

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of:

SUPERIOR WASTE & RECYCLE LLC

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

DOCKET TG-181023

**WASTE MANAGEMENT OF
WASHINGTON, INC.'s POST-
HEARING BRIEF**

POST-HEARING BRIEF

Waste Management of Washington, Inc. (“Waste Management”) submits its post-hearing brief as ordered by Judge Pearson from the bench at hearing.¹

¹ TR. 156:2-5.

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ARGUMENT

I. Introduction and Overview

1 For several years, Daniel Stein solicited customers and provided solid waste service in Kitsap County in violation of Washington law.² He ignored UTC Staff’s attempts to contact him and provide technical assistance.³ He directed prospective customers to cancel existing service with Waste Management of Washington, Inc. (“Waste Management”). He then directed them to falsely inform Waste Management that they would take their own waste to the dump, not that they would be using Mr. Stein’s competing service.⁴

2 A day after the Commission fined Mr. Stein and ordered him to cease and desist solid waste collection without a certificate,⁵ he submitted an application seeking a solid waste certificate for Superior Waste & Recycle LLC (“Superior”), of which he is sole owner⁶ and primary operator.⁷ Waste Management holds the existing certificate from the Commission to haul solid waste in Superior’s proposed territory and protested the Application pursuant to RCW 81.77.040.⁸

3 To receive a new certificate to serve in Waste Management’s certificated territory, Superior must prove three elements:

² Exh. DS-18X, *In re Daniel Stein d/b/a Seabeck Waste & Recycle* (TG-180181 Order 02, Dec. 10, 2018) (the “Cease and Desist Order”) at 7, ¶ 25.

³ *Id.*; see also *id.* at 3-4, ¶¶ 4-6.

⁴ *Id.* ¶ 5.

⁵ See generally Exh. DS-18X, Cease and Desist Order.

⁶ Exh. DS-9X, Superior’s Application for a Solid Waste Collection Company Certificate (dated Dec. 11, 2018) (the “Application”) at 2.

⁷ Exh. DS-21X at 4, Superior response to UTC Staff Data Request No. 5.

⁸ Protest of Waste Management of Washington, Inc. (Feb. 20, 2019).

(1) the existing certificated company or companies “will not provide service to the satisfaction of the commission”; (2) the public convenience and necessity require the additional operations the applicant proposes; and (3) the applicant has the financial and operational fitness to provide the proposed service.⁹

The Commission must make all three of these findings in order to grant the application.¹⁰ Here, Superior has failed to carry its burden as to each element.

4 Historically, the Commission has set a high standard for the solid waste industry, both to receive a certificate and to operate under one. The record demonstrates that Waste Management continues to meet those standards to the Commission’s satisfaction, so Superior cannot prove the first required element. The record also reflects that Superior has not shown a public need for issuance of any new certificate, the second element. With respect to the third element, the record reflects that Superior is *neither* financially nor operationally fit to provide its proposed service (even if it had met the second element). Thus, the record supports denying Superior’s application on the basis of each element.

5 To grant Superior’s application on this record would seriously undermine the system that has served Washington’s solid waste customers well for decades. Superior’s proposed territory covers only a fraction of the regulated customers in Kitsap County alone. Even if the Commission had serious concerns with Waste Management—which the record does not support—granting Superior’s application instead of working with Waste Management to continue improving would veer away from precedent and open a new era of competitive garbage and recycling collection service in this state. Granting the Application would repudiate both the

⁹ *In re Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington* (Docket TG-120033 Order 07, Feb. 14, 2013) at ¶ 5 (quoting RCW 81.77.040).

¹⁰ *See id.*

Commission’s recognition that “community universal solid waste service by its nature can be provided more efficiently and safely by a single carrier”¹¹ and the Legislature’s “strong preference” for exclusive solid waste collection service.¹² At a minimum, granting the Application would invite a wave of new contested certificate cases. Instead, the Commission should recognize the value of its relationship with Waste Management, which remains committed to providing service to the Commission’s satisfaction.

6 The alternative is a hauler who has consistently bridled at Commission regulation. Last year, Mr. Stein testified that when Commission staff first contacted him about his illegal collection service, he found the very existence of the UTC unbelievable—a dirty trick by Waste Management trying to scare him off.¹³ Less than a year ago, this Commission found that testimony not credible, finding that Mr. Stein had been operating “in violation of law for many years, and with knowledge that it was operating in violation of Commission rules.”¹⁴ The Commission found that Mr. Stein showed “very little ability or willingness to comply with Commission regulations.”¹⁵ Even at hearing in this docket, Mr. Stein testified that he continues accepting token compensation for his services as a protest against the Commission’s Cease and

¹¹ *In re Sharyn Pearson & Linda Zepp d/b/a Centralia-SeaTac Airport Express*, 1994 WL 16962797 (Order M. V. C. No. 2057, Hrg. No. D-76533, June 24, 1994).

¹² *In re Application GA-896 of Superior Refuse Removal Corp.*, 1993 WL 13811933 (Order M.V.G. No. 1639, Hearing No. GA-896, June 28, 1993).

¹³ Stein, Exh. DS-17X, *In re Daniel Stein d/b/a Seabeck Waste & Recycle*, Docket TG-180181, transcript of hearing (Nov. 29, 2018) at 24:20-25:4. (This citation is to the pages as numbered in the transcript, which are pages 25-26 of 45 of Exh. DS-17X.)

¹⁴ Exh. DS-18X, *In re Daniel Stein d/b/a Seabeck Waste & Recycle* (Docket TG-180181 Order 02, Dec. 10, 2018) at 7, ¶ 25.

¹⁵ *Id.*

Desist Order.¹⁶ This attitude, together with Superior's lack of financial and operational fitness for its proposed service, show that it should not receive a certificate.

7 In short, both Washington law and the Commission's high standards for solid waste service require denial of the Application. The following sections apply the three required elements for a new certificate to the record, demonstrating Superior's shortcomings with respect to each.

II. Superior has not proven any of the three elements required to receive a certificate.

A. Waste Management will provide service to the satisfaction of the Commission.

1. Waste Management provides satisfactory service.

8 Superior must prove that Waste Management "will not provide service to the satisfaction of the Commission."¹⁷ The Commission looks at several factors in making this determination. These include:

[1] the nature, the seriousness and the pervasiveness of complaints about [the existing carrier's] service; [2] the carrier's response to customer complaints, and the carrier's demonstrated ability to resolve them to the Commission's satisfaction; and [3] the carrier's history of compliance with regulation, with special attention to the carrier's cooperativeness on matters central to the Commission's regulation in the public interest.¹⁸

¹⁶ Stein, TR. 46:9-25 (quoting Exh. DS-7, Mr. Stein's statement to *Kitsap Sun*, at 4).

¹⁷ RCW 81.77.040.

¹⁸ *In re Application GA-849 of Superior Refuse Removal Corp.*, 1991 WL 11863736 (Order M.V.G. No. 1526, Hearing GA-849, Nov. 20, 1991) (citing Order M.V.G. No. 1402 *In re R.S.T. Disposal Co., Inc. d/b/a Tri-Star Disposal*, Cause No. GA-845 (July 1989)).

9 The record shows that *not one* of these factors supports Superior’s application. In discovery, UTC Staff found as much with respect to each individual factor.¹⁹ Staff concluded that Waste Management *will* provide service to the satisfaction of the Commission.²⁰ In reaching that conclusion, Staff reviewed all complaints received by the UTC regarding Waste Management’s *entire* Brem-Air operation since the start of 2017—23 complaints in all.²¹ Of those, only three were upheld in the customer’s favor, and none of those related to refusal to provide service of the sort Superior relies on to claim unsatisfactory service by Waste Management.²²

10 With respect to service under Brem-Air’s existing tariff, Waste Management investigated the service locations for each of Superior’s 53 proposed customers.²³ Every one of them is eligible for Waste Management curbside service under the existing Brem-Air tariff.²⁴ Thirteen are also eligible for drive-in or carry-out service on existing terms.²⁵ Only two Superior customers are ineligible for those services due to distance limitations in the tariff.²⁶ Thirty-four—including the two just mentioned—are ineligible because of safety concerns related to their privately-maintained roads.²⁷ Those denials of specialized carry-out or drive-in service are

¹⁹ Exh. SS-11X, UTC Staff responses to Waste Management discovery requests, at 3 (timeliness of service), 4 (regularity of service), 5 (nature, seriousness, or pervasiveness of complaints), 6 (response to complaints), 7 (ability to resolve complaints), 8 (history of compliance with regulation), 9 (history of compliance with regulation on matters central to regulation in the public interest).

²⁰ Sevall, Exh. SS-6T at 4:17-19.

²¹ *Id.* at 4:19-21.

²² *Id.* at 4:21-5:1.

²³ *See generally* Rutledge, Exh. RAR-2T at 2-5, *as corrected*, Rutledge, TR. 102:19-103:7. Further citations to Mr. Rutledge’s testimony reflect Mr. Rutledge’s corrections at hearing.

²⁴ Rutledge, Exh. RAR-2T at 4:3-4, 5:8-9.

²⁵ Rutledge, Exh. RAR-2T at 3:22-4:1, 5:9-11.

²⁶ Sevall, Exh. SS-6T at 5:10-13.

²⁷ Sevall, Exh. SS-6T at 5:13-15.

consistent with Commission regulations and the Commission-approved terms of Waste Management's Brem-Air tariff.²⁸ As UTC Staff correctly notes, declining service due to valid safety concerns does not indicate a failure to serve to the Commission's satisfaction, and nothing in the record calls Waste Management's safety concerns into doubt.²⁹ Again, all of these customers are eligible for curbside service, just like everyone else in Waste Management's Kitsap County service territory, whether urban, suburban, or rural.

11 More generally, both Mr. Weinstein and Mr. Rutledge testified about Waste Management's history of responding to and collaborating with the Commission on a wide range of regulatory matters,³⁰ as well as its commitment to continue doing so, including with specific reference to the customers and services at issue in the Application.³¹ Superior failed to contest this evidence with any particularity.

12 Taking all the evidence together, UTC Staff "does not believe that the facts in the three consumer upheld complaints, nor anything else in the record, demonstrates that Waste Management is not providing satisfactory service" based on the factors identified above.³² Waste Management agrees, and the Commission should find accordingly and therefore deny the Application.

²⁸ WAC 480-70-366; Brem-Air Disposal Tariff No. 20, 1st Revised Page No. 14, Item 30.

²⁹ Sevall, Exh. SS-6T at 3:19-4:13.

³⁰ Weinstein, Exh. MAW-1T at 3-7; Rutledge, Exh. RAR-2T at 5-6.

³¹ Weinstein, Exh. MAW-1T at 8-11, Exh. MAW-5T at 2-7; Rutledge, Exh. RAR-1T at 2-6.

³² *Id.* at 5:1-7.

2. *Even if Waste Management’s service were unsatisfactory, the Commission should deny the Application and work with Waste Management to improve.*

13 Even if the Commission were dissatisfied with Waste Management’s past service, that would still not justify a finding that Waste Management *will* not provide satisfactory service going forward, as required by RCW 81.77.040, before the Commission could grant Superior a certificate. When the Commission rejected a certificate application by another company named Superior in 1991, it held:

A grant of additional authority in the same territory is not an appropriate sanction for every violation of Commission laws or rules or every deficiency in the provision of solid waste service. The Commission must consider the Legislature’s reluctance to permit overlapping authorities in the collection and disposal of solid waste in determining an appropriate sanction.³³

And in 1993, rejecting another application by the same Superior, the Commission elaborated that “[w]hen service and compliance appear generally satisfactory, it is appropriate to *consider whether there are tools other than granting overlapping authority* available to the Commission to bring about needed improvements.”³⁴

14 In the 1993 case, the Commission found that the record clearly showed a number of systematic failures by the incumbent.³⁵ Still, the incumbent’s “financial condition and cooperativeness with Commission regulation” showed that the incumbent was “able and willing

³³ *In re Application GA-849 of Superior Refuse Removal Corp.*, 1991 WL 11863736 (Order M.V.G. No. 1526, Hearing GA-849, Nov. 20, 1991) (emphasis added).

³⁴ *In re Application GA-896 of Superior Refuse Removal Corp.*, 1993 WL 13811933 (Order M.V.G. No. 1639, Hearing No. GA-896, June 28, 1993) at n. 12 (emphasis added).

³⁵ *Id.* (in addition to evidence of various less systematic failures, the record clearly demonstrated the incumbent’s “failure to provide information on its annual reports; . . . tendency to overload two-axle trucks; and . . . inadequate container maintenance program”).

to correct the service and compliance problems shown on this record,” so there was no showing of unsatisfactory service.³⁶

15 The record here lacks any such evidence of systemic compliance failures, so the Commission should work with Waste Management to address any concerns, rather than granting Superior’s application. Like in the 1991 Superior case, the record here lacks:

evidence of widespread or serious service failures; repeated failure to respond to complaints from the public which it serves, or inability or unwillingness to resolve complaints to the satisfaction of the Commission; repeated and knowing violations of Commission laws and regulations; or repeated failure to correct knowing violations, that can lead to the conclusion that the protestant will not provide service to the satisfaction of the Commission.³⁷

On this record, the Commission should abide by its precedent and reject the Application, just as it did in 1991, even if it finds room for Waste Management to improve operations at Brem-Air.

16 As this Commission held in the 1993 Superior case, the Washington legislature has expressed “a strong preference for regulated monopoly service in the collection of solid waste.”³⁸ That case cited a 1961 Attorney General opinion discussing the then-new certificate system. The Attorney General wrote that “[e]xperience has shown that having exclusive territories for garbage haulers serves and protects the public interests far better than when competition exists.”³⁹

³⁶ *Id.*

³⁷ *In re Application GA-849 of Superior Refuse Removal Corp.*, 1991 WL 11863736 (Order M.V.G. No. 1526, Hearing GA-849, Nov. 20, 1991), *aff’d*, *Superior Refuse Removal, Inc. v. Wash. Utils. & Transp. Comm’n*, 81 Wn. App. 43, 47-48 and n.4 (1996).

³⁸ *In re Application GA-896 of Superior Refuse Removal Corp.*, 1993 WL 13811933 (Order M.V.G. No. 1639, Hearing No. GA-896, June 28, 1993) (citing RCW 81.77.040; Wash. Att’y Gen. Op. 61-62 No. 67 (Oct. 2, 1961)).

³⁹ Wash. Att’y Gen. Op. 61-62 No. 67 (Oct. 2, 1961).

17 Finally, Superior claims that it should receive a certificate because it believes its service would be better than Waste Management's.⁴⁰ The record contradicts that conclusion, but even if it were so, the Commission has said that a comparison of service between the applicant and incumbent has no bearing on whether the existing service is satisfactory. The Commission should *only* consider the applicant's proposal after finding that an incumbent will not serve to the Commission's satisfaction.⁴¹

B. The public convenience and necessity do not justify a new certificate.

18 Separately, the Commission should deny the application because Superior has not proven the second element: whether the public convenience and necessity require the proposed service. On this element, "the Commission must hear directly from prospective customers and those witnesses must testify at the hearing, under oath, and subject to cross-examination."⁴² This contrasts with a temporary certificate application, which can be supported by sworn written statements like those submitted by Superior.⁴³ Superior failed to present any witnesses other than Mr. Stein himself. That leaves the Commission with only Mr. Stein's generalized, self-serving testimony, plus a number of unsworn statements that purport to give the views of individual customers.

19 Waste Management does not mean to suggest that those people and their needs are not real. Waste Management is sympathetic to the needs of customers in hard-to-access locations.

⁴⁰ *E.g.* Stein, Exh. DS-1T at 5:12-18.

⁴¹ *In re Application GA-896 of Superior Refuse Removal Corp.*, 1993 WL 13811933 (Order M.V.G. No. 1639, Hearing No. GA-896, June 28, 1993).

⁴² *Northwest Industrial Services, LLC, d/b/a American On Site Services* (TG-081725 Order 03, Apr. 23, 2009).

⁴³ WAC 480-70-131(3); Exh. DS-4.

Mr. Weinstein and Mr. Rutledge testified that Waste Management continues to evaluate how it might better serve such people without unreasonable risk or unfair cost shifts to other customers.

20 But the fact is that Superior has not presented the evidence required by Commission precedent to succeed in this case. Even assuming the truth of everything in the filed statements, Superior's failure to present the required evidence further shows that it is unprepared to meet the obligations imposed by this Commission. Moreover, even if all of the statements submitted by Superior were true, they represent an extremely small slice of the population in an area with 6,000 Waste Management customer accounts.

21 Further, the public convenience and necessity do not require doorstep collection service up long driveways with access issues, where driving a waste collection vehicle would put persons or property at risk. Ten of Superior's proposed customers could get carry-out or drive-in service under Brem-Air's tariff today. All but two of the others are eligible for standard curbside service, but are excluded from drive-in service only because they have private drives that cannot accommodate garbage trucks and they cannot or will not take their waste to curbside collection points or upgrade their private roads for safe access. Superior has only two customers who are excluded from those specialized services due to the distance limitation in Brem-Air's tariff—too few to justify a new certificate, as Staff agrees.⁴⁴

22 One final note on Superior's proposed service: The record is not entirely clear, but Superior seems to believe that granting the Application would somehow limit Waste

⁴⁴ See Sevall, Exh. SS-6T at 4:10-13; Exh. SS-11X at 16, Staff Response to Waste Management Data Request No. 22(d) ("although there are two Superior customers that are not eligible for drive-in service based on Waste Management's current tariff, the small number of presently ineligible customers does not appear to demonstrate a public need for a new certificate.").

Management’s existing authority.⁴⁵ Waste Management is aware of no authority in support of that position, which conflicts with the outcome in past cases when the UTC has found that an existing certificate holder will not serve to the Commission’s satisfaction.⁴⁶ Nor does the record support a finding that Superior is fit, willing, and able to serve the hundreds of Waste Management drive-in and carry-out customers in Superior’s proposed territory whose existing service would be immediately displaced by this outcome.

23 In sum, Superior’s failure to prove the need for its proposed service justifies denial of the Application.

C. Superior has not shown that it is operationally or financially fit.

24 The third required element for Superior to receive a certificate is its own fitness to provide the proposed service, which includes both financial and operational fitness.⁴⁷ Superior failed to prove either. In fact, less than eight months ago, the Commission itself determined that Mr. Stein—Superior’s sole owner and primary operator—had violated the Commission’s solid waste regulations, and in doing so showed “very little ability or willingness to comply” with those regulations.⁴⁸ The record shows that a range of shortcomings persist with respect to Superior’s financial and operational fitness.

⁴⁵ Stein, TR. 32:10-14; *see also* Stein, TR. 32:15-34:6.

⁴⁶ *See, e.g., In re Sharyn Pearson & Linda Zepp d/b/a Centralia-SeaTac Airport Express*, 1994 WL 16962797 (Order M. V. C. No. 2057, Hrg. No. D-76533, June 24, 1994), (“If this application is granted, the applicants will have authority that entirely overlaps” the incumbent’s in two counties).

⁴⁷ *In re Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington* (Docket TG-120033 Order 07, Feb. 14, 2013) at ¶ 5.

⁴⁸ Exh. DS-18X, Cease and Desist Order at 7, ¶ 29.

1. The record shows major gaps in Superior’s operational fitness and regulatory compliance.

25 By signing the Application, Mr. Stein declared, “I understand the responsibilities of a solid waste collection company, and I am in compliance with all local, state, and federal regulations governing business in the state of Washington.”⁴⁹ He testified that he is “familiar with the law regarding collection of solid waste”⁵⁰ and that “Superior has plans to comply with all requirements [of Commission regulations] as soon as the Commission is satisfied and the certificate is granted.”⁵¹ But the record abounds with Superior’s failure to comply with various requirements.

26 When UTC Staff requested a copy of Superior’s compliance plans, Superior offered only a narrative discovery response less than two pages long, claiming that “[a] consultant has prepared administrative and financial procedures in compliance with the UTC and Washington State regulations.”⁵² Superior failed to produce any more detailed or previously prepared plans.⁵³ Ultimately, UTC Staff examined only Superior’s financial information, and reached no conclusions regarding its operational fitness.⁵⁴

27 Mr. Stein testified on cross-examination that the consultant was his mother, Ms. Caroline Stein, who prepared the purported (but not produced) plans without compensation.⁵⁵ Mr. Stein indicated on re-direct that “her credentials and her background is [sic] key” to Superior’s

⁴⁹ Exh. DS-9X, Application, at 5; Stein, TR. 80:16-81:8.

⁵⁰ Stein, Exh. DS-1T at 5:2.

⁵¹ Stein, Exh. DS-8T at 8:10-12.

⁵² Exh. DS-21X at 3-4, Superior Response to UTC Staff Data Request No. 5 (July 29, 2019).

⁵³ Stein, TR. 54:5-19.

⁵⁴ Sevall, TR. 146:21-147:3.

⁵⁵ Stein, TR. 54:20-55:1.

compliance, but the record is devoid of those credentials and qualifications, except a few general statements indicating that she has a “business degree,” has “been an advocate for elderly and disabled people for quite a many [sic] decades,” and has “done something similar” to her role at Superior for other businesses—the only given example being preparation of “Power of Attorneys over people that are at risk.”⁵⁶ Nothing in the record suggests that Ms. Stein has any specific experience or training in complying with any Uniform System of Accounts, nor relevant to regulatory compliance in any transportation industry, let alone solid waste.

28 About half of Superior’s two-page narrative response consists of Superior’s “Back-Up Action Plans,” which say only that if Mr. Stein is unavailable, the route will be driven by his sister Tammy Stein (who is purportedly familiar with Superior’s routes and service but is not a Superior employee) and that if Superior’s equipment is unusable, Superior will rely on unspecified “rental equipment” instead.⁵⁷

29 At hearing, Mr. Stein said he knew Washington law requires UTC-certificated haulers to comply with local solid waste ordinances.⁵⁸ But his testimony shows almost no familiarity or preparation to comply with Kitsap County’s regulations for garbage and recycling service. Superior’s proposed service—as well as the “free” service it currently provides—lacks numerous County requirements: separate billing for recycling service,⁵⁹ collection of commingled recyclables⁶⁰ in at least one separately designated cart,⁶¹ compostable organics collection in

⁵⁶ Stein, TR. 92:20-93:17.

⁵⁷ Exh. DS-21X at 4; Stein, TR. 55:2-56:15.

⁵⁸ Stein, TR. 56:24-57:1.

⁵⁹ Exh. DS-20X, Kitsap County Code (“KCC”) Chapter 9.48 “Residential Recycling Collection,” at 3, KCC 9.48.040(1)(A); Stein, TR. 57:2-20.

⁶⁰ Exh. DS-20X at 3, KCC 9.48.040(1)(C); Stein, TR. 58:24-59:17.

⁶¹ Exh. DS-20X at 3, KCC 9.48.040(1)(E); Stein, TR. 59:21-60:18.

required areas,⁶² collection container specifications and related coordination with the County,⁶³ rates designed to encourage recycling and compostable organics collection⁶⁴ and distribute the cost of single-family recycling among all single-family garbage ratepayers,⁶⁵ recycling cart options,⁶⁶ and rate design requirements for compostable organics service.⁶⁷

30 Superior offers only slightly better plans to comply with the Commission's business operations requirements. The Commission requires a hauler to "maintain a business office" open for at least four hours on Mondays through Fridays, except holidays.⁶⁸ Superior's proposed "business office" would be Seabeck Landing General Store, and would be staffed by general store employees.⁶⁹ Superior would pay for neither the space nor the store employees,⁷⁰ and has no formal agreement establishing its right to use the space.⁷¹ When asked about store employees' training to comply with the Commission's solid waste customer service requirements, Mr. Stein indicated that they would point customers to "a bulletin board [with] all the information that is required" by law.⁷²

31 Superior has also failed to define or abide by geographic limits to its proposed service territory. Mr. Stein acknowledged that the Commission's mapping requirements serve the need

⁶² Exh. DS-20X at 4, KCC 9.48.040(3)(A); Stein, TR. 60:19-62:10; *also compare* Superior's proposed service territory map, Exh. DS-11X, with Kitsap County interactive map of required areas for curbside compose service, available at <https://www.kitsapgov.com/pw/Pages/wastecollection.aspx> (accessed Sept. 27, 2019).

⁶³ Exh. DS-20X at 4, KCC 9.48.040(4)(A); Stein, TR. 62:15-63:9.

⁶⁴ Exh. DS-20X at 5, KCC 9.48.050(1)(A); Stein, TR. 63:10-16, 64:7-16.

⁶⁵ Exh. DS-20X at 5, KCC 9.48.050(1)(B)(i); Stein, TR. 64:17-65:1.

⁶⁶ Exh. DS-20X at 5, KCC 9.48.050(1)(B)(iii); Stein, TR. 65:24-66:4.

⁶⁷ Exh. DS-20X at 5-6, KCC 9.48.050(1)(D); Stein, TR. 66:5-13.

⁶⁸ WAC 480-70-361(1).

⁶⁹ Stein, TR. 68:12-18, 69:12-14.

⁷⁰ Stein, TR. 71:17-72:2.

⁷¹ Stein, TR. 81:9-14.

⁷² Stein, TR. 69:15-21.

for precise territory boundaries, which in turn would enable precise determination of whether a prospective customer is within the allowed territory.⁷³ Yet Mr. Stein claimed that Superior’s vague, hand-drawn territory map “was accepted by the UTC” even though he believed it did not meet the Commission’s map requirements, as cited in the application form.⁷⁴ When Waste Management requested a map meeting the Commission’s mapping standards, Superior refused.⁷⁵ It took the surprising position that the requested map—a requirement of the Application⁷⁶—was irrelevant to whether Superior’s application meets requirements for a certificate application.⁷⁷ It also claimed such a map was “obtainable from some other [unspecified] source”—implicitly, a source with precise knowledge of Superior’s intended territory—“that is more convenient, less burdensome, or less expensive.”⁷⁸

32 This fuzziness and resistance to compliance translates into Superior’s proposed operations. Mr. Stein acknowledged that the Commission’s territory boundaries are requirements, not suggestions or recommendations.⁷⁹ Therefore, Mr. Stein testified, if Superior received a service request from outside its territory, he “would decline them and tell them to go with whomever the provider was.”⁸⁰ Yet he admitted that Superior already serves at least one customer outside its proposed territory.⁸¹ He also acknowledged that Superior’s filed map lacks

⁷³ Stein, TR. 73:12-22.

⁷⁴ Stein, TR. 73:19-74:11.

⁷⁵ Exh. DS-14X at 10, Superior Response to Waste Management Data Request No. 0036.

⁷⁶ Exh. DS-9X at 3 (certificate application form directs: “Please attach a map that meets the requirements of WAC 480-70-056 and clearly shows the territory described above.”).

⁷⁷ Exh. DS-14X at 10, Superior Response to Waste Management Data Request No. 0036.

⁷⁸ *Id.*

⁷⁹ Stein, TR. 76:14-18.

⁸⁰ Stein, TR. 74:12-15.

⁸¹ Stein, TR. 74:16-75:11, 76:19-21.

many geographic features that would be useful to determine whether Superior's certificate allowed it to serve a prospective customer.⁸² Many of these features would also be required by the Commission's regulations, and therefore required with a certificate application.⁸³

33 Finally, the record also casts doubt on Superior's ability to keep businesslike records. When Waste Management requested information on billing and accounting practices from Mr. Stein's operations prior to the Cease and Desist Order, Superior indicated merely, "No such record of activity. All records destroyed pursuant to the order of docket TG-180181," the Cease and Desist Order.⁸⁴ Pressed further in discovery, Mr. Stein claimed that he understood the cease and desist order to require such destruction of records, which he did out of his "desire to comply with the lawful order I was served, to move forward with new knowledge, to the liking of the commission."⁸⁵ However, nothing in the Cease and Desist Order required Mr. Stein to destroy his records.⁸⁶ And at hearing, he admitted the possibility that the records he destroyed contained evidence of further violations beyond those for which the Commission cited him.⁸⁷

34 In sum, Superior is not ready to meet the obligations of a solid waste hauler. It hopes to secure a certificate first and sort out regulatory compliance later. It has made no comprehensive attempt to identify, much less fulfill, all the regulations the Application would subject it to. Regulated solid waste hauling is a complex business, and even an operationally fit hauler must

⁸² Stein, TR. 75:20-25.

⁸³ WAC 480-70-056(2) (details required on "[a]ny map submitted to the [C]ommission"); Exh. DS-9X at 3 (certificate application form directs: "Please attach a map that meets the requirements of WAC 480-70-056 and clearly shows the territory described above.").

⁸⁴ Exh. DS-14X at 11 (Superior response to Waste Management Data Request No. 0037).

⁸⁵ Exh. DS-22X at 6 (Superior response to Waste Management Data Request No. 0058.a).

⁸⁶ *See generally* Exh. DS-18X, Cease and Desist Order; *see also* TR. 51:15-17 (Judge Pearson: "I agree that nowhere in this order does it instruct Mr. Stein to destroy any of his records . . .").

⁸⁷ Stein, TR. 80:8-15.

monitor and occasionally adjust its compliance program. But surely a hauler must make a reasonably comprehensive attempt to identify the relevant body of law, and must plan in advance for how it will comply, before the Commission may find it fit. Superior has not done so.

2. *Superior's incomplete budget estimate and lack of familiarity with financial concepts and obligations show its lack of financial fitness.*

35 The record shows that Superior's filed cost projections depend on significant omissions and optimistic assumptions, and also that Superior lacks the accounting and ratemaking expertise to offer reasonable, cost-based service. In light of these shortcomings, Superior is not financially fit to receive a certificate.

36 Mr. Stein's testimony shows that it would cost roughly \$2,500 to bring Superior's recycling carts alone into compliance with Kitsap County regulations⁸⁸—over 10% of Superior's estimated annual budget.⁸⁹ That cost is not reflected in any of Superior's filings,⁹⁰ nor, therefore, in the analysis of Mr. Sevall, UTC Staff's witness. Superior also made no provision for the cost of compostable collection containers where required.⁹¹

37 With respect to administrative expenses, Superior estimated only \$300 for accounting services, to cover office supplies and possibly software like Quickbooks.⁹² Its budget projects no costs for other legal or professional services.⁹³

⁸⁸ Stein, TR. 66:22-67:3, 67:11-24.

⁸⁹ Exh. DS-10X at 4 (Superior business plan estimating \$24,144 in annual revenue).

⁹⁰ Stein, TR. 67:4-10.

⁹¹ Stein, TR. 68:2-11.

⁹² Stein, TR. 81:15-25.

⁹³ Stein, TR. 82:6-13.

38 Mr. Stein also indicated that he is not familiar with the concept of a revenue requirement,⁹⁴ one of the most fundamental concepts in regulated ratemaking. Superior's financial projections lump together all costs for both recycling and garbage,⁹⁵ and it does not offer separate rates for garbage and recycling.⁹⁶ There is no indication that Superior understands the concept of cost allocation, let alone intends to allocate its costs of service to reasonably reflect different costs among customers and commodities.⁹⁷

39 Mr. Sevall testified that, *based on the financial information Superior filed*, he believed Superior was financially fit to provide its proposed services for at least one year.⁹⁸ But that analysis is no better than the information Superior provided to Staff. The gaps in Superior's financial estimates throw Mr. Sevall's conclusions into significant doubt. In addition, the Commission should consider not only Superior's gross cash flows, but also its ability to account and set rates consistent with the Commission's requirements. In that light, the record does not support finding that Superior is financially fit to provide its proposed service.

III. Conclusion

40 Superior has failed to show that Waste Management will not serve to the Commission's satisfaction, that the public convenience and necessity require its proposed service, and that it is financially or operationally fit. Therefore, the Commission should deny the Application.

⁹⁴ Stein, TR. 86:11-13.

⁹⁵ Stein, TR. 85:12-14.

⁹⁶ Exh. DS-14X at 12, Superior Response to Waste Management Data Request No. 0042.

⁹⁷ See generally Stein, TR. 82:14-86:13.

⁹⁸ See Sevall, Exh. SS-1T at 3:1-6:9.

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