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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of:  
  
WASTE MANAGEMENT OF WASHINGTON,  
INC. D/B/A WM HEALTHCARE SOLUTIONS  
OF WASHINGTON  
  
For an Extension of Certificate G-237 for a  
Certificate of Public Convenience and Necessity  
to Operate Motor Vehicles in Furnishing Solid  
Waste Collection Service

Docket No. TG-120033


**DECLARATION OF POLLY L.  
MCNEILL IN SUPPORT OF WASTE  
MANAGEMENT'S MOTION TO  
STRIKE THE TESTIMONY OF  
CHRISTOPHER DUNN, JAMES RYAN,  
MIKE PHILPOTT AND RON ADAMS  
AND CORRESPONDING MOTION IN  
LIMINE**

I, Polly L. McNeill, declare as follows:

- 1. I am counsel for Waste Management in this matter and I make this declaration based on personal knowledge.
- 2. Attached hereto as Exhibit 1 are true and correct copies of excerpts of the August 8, 2012 Hearing Transcript, Volume II, before Administrative Law Judge Gregory J. Kopta.
- 3. Attached hereto as Exhibit 2 are true and correct copies of excerpts of the October 15, 2012 Deposition Transcript of Jeffrey Norton.
- 4. Attached hereto as Exhibit 3 are true and correct copies of excerpts of the November 2, 2012 Deposition Transcript of Christopher Dunn.

1 I declare under penalty of perjury under the laws of the State of Washington and the United  
2 States that the foregoing is true and correct.

3 EXECUTED this 21st day of November, 2012 at Seattle, Washington.

4   
5 \_\_\_\_\_  
6 Polly L. McNeill

CERTIFICATE OF SERVICE

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

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360-664-1160 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Federal Express <input checked="" type="checkbox"/> Via Email
Gregory J. Kopta Administrative Law Judge Washington Utilities and Transportation Commission gkopta@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Fronda Woods Attorney General's Office of Washington PO Box 40128 Olympia, WA 98504 (360) 664-1225 fwoods@utc.wa.gov bdemarco@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Stephen B. Johnson Jared Van Kirk Garvey Schubert Barer 1191 Second Avenue, Suite 1800 Seattle, WA 98101 (206) 464-3939 sjohnson@gsblaw.com jvankirk@gsblaw.com vowen@gsblaw.com dbarrientes@gsblaw.com <i>Attorneys for Stericycle of Washington, Inc.</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
James K. Sells 3110 Judson Street Gig Harbor, WA 98335 (360) 981-0168 jamesells@comcast.net cheryls@rsulaw.com <i>Attorney for Protestant WRRRA, Rubatino, Consolidated,          Murrey's, and Pullman</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

DATED at Seattle, Washington, this 21st day of November, 2012.

Deanna L. Schow

# Exhibit 1

**Docket No. TG-120033 - Vol. II**

**In the Matter of the Application of Waste Management of  
Washington, Inc.**

**August 8, 2012**



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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 )

---

HEARING, VOLUME II

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

---

2:40 P.M.

AUGUST 8, 2012

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504-7250

REPORTED BY: SHERRILYN SMITH, CCR# 2097

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1 A P P E A R A N C E S

2 ADMINISTRATIVE LAW JUDGE:

3 GREGORY J. KOPTA  
4 Washington Utilities and  
5 Transportation Commission  
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A P P E A R A N C E S (Continued)

FOR WASTE MANAGEMENT OF WASHINGTON, INC.:

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Summit Law Group PLLC  
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jessicag@summitlaw.com

-o0o-



1 to poke around in Stericycle's financial information,  
2 to essentially audit the annual report and audit  
3 Stericycle's compliance with its rates, on the theory  
4 that somehow Stericycle is overearning and hiding  
5 profits and so on and so forth. There's not a shred  
6 of basis for that. So on relevance grounds and on  
7 burdensomeness grounds, we continue to object.

8 JUDGE KOPTA: I am also going to deny  
9 the request to compel any kind of additional response  
10 to this data request. I have no reason to doubt the  
11 declaration that Stericycle does not maintain this in  
12 the ordinary course of its business. I don't think  
13 discovery is an appropriate means of getting them to  
14 create documents, it's to get copies of documents.  
15 Whether or not they should, whether or not it's a good  
16 business practice, is not something that's before me  
17 and not something at issue in this proceeding.

18 I also find that it is of marginal relevance,  
19 because unless Stericycle is putting at issue in this  
20 docket its profitability, as I read the statute, one  
21 of the factors that the Commission needs to consider  
22 is -- I'm going to read it: The present service and  
23 the costs thereof for the contemplated area to be  
24 served.

25 Cost, not profitability. I think information

1 about costs is certainly relevant, the current  
2 services that are provided is certainly relevant. But  
3 getting more into financial information, I don't  
4 think, and I'm not going to allow, at least at this  
5 stage, a dispute over extraneous issues, which is what  
6 I consider this to be.

7 I will say, however, that I am taking  
8 Stericycle's representations as to what it intends to  
9 present on its face. If, however, there is testimony  
10 filed that touches on profitability or anything that a  
11 price-out would be germane to, then I will certainly  
12 entertain a motion to strike based on my ruling here.  
13 It works both ways.

14 Data Request No. 7. Ms. Goldman?

15 MS. GOLDMAN: Yes, thank you.

16 Well, unfortunately we kind of get into a he  
17 said, she said on this one. I must say that, as I  
18 have indicated in my exchange with Mr. Johnson, that I  
19 have copied all the other parties on, my typical  
20 approach to discovery disputes and discovery  
21 conferences is to document what happened. I told him  
22 this. I think it serves everybody well, so everybody  
23 is on the same page, and we are all in agreement as to  
24 what we said and what we agreed to do. In this case,  
25 that certainly proved to be a useful tool.

1 22, which --

2 MR. JOHNSON: 18, I think we already  
3 addressed, Your Honor.

4 JUDGE KOPTA: All right. That's right,  
5 we did.

6 MR. JOHNSON: But I think you are  
7 correct, it's 20 through 22.

8 JUDGE KOPTA: Okay.

9 MR. JOHNSON: And those deal with this  
10 issue of using recycling discounts to --

11 JUDGE KOPTA: Right. And again --

12 MR. JOHNSON: -- induce service switch.

13 JUDGE KOPTA: Yes, I think you addressed  
14 that had in your opening comments as well. I don't  
15 need to hear anything more on that. I think that  
16 that's farther afield than we are going here.

17 If you have concerns about what Waste  
18 Management is doing, you can always file a complaint.  
19 This is not an opportunity to provide every problem or  
20 objection you have to what Waste Management is doing.  
21 I'm not going to allow us to fall that far afield, so  
22 I'm denying this, the motion as to 20 through 22.

23 MR. JOHNSON: So, Your Honor, just so  
24 that I understand your ruling. This goes directly to  
25 regulatory fitness, if they are violating the tariff

1 JUDGE KOPTA: I know where you are  
2 coming from, and I understand --

3 MR. JOHNSON: Let me just add one little  
4 wrinkle that perhaps you haven't heard about yet.

5 Under RCW 81.77.040 if you read far enough  
6 down, you find that the Commission has the authority  
7 to issue certificates with conditions. It is my  
8 thought that regulatory fitness is certainly an issue.  
9 But if there is evidence presented at the hearing that  
10 an applicant is engaged in some kind of activity that  
11 is contrary to the statute and the Commission's rules,  
12 that even if the Commission ultimately determines that  
13 the application should be granted, that it has the  
14 ability, and in fact in that case, it should attach  
15 conditions.

16 And I think this would go back to like the  
17 Ryder case, which I was also involved in, where  
18 Stericycle was dinged for a particular agreement with  
19 a subsidiary of the Washington Hospital Association,  
20 and was required to change the practice, you know, in  
21 an order issued in an application case.

22 So that is where I am coming from, both  
23 regulatory fitness and the notion that this is a  
24 proper subject for a condition if the Commission so  
25 chooses.

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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF KING

I, Sherrilyn Smith, a Certified  
Shorthand Reporter in and for the State of Washington,  
do hereby certify that the foregoing transcript is  
true and accurate to the best of my knowledge, skill  
and ability.


\_\_\_\_\_  
SHERRILYN SMITH

# Exhibit 2

Transcript of the Testimony of

**Jeffrey Norton**

October 15, 2012

**In the Matter of the Application of Waste Management of  
Washington**

No. TG-120033



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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application )  
of )  
)  
WASTE MANAGEMENT OF WASHINGTON, ) Docket No. TG-120033  
INC., D/B/A WM HEALTHCARE )  
SOLUTIONS OF WASHINGTON ) Order 05  
)  
For an Extension of Certificate )  
G-237 for a Certificate of Public )  
Convenience and Necessity to )  
Operate Motor Vehicles in )  
Furnishing Solid Waste Collection )  
Service )

DEPOSITION OF JEFFREY NORTON

October 15, 2012

Seattle, Washington

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**Jeffrey Norton  
October 15, 2012**



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APPEARANCES (Continuing)

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fwoods@utc.wa.gov

Also present: Jeff Daub  
Ron Adams  
Mike Philpott

1 Q And this exhibit is the two different contracts; right?

2 A **Correct.**

3 Q One for recycling and one for medical waste?

4 A **There's actually three.**

5 Q Okay. Where did I -- what's the --

6 A **It's for reporting and using our customer reporting tool.**

7 Q Okay. That's not an addendum to another one; that's a  
8 separate agreement?

9 A **Correct.**

10 Q And it's your understanding that these are effective even  
11 though they don't have the Waste Management signature on  
12 them; correct?

13 A **Correct.**

14 Q What were Northwest Hospital's recycling rates before  
15 this contract?

16 A **I believe they were \$130 or so per haul, and that's it.**

17 Q And they didn't have this \$40 a time rebate?

18 A **That's correct.**

19 Q What is that? Explain it to me. I don't understand what  
20 it is.

21 A **That -- so rebate in this term is buying their  
22 commodities, in effect. We were in a competition with  
23 other recyclers that wanted their recyclables, and this  
24 was a competitive rate to -- as long as they kept the  
25 commodities that they wanted in their single stream**

1           **compactor that we would pay them.**

2           Q    So instead of getting them for free, you would pay them  
3           back for them?

4           **A    That's correct. But we still charged them a haul charge,**  
5           **correct.**

6           Q    And this was a renewal of an existing contract, this  
7           recycling contract?

8           **A    That's correct.**

9           Q    Okay. And was it renewed before the end of the term of  
10          the agreement?

11          **A    I don't know.**

12          Q    You negotiated both of these -- or all of these  
13          agreements; is that correct?

14          **A    I did, yes.**

15          Q    I believe you testified in your testimony that you had  
16          had discussions with Northwest about moving their  
17          regulated medical waste to Waste Management?

18          **A    Correct.**

19          Q    How were you trying to get them to do that? What was  
20          your sales point with Northwest?

21          **A    New containers, and our rates are a little bit -- were a**  
22          **little bit less when I first started talking to them.**  
23          **And we were already providing certain services on-site,**  
24          **and they were happy with our services.**

25                   **That's it.**

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Seattle/Tacoma, Washington**

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STATE OF WASHINGTON ) I, Karmen M. Knudson, CCR, RPR, CRR,  
) ss a certified court reporter in  
County of Pierce ) the State of Washington, do hereby  
certify:

That the foregoing deposition of JEFFREY NORTON  
was taken before me and completed on October 15, 2012, and  
thereafter was transcribed under my direction; that the  
deposition is a full, true and complete transcript of the  
testimony of said witness, including all questions, answers,  
objections, motions and exceptions;

That the witness, before examination, was by me  
duly sworn to testify the truth, the whole truth, and  
nothing but the truth, and that the witness reserved the  
right of signature;

That I am not a relative, employee, attorney or  
counsel of any party to this action or relative or employee  
of any such attorney or counsel and that I am not  
financially interested in the said action or the outcome  
thereof;

That I am herewith securely sealing the said  
deposition and promptly delivering the same to  
Attorney Jared Van Kirk.

IN WITNESS WHEREOF, I have hereunto set my  
signature on October 19, 2012.

*Karmen Knudson*

Karmen M. Knudson, CCR, RPR, CRR  
Certified Court Reporter No. 1935.



# Exhibit 3

**Christopher Dunn**

**In the Matter of the Application of Waste Management of  
Washington, Inc.**

**November 2, 2012**



1411 Fourth Avenue, Suite 820 • Seattle, Washington 98101

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

---

In Re Application of )  
 )  
WASTE MANAGEMENT OF )  
WASHINGTON, INC. )  
d/b/a WM Healthcare Solutions ) Docket No. TG-120033  
of Washington )  
720 4th Ave. Ste 400 )  
Kirkland, WA 98033-8136 )

DEPOSITION UPON ORAL EXAMINATION

OF

CHRISTOPHER DUNN

Taken at 315 Fifth Avenue South, Suite 1000

Seattle, Washington

DATE TAKEN: November 2, 2012

REPORTED BY: KATHLEEN HAMILTON, RPR, CRR, CCR 1917

**BUELL REALTIME REPORTING, LLC**

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A P P E A R A N C E S

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ALSO PRESENT:

MIKE WEINSTEIN

\* \* \* \* \*

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DEPOSITION OF CHRISTOPHER DUNN

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1 A. I mean, at this time that's all I can recall.

2 Q. And when you say "we," who do you mean?

3 A. Usually if we're looking at things, we discuss it as a  
4 group between myself, Mike Philpott.

5 Q. And that's the group, you and Mike Philpott?

6 A. That may not include everybody, but it's usually a  
7 conversation since we're in the same office together.

8 Q. And so when you and Mr. Philpott discuss the  
9 incinerate containers, what was the gist of that conversation?

10 A. We talked about, you know, the amount of trucking to  
11 Salt Lake City, for example, and where we thought we'd be at  
12 for our gross margin in regards to the current rates versus the  
13 current costs.

14 Q. And that discussion about the gross margin was looking  
15 specifically and only at the incinerate containers?

16 A. At that time.

17 Q. What does gross margin mean?

18 A. Cost versus revenue.

19 Q. So if I do the math right, I take revenue and subtract  
20 costs and get gross margin?

21 A. Yes.

22 Q. And is gross margin the same thing as profit?

23 A. I would suppose so.

24 Q. Who handles the accounting functions for Stericycle?

25 And I will remind you here that when I say Stericycle, I mean

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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF KING

I, Kathleen Hamilton, a Certified Shorthand Reporter and Notary Public in and for the State of Washington, do hereby certify that the foregoing transcript of the deposition of CHRISTOPHER DUNN, having been duly sworn, on NOVEMBER 2, 2012, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12TH day of NOVEMBER, 2012.



---

KATHLEEN HAMILTON, RPR, CRR, CCR

My commission expires:  
APRIL 2014