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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of)
)
WASTE MANAGEMENT OF) Docket No. TG-120033
WASHINGTON, INC.)
d/b/a WM Healthcare Solutions)
of Washington)

TELEPHONIC HEARING, VOLUME III

Pages 102 - 151

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

3:01 P.M.

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1 JUDGE KOPTA: Let's be on the record.
2 We are in Docket No. TG-120033 encaptioned In the
3 Matter of the Application of Waste Management of
4 Washington, Inc., d/b/a WM Healthcare Solutions of
5 Washington, et cetera. Today's date is October 3rd,
6 2012, three o'clock, a little thereafter, in the
7 afternoon. We are here for oral argument and decision
8 on Stericycle's motion for -- to compel discovery
9 responses from Waste Management.

10 We will begin by taking appearances first for
11 the Company.

12 MR. VAN KIRK: Were you referring to
13 Stericycle or Waste Management?

14 JUDGE KOPTA: I was referring to Waste
15 Management.

16 MR. VAN KIRK: Go for it, Jessica.

17 MS. GOLDMAN: For Waste Management of
18 Washington, this is Jessica Goldman from the Summit
19 Law Group.

20 JUDGE KOPTA: And for Stericycle?

21 MR. VAN KIRK: And for Stericycle of
22 Washington, this is Jared Van Kirk from Garvey
23 Schubert Barer.

24 JUDGE KOPTA: And for Commission Staff?

25 MS. WOODS: Good afternoon, Your Honor.

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1 This is Fronda Woods, Assistant Attorney General, for
2 Commission Staff.

3 JUDGE KOPTA: And for everyone else?

4 MR. SELLS: That would be James Sells,
5 attorney on behalf of Washington Refuse Recycling
6 Association and associated companies.

7 JUDGE KOPTA: All right, thank you. And
8 of course I didn't introduce myself. Gregory Kopta,
9 presiding administrative law judge.

10 I have read both the motion and the response.
11 What I would propose to do is go through each of the
12 data requests that Stericycle has requested in order
13 to compel and have a brief discussion of each one of
14 those.

15 I hope it comes as no surprise that I intend
16 to be as consistent as possible with our last
17 disposition of these types of requests. I will say
18 that in general. I am only going to be looking for
19 how these relate to the issues that we will be
20 addressing at the hearing. Also, I would just observe
21 that the responses and -- the responses to the
22 requests themselves and Waste Management's description
23 of what they have already provided are a bit
24 different. So to the extent that information has
25 already been provided that is responsive to these data

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1 requests, then that's something that I am going to
2 want to hear from Waste Management, since there's only
3 one of the requests that I note in which Waste
4 Management says that they have already provided
5 responsive information. That was a little bit
6 different than what I saw in the pleading, and will be
7 expecting to know if that is the case for any of the
8 other requests.

9 I believe we are looking first at Data Request
10 No. 2. On that one I will just tell you preliminarily
11 that that seems to me to be addressed to how this
12 particular service is provided, and that was something
13 that I said is off the table as far as discovery goes.
14 Is there some other reason that you are asking for
15 this, Mr. Van Kirk?

16 MR. VAN KIRK: Thank you, Judge Kopta.
17 Thank you for setting this hearing this week when I
18 know you are busy. My one sentence preliminary remark
19 will simply be that our intention with all of these
20 discovery requests, which I hope will become clear,
21 was to follow on from your Order No. 5 and focus on
22 things that do relate to public need and public
23 interest. I will do my best to explain that as I go
24 forward here.

25 JUDGE KOPTA: Fair enough.

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1 MR. VAN KIRK: So Data Request No. 2
2 frankly seems to be a fairly simple data request. The
3 way I see it as being related, we -- we know the --
4 from some of the earlier responses that this material,
5 the sharps material, will be shipped down to
6 California. We think it's relevant to a generator's
7 potential interest in the issues of safety, the
8 environmental impact and of liability, to know how
9 their sharps material is being shipped at such great
10 distance.

11 JUDGE KOPTA: Ms. Goldman?

12 MS. GOLDMAN: Your Honor, we have
13 already provided information regarding the vehicles
14 that Waste Management uses for its medical waste, and
15 that's reflected in my Footnote 24.

16 MR. VAN KIRK: I read that as well. Let
17 me address that. The earlier responses didn't specify
18 that any of these trucks, to the best of my
19 recollection, were being used for the sharps program.
20 I know this is a pilot program, and I also know they
21 run some pretty -- a pretty long haul down to
22 California. To the extent that an earlier request
23 specifically identifies those vehicles, I don't think
24 it will be too hard to just point that out in one
25 line.

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1 JUDGE KOPTA: Again, I'm going with my
2 preliminary evaluation of this one. I think what kind
3 of vehicles are used for this particular service,
4 unless Waste Management has placed that into issue, is
5 something that we are really going to have to deal
6 with. This is more of an issue that goes to their
7 fitness as opposed to the program itself. I'm going
8 to deny the motion as to that request.

9 And by the way, I will not be issuing a
10 written order, the oral disposition is what you are
11 going to get, just like we did last time.

12 So No. 3.

13 MR. VAN KIRK: Okay, I'll do No. 3. Let
14 me make one more one- or two-sentence preliminary
15 remark for No. 3, that I think also relates back.

16 I see a connection here between sort of the
17 first half and the second half of the motion we made.
18 The second half having to do with expressions of
19 public need that may be asserted at the hearing, in
20 that to the extent that we don't know at this point,
21 and we don't, what expressions of public need are
22 going to be put forward at the hearing. We also don't
23 know what service features are going to be relevant.
24 Waste Management has kept us in the dark on both
25 counts. Although I'm not asking you to revisit what

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1 you just said, as an example on the transportation
2 issue, you said to the extent Waste Management has put
3 at issue. Well, we should know that at this point and
4 we don't. That was the reason why we have maybe had
5 to ask for more than we otherwise would, because we
6 don't have that information. I would encourage us to
7 look at these as a unified whole.

8 JUDGE KOPTA: Well, I have no problem
9 with doing that. I will say, as I believe I have said
10 before, that all of my rulings on these are
11 conditioned on my understanding of what is at issue in
12 this case. If, as a result of testimony, any of these
13 things are put into issue that I thought were not part
14 of the case, then I am certainly willing to revisit
15 that in one way or the other, either require the
16 information be provided or strike that portion of
17 testimony or evidence that's presented that raises the
18 issue when it was represented that it would not be.

19 I'm hoping that I am consistent both in terms
20 of what I initially decide and how that carries
21 forward into the case. I don't intend to say you
22 can't have the information and allow the other side to
23 provide evidence on that particular issue without you
24 having had a chance to conduct discovery.

25 MR. VAN KIRK: Okay, fair enough. I'll

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1 move on to No. 3 in particular, unless Jessica wanted
2 to say something.

3 MS. GOLDMAN: Go ahead.

4 MR. VAN KIRK: Okay.

5 So No. 3, again relating to public need, and
6 public interest as well. The question is, is Waste
7 Management offering something that people -- that
8 generators out there have expressed a need for and
9 that is in the interest of the generator public. I
10 think No. 3 goes directly to issues related to safety
11 and liability in terms of how long and in what context
12 is this material being kept before it is shipped down
13 to California. At this point, I don't believe we have
14 that information.

15 JUDGE KOPTA: Ms. Goldman?

16 MS. GOLDMAN: Yes, your Honor. I guess
17 to address the preparatory remarks about Mr. Van Kirk
18 having confusion as to what is the basis of the public
19 need. That's a little odd coming two days after the
20 submission of our direct testimony which lays out our
21 case. It is our understanding that what is going to
22 be happening at this hearing is going to be
23 cross-examination. I think we have laid out in very
24 specific detail what the generators are saying and
25 they have used their own words to do so. I think

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1 that's wrong, that there can be confusion as to the
2 basis of Waste Management's contention of a need for
3 its services.

4 And regarding No. 3, this notion that
5 Stericycle is entitled to this information so that
6 the -- to know its generators have expressed a need
7 for it. Well, to the degree that we are relying on
8 generators' expressed needs, we have already stated
9 what those expressed needs are, both in our discovery
10 responses and in our direct testimony.

11 JUDGE KOPTA: Well, I have not reviewed
12 the testimony, Ms. Goldman. Is this particular
13 service one that Waste Management is proffering as a
14 service that is currently not being provided in the
15 state of Washington in those areas for which you are
16 seeking to extend your authority?

17 MS. GOLDMAN: Yes and no. None of the
18 generators have addressed that issue. It is certainly
19 a service that Waste Management contends is different
20 than what is currently offered in the market. None of
21 the generators who are supportive of Waste
22 Management's prima facie case have addressed that
23 issue.

24 JUDGE KOPTA: All right. Well, let me
25 ask you, Mr. Van Kirk. The first part of this, when

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1 you are asking when and how frequently have you
2 collected material for this service, are you talking
3 about from the generators?

4 MR. VAN KIRK: Yes.

5 JUDGE KOPTA: All right. Well, I think
6 that is a legitimate question that describes this
7 particular service, how often it is collected, whether
8 it's weekly, monthly, you know, however. I think
9 that's a legitimate question. In terms of how it is
10 stored and how frequently it is transported to
11 California, I think that goes farther than we need to
12 know at this particular point.

13 I will require that Waste Management let you
14 know how frequently they collect it, but the remainder
15 of this I'm not going to require that they provide a
16 response to.

17 MR. VAN KIRK: May I make one more
18 comment, please, I think will help us as we go forward
19 here?

20 JUDGE KOPTA: All right.

21 MR. VAN KIRK: I don't think I entirely
22 agree that the scope of discovery on services that we
23 are entitled to receive depends strictly upon the
24 specifics of the generator needs that they put
25 forward. The question here, as in all discovery is,

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1 is Stericycle having a fair opportunity to prepare a
2 defense in this case. When it comes to generators,
3 although we will -- we don't necessarily need to
4 question the wisdom of the need they do express, it is
5 appropriate, I think, to put generators on notice of
6 the full scope of services before them, especially
7 areas in which they may not know about or may not have
8 considered, and determine whether the full scope of
9 the service meets the need. Because the question for
10 public need isn't has a generator expressed a need for
11 service that comes at least once a week, for example,
12 the question is does the generator express a need that
13 will be met by, for example, the ecoFinity service.

14 JUDGE KOPTA: I appreciate that,
15 Mr. Van Kirk. I don't disagree with you, which is why
16 I asked Ms. Goldman the question that I did; which is,
17 is this a service that is at issue. I didn't ask
18 whether it was something that was addressed by any of
19 the generator-need testimony. If it has been put into
20 issue, then I think that you are entitled to
21 reasonable discovery about the service itself. But as
22 I said earlier, I think there are limits.

23 I think certainly what a customer perceives as
24 what the service is, is certainly within the realm of
25 discoverable evidence. What they do on the back end,

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1 I'm less inclined to require that they provide,
2 because I don't -- I don't see that as something --
3 again, the Commission is consumer-focused and that is
4 where my focus is as well. I am looking at it from
5 the point of view of what's going to be of interest,
6 what is a consumer going to see as what this service
7 provides, not necessarily how they string together the
8 different piece parts of this to provide the
9 particular service. That's where I'm coming from,
10 just to let you know, so that you understand what my
11 rulings will be on the remainder of these requests.

12 So let's --

13 MR. VAN KIRK: I'm not going to push
14 anymore on No. 3, but I think this goes to probably
15 the next one or the one after. I think when it comes
16 to ecoFinity, a lot of what is being put at issue is
17 what you call the back end. What is done with this
18 waste? Is it recycled, does it meet -- does it help
19 meet sustainability goals? Those are the sorts of
20 issues that I think are being put in play by Waste
21 Management by raising this service.

22 JUDGE KOPTA: Certainly to the extent
23 that they are claiming that this is a service that has
24 benefits beyond specific customers, as in
25 environmental-type benefits, then I would agree with

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1 you, that a demonstration of what those benefits are
2 is legitimate. What their trucks look like, where do
3 they take it after it leaves the state of Washington,
4 I think is a little bit farther afield than I'm
5 willing to push at this point. That's where I'm
6 coming from.

7 MR. VAN KIRK: I'll move on to No. 4,
8 then.

9 JUDGE KOPTA: All right.

10 MR. VAN KIRK: So this one -- the
11 previous discovery we've gotten was basically generic.
12 I think you saw in Ms. Goldman's response, she talked
13 about there was lots of promotional materials that
14 ecoFinity put out. This one goes directly to the,
15 quote, pilot program that's being offered here in
16 Washington. When I wrote these requests, and I think
17 to this point in time, we don't know whether it's
18 identical, whether it's different, which services have
19 been offered here versus which services are touted
20 nationally. We really want to know about the program
21 here in Washington, because we think that's the best
22 reflection of what they are offering to Washington
23 customers.

24 JUDGE KOPTA: Ms. Goldman?

25 MS. GOLDMAN: Well, Your Honor, I just

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1 don't think that's a fair statement of what it is that
2 we have provided. You know, if you just -- if you go
3 to Page 2 and Page 3 of my brief, we are talking here
4 about what's happening in Washington state. This is
5 the single ecoFinity program at issue, and all of this
6 information relates only to that program.

7 JUDGE KOPTA: I was just going to ask,
8 this is the one that I noted that you said that you
9 already provided responsive information to specified
10 data requests.

11 Mr. Van Kirk, did the information that they
12 provide not give you the information about this pilot
13 program?

14 MR. VAN KIRK: I think the information
15 we have about the pilot program in particular is -- we
16 do have a -- we do have the contract related to the
17 pilot program. What we don't have, and I -- again, I
18 don't -- I think these must exist, but I'm not sure,
19 we don't have them, is write-ups, internal write-ups,
20 documents related to this pilot program. I think on a
21 document level, what we really have are the general
22 descriptions of the ecoFinity program, and at least a
23 large portion of those are marketing materials.

24 JUDGE KOPTA: Well, I think that you are
25 entitled to know which services they are offering as

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1 part of the pilot program. I think asking them to
2 produce all records describing that service is overly
3 broad. I will say that to the extent that Waste
4 Management has not identified and given you a
5 reasonable description of the services that were
6 included in the pilot program, that you are entitled
7 to that information. I will require that they provide
8 that to you. I will not require that they provide all
9 records that relate to that.

10 MS. GOLDMAN: Your Honor, can I speak to
11 understanding your order? I'm not clear if you are
12 ordering -- that what we have provided is not
13 sufficient. We have described precisely, this is a
14 singular program. It does what it says -- what it
15 does is what we have described here. I'm not clear on
16 how much more information would be required to define
17 the program.

18 In addition, among the documents we have
19 produced is a citation to -- a reference to the
20 website of the company that handles the recycling end
21 of this, which has lots of detailed information, it's
22 got white papers. That is the program that is being
23 offered here in Washington state.

24 JUDGE KOPTA: I have not reviewed
25 everything that you have provided in response to

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1 discovery. I am going simply on what I have in front
2 of me. To my mind, an acceptable answer would be for
3 you to say we have provided you a description of every
4 service and see these data request responses or this
5 information. That's fine by me, if you have already
6 done it. I don't know whether you have or you
7 haven't. I'm just saying that to the extent that you
8 have not, then you need to do so; to the extent that
9 you have, then you just need to identify to Stericycle
10 where you have provided that information.

11 MS. GOLDMAN: Okay, Your Honor, we will
12 submit a supplementation that cites to the information
13 that I have cited to in my brief.

14 JUDGE KOPTA: All right.

15 And Request No. 5.

16 MR. VAN KIRK: Now we move into a series
17 of requests I think gets to what you call the back end
18 sort of things here. The ecoFinity sharps recycling
19 service, as its name implies, and as it is being
20 promoted by Waste Management as a recycling service
21 both commercially and formally under Commission
22 regulation, implies that we are talking about
23 something that is an environmentally-friendly service
24 or an environmentally-beneficial service that meets
25 some need of a generator for environmental services,

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1 environmentally-friendly services.

2 Here we are trying to get to -- since this is
3 the pilot, the first and only time this has been
4 offered in Washington, we are trying to get to what
5 are the results? Have these been beneficial? And has
6 that been studied? And what are the results of the
7 program? And are they meeting the -- are they meeting
8 what is being -- the scope of how the service is being
9 promoted? And so I think No. 5 is -- refers to that.

10 No. 6 is -- refers to that in general for the
11 national program. And in there, in that case, we
12 know, for example, that there is in fact a study that
13 we don't have access to, that we have asked for. And
14 then No. 7 and 8 ask for specific data to the extent
15 that such data is not included in one of these studies
16 we are asking for.

17 JUDGE KOPTA: What I am hearing from you
18 is really focused on Nos. 6, 7, and 8. No. 5 is much
19 broader than what you just described. My inclination
20 is to deny No. 5 and to focus on Nos. 6, 7 and 8.

21 Ms. Goldman, do you have anything to say in
22 response to what Mr. Van Kirk just said?

23 MS. GOLDMAN: Well, I agree with your
24 order on No. 5.

25 JUDGE KOPTA: What a surprise.

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1 MS. GOLDMAN: Regarding No. 6, which he
2 has just described as regarding a national studies,
3 the national studies are referenced on this website.
4 They are available, I clicked on them myself. There
5 is both a white paper and a clinical study that
6 describes this lifecycle solution analysis that has
7 been conducted. That is the information that is
8 available regarding the national program, which is in
9 fact the same program that is being offered here.

10 MR. VAN KIRK: It's actually not
11 available. The white paper on mine is a summary of
12 the study. If you look into that white paper, it
13 refers to the larger study that it says is retained by
14 Becton Dickinson. It's just a summary that's
15 available on the web, not the full study.

16 JUDGE KOPTA: Do you have an objection
17 to providing him with the entire study, Ms. Goldman?

18 MS. GOLDMAN: We don't have the entire
19 study. That is a study conducted by another company.

20 MR. VAN KIRK: It's a study commissioned
21 by your partner, Becton Dickinson.

22 JUDGE KOPTA: Well --

23 MR. VAN KIRK: It's certainly within
24 your ability -- in the scope of your ability to
25 obtain.

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1 MS. GOLDMAN: Your Honor, again I think
2 this is going quite far afield. When we last
3 addressed this issue with you, and Stericycle appeared
4 before you based on a claim of public need, same basis
5 as it now appears again. You know, the order
6 indicated that once we got to third parties providing
7 services and it being outside of the state of
8 Washington, that that was going too far afield.

9 I think they've got plenty of information as
10 to what the program is offering. I will certainly
11 advise them of that again in a supplement to the
12 discovery responses. And they've got information that
13 is available on this website. I think having looked
14 at it myself, it gives them plenty of detail.

15 In the order that you issued regarding the
16 preliminary legal analysis, you made it clear that the
17 Commission was not going to be second-guessing
18 customer-stated needs, but that it would be deferring
19 to the judgments made by generators. It seems that at
20 this point, the information that is being sought by
21 Stericycle is going beyond even what the Commission
22 has indicated that it would consider.

23 I would also again state that none of the
24 direct testimony that we have submitted by shippers
25 makes any mention of this program.

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1 JUDGE KOPTA: Well, have you, in your
2 other portions of your testimony, in discussing this
3 program, touted its benefits as being
4 environmentally-friendly or involving reclamation or
5 recycling or any of the things that are subsumed
6 within this data request in terms of the aspects of
7 this service?

8 MS. GOLDMAN: We have -- in the direct
9 testimony of the -- of a Waste Management
10 representative, it mirrors precisely what I have
11 quoted on Pages 2 and 3. That's exactly the
12 information that's been offered, precisely this level
13 of detail and explanation about how the process
14 functions.

15 JUDGE KOPTA: That wasn't --

16 MS. GOLDMAN: It is literally the exact
17 same --

18 JUDGE KOPTA: That was not my question.
19 My question is: Have you touted this service as being
20 environmentally-friendly as one of the benefits of
21 providing this service?

22 MS. GOLDMAN: I don't know that we have
23 actually touted it, other than describing it in the
24 terms here, as a sharps recycling program.

25 JUDGE KOPTA: Because what I'm saying

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1 is, if you have put at issue the environmental aspects
2 of this service, then I think they are entitled to
3 this report; if you have not, then they are not.
4 That's why I asked the question.

5 I ask again, are you now claiming that one of
6 the benefits of this service is that it is a more
7 environmentally-friendly way of disposing of this
8 material?

9 MS. GOLDMAN: Yes, we are.

10 JUDGE KOPTA: Then I think that they
11 are --

12 MS. GOLDMAN: We are, but none of the
13 shippers are.

14 JUDGE KOPTA: That's not my concern. My
15 concern is what you have said about this service as
16 part of what you are planning to offer within the
17 service territory that you are seeking authority to
18 operate in. If you are claiming that this is an
19 environmentally-friendly service, then I think that
20 they are entitled to any studies that you have or have
21 access to that examine the extent to which this is an
22 environmentally-friendly service.

23 Now, the next question of course is, if this
24 is not in your possession, is it something that is
25 reasonably obtainable by you because of your

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1 relationship with the person who conducted the study?

2 MS. GOLDMAN: Your Honor, I'm sorry, but
3 I don't know the answer to that question. I would
4 assume that it is a highly confidential study, given
5 its competitive nature and the competition that it has
6 with Stericycle nationwide. But other than that
7 assumption, I'm sorry, but I don't know the answer to
8 that question.

9 MR. VAN KIRK: Just as a quick aside, in
10 the summary that is available, not the study itself,
11 they don't actually say it is confidential. What they
12 say is you can -- you can get it by calling this
13 number. Now, we've tried to do that and they haven't
14 provided it to us, but they do offer it for
15 promotional purposes.

16 JUDGE KOPTA: I'm going to require that
17 this study be provided, the one that we are referring
18 to right now. All we have been talking about right
19 now is the study, and so I am only going to require
20 that. I think that given that Waste Management has
21 put this at issue in the proceeding, that Stericycle
22 is entitled to the information.

23 So on No. 7, it looks like you are asking for
24 information that is specific to this particular pilot
25 program. And then in 8, you are asking for all

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1 material in Washington or all that they have collected
2 everywhere?

3 MR. VAN KIRK: It's the same question.
4 It's No. -- it is the same question. No. 7 goes to --
5 I think of these as sort of the recycling results, the
6 results from Washington waste and the results from
7 waste overall in the program. The reason we ask for
8 this is because the promotional materials for the
9 program tout up to 75 percent, or 75 percent or more,
10 depending on which document you read, conversion, if
11 you will, of waste into recyclable materials, where
12 the earlier Waste Management response points to
13 something quite a bit lower. I don't know whether
14 that's a difference between the Washington program
15 versus the program overall, whether there's
16 inaccuracies in one or both of those sets of data. I
17 think it's relevant if we are talking to -- if we are
18 talking about what Waste Management is going to be
19 saying are the benefits of the recycling program.

20 JUDGE KOPTA: The problem is, at least
21 as I'm looking at this, you are asking a very narrow
22 question in 7 and a very broad question in No. 8.
23 Neither of them seem to go to the state of Washington,
24 which is the Commission's primary concern.

25 MR. VAN KIRK: Well, No. 7 goes to the

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1 state of Washington, because it is only asking for
2 data on material collected from Washington, which is
3 St. Joseph Medical Center. That's the only customer
4 to date that we know of in Washington that's being
5 offered in this program.

6 JUDGE KOPTA: Is that accurate,
7 Ms. Goldman, that the only collection of this material
8 is occurring from St. Joseph Medical Center in
9 Washington?

10 MS. GOLDMAN: In Washington, that's
11 correct.

12 JUDGE KOPTA: And did you have a
13 response?

14 MS. GOLDMAN: Yes, Your Honor. I think
15 that -- Mr. Van Kirk and I had a meet-and-confer
16 regarding this issue, that Stericycle is confused
17 about these numbers that are generating as the basis
18 for this data request. It references the 75 percent
19 recyclable number that is offered by Becton Dickinson,
20 and then a much lower percent of 17 to 28 which is
21 offered by Waste Management.

22 As I explained to him, they are two totally
23 different things that are being categorized. The
24 75 percent refers to the amount of the waste. If you
25 take the entire unit of waste that is generated,

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1 75 percent of that can then be sent through this
2 recycling program. It doesn't have to do with how
3 much is then recycled product at the end, which is --
4 indeed, when you look at the number we have offered,
5 which is referenced on Page 3 of my brief,
6 Paragraph 8, in the block quote, where we indicate
7 that in May and June of 2012, 17 percent to 28 percent
8 of these specific products that were sent through
9 ended up being recyclable.

10 JUDGE KOPTA: And --

11 MS. GOLDMAN: So as I explained to him,
12 we are talking about two totally different
13 percentages.

14 As to the information here that is sought,
15 this is a burdensome request, because this
16 information -- you know, St. Joseph Medical Center's
17 waste is not treated individually. Is it goes into --
18 you know, it is treated with many hundreds of
19 thousands of tons of other waste. To split out this
20 information, to give the particulars on this, as
21 distinct from the information which you have now
22 directed me to produce -- you know, this report
23 referenced in Data Request No. 6, specifically
24 addresses the information that is available regarding
25 the program as a whole.

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1 We think this is really burdensome and quite
2 far afield and not justified by the confusion that
3 Stericycle continues to profess about the difference
4 in these numbers, which is leading it I think to
5 distrust our data responses.

6 JUDGE KOPTA: And have you provided
7 information about how you calculate those two
8 different percentages and what they mean?

9 MS. GOLDMAN: Well, one of them is not
10 ours. The 75 percent is Becton Dickinson's number
11 that Stericycle has seen referenced, and is
12 consistently referenced in the Becton Dickinson
13 materials and on its website, that of sharps waste,
14 75 percent of that waste can be recycled, can be
15 processed through.

16 The other we have explained in our -- which
17 has to do with our data responses, we have explained.
18 That would be in our response to the first data
19 request, No. 18, Subpart G.

20 JUDGE KOPTA: And, Mr. Van Kirk, are
21 you --

22 MR. VAN KIRK: Yes, if I may. I think
23 if -- Ms. Goldman did explain the second of the
24 numbers, the Waste Management numbers to me on the
25 phone, and that was as I expected them to be. We

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1 didn't really talk about the 75 percent number.

2 If there's confusion on my part, I think it's
3 justifiable confusion, and this goes precisely to the
4 issue. Those documents or materials imply quite
5 strongly in my mind that that number is basically the
6 recycling benefit to customers. To the extent that
7 that's what customers are seeing when they are
8 thinking about whether they want this service and
9 whether it is something that is otherwise not
10 available, they need to be disabused of that notion,
11 and that the recycling benefit is in fact much lower.
12 That's really why I'm getting at -- what I've gotten
13 at these questions. So that's No. 1.

14 No. 2 is to the extent that the waste is
15 commingled with other waste, the Washington waste is
16 commingled with other waste once it gets to
17 California, that's also precisely why I included Data
18 Request No. 8 there, so that my bases were covered if
19 they weren't able to produce Washington's specific
20 numbers.

21 JUDGE KOPTA: Well, let me ask you this,
22 Ms. Goldman. In your testimony in this case, are you
23 producing either of those numbers in support of this
24 particular service?

25 MS. GOLDMAN: I believe -- no. Not the

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1 75 percent, no. The only number that we have included
2 I believe is the 17 percent and 28 percent that is
3 referenced in that Paragraph 8 of my opposition brief,
4 which looks exactly like what you are seeing there.

5 JUDGE KOPTA: And you have provided
6 Stericycle with the basis for your calculation of 17
7 and 28 percent, or whatever those numbers are?

8 MS. GOLDMAN: Do you mean documentation
9 of it? I'm not sure what you mean.

10 JUDGE KOPTA: Have you provided them an
11 explanation of how that number is calculated with
12 supporting documentation?

13 MS. GOLDMAN: We have not.

14 JUDGE KOPTA: All right. Well, I think
15 that they are entitled to that. If you put those
16 numbers at issue, they are entitled to know how you
17 came up with them. The 75 percent, I think if it's
18 not your number and you are not relying on it, then
19 that's not something that I think you are responsible
20 for, to how that is calculated. I think the issue
21 there becomes one of customer confusion, in which case
22 none of these data requests go to that particular
23 issue.

24 I will require -- whether it's -- I don't
25 think that it's -- whether it is No. 7 or No. 8, I

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1 will require that Waste Management provide Stericycle
2 with the basis for its calculation of the percentages
3 on which it relies, but the rest of it I'm going to
4 deny.

5 MR. VAN KIRK: May I ask for one
6 clarification?

7 JUDGE KOPTA: Yes.

8 MR. VAN KIRK: The percentage numbers
9 that have been -- that we have been talking about, the
10 17 and 28 percent, therefore just to select two select
11 months, and I understand from -- in general from our
12 earlier conversation in the last hearing that we were
13 looking at sort of the relevant time period being
14 2011, 2010. So the other thing that we haven't talked
15 about, that these requests were getting to, we were
16 trying to get a more comprehensive sample of a
17 whole -- a whole year's worth of data, rather than
18 just a month here and month there. Some kind of data
19 that's consistent with the time period that's under
20 consideration.

21 JUDGE KOPTA: I think to the extent that
22 they are relying on particular information or
23 quantities, or I don't know what it is that they are
24 relying on, then I would agree that that should be
25 provided for the last two years, just as everything

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1 else that I have required be provided. Not just --

2 MS. GOLDMAN: Your Honor, we're not.

3 There's no mention of any time frame other than May
4 and June of 2012. There's no claim as to the
5 performance in any other time frame besides those two
6 months, neither in this -- in any of the testimony, of
7 Waste Management included. There's no reliance on
8 that.

9 MR. VAN KIRK: I still think it is
10 important information for understanding the nature of
11 the recycling that is being offered. I think that's
12 useful for the Commission, useful for understanding
13 generator need and useful for preparing our defense.

14 JUDGE KOPTA: Ms. Goldman, are you
15 representing that those percentages are representative
16 of the amount of recyclable nature of the materials
17 that are collected, or are you saying that that is
18 just those two months?

19 MS. GOLDMAN: If I look at the actual
20 words we have used, we have just reported on what
21 those two months were.

22 JUDGE KOPTA: And that's why I asked the
23 question. If you are claiming that that -- or
24 suggesting or implying that that is representative of
25 the amount that the public can expect to be the result

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1 of this program, then I think Mr. Van Kirk is correct,
2 you should provide data for the last two years. If
3 all you are saying is that in these last two months it
4 was those two numbers, and we don't know what it is
5 for any other time, then I would limit it to those two
6 months.

7 So what is it that --

8 MS. GOLDMAN: Well, I think it -- I'm
9 sorry.

10 JUDGE KOPTA: I'm asking what is it
11 that -- I assume that you are claiming that those
12 numbers are representative of what customers can
13 expect.

14 MS. GOLDMAN: Your Honor, I think that's
15 implicit.

16 JUDGE KOPTA: Then I will say that for
17 the last two years, just as with all the other data,
18 that you need to provide the backup information for
19 calculating those numbers.

20 Does that address your request for
21 clarification, Mr. Van Kirk?

22 MR. VAN KIRK: Yes, it does.

23 JUDGE KOPTA: All right, then let's move
24 on.

25 MR. VAN KIRK: No. 9 is a document

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1 request that basically asks for any documents that
2 essentially report the information asked for in 7 and
3 8. They report some kind of reports that are
4 generated. I don't have access to their documents, I
5 don't know if those reports exist.

6 JUDGE KOPTA: I have required that they
7 provide you with the backup information.

8 MR. VAN KIRK: I understand, that's why
9 I said No. 9 is quite quick.

10 JUDGE KOPTA: Right.

11 MR. VAN KIRK: I anticipated what you
12 were going to say.

13 JUDGE KOPTA: Well, that's good. Just
14 to be clear, that one is denied.

15 MR. VAN KIRK: Okay.

16 JUDGE KOPTA: No. 10.

17 MS. GOLDMAN: I'm sorry, was that 8 or 9
18 that was --

19 JUDGE KOPTA: No. 9 was denied. And 7
20 or 8, I'm not sure which one it is, where you base
21 your numbers on, whether it's just Washington-specific
22 or whether it's broader than that, but whatever that
23 information is, then that's where it needs to go.

24 MS. GOLDMAN: And, Your Honor, just to
25 be clear here, since I know there's a lot of

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1 information, and we are going to be relying on this
2 oral ruling. The information we are talking about is
3 the information that is reflected in my Paragraph 8 on
4 Page 3 of my opposition brief, which is the
5 description of the percentages of the recycled product
6 yielded in May and June of 2012. It is my
7 understanding that you have ordered us to produce
8 equivalent information regarding that subject for all
9 of 2011 and 2012.

10 MR. VAN KIRK: And to explain how you
11 get the numbers.

12 JUDGE KOPTA: That's correct, with
13 Mr. Van Kirk's clarification.

14 MR. VAN KIRK: Sorry if I jumped the gun
15 there.

16 JUDGE KOPTA: No, that's exactly what I
17 said. So whether that's in response to No. 7 or No. 8
18 or a little bit of both, I will let you all decide.
19 That's all I'm going to require in 7 and 8.

20 So No. 10.

21 MR. VAN KIRK: No. 10 goes to the issue
22 of whether -- whether they provide any reports of
23 these benefits back to clients. You know, is there
24 some kind of reporting procedure -- is there some kind
25 of reports that exist that say to clients, hey, here's

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1 how much you have saved, environmentally speaking,
2 over the last month. If there are such reports, we
3 would like to see at least a representative sample of
4 them. The point here is -- yeah, I actually said
5 representative sample in the request. We would like
6 to know if they report back the results for customers.

7 JUDGE KOPTA: Ms. Goldman?

8 MS. GOLDMAN: Again, Your Honor, we
9 think that is far afield and it is burdensome. They
10 don't need this level of detail, particularly given
11 that there's no reference by anybody to any such
12 reports, in any of the testimony that Waste Management
13 is relying on for its prima facie case.

14 I can tell you I'm not even aware of any
15 existing. It is both as a matter of objecting on
16 principle and objecting to something I'm not aware
17 exists. In any event, nobody has even mentioned such
18 a report or such information being sent back to the
19 single Waste Management customer in Washington state.

20 JUDGE KOPTA: I think I have already
21 required you to provide the information that you need
22 to provide. I don't see that this is -- this is just
23 another way of getting at the same information. I
24 don't think that is -- I think that is duplicative and
25 burdensome. I am going to deny No. 10.

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1 MR. VAN KIRK: Is it too much to find
2 out just whether they do or don't offer such reports
3 without actually producing your report? I ask because
4 I know we do. I think for public interest purposes,
5 it's relevant to know whether the services are
6 comparable or different in that way.

7 JUDGE KOPTA: I am not going to get down
8 to that level of detail. If there were a generator
9 that said that they really thought this was the
10 greatest thing since sliced bread, then I might want
11 to know what kind of information they are providing to
12 customers. At this juncture, I don't think that
13 that's something that -- given the nature of how much
14 they have placed this at issue, I think that is more
15 than is necessary.

16 MR. VAN KIRK: Okay.

17 JUDGE KOPTA: No. 11, I'll tell you
18 right now, you are asking for them to create evidence,
19 not provide it. I will deny that because I think
20 that's an improper request.

21 MR. VAN KIRK: I'm not going to offer
22 anything else on that one.

23 JUDGE KOPTA: No. 12. Again I think
24 this is -- that I have already ruled on an issue that
25 is similar to this. I am not interested and the

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1 Commission is not interested in agreements between
2 affiliates on how the service is provided. I don't
3 think that is a reasonable thing to look for in
4 discovery. I am going to deny No. 12.

5 MR. VAN KIRK: If I can just briefly put
6 my position on record there?

7 JUDGE KOPTA: You may.

8 MR. VAN KIRK: With no hope that I am
9 going to change your mind on this.

10 JUDGE KOPTA: That's all right, you can
11 put it on the record.

12 MR. VAN KIRK: I do think, especially
13 given that all that's been offered so far is a pilot
14 program, and there's no, as far as we can tell,
15 discernable commitment for this program to continue
16 into the future at all, or in the same form, it is
17 relevant both to whether generators want this service
18 and to whether it's in the public interest to know
19 what the obligations are of the parties involved in
20 the service to continue offering it. We think that's
21 useful and relevant to preparing our defense in this
22 matter.

23 JUDGE KOPTA: All right. You're
24 right --

25 MR. VAN KIRK: That's what I have to

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1 say.

2 JUDGE KOPTA: You're right, it doesn't
3 change my mind. Thank you.

4 We will move on to No. 13.

5 MR. VAN KIRK: So now we switch to sort
6 of the second grouping of these things, which go
7 pretty laser-like to evidence of an expressed
8 generator need. I will say in the beginning they --
9 they each go to a very specific service feature, and
10 those were taken from Waste Management's earlier
11 discovery responses where they said this is something
12 we offer that is different or better than Stericycle.
13 Our simple question is, who out there has said that
14 they need those? And now in their responses they have
15 said -- they have listed people, listed companies,
16 generators. First of all, the responses are ambiguous
17 as to what exactly the communications were, other than
18 that they were oral.

19 I think we need more information on what's
20 the -- what's the need that was expressed out there.
21 And I don't think -- I know that this is becoming
22 preliminary remarks, so my pardon. I don't think it
23 is sufficient just to say here are specific remarks
24 that people made at the hearing. I think it is
25 relevant to understanding generator need to know

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1 anybody's expressed -- what they said so that Waste
2 Management isn't put in the position of being able to
3 pick and choose what the expressions are out there,
4 and just pick the best ones, for example.

5 Let's do this in a -- to concretize this,
6 let's talk about No. 13. One of the -- one of the
7 things they said they did that was better about the
8 Waste Management services was their processing
9 facility will be closer to at least certain
10 generators. Every time you move a processing
11 facility, you move it closer to some and farther from
12 others. And that that's good, because generators can
13 then audit the facility without driving as far, I
14 guess.

15 We want to know what people have said on that
16 subject. Their answer was, they have communicated
17 orally with representatives of many of Waste
18 Management customers, including -- without saying that
19 this is inclusive, so they are still making a
20 selection here -- including, and then it lists a few
21 names. We don't know, and they have refused to
22 provide us what are the contexts of those
23 communications, when did they occur, what was said.
24 It just says, We have communicated about this subject.
25 It doesn't say they have expressed a need. There's

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1 all these ambiguities and little holes left open where
2 we don't -- we don't know what the expressed generator
3 need is. I think it is really important to know that.

4 JUDGE KOPTA: Ms. Goldman?

5 MS. GOLDMAN: Yes, your Honor. Sorry to
6 appear here like a broken record. We are delighted
7 that Stericycle is so concerned about generator need
8 and what their expressed needs are. We would simply
9 again direct Stericycle to the prima facie case which
10 we filed on Monday. Those are the generators'
11 statements that we are relying on that show a need for
12 distinct or additional service in this market. To the
13 degree that any single generator said no, we don't
14 think competition is good, that is not information
15 that in any way takes away from the fact that there
16 are generators who think it is, and that there are
17 generators who believe that this statewide service is.
18 Frankly, I'm not aware of a single generator ever
19 having made a statement that they didn't welcome
20 competition, et cetera.

21 In any event, Stericycle can look very
22 precisely. We have 12, I think, or so statements of
23 generator need. They speak in their own words and
24 express what it is that they -- the reasons why they
25 believe it is important that this application be

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1 granted. What specifically was said on any given day,
2 what day of the week that was, what day of the
3 calendar year was, why that is even possibly relevant,
4 I can't say. It is burdensome. All of these
5 communications happened orally. These communications
6 happened between Waste Management salespeople and
7 customers.

8 In any event, we have been required to submit
9 our prima facie case and we have. That's what --
10 that's what is the statement of generator need upon
11 which we are relying. That should be sufficient to
12 understand the basis why Waste Management contends
13 that there is a need for this service.

14 MR. VAN KIRK: If it's my turn now, I
15 think -- and now we are talking about Stericycle's
16 ability to prepare a defense to these cases. I
17 think -- I disagree to some extent. I think it is
18 important to understand whether it is only a single
19 generator expressing a need or not. I'm not saying
20 there's a cutoff or there's some kind of rule that
21 says if it's only one person it doesn't count.
22 However, depending on what the statement is, it could
23 be relevant whether it's only one person or whether it
24 is a series of people. It is also relevant where
25 these people are and who they are because it depends

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1 on what services are available in the current
2 territory.

3 Again, I think to the extent that
4 Stericycle -- and I -- I'm in your camp, Judge Kopta.
5 I have not been able to review all of the testimony
6 that has been put out there yet. But I think it is
7 important to -- to the extent that Waste Management
8 has information -- I'm not asking them to go out and
9 interview generators. They said they have information
10 at their disposal as to communications from these
11 generators, that may or may not match up with what the
12 people have said that they have put in -- in
13 declarations for the court. I believe it is relevant.

14 JUDGE KOPTA: First of all, all of these
15 requests are not specific to the service territory
16 that Waste Management is seeking authority to provide
17 service in. That's one problem that I have with these
18 requests, that they are overbroad.

19 The second problem I have, I think Ms. Goldman
20 sums up quite well, and that is whatever these
21 generators may think, the ones that they are putting
22 on in front of the Commission that say that there is a
23 need, is where the focus of the Commission is.

24 If Stericycle, and presumably the other
25 generators in this service territory where Waste

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1 Management is not providing service, are either
2 Stericycle customers, or whoever the WRRRA member is
3 that is providing service in that territory, then you
4 can certainly interview those people and have them
5 testify.

6 I do not want to be in a situation where we've
7 got hearsay and second and thirdhand information
8 provided as to whether or not there is a need. We are
9 going to be looking at people who come into the
10 hearing room or provide a sworn statement. I don't
11 want to get into a he said/she said kind of back and
12 forth.

13 I don't think that that information is likely
14 to lead to the discovery of admissible evidence. That
15 is what I am saying is the standard. I don't see that
16 as what is going to happen as a result of these
17 requests. I also agree that it would be burdensome.
18 I'm sure that there are a number of conversations that
19 have gone on. To ask them to go back and try and
20 document them posthoc and accurately transcribe what
21 someone said, I just don't think that that information
22 is going to be useful or anything that's going to be
23 beneficial to the Commission's evaluation of the
24 issues in this proceeding.

25 That goes, actually, to 13, 14, 15 and 16.

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1 All of these are specific to particular topics, and
2 they all have the same infirmity from my view.

3 Mr. Van Kirk, if you would like to say one
4 more thing for the record, you may.

5 MR. VAN KIRK: I will.

6 I think -- first of all, we're not talking
7 about anybody transcribing conversations. Right now
8 we don't know anything. Right now we have no idea.
9 We don't even know whether -- because again, the
10 answers say we've had conversations on this subject.
11 We don't even know if any of these -- if these
12 providers said, well, gee, that's an interesting
13 service, but I already get that from some WRRRA member
14 or Stericycle. We don't know if that was the response
15 to these conversations. Certainly if that was the
16 response, it would lead to the discovery of admissible
17 evidence. We could identify that generator, we could
18 talk to them, and maybe they will come and testify
19 after we have that information.

20 This is discovery, and it goes to the ability
21 to prepare our defense. And as far as admissibility,
22 your control over the admissibility of hearsay is
23 totally understandable, but I also think it is a
24 separate point from what we can gain to -- to help us
25 prepare a defense in this case, and not prepare it

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1 solely on the basis of the limited declarations that
2 Waste Management has chosen to provide.

3 JUDGE KOPTA: I understand that. I have
4 not heard you say that it would be an impossible task
5 for you to take the generators' statements that Waste
6 Management has filed, and look at your own customer
7 list in that service territory, and go to those
8 customers that you already serve and ask them the very
9 questions that you are asking of Waste Management. I
10 think you are in as good a position as they are to ask
11 those customers whether they think that Waste
12 Management's service is something that they need or
13 not. I think that is incumbent on you to do. I don't
14 see that as Waste Management's obligation or burden.

15 MR. VAN KIRK: Is your ruling based on
16 relevance or burdensomeness or something different,
17 just so I understand?

18 JUDGE KOPTA: It is based on everything
19 that I have just said; which is, I don't think that it
20 is likely to lead to the discovery of admissible
21 evidence, and I think that it is burdensome. I think
22 that you are in as good a position to find out what
23 other generators believe about this service as is
24 Waste Management.

25 So what's the next one, No. 30?

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1 MR. VAN KIRK: 30 and 34 are similar.
2 They were just -- they just -- the numbers weren't
3 consecutive, because they skipped some other questions
4 that we weren't contesting the answers for.

5 JUDGE KOPTA: Those are all the same
6 bucket of the requests that we were just discussing.

7 Are there any others?

8 MR. VAN KIRK: I think that's the end of
9 the motion.

10 JUDGE KOPTA: All right.

11 MS. GOLDMAN: Your Honor?

12 JUDGE KOPTA: Yes, Ms. Goldman.

13 MS. GOLDMAN: I know you have
14 effectively ruled on 30 and 31, but can I, for the
15 record, also explain, since Mr. Van Kirk has not
16 reviewed our testimony, which frankly would have been
17 of great assistance to him in answering these
18 questions, but that there is no reference to either of
19 the services in 30 or 31 in anybody's testimony
20 submitted by Waste Management. Nobody.

21 JUDGE KOPTA: A little piling on, but
22 whatever. If you want to say something for the
23 record, I am happy to let you do so as well.

24 Again, just to be clear, I am denying the
25 motion with respect to those two data requests based

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1 on my ruling on the Requests 14 through -- or 12 --
2 what is it, 14 through 16?

3 MR. VAN KIRK: It is 13 through 16,
4 No. 30 and No. 34.

5 JUDGE KOPTA: Right. Those are all
6 denied on the same basis.

7 MS. GOLDMAN: And 31, I believe, also.

8 MR. VAN KIRK: I don't think I raised
9 31, unless I -- oh...

10 JUDGE KOPTA: Now is your opportunity.

11 MR. VAN KIRK: Hang on a minute. It
12 does say --

13 JUDGE KOPTA: You do say 31 --

14 MR. VAN KIRK: You're right, I do. My
15 mistake. I raised 31 and I raised it in a different
16 context. I've forgotten there.

17 Jessica, you have said that no one is
18 discussing farm ecology whatsoever in your testimony.
19 Is that what you just said with respect to 31?

20 MS. GOLDMAN: That is what I have said.

21 MR. VAN KIRK: I won't -- I'll give up
22 on 31, then. You can include that on the list.

23 JUDGE KOPTA: We will consider that
24 withdrawn from the motion.

25 MR. VAN KIRK: Yes.

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1 JUDGE KOPTA: I think that is
2 everything, unless someone has another issue that they
3 need to raise at this point.

4 (Pause in the proceedings.)

5 JUDGE KOPTA: Hearing nothing, we are
6 adjourned. Thank you.

7 (Hearing adjourned 3:57 p.m.)

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STATE OF WASHINGTON

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COUNTY OF KING

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I, Sherrilyn Smith, a Certified

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