1 to 53 customers if you were granted a certificate?

8 MR. STANOVSKY: Your Honor, objection. That

9 misstates the record. Waste Management did not represent

10 that that is what would happen. We were trying to clarify

11 Mr. Stein's understanding of the results in this case. But

12 by no means does Waste Management concede that granting

13 Mr. Stein a certificate would necessitate Waste Management

14 losing the right to provide that same service.

15 JUDGE PEARSON: I agree that was the nature of your

16 question.

17 MR. STANOVSKY: Thank you.

18 JUDGE PEARSON: So I'll sustain the objection and--

19 MR. STANOVSKY: Thank you.

20 MR. GARG: I'll rephrase. Actually, let's move on.

21 Mr. Garg Continuing:

22 Q. Waste Management bought up the Cease and Desist Order

23 from Seabeck; what was the conclusion at the end of that

24 investigation?

25 A. The conclusion of that investigation was that I was

0089

1 offering services through means of solicitation, I

2 guess--advertisement. I pleaded guilty to it and was found

3 guilty.

4 Q. You were found guilty? Were there any penalties

5 assessed?

6 A. There was.

7 Q. Did pay the penalties?

8 A. I did.

9 Q. After the conclusion of the investigation, is there

10 anything left from the investigation that--any order that

11 you need to abide by?

12 A. Yes. I need to not violate anymore UTC laws.

13 Q. At the end of the investigation you filed this

14 application with UTC; what was the purpose of filing this

15 application?

16 A. The purpose of filing this application is exactly what I

17 said in open court; I said at the end of that--Laura

18 Chartoff was the sitting judge on that. And I told The

19 Court, and open, and Harry was there and I said, I will be

20 filing an application to be a solid waste company for the

21 people that you see behind me, at that time--it was a

22 customer base--to give them the service.

23 Q. Waste Management brought up a data request in which they

24 asked for customer information and you made an objection

25 based on a WAC code; did you actually provide the

0090

1 information to Waste Management?

2 A. Which one was that?

3 Q. It was a question on the list that Waste Management

4 asked for.

5 A. Oh.

6 Q. While you made an objection, did you actually end of

7 providing them the list that they asked for?

8 A. I did.

9 Q. Let's talk about the Kitsap Sun article that Waste

10 Management brought up. In the article, you mentioned--or,

11 the writer mentioned, that you were making a protest against

12 the UTC; was that protest against UTC or was that protest

13 against another company?

14 A. In a fit of emotion it was--it was a protest against

15 Waste Management; it was a protest against how can this be?

16 It was a protest against how is this possible? How is this

17 happening? How can all of these people be so stranded and

18 there I am to help them out and I'm just cut down--told to

19 cease and desist. It was my protest against that.

20 Q. To clarify, what are your feelings toward the UTC?

21 A. Favorable. I think they're--I called Jason Hoxit on the

22 phone, maybe a week after receiving the Cease and Desist

23 Order, and I just leveled with him. They don't--I just

24 talked to him just like a human being, and he talked to me

25 just like a human being. And I've had nothing but

0091

1 professional interactions with the UTC. Michael Dotson,

2 Scott Sevall, even Laura Chartoff who found me guilty and

3 fined me--everyone was just doing their job and I think that

4 they're doing it in a professional manner.

5 Q. Waste management brought up DS-16X, some fliers that

6 mentioned that you would send a monthly invoice. Do you

7 believe there's a difference in advertising something and

8 actually doing something?

9 A. Very much.

10 Q. So to my understanding, no invoices were ever sent, even

11 though it was mentioned on the flier?

12 A. Correct. It's hard--it's hard to reach out and beta

13 test something to go out there and see how deep the need is.

14 Without putting a face on it, you can't have some guy just

15 come to your door in a dirty pair of jeans, you know?

16 (Knocked twice on the table with hand) Hi, you know? I'm

17 here to pick up your garage, you know, and I'm going to do

18 is for free. It just doesn't work that way, you know? So

19 there's a representation of what I wanted to get across to

20 the people in my community, like, hey, you know, if you--I

21 would assume that you have this problem because, you know,

22 you are--you're up a road.

23 At that time, I didn't even know the UTC even existed.

24 So, I was just, started going up all these roads--and

25 they're everywhere. These arterial roads are just--they're

0092

1 everywhere. And they're steep and--and, yeah. So I wanted

2 to represent something professional, something that they

3 could see that's tangible that they could--like, oh. You

4 know, there's a difference; there's a different choice.

5 Q. All right. Let's move on to the destruction of records

6 of Seabeck that Waste Management brought up.

7 Is it fair to say that your understanding of Cease and

8 Desist Order was to destroy the records?

9 A. Yes.

10 Q. Regardless of the what the language of the actual order

11 says, your mindset at the time required--

12 MR. STANOVSKY: Objection, Your Honor, leading.

13 Q. What was your mind set at the time when you read the

14 Cease and Desist Order?

15 A. I cried like a baby. It was terrible. It was horrible.

16 I threw it all away. I was--and then I was going to go pick

17 up all the garage cans and all of this and... It was

18 terrible. It was years and years and years of work. All my

19 notes. It was horrible.

20 Q. Waste Management brought up Exhibit DS-21X where you

21 mentioned Caroline Stein, your mother, was the consultant

22 that prepared the plans; does your mother have any

23 experience preparing such documents?

24 A. She does.

25 Q. Can you tell me in what capacity?

0093

1 A. She has a business degree. She has multiple bachelor's

2 degrees. And I rely on her for clear understanding of what

3 it is, that part of the administration. So the USOA, it's

4 an 89-page document. Basically it's a whole lot of

5 instructions to fill out two pages. And that's a lot of

6 instructions. So her credentials and her background is key

7 in this. Also to include, she's been an advocate for

8 elderly and disabled people for quite a many decades. And

9 yeah, it was a perfect fit. It was completely perfect.

10 Q. Has she done something similar for other businesses?

11 A. She has.

12 Q. Can you give us a few examples?

13 A. Some of the examples would be Power of Attorneys over

14 people that are at risk. That would be quite a number.

15 Q. And is it our understanding that your mother will also

16 be handling the accounting?

17 A. She will.

18 Q. Waste Management brought up quite a few Kitsap County

19 codes that you're currently not abiding by. Do you have

20 plans to abide by them once you are granted a certificate?

21 A. Yes. It is within--it is Superior's plan to abide by

22 every--every single county code, state code, UTC code, and

23 to include federal code.

24 Q. Waste Management also brought up the employees at the

25 general store and lack of training; will you be providing

0094

1 any training based on the UTC regulations?

2 A. Yes.

3 Q. Waste Management brought up your map and post territory.

4 You mentioned your map you submitted--your map was submitted

5 to the UTC?

6 A. Yes.

7 Q. Did UTC make any objections?

8 A. No.

9 Q. Based of that information, did you have any concern that

10 UTC would not approve the map, or the map was not following

11 regulations?

12 A. No, not at that--at that moment.

13 Q. Waste Management also brought up a customer that's

14 outside the area that you've highlighted on the map, can you

15 explain why there's a customer outside that area?

16 A. It's unfortunate. I would love to save everybody in

17 Kitsap County from--from what Waste Management won't do.

18 I'm not saying Waste Management is a bad company; I'm saying

19 Waste Management--they don't provide what it is I provide.

20 So, by doing so, I've stepped in and I have to determine

21 what it is with inside a zone that I can handle responsibly.

22 I can't bite off more than I can chew. I would love to take

23 on the whole county--I would love to--but I can't do that.

24 But what I can do is the zone inside, and I hope that given

25 a certificate from the UTC, that Waste Management would step

0095

1 up to that one customer on the outside and provide service.

2 Q. So if you were granted a certificate, you're willing to

3 stay within your territory?

4 A. Yes.

5 Q. Let's go back to destruction of records prior--for

6 Seabeck. Waste Management brought up that there might be

7 some other violation that may have occurred that you're

8 unaware of. Did you have a chance to provide those records

9 to UTC while the investigation was going forward?

10 A. No.

11 Q. What information did the UTC look at when they

12 determined the penalties for your infractions?

13 A. What did they look at? They looked at exhibits

14 for--there was an exhibit for a flier. And there was a

15 phone call, I believe.

16 Q. Do you believe that if there were more infractions at

17 that time, UTC would have found them?

18 A. No.

19 Q. One last question: You mentioned you're not--in fact,

20 Waste Management brought up that you're currently not

21 charging a separate tariff for recycling. Waste Management

22 also brought up the fact that you are required to provide a

23 rate that encourages recycling; do you not believe that not

24 charging for recycling is encouraging people to recycle?

25 MR. STANOVSKY: Objection, Your Honor, I didn't

0096

1 understand the question. I think there were a couple not's.

2 JUDGE PEARSON: I think I understand it. You're

3 asking whether not charging for recycling either encourages

4 or discourages people from recycling.

5 MR. STANOVSKY: I'm sorry, could you--

6 MR. GARG: Yes. I'll--

7 MR. STANOVSKY: Thank you.

8 Mr. Garg Continuing:

9 Q. So you mentioned in your testimony to Waste Management

10 that you were currently not charging a tariff for recycling.

11 Waste Management also mentioned a specific Kitsap County

12 code that requires you to encourage recycling via your rate.

13 Not charging for recycling, do you believe that makes the

14 Kitsap County code for encouraging people to recycle?

15 MR. STANOVSKY: Objection. Your Honor, that

16 misstates the evidence. The tariff does not show that he

17 does not charge for recycling; it shows that he charges the

18 same for recycling and garbage.

19 JUDGE PEARSON: Okay. Sustained. Do you want to

20 try to rephrase your question? I know what you're getting

21 at. I understand.

22 MR. GARG: No, Your Honor.

23 JUDGE PEARSON: You're good?

24 MR. GARG: I'm good.

25 JUDGE PEARSON: Okay.

0097

1 MR. GARG: No further questions.

2 MR. STANOVSKY: I'm not sure the order here, if the

3 staff should go or--I would move for a very brief recross.

4 JUDGE PEARSON: What do you want to recross about?

5 MR. STANOVSKY: One, about the discovery response

6 and whether information was actually provided. And one

7 question about the UTC's response to the map that was filed.

8 JUDGE PEARSON: Okay, I don't believe that answers

9 to those questions will be helpful to me at this point.

10 MR. STANOVSKY: Fair enough.

11 JUDGE PEARSON: So let's just move on at this

12 point. And, Mr. Fukano, do you have questions for

13 Mr. Stein?

14 MR. FUKANO: A very few questions.

15

16 CROSS-EXAMINATION

17

18 BY MR. FUKANO:

19 Q. Mr. Stein, as of today in the capacity of Superior,

20 there's been some discussion as to whether or not the

21 Commission WACs apply to you. Do you believe that the

22 Commission WACs applied to you prior to receiving a

23 certificate as Superior?

24 A. I do.

25 Q. So you do?

0098

1 A. If I violate, I'm going to hear from you guys. That's

2 what that means. I do.

3 Q. And there have been some questions regarding your

4 compensation while you were operating as Seabeck. Were you

5 receiving compensation while you were operating as Seabeck?

6 A. No.

7 Q. So you would say that you were receiving no compensation

8 while you were operating with Seabeck?

9 A. How do you define compensation?

10 Q. As broadly as possible.

11 A. I'm sorry.

12 Q. As broadly as possible.

13 A. I didn't receive any tangible goods by any means or

14 money, but I did--I mean, I received cookies.

15 Q. While you were operating at Seabeck did you advertise

16 rates for services to potential new customers?

17 A. Yes.

18 Q. So you would have collected compensation from those

19 customers?

20 A. No. Well, so yes, that was the plan. The plan was to

21 move and have a business license and form an LLC and all

22 these things. These were the goals that I was moving

23 towards. I was still in the beta test of figuring out how

24 to operate this solid waste company.

25 Q. Okay. During your redirect you discussed your business

0099

1 plan; did you state how long that plan is? I might have

2 misheard.

3 A. How long the business plan is?

4 Q. In terms of pages, perhaps?

5 MR. GARG: I believe that was a backup plan, not

6 the business plan.

7 MR. FUKANO: Oh, I see. Not the consultant report?

8 MR. GARG: No.

9 MR. FUKANO: Oh, I must have misheard.

10 No further questions.

11 JUDGE PEARSON: Mr. Garg, do you have any redirect

12 based on Mr. Fukano's questions?

13 MR. GARG: No redirect, Your Honor.

14 JUDGE PEARSON: All right. Then, Mr. Stein, you

15 are excused.

16 THE WITNESS: Thank you.

17 JUDGE PEARSON: You can step down.

18 (Witness excused.)

19 JUDGE PEARSON: Mr. Weinstein, a witness, correct,

20 and I don't have the table of time estimates in front of me;

21 does someone have access to that?

22 MR. GARG: It will be about a half hour, Your

23 Honor.

24 JUDGE PEARSON: About half an hour?

25 MR. GARG: I would prefer if Mr. Weinstein and

0100

1 Mr. Rutledge testify together. Some of their answers are

2 similar, so I'm not sure which one will be able to answer my

3 questions.

4 JUDGE PEARSON: Okay.

5 MR. GARG: So if they can testify together, it will

6 be less than one hour.

7 JUDGE PEARSON: Okay. Mr. Stanovsky, I don't know

8 if you have objection to that. I've actually done that

9 before on an application case where it saves a lot of time

10 rather than saying, oh, he should answer the question rather

11 than me. I can swear them both in and then they can confer

12 amongst themselves and whoever is more--best suited to

13 answer the question can answer then.

14 MR. STANOVSKY: And I've seen in the rules where

15 that's an option as well but, frankly, I hadn't thought

16 about it. So if I could, two minutes to confer.

17 JUDGE PEARSON: Sure, sure. And why don't we just

18 take a five-minute break. And then what we'll do, we'll

19 come back, we'll have Mr. Garg do cross-examination and then

20 I think we'll break for lunch after that. But let's just

21 take a quick five-minute break now for anyone who needs it.

22 (Recess taken from 11:14 to 11:27 a.m.)

23 JUDGE PEARSON: So, let's be back on the record

24 following a brief recess. Attorneys have conferred and

25 Mr. Stanovsky has agreed that Mr. Weinstein and Mr. Rutledge

0101

1 can testify at the same time. And what we'll do is we'll

2 have--Mr. Garg, I'll have you direct your questions to

3 Mr. Weinstein primarily. And if he thinks that Mr. Rutledge

4 is better suited to answer the question he'll defer to him

5 for the answer. Does that work?

6 MR. GARG: Yes. Yes, Your Honor.

7 JUDGE PEARSON: So if you come up to these last two

8 seats here on the bench and turn your microphones on.

9 (Witnesses: Michael Weinstein and Robert Rutledge

10 moved to the bench to testify simultaneously.)

11 (Discussion off the record.)

12 JUDGE PEARSON: If you could both just stand and

13 raise your right hands. Do you swear or affirm that the

14 testimony you give today will be the whole truth and nothing

15 but the truth?

16 (Mr. Weinstein and Mr. Rutledge confirmed oath.)

17 JUDGE PEARSON: Okay. Go ahead and be seated.

18 And, Mr. Stanovsky, if you could just have them each,

19 individually, state their names for the record, and if you

20 want to make those corrections to the testimony now.

21 MR. STANOVSKY: Yes.

22 JUDGE PEARSON: Okay.

23 //

24 //

25

0102

1 REDIRECT EXAMINATION

2

3 BY MR. STANOVSKY:

4 Q. Mr. Rutledge, would you please state your name for the

5 record?

6 A. Yes. My name is Robert Rutledge.

7 Q. And, Mr. Weinstein?

8 A. Michael Weinstein.

9 Q. And, Mr. Rutledge, you have what's marked as

10 Exhibit RAR-1T in front of you, your direct testimony,

11 correct?

12 A. Yes.

13 Q. And do you have any corrections to that testimony?

14 A. Yes. On Page 1, Line 14 where it states almost five

15 years, should read one year as district manager. I

16 was--well, I've been with the company for five years. Four

17 years of that--my first four years was as route manager with

18 our Seattle branch.

19 Q. Thank you. And do you have RAR-2T, your response

20 testimony?

21 A. Yes.

22 Q. And can you tell us your first correction to that?

23 A. Yes. On Page 3, Line 23, the No. 11 should be a 10. I

24 reviewed my notes in preparation, I realized that I made a

25 copy paste there on the spreadsheet.

0103

1 And the next is on Page 4, Line 1 the 34 should be 35.

2 And then on Line 5, the 34 should also be 35.

3 And then Line 6, 33 should be 34.

4 Q. Thank you. And the next correction?

5 A. On Page 5, Line 11, 6 should be 3, and the 2 should be a

6 5.

7 And then also on Line 13, the 2 should be a 5.

8 Q. Thank you. And I believe you had one more correction?

9 A. Correct. Page 6, there is a correction in the

10 terminology, code red. It should be followed by code red

11 for commercial customers is what it's pertaining to, and

12 customers with escalations are residential customers.

13 And the rest of the paragraph is correct.

14 Q. Thank you. And, Mr. Weinstein, I believe you had one

15 correction to your direct testimony?

16 A. Yes. On Page 1 of direct testimony, just Line 14. It

17 states that I am a certified public accountant; it should

18 state I was a certified public accountant.

19 MR. STANOVSKY: Thank you. With that, Waste

20 Management tenders them for cross-examination.

21 JUDGE PEARSON: Okay, thank you. Mr. Garg, you can

22 proceed.

23 //

24 //

25

0104

1 CROSS-EXAMINATION

2

3 BY MR. GARG:

4 Q. Mr. Weinstein, as mentioned before, I'll direct the

5 question to you and if it's something Mr. Rutledge is better

6 informed, then feel free to pass the question off to him.

7 My first question actually refers to your direct

8 testimony. This is Exhibit MAW-1T. If you look on Page 5.

9 A. Yes.

10 Q. The very first paragraph there that starts on Page 5,

11 can you read the first sentence?

12 A. On Page 5? Commission finds that Waste Management will

13 not provide service to the Commission's satisfaction?

14 Q. No, it would be the next paragraph, the first sentence.

15 A. Oh. As a practical matter, allowing competition and

16 providing such services tends to result in duplication of

17 services and, in turn, increased rates for everyone.

18 Q. In your opinion, does providing competition decrease

19 rates or does monopoly decrease rates?

20 A. In my opinion, with regards to the regulatory

21 environment that we operate in, in Washington State, that

22 the competition where you have two certificates that would

23 be awarded in the same geographical area, that would

24 increase costs and increase rates, ultimately.

25 Q. Let's move on to the next page. The question regarding

0105

1 the specialized service to customers in Superior's proposed

2 territory. You mentioned Item 80, can you explain what that

3 tariff is?

4 A. Item 80 in the tariff is rates that are regarded to the

5 carry-out and drive-in services provided as additional

6 ancillary charges to customers.

7 Q. It is understanding that this tariff was revised using

8 TG-071785. Can you tell me what the revisions were

9 regarding?

10 A. What--would you please repeat that date?

11 Q. This tariff was recently revised using Docket TG-071785.

12 Are you aware of any revisions to this tariff?

13 A. Yes. This tariff was revised several years ago, I

14 believe.

15 Q. What did the revisions include?

16 A. Well, there was a rate filing, I believe, in 2010. And

17 at that time there was a general rate filing where all rates

18 to customers were increased as a result of our proposed

19 filing that we filed with Commission.

20 Q. Are you aware of any distance limitations that this new

21 revision proposed?

22 A. I don't believe that that filing that happened in 2010

23 revised the distance of limitations at that time.

24 Q. Are you aware of anything like that, Mr. Rutledge?

25 A. (Mr. Rutledge) No.

0106

1 Q. Are you aware of any distance limitations that the new

2 tariff proposed?

3 A. (Mr. Rutledge) No.

4 MR. STANOVSKY: Objection, Your Honor. I

5 apologize, I didn't catch it before Mr. Rutledge's answer,

6 but I'm not clear what Mr. Garg is referring to as the "new

7 tariff." I believe he cited a Docket number beginning with

8 '07, which I think would be 2007. And I understood Mr.

9 Weinstein to be testifying about a 2010 revision. So I'd

10 just like to clarify.

11 A. (Mr. Weinstein) If it was '07, I believe that was a

12 filing where--

13 MR. STANOVSKY: Could we--

14 JUDGE PEARSON: Mr. Garg, can you clarify which--

15 MR. GARG: I was referring to the '07, the 2007

16 revision.

17 JUDGE PEARSON: And which--which exhibit is that?

18 I think it's MAW-6X.

19 MR. GARG: 6X. Do you have Exhibit MAW-6X in front

20 of you, Mr. Weinstein?

21 MR. WEINSTEIN: I don't believe I do have it in

22 front of me.

23 MR. STANOVSKY: AND, Your Honor, I apologize. I

24 didn't print out all of the cross exhibits for my witnesses,

25 but I... In fact, I don't think I have that one for myself

0107

1 either. So I could show it to Mr. Weinstein on the computer

2 or if you can lend him your copy--I apologize for that.

3 JUDGE PEARSON: I only have it electronically, and

4 my computer has been frozen for about 10 minutes. So,

5 doesn't anyone else--Mr. Fukano, do you have a copy.

6 MR. FUKANO: I do have a copy of that.

7 JUDGE PEARSON: Okay. It is Staff's cross exhibits

8 that he's regarding to.

9 MR. STANOVSKY: I have the exhibit electronically,

10 I just didn't print it; I apologize for that.

11 JUDGE PEARSON: Supposedly, I do, too.

12 MR. FUKANO: It's not a--properly labeled.

13 JUDGE PEARSON: That's okay.

14 (Copy of exhibit was provided to Mr. Weinstein.)

15 MR. WEINSTEIN: I have the tariff in front of me

16 now.

17 Mr. Garg Continuing:

18 Q. Can you tell me the changes that were proposed in this

19 tariff?

20 A. With regards to the carry-out charges--

21 Q. The distance. With any dis--

22 A. The distance--are you talking about the distance for the

23 drive-in or are you talking about the distance for the

24 carry-out charges?

25 Q. Both.

0108

1 A. With regards to the carry-out charges, I believe it

2 was--A denotes that there was a rate increase at that time.

3 And C is with regards to there was a change in some of the

4 verbiage.

5 Q. Can you read off what that verbiage is?

6 A. I can't recall offhand, no.

7 JUDGE PEARSON: I'm sorry, what page are you on,

8 Mr. Garg?

9 MR. SEVALL: It should be Item 80.

10 JUDGE PEARSON: Thank you. I just got it to work.

11 Just give me a second to get there, please.

12 MR. GARG: Sure.

13 JUDGE PEARSON: Okay, I am at it now.

14 Mr. Garg Continuing:

15 Q. So it would be Page No. 19. Are you at Page No. 19?

16 A. Yes, I'm here.

17 Q. So, Page No. 19 has specifics as far as the distance

18 that wage management will go for carry-out service and

19 drive-in service; can you tell me what those distances are?

20 A. Yes. I'm sorry?

21 Q. Can you tell me what those distances are?

22 A. Yes. The distance with regards to carry-out was, up to

23 50 feet. And with regards to drive-ins, we were going up to

24 one mile.

25 Q. Can you tell me why these distances--can you tell me if

0109

1 the distances were higher or lower prior to this change in

2 tariff?

3 A. I believe the--best of my recollection, there was no

4 change in distance with regards to the carry-out. With

5 regards to the drive-in charges, both the drive-ins from

6 over 250 feet to 1/10th of a mile, and from 1/10th of a

7 mile--for each additional 1/10th of a mile up to a maximum

8 of one mile, those were new rates that were placed into the

9 tariff. Previous to this tariff, I believe there was no

10 rates for those services at all.

11 Q. Can you tell me why these limitations were placed in the

12 new tariff?

13 A. I can't recall, specifically, it's been 12 years.

14 Q. Can you tell me any other location besides the proposed

15 area where you have similar--similar limitations on

16 distance?

17 A. I believe all of our tariffs are somewhat different from

18 one another depending on the requirements in each of those

19 geographical locations. But I can't recall specifically if

20 there are limitations in any of those other territories.

21 Q. I will point you out to Mr. Sevall's testimony, he

22 actually had an opportunity to take a look at it. And he

23 mentioned in his testimony that there are no other locations

24 besides Skagit County that have these limitations.

25 JUDGE PEARSON: Are you referring to Mr. Sevall's

0110

1 direct responses?

2 MR. GARG: His direct, Your Honor.

3 MR. STANOVSKY: So that would be SS-1T?

4 JUDGE PEARSON: Correct.

5 MR. WEINSTEIN: And what page of his testimony?

6 MR. GARG: Give me one second. It's actually, if

7 you go to SS-5T, Page 3.

8 Mr Garg Continuing:

9 Q. Mr. Sevall writes: Driving and carrier services are

10 offered in Waste Management's other tariffs without a

11 limitation to a maximum distance except Skagit County.

12 Would you disagree with that statement?

13 A. No, I wouldn't disagree.

14 Q. Would you tell us why Skagit County is the only county

15 with those limitations placed?

16 MR. STANOVSKY: Objection, Your Honor. Just so the

17 record is clear, it's Skagit and Kitsap.

18 JUDGE PEARSON: Correct. Mr. Garg that--

19 Q. Can you tell me why those two counties are the only

20 counties where these limitations are placed?

21 A. I really can't recall specifically. I will tell you

22 that many of these tariffs are adopted tariffs initially

23 from acquisitions that, when we acquire a company we acquire

24 their tariff, so. But I cannot recall as to why there were

25 limitations in those tariffs, specifically.

0111

1 Q. Do you know how many customers this change in tariff

2 effected?

3 MR. STANOVSKY: Your Honor, just to clarify, we're

4 talking about the 2007--

5 MR. GARG: 2007 tariff, correct.

6 A. No, I do not.

7 Q. Do you know how many customers does drive-in and

8 carry-out services currently provided to?

9 A. I do not know the specific number of customers. I will

10 tell you that the amount of revenue that we collect from

11 customers is very small. So I would say that it is--there

12 are very few customers that currently--that subscribe to

13 this additional service.

14 Q. Again, Mr. Rutledge, feel free to jump in if there's any

15 question that you can answer.

16 MR. RUTLEDGE: Okay.

17 Q. Let's go to your testimony, Page 9.

18 MR. STANOVSKY: And you're addressing

19 Mr. Weinstein?

20 MR. GARG: Mr. Weinstein.

21 Q. The question is: When you investigated the number of

22 customers Waste Management is unable to serve with carry-out

23 or drive-in service, what did you discover? Can you read

24 the first sentence of that answer?

25 A. Waste Management does not directly track cases in which

0112

1 it cannot provide service requested by a customer.

2 Q. Is there a reason why Waste Management does not track

3 that information?

4 A. We track--if--we can't--for every request that is made,

5 we don't track what we--I can't really respond to that,

6 quite honestly. I mean, we track what we can serve but we

7 don't necessarily track what we can't serve.

8 Q. So there may be many customers in your territories that

9 are not getting the service at all?

10 A. If they've requested the service we would have a record

11 as to whether or not they requested it in customer notes

12 that we have.

13 Q. And what is the action that you take after someone

14 requests a service and you believe you cannot provide the

15 service?

16 A. We inform the customer that--the reasons for which we

17 cannot provide the service.

18 Q. Can you tell me what some of those reasons would be?

19 A. That is a question that would probably be answered by

20 Mr. Rutledge.

21 A. (Mr. Rutledge) So when we receive a request from a

22 customer it comes across in the form of a case, it gets sent

23 to one of my route managers who will go out in the area

24 onsite and review the property to determine whether it is,

25 or isn't, eligible for service. Some of the contributing

0113

1 factors are the safety aspect of it. For example, a

2 carry-in or a walk-in service, can our truck be safely

3 parked on the road, can our drivers still visibly see the

4 vehicle at all times while walking up to grab the

5 containers.

6 In regards to drive-in service, we look at several

7 variables; that would be maintenance of the roadway to get

8 up to the resident's house as well as once up to that house

9 do we have adequate safe turnaround so that we won't

10 potentially jeopardize any landscape or any property on the

11 customer's premises.

12 Q. Would it be possible for Waste Management to serve these

13 customers with different vehicles?

14 MR. STANOVSKY: Objection, Your Honor, vague as

15 "these customers."

16 Q. The customers that are refused service based on concerns

17 that you mentioned, would it be possible to serve those

18 customers if Waste Management had different vehicles?

19 A. Yes.

20 Q. Going back to my previous question, if we look at the

21 Kitsap Sun article of 2007. I believe that was

22 Exhibit DS-7?

23 MR. STANOVSKY: I believe that's the 2019 article.

24 I think the 2007 article, I believe, is DS-6.

25 Q. Do you have a copy of that in front of you,

0114

1 Mr. Weinstein?

2 A. DS-6?

3 Q. If you look at Page 2 of that article, going to the

4 fifth paragraph. Can you read that sentence starting

5 with--read that paragraph starting with, Bickle said.

6 A. You said that's Page 2?

7 Q. Yeah, Page 204 (sic).

8 A. Bickle said about 250 people in Kitsap County are

9 effected by the new 50-foot limit for pack-out service.

10 Only two, including Gearlaush (phonetic), have complained

11 that the adjustment is unfairly difficult.

12 Q. Would you agree with that statement, that 250 people

13 were effected by your change in tariff?

14 A. I can't--I don't recall. I don't know.

15 Q. Going back to your testimony, the very next page, Page

16 10 of 17--and this is to Mr. Weinstein.

17 MR. STANOVSKY: And this is the direct testimony?

18 MR. GARG: This is the direct testimony, MAW-1T.

19 A. I'm here.

20 Q. You mentioned a few options for Superior, one of the

21 options--can you read that last paragraph, just the first

22 sentence?

23 A. Another option would be to offer hauling from the

24 customer's home to regular Waste Management collection

25 points, much like the Trash Maidz model, as on optional add-

0115

1 on service.

2 Q. Can you describe what this Trash Maidz model is?

3 A. Best of my understanding, the Trash Maidz model would be

4 that they essentially would take the material that's located

5 at the customer's doorstep, or whereever, and transports the

6 material down to the collection site and, in turn, returns

7 the can back to the where the household.

8 Q. And Trash Maidz, or a similar company, would be charging

9 for the service?

10 A. I believe they do charge for the charge. I believe this

11 is a company in California that does that.

12 Q. Now, would Waste Management not charge these same

13 customers that a company such as this provided a service

14 for?

15 MR. STANOVSKY: I'm sorry, Your Honor, I think I'm

16 going to just ask you to rephrase that. I don't think I

17 followed that. It may be my fault, I apologize.

18 MR. GARG: Sure.

19 Mr. Garg Continuing:

20 Q. So if a company like--if Superior was to operate

21 similarly to Trash Maidz, would Waste Management still

22 charge those customers that Superior is providing a service

23 to?

24 A. We would charge them for the collection of the material

25 in accordance with our tariff. However, what Superior

0116

1 charges to bring that material down to the collection site

2 and back up to that household, again, that would be between

3 the customer and Superior directly.

4 Q. So, essentially, these customers that are mentioned here

5 would be paying for the service twice; they would be paying

6 Superior and to Waste Management?

7 A. That's not correct. They would just be paying Superior

8 for the time involved to collect the--take the material from

9 their home down to a collection point and back. They would

10 be paying Waste Management for the actual collection of

11 material to take it for disposable and for the collection of

12 not only the garbage but the recyclables as well to be

13 processed.

14 Q. But if one company can provide these two same services,

15 would the charges for the customers be less or more?

16 MR. STANOVSKY: Objection, Your Honor, calls for

17 speculation.

18 JUDGE PEARSON: I'm going to sustain it. Do you

19 want to rephrase the question?

20 MR. GARG: Withdrawn.

21 Mr. Garg Continuing:

22 Q. The very next page under the same question, the very

23 last paragraph, under this question, can you read that first

24 sentence?

25 JUDGE PEARSON: Sorry, can you tell me what page

0117

1 you're on?

2 MR. GARG: Page 11 of 17, MAW-1T.

3 JUDGE PEARSON: And then how about a line number?

4 MR. GARG: Line No. 4.

5 Mr. Garg Continuing:

6 Q. Can you start with Line No. 4 and read that first

7 sentence?

8 A. Separate from the current docket, Waste Management is

9 considering a submission of new or revised tariff sheets to

10 implement a new service.

11 Q. Can you give me details on that new revised tariff

12 sheets that you're implementing?

13 A. We are, you know, currently exploring the possibility of

14 offering services with limited access vehicles, smaller

15 vehicles, that can provide this service similar to bring--to

16 be able to safely bring a collection vehicle closer to the

17 customer's location to be able to collect the material from

18 the customer's household.

19 Q. Have you purchased these vehicle?

20 A. No, we have not yet.

21 Q. Have you placed an order for these vehicles?

22 A. No, we have not yet.

23 Q. What is the time estimate that you think you can get

24 these vehicles on the road?

25 A. I probably should defer this to Mr. Rutledge.

0118

1 A. (Mr. Rutledge) Yeah, at this point, it's unknown, the

2 exact time frame. We're, ultimately, waiting to see what

3 the results of this hearing will--in determining what the

4 next steps would be for Waste Management.

5 Q. So it's unknown how long it will take before these

6 customers start receiving service, that are currently not

7 receiving a drive-in service beyond a mile, or carry-out

8 service beyond 50 feet?

9 A. (Mr. Rutledge) Correct.

10 MR. STANOVSKY: Objection, Your Honor. The

11 question misstated the evidence. Mr. Garg, I believe,

12 indicated that the limit for carry-out was 50 feet, which it

13 is not.

14 MR. GARG: It's part of the previous exhibit that

15 Mr. Weinstein read.

16 MR. STANOVSKY: That tariff sheet was effective in

17 2007, it's not currently effective.

18 JUDGE PEARSON: Okay, I'm confused now. So what is

19 the current--yes, Mr. Weinstein?

20 MR. WEINSTEIN: Yes. The current carry-out

21 limitation is two--one hundred feet. And it's my

22 understanding from my--you know, that that was changed in

23 2010. I would say, to a certain extent related to the

24 article in Kitsap Sun in 2007 we extended the carry-out from

25 fifty feet to a hundred feet.

0119

1 JUDGE PEARSON: Okay, thank you for that

2 clarification.

3 Mr. Garg Continuing:

4 Q. So, let me point you to MAW-8CX.

5 MR. STANOVSKY: And, Your Honor, this is an exhibit

6 that has been marked confidential. And, consistent with the

7 Protective Order, my witnesses don't have a copy of that at

8 this point.

9 JUDGE PEARSON: Okay. And, just to be clear, I do

10 not want to have to reference any confidential information.

11 MR. GARG: It will not--it will just reference

12 generalized information.

13 JUDGE PEARSON: Okay.

14 MR. STANOVSKY: Shall we provide the witnesses a

15 copy? Would your Your Honor waive the Protective Order as

16 necessary to allow the witnesses to look at it?

17 JUDGE PEARSON: So, direct me again to which is 8CX

18 for Mr. Weinstein; is that correct? I'm still having

19 computer difficulties so I have to actually go into our

20 system and individually find each exhibit because my exhibit

21 list is broken.

22 So this is--just direct me to the exhibit number.

23 MR. GARG: Sure. 8CX, Your Honor. Hold on one

24 second.

25 MR. GARG: We can go to a different exhibit that

0120

1 provides similar information.

2 JUDGE PEARSON: Okay, so can you just describe for

3 me what this exhibit is?

4 MR. GARG: This is a list of customers where--that

5 have made complaints against Waste Management regarding

6 missed pickups or Waste Management's inability to provide a

7 pickup.

8 JUDGE PEARSON: And are these customers who made

9 complaints with the Commission or with Waste Management

10 directly?

11 MR. GARG: Sorry, Your Honor?

12 JUDGE PEARSON: Are these customers who made

13 complaints with the Commission or with Waste Management

14 directly?

15 MR. GARG: I believe this Waste Management

16 directly, Your Honor.

17 MR. STANOVSKY: Maybe we can check the exhibit

18 list. I understand Exhibit MAW-8CX to be Superior's sort of

19 restatement of Waste Management's information about

20 Superior's customers.

21 JUDGE PEARSON: This looks like a document that was

22 created. It did not come the Commission, so it looks like

23 it was a document that was created by Superior.

24 MR. STANOVSKY: And, Your Honor, your exhibit list

25 indicates MAW-8CX, Confidential, Complete Superior Customer

0121

1 Location notes.

2 JUDGE PEARSON: Right.

3 MR. STANOVSKY: Which is consistent with what I

4 have.

5 JUDGE PEARSON: Okay. But I'm still not clear what

6 exactly--who created the document and what it's based on.

7 MR. GARG: I believe this was a list that was

8 submitted as part of data request by Waste Management and

9 we, our office--

10 JUDGE PEARSON: Compiled and summarized it?

11 MR. GARG: Right. Correct, Your Honor.

12 JUDGE PEARSON: Okay.

13 MR. STANOVSKY: And this is one that I've alluded

14 to before we began examination where, you know, we have no

15 objection in principle to their sort of redistillation of

16 Waste Management's discovery response, but a--you know,

17 aren't prepared to accept without verifying that it's an

18 accurate representation of what we disclosed.

19 JUDGE PEARSON: Sure. And so I'm fine with the

20 witnesses being provided a copy of the witness. It contains

21 personally-identifying information of Waste Management

22 customers, I believe--unless they are Superior's customers;

23 that's the part I'm confused about.

24 MR. GARG: They're currently Waste Management

25 customers.

0122

1 JUDGE PEARSON: Oh. Okay. So someone has that

2 exhibit?

3 MR. STANOVSKY: Yeah. So shall I provide them 8CX?

4 MR. GARG: Yes.

5 JUDGE PEARSON: Sure. And then, again, I'm sure

6 you can ask questions that don't refer to any of their

7 personally-identified information that's contained within

8 this exhibit.

9 MR. GARG: Yes, Your Honor.

10 JUDGE PEARSON: Okay.

11

12 CROSS-EXAMINATION (Continuing)

13

14 BY MR. GARG:

15 Q. Without providing any customer-identifying information,

16 can you tell me generally what this exhibit refers to?

17 A. I think what I'll do is I'll defer to Mr. Rutledge with

18 regards to those questions.

19 Q. Sure.

20 A. (Mr. Rutledge) Yes, it refers to the current conditions

21 of these customers' locations as to whether they can or

22 cannot receive carry-in or pack-out service under our

23 current tariff.

24 Q. Can you, without providing any identifying information,

25 can you tell me how many customers are listed on this

0123

1 exhibit?

2 MR. STANOVSKY: And, again, Your Honor, subject to

3 check because this is Superior's version of what appears to

4 be Waste Management's disclosures.

5 A. (Mr. Rutledge) I have 53 on here.

6 Q. Can you tell me the steps that have been taken, thus

7 far, to provide service to these customers?

8 A. (Mr. Rutledge) In regards to?

9 Q. Well, first, can you establish that these customers are

10 currently not getting service from Waste Management? Based

11 on the notes?

12 A. (Mr. Rutledge) They are eligible for service under our

13 current tariff. But in regards to pack-out and walk-in,

14 you're right, not all of them--after I went out in a truck

15 similar to Mr. Stein's to run the route to observe all these

16 customers' properties. And looking and determining

17 whether--are there customers that are currently serviced by

18 him that would be eligible for our current--under our

19 current tariff and--or would they not be eligible and as to

20 why, under my observations.

21 Q. But you went in, like you said, in a truck similar to

22 Mr. Stein's, you didn't go out in a Waste Management vehicle

23 that you currently use for these roads?

24 A. (Mr. Rutledge) It was a Waste Management route manager

25 truck, which is a Chevy Silverado.

0124

1 Q. But it wasn't a Waste Management trash pickup vehicle?

2 A. (Mr. Rutledge) No.

3 Q. Would you believe your results would be different if you

4 had gone in a Waste Management trash pickup vehicle?

5 A. (Mr. Rutledge) Without doing that, I wouldn't be able

6 to say.

7 Q. Have any of these customers, according to your

8 knowledge, complained about not getting service from Waste

9 Management?

10 A. (Mr. Rutledge) Not directly to me, no.

11 Q. Are there any steps being taken to provide service to

12 these customers currently?

13 A. (Mr. Rutledge) In regards to which specific customers?

14 Q. All 53 on the list?

15 A. (Mr. Rutledge) All 53? Like Mr. Weinstein had

16 mentioned, we are seriously and actively looking at

17 potential options that Waste Management can look at moving

18 forward but to ensure we can provide service to all 53.

19 Q. So, actually, going to your testimony, Mr. Rutledge,

20 RAR-1T.

21 A. (Mr. Rutledge) Okay.

22 Q. Can you tell me when this testimony was provided?

23 A. (Mr. Rutledge) When was it provided?

24 Q. It's on the very first page.

25 A. (Mr. Rutledge) May 15.

0125

1 Q. Page 407, starting with Line 14, can you read that

2 sentence for me?

3 A. (Mr. Rutledge) We only recently received a list of

4 Superior's customers and service locations and are actively

5 working to ground truth the accessibility of those locations

6 under Waste Management's existing service terms.

7 Q. So since May 15th, it's been two and a half months; can

8 you describe to me what active steps you've taken?

9 A. (Mr. Rutledge) In regards to improving--

10 Q. You said you're actively working to ground truth the

11 accessibility?

12 A. (Mr. Rutledge) Yeah, and that's like I had stated

13 earlier, where Waste Management is looking at potential

14 objects with different vehicles to be able to provide

15 services. We have deemed that a smaller vehicle would be

16 necessary in order for Waste Management to be able to

17 provide the service that Mr. Stein is providing.

18 Q. But, again, no proactive steps have been taken, so no

19 timeline?

20 A. (Mr. Rutledge) Not--

21 MR. STANOVSKY: Objection, Your Honor. Vague as to

22 "proactive steps."

23 MR. GARG: Withdrawn.

24 Mr. Garg Continuing:

25 Q. Were you aware of the complaint and investigation

0126

1 against Seabeck that occurred last November?

2 A. (Mr. Rutledge) Can you repeat the question, please?

3 Q. This is for both, whoever can answer, Mr. Weinstein or

4 Mr. Rutledge. Were you aware of the investigation against

5 Seabeck?

6 MR. STANOVSKY: And, can I clarify? Did you ask,

7 are they aware? Or were they aware?

8 MR. GARG: Are they aware.

9 A. (Mr. Weinstein) Yes, I'm aware of it.

10 Q. When did you become aware?

11 A. Earlier this year, after the investigation.

12 Q. And yourself, Mr. Rutledge?

13 A. (Mr. Rutledge) Yes--

14 Q. When did you become aware?

15 A. (Mr. Rutledge) I became aware after the investigation

16 in December.

17 Q. So, what were you made aware of? Give me your brief

18 synopsis of what do you think the investigation was about

19 and what you believe happened?

20 A. (Mr. Weinstein) Well, the--this is Mike Weinstein

21 speaking. The investigation was with regards to the fact of

22 whether or not there was an illegal person that was hauling

23 waste without a G Certificate. And based on the results of

24 the investigation the UTC determined that Mr. Stein was

25 illegally hauling waste.

0127

1 Q. Did you do anymore research on the investigation, or was

2 that the only information that you received?

3 A. The only information I received was the information that

4 was on the record, you know, through the investigative

5 report and the Commission's order.

6 Q. And as part of that testimony, I can--I can point you to

7 exhibit--but as part of that testimony there were some

8 customers present, just like there are behind us today, were

9 you aware that these customers were making complaints about

10 Waste Management's service?

11 A. I wasn't aware of that at that time, no.

12 Q. And how about yourself, Mr. Rutledge?

13 MR. STANOVSKY: Objection, Your Honor, assumes

14 facts not in evidence.

15 JUDGE PEARSON: Can you expand on that?

16 MR. STANOVSKY: He asked if they're aware that

17 these customers were making complaints, and I don't believe

18 the record reflects that they were making complaints to

19 Waste Management. I think that was the phrasing.

20 MR. GARG: Well, I'm just asking to the knowledge

21 of Mr. Rutledge and Mr. Weinstein's knowledge of the

22 investigation of the results. If they are unaware then...

23 JUDGE PEARSON: Okay. So without specifically

24 saying that complaints were made, were they aware--

25 MR. GARG: Were they aware.

0128

1 JUDGE PEARSON: --of the investigation and its

2 results. Which I think they have affirmatively both said

3 yes, they were.

4 Mr. Garg Continuing:

5 Q. However in your testimony (inaudible)--

6 THE REPORTER: Your testimony with who?

7 Q. With Mr. Rutledge, RAR-1T, Page 4. You mentioned he

8 only recently received a list of Superior's customers and

9 service locations; did you not receive this information back

10 in January as well?

11 A. (Mr. Rutledge) No.

12 JUDGE PEARSON: Mr. Garg, do you know about how

13 much longer this will be?

14 MR. GARG: Ten to fifteen minutes, Your Honor.

15 JUDGE PEARSON: Okay. Let's take a short break

16 then, and--just a short five-minute break, or would everyone

17 prefer to just take a lunch break now and complete this

18 afterwards? I'm fine either way--take a short break now,

19 press through until you're done with your cross-examination

20 or we can just break for lunch now and come back.

21 MR. GARG: It will be 10 minutes, Your Honor, So we

22 can take a 5-minute break now would be my preference and I

23 can finish up in 10 minutes after that.

24 MR. STANOVSKY: I think I'm, personally, happy to

25 press on.

0129

1 JUDGE PEARSON: Okay.

2 MR. STANOVSKY: But I'd check with my witnesses as

3 well. You're okay?

4 MR. RUTLEDGE: Yes.

5 MR. FUKANO: I would be fine pressing on or with a

6 break.

7 JUDGE PEARSON: Okay, so let's just take a quick

8 break then; we'll take a 5-minute break and we'll come back

9 and then we'll finish and go to lunch, okay?

10 (Recess taken from 12:13 to 19:19 p.m.)

11 JUDGE PEARSON: If everyone could please take a

12 seat, we're going to get started again. Let's go back on

13 the record and, Mr. Garg, you can finish your

14 cross-examination of these two witnesses.

15 MR. GARG: Yes, Your Honor.

16

17 CROSS-EXAMINATION (Continuing)

18 BY MR. GARG:

19 Q. Now referring to Mr. Weinstein's testimony, MAW-5T. Go

20 to Page 3 of 9. And read that--

21 Mr. WEINSTEIN: I'm still trying to locate it.

22 JUDGE PEARSON: Hold on one second. You said

23 Page 3?

24 MR. GARG: Page 3 of 9.

25 JUDGE PEARSON: Line 9?

0130

1 MR. GARG: Yes.

2 JUDGE PEARSON: Mr. Garg?

3 Mr. Garg Continuing:

4 Q. Starting with Line 12, can you read the next two

5 sentences?

6 A. (Mr. Weinstein) This is the direct testimony?

7 Q. Yes.

8 A. Waste Management's willingness to provide the service

9 proposed by Superior to the Commission's satisfaction--

10 Q. I don't think we're on the right one. This is the

11 response testimony, 5T, I believe. MAW-5T.

12 A. Page 5?

13 Q. Page 3 of the response testimony.

14 WEINSTEIN: Oh, response.

15 Q. Exhibit MAW-5T.

16 A. Is it Page 3?

17 Q. Page 3, correct.

18 A. Line 12: In addition, I am working to develop a new

19 service option for specialized carry-out and drive-in

20 service.

21 Q. Continue reading, next sentence as well.

22 A. This option would be an add-on to the Waste Management

23 basic residential surcharges and options and would extend

24 drive-in service to residential customers not currently

25 eligible for drive-in or carry-out service under the current

0131

1 primary tariff rules.

2 Q. That's good. Now, can you tell me if there would be

3 additional charges for this service, for the add-on service?

4 A. Yes, there--well, for the specialized service there will

5 be new charges if--if we decide to--once we decide to go

6 forward with that. And there will be a change in the

7 distance requirements as well.

8 Q. Can you tell me what those new charges would be or?

9 A. We haven't completed the analysis on these new charges

10 yet.

11 Q. Can you tell me what's preventing you from starting the

12 service?

13 A. Well, what's preventing us from starting the service is

14 to first determine the resolution of this case.

15 Q. Are you saying if Superior is able to get a certificate

16 for Kitsap County and Skagit County and in the proposed

17 area--just Kitsap and the proposed area, would Waste

18 Management refuse to provide this service in other areas if

19 it could?

20 A. If Kitsap--that is a very difficult thing to answer, but

21 if, um... If the UTC were to grant a certificate to

22 Superior, then we would provide whatever services are

23 necessary to compete with Superior in our certificated

24 territory.

25 Q. Can you describe me the area that Superior proposes as

0132

1 its territory? Can you tell me the environmental area? Is

2 it developed? Is it...

3 A. I think that's a question that Mr. Rutledge would be

4 better to answer.

5 A. (Mr. Rutledge) Can you repeat the question for me,

6 please?

7 Q. What type of area--can you describe the area that

8 Superior proposes the certificate in?

9 A. (Mr. Rutledge) In regards to?

10 Q. The territory, the environment, the landscape?

11 A. (Mr. Rutledge) Yes. It's very rural, a lot of

12 overgrown, a lot of winding dirt roads. The Seabeck area

13 doesn't have a whole lot of development--large developments

14 like you'd see in the larger areas of Kitsap County.

15 There's a higher level of challenges that you're faced with

16 out in the Seabeck area.

17 Q. Are you familiar with other areas in Washington that

18 provide similar challenges?

19 A. (Mr. Rutledge) No.

20 Q. Just one more question for you, and this is from

21 Mr. Weinstein's direct testimony. MAW-1T, Page 17 of 17,

22 Line 15. If you can read that first sentence.

23 A. (Mr. Weinstein) It seems unlikely that Superior is in a

24 position to correct all the shortcomings and uncertainties

25 identified above, even if Waste Management were not.

0133

1 Providing service to the satisfaction of the Commission.

2 Q. Do you believe Waste Management, a direct competitor--

3 better position to make that judgment? Or is UTC in a

4 better position to make that judgment?

5 A. Could you be more specific? Judgment with regards to

6 what?

7 Q. Judgment to whether Superior is in a position to operate

8 under the UTC?

9 A. Well, that would be the Commission's prerogative to make

10 that determination.

11 MR. GARG: Thank you. That is all, Your Honor.

12 JUDGE PEARSON: Good, thank you. I have one

13 clarifying question for you, Mr. Weinstein regarding your

14 responsive testimony, which I've now taken off my screen so

15 give me a minute to get back to it. But I can tell you

16 that--well, actually, I think it was Page 3.

17

18 EXAMINATION

19

20 BY JUDGE PEARSON:

21 Q. Okay. Yes, it is Page 3. So this is just a clarifying

22 question to help me understand better. Lines 16 through 18.

23 Actually, it starts on Line 15. You refer to customers not

24 currently eligible for drive-in or carry-out service. Under

25 the current ground/air tariff rules. And then it says,

0134

1 either because they are beyond the distance limits for those

2 services under Item 80 of the tariff, or because they are

3 not safely accessible to the standard collection vehicles

4 used by Brem-Air.

5 So I would just like clarification that--why would there

6 be distance limits for services for reasons other than

7 safety? What other reasons would exist besides safety to

8 put distance limits for service?

9 A. Other reasons besides safety, and I'll respond first and

10 then Mr. Rutledge can also address the issue, would be

11 regarding to whether or not we believe our vehicles could

12 damage the property that the customer is on. Or that you

13 don't have access, easily accessible turnaround space.

14 So we're concerned about whether or not we create damage

15 to the customer's property and whether or not our vehicles

16 can safely navigate the areas.

17 JUDGE PEARSON: Okay, thank you. I was just

18 clarifying. I guess in my mind I would have lumped in

19 damage to customer property with safety concerns so I just

20 wanted to clarify what the distinction was. Okay. So it

21 sounds like they're all related to hazards, potential hazard

22 to property damage, or safety concern?

23 A. Yes.

24 Q. There are no other reasons?

25 A. No other reasons that I can really think of now.

0135

1 JUDGE PEARSON: Okay. So it's 12:27, I think we

2 should go ahead and take a lunch break, if you're okay,

3 Mr. Stanovsky? I don't know if you have any redirect.

4 MR. STANOVSKY: We do have some redirect.

5 JUDGE PEARSON: Okay, but we can handle that after

6 lunch?

7 MR. STANOVSKY: Yeah.

8 JUDGE PEARSON: Okay, it's 12:28, we will be in

9 recess until 2:00 p.m. Everybody have a nice lunch and I

10 will see you back in an hour and a half.

11 (Recess from 12:27 to 2:00 p.m.)

12 JUDGE PEARSON: So let's be back on the record.

13 It's 2:00 p.m. and following a recess for lunch we are

14 now going to resume. Actually, I believe we are moving on

15 to redirect with Mr. Stanovsky before Mr. Weinstein and

16 Mr. Rutledge. I'll just remind you two, of course, that

17 you're both still under oath. And whenever you're ready,

18 Mr. Stanovsky.

19 MR. STANOVSKY: Just to clarify then, the State

20 will go--or the UTC staff will go after and then I will have

21 another chance to redirect?

22 JUDGE PEARSON: Correct.

23 MR. STANOVSKY: No redirect at this time, Your

24 Honor.

25 JUDGE PEARSON: Okay. Mr. Fukano?

0136

1 MR. FUKANO: Yes. Actually, I have a very brief

2 question, and I'm not sure who is this is most properly

3 directed to, I guess, beginning with Mr. Rutledge.

4

5 CROSS-EXAMINATION

6

7 BY MR. FUKANO:

8 Q. How does Waste Management distinguish between a driveway

9 and a privately-maintained road for public access?

10 A. (Mr. Rutledge) A driveway is technically deemed at the

11 start of where a--where it starts off of the private road.

12 So the driveway--I'm trying to think of an example to give

13 you. It might be off of Larson Lane. The driveway starts

14 once it's leading off of Larson lane.

15 Q. And, again, I'm not certain who this question is best

16 directed to so I'll start with Mr. Rutledge.

17 Do you know why Waste Management has not previously

18 invested in smaller collection vehicles similar to what's

19 been discussed in you and Mr. Weinstein's testimony for the

20 service area?

21 A. (Mr. Rutledge) I do not.

22 A. (Mr. Weinstein) With regards to why we haven't invested

23 it, because quite honestly there's been so very little

24 demand for it. You know, these vehicles cost hundreds of

25 thousands of dollars, and until there's a sufficient amount

0137

1 of demand, then we would take another look at that. But up

2 until now, the demand has been such that it didn't require

3 the investment of that type of vehicle.

4 MR. FUKANO: Thank you. No further questions.

5 JUDGE PEARSON: Okay. Do you have any redirect?

6 MR. STANOVSKY: No, Your Honor.

7 JUDGE PEARSON: Then you are both excused.

8 MR. GARG: Your Honor, with your lead, I would like

9 to ask one recross.

10 JUDGE PEARSON: What is it regarding?

11 MR. GARG: This is regarding clarity on the

12 one-mile restriction.

13 JUDGE PEARSON: So is it a follow-up on an earlier

14 question?

15 MR. GARG: On your question, Your Honor.

16 JUDGE PEARSON: Oh, on my question. Okay, go

17 ahead.

18

19 RECROSS-EXAMINATION

20

21 BY MR. GARG:

22 Q. So you have previously testified that the only reasons

23 you're placing limitations is because of safety; is that

24 correct? The limitations on the driveway and curbside?

25 JUDGE PEARSON: I don't think your microphone is

0138

1 on; I see a red light. There you go. Thank you.

2 Q. You have previously testified that the limitations

3 placed for drive-in and curbside, the one mile and the

4 hundred feet restrictions, they're for safety; is that

5 correct?

6 A. (Mr. Weinstein) It's for safety and I also mentioned in

7 the question by the Judge is that that's also due to with

8 regards to potentially causing damage to the individual's

9 property.

10 Q. So is your testimony that at one mile it's safe but at

11 1.1 mile it's no longer safe? The same thing for curbside,

12 a hundred feet is safe but for 101 feet it's not safe?

13 A. You know, previously these limitations were put on to

14 try to encourage customers to utilize our curbside service.

15 And we felt--and I can't speak to this too much because I

16 can't recall when these limitations were put on, but at some

17 point in time we felt that limitations were necessary

18 to--for the safety of the customers' property and for the

19 safety of the vehicles.

20 Q. So let me clarify if I'm hearing you correctly. So

21 you're testifying that these arbitrary limitations were put

22 because for what determination why one mile, why not two

23 miles or 100 feet, not 200 feet. Why these specific

24 regulations, why--

25 A. I can't recall why those limitations were put on at the

0139

1 time.

2 MR. GARG: All right. No further questions, Your

3 Honor.

4 JUDGE PEARSON: Okay, thank you. Questions?

5 MR. STANOVSKY: No.

6 JUDGE PEARSON: All right. Then you are both

7 excused, you may step down.

8 (The witnesses were excused.)

9 JUDGE PEARSON: And at this time we'll call

10 Mr. Sevall. If you can stand and raise your right hand.

11 Do you swear or affirm that the testimony you give today

12 will be the whole truth and nothing but the truth?

13 MR. SEVALL: I do.

14 JUDGE PEARSON: Please be seated. Mr. Fukano, go

15 ahead.

16 MR. FUKANO: This is Scott Sevall testifying on

17 behalf of Utilities Division Commission Staff. And I

18 believe he has one small correction to make to his

19 testimony.

20 MR. SEVALL: Correct. There is a--

21 JUDGE PEARSON: Is that microphone on?

22 MR. SEVALL: I got a green light.

23 JUDGE PEARSON: Is it a bright green light?

24 MR. SEVALL: Oh, there is a bright green light.

25 I believe it is an error in SS-6T, Page 4, Line 19

0140

1 reference to DR0002 should be DR0001. And I believe that's

2 the only fix.

3 MR. FUKANO: I would make the witness available for

4 cross.

5 JUDGE PEARSON: Thank you. Mr. Garg?

6 MR. GARG: Yes, Your Honor.

7

8 CROSS-EXAMINATION

9

10 BY MR. GARG:

11 Q. Mr. Sevall, you've submitted Exhibit SS-5T, which is

12 your response testimony on June 28th. And you submitted a

13 supplemental testimony on July 30th, which is Exhibit SS-6T.

14 Can you inform us why was there a need for submitting a

15 supplemental testimony?

16 A. The need for the supplemental testimony was due to

17 responses to the outstanding data requests that staff had

18 issued.

19 Q. We'll go off the supplemental testimony first, if you

20 can go to SS-6T.

21 A. I have SS-6T supplemental filed on July 30, 2019.

22 Q. Correct. Now, if you go to Page 2--I'm sorry, no,

23 Page 3 of the document, and you mentioned Line 3, how many

24 customers Superior Waste provide--provided ground service

25 to; the number is 53; is that correct?

0141

1 A. Yes, I believe it's 53.

2 Q. And going to Line 19, you mentioned 34 customers were

3 not receiving service from Waste Management because of

4 safety concern; is that correct?

5 A. Correct.

6 Q. So are you implying with this document that there are 19

7 customers that are receiving service from Waste Management?

8 A. No. There are 53 customers who are not receiving

9 service that Mr. Stein--Superior Waste--is providing service

10 to. What I'm saying is that 34 of those customers are not

11 receiving service from Waste Management. Waste Management

12 is excluding them from being able to have drive-in or

13 walk-in service because of safety-related reasons.

14 Q. From your research, can you testify whether you believe

15 it's safety related reasons or is it above and beyond the

16 one-mile threshold, the hundred feet threshold for curbside?

17 A. So, why--why I primarily believe that, that information

18 came from data request that we finally received from Waste

19 Management; I forget what number that is off the top of my

20 head--where they provided a table of information of

21 Mr. Rutledge's survey that he submitted designating the

22 reasons why Waste Management could not provide service to

23 any of these 53 customers. Or, if they could provide

24 service--and any that were beyond the stipulated limitation

25 in the tariff. And the instructions in that DR, if my

0142

1 memory serves me right, was that if it was both safety and

2 the limitation, they were to mark both reasons.

3 Q. Same page, Line 15, can you read that sentence at the

4 end?

5 A. So this is Page 3, Line 15?

6 Q. Page 3, Line 15, that's correct.

7 A. And so it starts with the word, "because"?

8 Q. Right. So the last sentence in the paragraph.

9 A. Okay. The rest of the customers seem to be dissatisfied

10 with Brem-Air Disposal's tariff rates or drive-in service.

11 Q. Were you able to estimate what that dissatisfaction was?

12 A. So looking at the information from Waste Management in

13 the data request and the customer complaints, which the UTC

14 responded with in, I believe it was DR001, we looked at

15 those. There were customer surveys--or, 23 customer

16 complaints to the Commission from January 2017 to current.

17 Of that, 3 of the 23 complaints were upheld in the

18 customer's favor. Only one of the 23's was for refusal of

19 service, and that was actually upheld in the company's

20 favor; so it was not found to be that needed to be--that was

21 a yard waste issue.

22 So there were 23 total customer complaints from Kitsap

23 County. So that is the entire Kitsap County of which only

24 one was for refusal of service; that was made to the

25 Commission. So there is zero records sitting in this

0143

1 Commission as far as I can see of actual refusal of service.

2 Q. We're actually just going off your testimony, not the

3 complaints. You mentioned two customers are excluded from

4 the tariff due to tariff limitations. Thirty-four customers

5 are not provided service because of safety-related concerns.

6 And the rest of the customers seem to be dissatisfied with

7 Brem-Air Disposal's tariff rates for drive-in service.

8 Going off your testimony alone, would you believe if

9 Superior was to receive a certificate, that it would

10 alleviate any customer problems, any customer complaints in

11 that area?

12 A. That is one possible solution that the Commission could

13 decide if they were to decide to issue a certificate.

14 Q. Waste Management, in the testimony, mentioned that

15 they're working on certain avenues, purchasing new vehicles,

16 maybe a new tariff on the way, have they corresponded--have

17 you seen any correspondence, any communication regarding

18 their intentions to move forward with servicing those

19 customers?

20 A. No, I have not received any communications as far as a

21 tariff revision to add any new service to the Brem-Air

22 tariff.

23 Q. Do you believe it is proper to give Waste Management a

24 deadline to meet the needs of these customers?

25 A. Yes. The Commission has full jurisdiction over the

0144

1 certificated area and if they deem something to be improper

2 they can issue a compliance.

3 Q. One final question. Based on your review of the

4 financial records and everything Superior provided to you,

5 do you believe Superior is capable of handling the territory

6 that it is asking a certificate for?

7 A. With the information provided at the time, I published a

8 memo that I testified to in my first testimony, SS-T1,

9 1T--hold on one second, let me grab that exhibit. So

10 Exhibit SS-3, this is my staff memo to assistant director

11 Dan Kermode, under the Conclusion:

12 Staff has reviewed Superior Waste & Recycling financial

13 information submitted in Docket TG-181023 and concludes the

14 company made reasonable efforts to estimate its finances

15 under the proposed application. Based on the company's

16 financial records provided, the company has adequate

17 resources and therefore staff concludes Superior Waste &

18 Recycling, LLC, has the financial resources to operate for

19 the proposed service for at least twelve months.

20 Q. So your testimony--to clarify--is that Superior is very

21 capable of performing the duties for a waste management

22 company if granted a certificate?

23 A. I believe I testified to that.

24 Q. No further questions--

25 A. To this memo in SS-1T.

0145

1 MR. GARG: No further questions.

2 JUDGE PEARSON: Thank you. Mr. Fukano, do you have

3 any redirect?

4 MR. FUKANO: Not at this time.

5 JUDGE PEARSON: Okay. Mr. Stanovsky, do you have

6 questions for Mr. Sevall.

7 MR. STANOVSKY: We do. Just a few, Your Honor.

8 MR. FUKANO: Actually, I did have one brief on--

9 JUDGE PEARSON: Sure.

10 MR. STANOVSKY: Sure.

11

12 REDIRECT EXAMINATION

13

14 BY MR. FUKANO:

15 Q. Mr. Sevall, in your review of the company, did you

16 examine any aspects of the company beyond the financial

17 capabilities when you determined fitness?

18 A. No. In application review I was only doing financial

19 fitness review.

20 MR. FUKANO: Thank you.

21 JUDGE PEARSON: Go ahead.

22 MR. STANOVSKY: All right. Thank you, Your Honor.

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0146

1 REDIRECT EXAMINATION

2

3 BY MR. STANOVSKY:

4 Q. Mr. Sevall, good afternoon, good to see you.

5 A. It is afternoon now.

6 Q. Do you have SS-6T, your supplemental testimony there?

7 A. I do. I have to flip back to it.

8 Q. And would you go to Page 1. Let me know when you're

9 there.

10 A. SS-6T, Page 1.

11 Q. Yes. And you see at the bottom, the question: Does

12 Superior Waste appear fit to provide service?

13 A. Yes.

14 Q. And would you read--obviously the answer, yes, but then

15 the next sentence after that?

16 A. The record in this case supports the conclusion that

17 Superior Waste has provided service to its customers since

18 2015. Staff's financial review, while not required by law,

19 found that Superior Waste has the means to continue service

20 for at least twelve months going forward.

21 Q. Thank you. And based on Mr. Fukano's question a moment

22 ago, do I understand correctly that your analysis only

23 regards the financial fitness and not the operational

24 fitness of Superior?

25 A. Correct.

0147

1 Q. And that you didn't evaluate any of the information

2 related to Superior's operational fitness?

3 A. Correct.

4 Q. Thank you. Do you have SS-11X there?

5 A. That's the a...

6 Q. That is Staff's responses to Waste Management discovery

7 requests, starting with No. 5.

8 A. I've got those electronically, hold on.

9 Q. Sure. Actually, we may not need to actually look at the

10 response. We can just do a Q and A, I think, unless we need

11 to refer to the document.

12 A. Well, I've got it--

13 Q. Sure.

14 A. --up here, so if we need it.

15 Q. Mr. Sevall, does Staff believe that the record in this

16 case shows that Waste Management is not providing

17 satisfactory service on the basis of the timeliness of the

18 service its provides in the relevant territory?

19 A. No.

20 Q. No, you believe the record does not show a lack of

21 satisfactory service on that basis? I'm just trying to be

22 clear.

23 A. Way too many negatives.

24 Q. My fault for phrasing the question awkwardly. In your

25 opinion, does the record show that Waste Management--the

0148

1 timeliness of Waste Management service is not to the

2 Commission's satisfaction?

3 A. There is no--nothing in this record as far as I see that

4 says Waste Management has not provided timely service.

5 Q. Thank you. Anything on this record to show that Waste

6 Management's service is not sufficiently regular for the

7 satisfaction of the Commission?

8 A. Related to curbside pickups, no. And staff concludes in

9 that testimony, at the end of that testimony, that Waste

10 Management--let me read it.

11 Q. Well, it may be simpler to just go with the discovery

12 request--

13 A. Okay.

14 Q. --and if we need to refer back to the testimony,

15 Mr. Fukano can do that, if need be. But, if you would find

16 Staff's response to Waste Management data request No. 8.

17 For the record, this is exhibit SS-11X at Page 4.

18 A. All right, Question No. 8, right?

19 Q. Yes. And would you just read Staff's response to sub

20 part B?

21 A. Sub part B: While the ultimate determination as to

22 satisfactory service is reserved to the Commission Staff--

23 Staff does not believe that the facts mentioned above

24 demonstrate that Waste Management is not providing

25 satisfactory service on the basis of the regular service.

0149

1 Q. And the facts mentioned above, if you look up at the

2 request of sub part A, it says: Please identify all facts

3 indicating that Waste Management solid waste collection is

4 not sufficiently regular, correct?

5 A. Correct.

6 Q. So, the meaning of B is that Staff doesn't conclude that

7 Waste Management service is unsatisfactorily irregular?

8 A. Correct.

9 Q. All right, thank you. Now if you just go to the next

10 page. And I'll just note, the structure is similar, so A

11 asks for identification of all facts with respect to another

12 factual element that. And, with that noted, I'll just ask

13 you to read the response to B.

14 A. While the ultimate determination as to satisfactory

15 service is reserved for the Commission, Staff does not

16 believe that the facts mentioned above demonstrate that

17 Waste Management is not providing satisfactory service,

18 based on the nature, seriousness of persuasiveness of the

19 complaints.

20 Q. Thank you. And the next page, Page 6 of 16, and if you

21 would just read sub part of B again. I'll note that the

22 structure is somewhat...

23 A. So that's the response to No. 10?

24 Q. Yes.

25 A. While the ultimate determination as to the satisfactory

0150

1 service is reserved to the Commission, Staff does not

2 believe that the facts mentioned above demonstrate that

3 Waste Management is not providing satisfactory service based

4 on the response to the complaints about this service--or its

5 service.

6 Q. Thank you. And the next page, Page 7, data request

7 No. 11. Similar structure, and just please read B--the

8 response to B.

9 A. While the ultimate determination as to the satisfactory

10 service is reserved to the Commission, Staff does not

11 believe that the facts mentioned above demonstrate that

12 Waste Management is not providing satisfactory service based

13 on its ability to resolve complaints.

14 Q. Thank you. And I wish I had thought of this a couple of

15 minutes ago, but could you just turn the page to the next

16 one, Page 8, and confirm that it has a comparable answer

17 with respect to Waste Management's history of compliance

18 with regulation?

19 A. So you don't want me to read that one?

20 Q. You're welcome to but it doesn't seem necessary at this

21 point. They're fairly similar.

22 A. It is. It is answered in the same fashion as the

23 previous answers.

24 Q. With respect to Waste Management's history of compliance

25 with regulations?

0151

1 A. Correct.

2 Q. And the next page, Page 9. Similar, but the request is

3 about Waste Management's history of compliance with

4 regulations on matters central to regulation in the public

5 interest. And the response is the same?

6 A. Correct.

7 Q. Thank you. And then, if you would, go down one more

8 page, Page 10, and this one is a little different. So if

9 you would just read Staff's response to B; this is data

10 request No. 14.

11 A. While the ultimate determination as to the satisfactory

12 service is reserved to the Commission, Staff has not

13 concluded that Waste Management's use of safety exemptions

14 establishes that Waste Management's service is

15 unsatisfactory.

16 Q. And so that's the safety exemptions we've discussed

17 earlier in the hearing here as you understand, items like

18 the condition of roads or availability of adequate

19 turnarounds?

20 A. Correct.

21 Q. Thank you. And if you would go down a couple of pages

22 to Page 15 of the exhibit, request No. 19. Actually, this

23 one I can probably just ask you: Do I understand that

24 you've concluded that Superior has not demonstrated that a

25 Certificate of Public Convenience & Necessity should be

0152

1 granted to it in this case?

2 A. That is true. I have not--I have concluded that.

3 THE REPORTER: What? I have concluded that?

4 MR. SEVALL: I have--I messed that all up. Just,

5 please request--redo the question.

6 Q. Certainly. Is it your conclusion that Superior should

7 not receive a certificate in this case?

8 A. That is my conclusion.

9 Q. And, specifically, is it your conclusion that Superior

10 has not shown that Waste Management service will not be to

11 the satisfaction to the Commission?

12 A. That is correct.

13 Q. And also, that Superior has not shown that the public

14 convenience and necessity require its proposed service?

15 A. That is correct.

16 MR. STANOVSKY: Thank you. No further questions,

17 Your Honor.

18 JUDGE PEARSON: Okay, thank you.

19 MR. FUKANO: No redirect.

20 JUDGE PEARSON: I do have a follow-up question,

21 just to put you on the spot, Mr. Sevall.

22 MR. SEVALL: Go.

23 //

24 //

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0153

1 EXAMINATION

2

3 BY JUDGE PEARSON:

4 Q. I understand that your recommendation is that the

5 Commission not grant Superior's application. Do you have

6 any other recommendations with respect to the service that

7 Waste Management is providing or should be providing?

8 A. Yes. This is the first time, ultimately, that the

9 complaints like this, specifically for Brem-Air come in

10 front of the Commission and it has highlighted areas that

11 there can be improvement in the service. But, at the same

12 time, that improvement may--may have some burden on the

13 customer side and on Waste Management side. We can only

14 regulate Waste Management.

15 Privately maintained roads are tricky and the

16 stipulation here really is around that, or this decision is

17 really around that. And Waste Management has to be safe in

18 their operations; we require that. We give them a safety

19 exemption for that reason. But, does that mean that

20 somebody should have to walk three miles to have their

21 garage collected? I do not think that's what it means.

22 Q. Okay.

23 A. So do you want specific recommendations?

24 Q. Yes, I would like a specific recommendation.

25 A. Staff would like, at a minimum of result coming from the

0154

1 Commission, if they were able to go with Staff's

2 recommendation, that would require tariff filings from Waste

3 Management, which would resolve this issue--or help resolve

4 this issue. And, specifically, what the tariff would look

5 like, I don't know. But discussing it is Step 1.

6 Q. Okay, thank you.

7 JUDGE PEARSON: Mr. Fukano, do you have any further

8 questions?

9 MR. FUKANO: No further questions.

10 JUDGE PEARSON: All right. So then Mr. Sevall, you

11 are excused.

12 (Witness excused.)

13 JUDGE PEARSON: That brings us to the end of

14 cross-examination for our witnesses. So let's go back to

15 the question I had at the start of the hearing about whether

16 counsel wanted to give closing arguments and/or post hearing

17 briefs.

18 MR. FUKANO: Staff would be neutral towards either

19 option, whichever is most helpful to the bench.

20 MR. GARG: Superior would prefer a brief.

21 JUDGE PEARSON: Okay.

22 MR. STANOVSKY: A brief is fine, Your Honor; I've

23 expressed a reservation before but we accept that.

24 JUDGE PEARSON: Okay. And so timeline for

25 briefing. What would be reasonable, given the need for

0155

1 transcripts, most likely?

2 MR. STANOVSKY: How long do transcripts typically

3 take?

4 JUDGE PEARSON: I think they are--they'll be

5 available for you to purchase them after 10 business days?

6 THE REPORTER: Yes.

7 JUDGE PEARSON: They're free on the Commission's

8 website after 30 days.

9 Mr. Fukano, do you have a recommendation?

10 MR. FUKANO: Perhaps two to three weeks after

11 receiving the transcript.

12 JUDGE PEARSON: Okay.

13 MR. STANOVSKY: So that would be 30 days from now--

14 would take us to early September. So, Your Honor, I'm in

15 hearing in Alaska from Wednesday until--scheduled for a week

16 and a half after that, and then back in hearing in Alaska, I

17 think the following Monday--the last week of August through

18 September 17.

19 JUDGE PEARSON: Why don't we go off the record

20 while we have this discussion--

21 MR. STANOVSKY: Sure.

22 JUDGE PEARSON: --and then we'll memorialize it so

23 you don't have to get everything they say.

24 (Off the record 2:34 to 2:37 p.m.)

25 JUDGE PEARSON: Let's go back on record. Following

0156

1 a brief recess, we worked on the details for post hearing

2 briefs. There will be simultaneous post hearing briefs due

3 to the Commission by close of business on Friday,

4 October 4th. And we have agreed to a 20-page limit,

5 excluding introductory and table of contents pages.

6 Is there anything else that we need to address before we

7 go off the record today?

8 MR. GARG: My client would like to know whether

9 Superior can continue to provide service without

10 compensation until this Court decides one way or the other.

11 JUDGE PEARSON: I think that's fine. Mr. Sevall,

12 have do you have any objection to that? The issue is

13 collecting compensation from the service provided.

14 MR. SEVALL: Correct. So my understanding is, your

15 client as long as he wished could continue with zero

16 compensation.

17 JUDGE PEARSON: Correct.

18 MR. SEVALL: So even, regardless of the outcome of

19 this, if he wanted to continue for zero compensation.

20 MR. GARG: My client is okay with not collecting

21 any compensation as long as he's allowed to provide the

22 service.

23 JUDGE PEARSON: Okay. Anything else?

24 MR. FUKANO: Nothing further from Staff.

25 MR. GARG: Nothing further from Superior.

0157

1 MR. STANOVSKY: Nothing from Waste Management, Your

2 Honor. Thank you.

3 JUDGE PEARSON: Well, thank you all for coming

4 today and thank you all that have observed from the audience

5 as well; thanks for making the trip.

6 THE REPORTER: I'm required to go around the table

7 to ask who, if they need to order.

8 JUDGE PEARSON: Do you want it on the record or off

9 the record?

10 THE REPORTER: On the record. Do you want to ask

11 them? Or, I can ask them.

12 JUDGE PEARSON: Sure. Who would need to order a

13 transcript for availability in 10 business days?

14 MR. FUKANO: Staff would. We'd appreciate it.

15 JUDGE PEARSON: Well, you'll get one. We've

16 already paid for our copy, so who else wants to pay for a

17 copy?

18 MR. GARG: You said it's available in 30 days?

19 JUDGE PEARSON: It is. And I think with this

20 schedule being what it is, I don't know that you would need.

21 MR. GARG: Superior will wait.

22 JUDGE PEARSON: Okay.

23 MR. STANOVSKY: Waste Management is happy to wait,

24 too.

25 JUDGE PEARSON: All right. Well, if that's

0158

1 everything, then we are adjourned.

2 (Hearing adjourned at 2:39 p.m.)

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STATE OF WASHINGTON )

5 ) ss

COUNTY OF PIERCE )

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7 I, CARMEN L. LUNDY, CCR No. 2287, Certified Court

8 Reporter, certify:

9 That the foregoing proceedings were taken before me at

10 the time and place herein set forth;

11 That the testimony and all objections made at the time

12 of the examination were recorded stenographically by me and

13 were thereafter transcribed;

14 That the foregoing is a true and correct transcript of

15 my shorthand notes so taken.

16 I further certify that I am not a relative or employee

17 of any attorney, of any of the parties nor financially

18 interested in the action.

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Notary Public in and for the

23 State of Washington at Tacoma.

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