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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

**WASTE MANAGEMENT’S MOTION
TO STRIKE THE TESTIMONY OF
CHRISTOPHER DUNN, JAMES RYAN,
MIKE PHILPOTT AND RON ADAMS
AND CORRESPONDING MOTION IN
LIMINE**

I. RELIEF REQUESTED

1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington (“Waste Management”) requests that the Commission strike all of the Prefiled Direct Testimony of Christopher Dunn and James Ryan, and portions of the Prefiled Rebuttal Testimony of Mike Philpott and Ron Adams. Waste Management further moves that Mr. Dunn be barred from testifying at the Hearing on all matters, and that Messrs. Ryan, Philpott and Adams be barred from testifying at the Hearing regarding the subject matter of the stricken testimony.¹

II. STATEMENT OF FACTS

A. The Dunn Testimony.

2. On October 1, 2012, Stericycle filed the Direct Testimony of its employee Christopher Dunn. Stericycle seeks to use Mr. Dunn to make its case that statewide competition from Waste

¹ Unlike Messrs. Ryan, Philpott and Adams, the only prefiled testimony offered by Mr. Dunn is the Direct Testimony which is the subject of this motion.

1 Management would “impose a serious squeeze on [Stericycle’s] margins.”² However, Mr. Dunn has no
2 experience or education in accounting or finance, did not prepare the exhibit appended to his testimony,
3 knows nothing about how the model reflected in that exhibit was prepared, and knows nothing about the
4 possible impact to Stericycle from statewide competition with Waste Management.³

5 3. Moreover, Stericycle has refused to provide Waste Management much in the way of
6 financial data. After multiple go-rounds with Stericycle, Waste Management moved for an order
7 compelling Stericycle to produce financial information so that Waste Management could “rebut
8 Stericycle’s claim of financial harm” if it must compete statewide with Waste Management.⁴ The
9 Presiding Officer denied Waste Management’s motion because he found that the requested financial
10 information

11 is of marginal relevance, because unless Stericycle is putting at issue in this docket its
12 profitability, as I read the statute, one of the factors that the Commission needs to
13 consider is – I’m going to read it: [“]The present service and the costs thereof for the
14 contemplated area to be served.[”]

15 Cost, not profitability. I think information about costs is certainly relevant, the current
16 services that are provided is certainly relevant. But getting more into financial
17 information, I don’t think, and I’m not going to allow, at least at this stage, a dispute over
18 extraneous issues, which is what I consider this to be.

19 I will say, however, that I am taking Stericycle’s representations as to what it intends to
20 present on its face. If, however, there is testimony filed that touches on profitability or
21 anything that a price-out would be germane to, then I will certainly entertain a motion to
22 strike based on my ruling here. It works both ways.⁵

23 **B. The Ryan Testimony.**

24 4. The Presiding Officer denied Stericycle’s motion to compel further discovery regarding
25 Waste Management’s alleged regulatory violations in providing ecoFinity recycling services to St.
26 Joseph Medical Center and in combining offers to perform recycling and regulated medical waste
27 (“RMW”) services. Regarding testimony at the hearing on these accusations, the Presiding Officer
28 explained to Stericycle:

² Prefiled Testimony of Christopher Dunn ¶ 13.

³ See Prefiled Response Testimony of Michael Weinstein.

⁴ Waste Management’s Mot. to Compel Disc. From Stericycle ¶ 8 (Jul. 31, 2012).

⁵ Declaration of Polly L. McNeill (“McNeill Decl.”), Ex. 1 at 41:18-42:13.

1 I am not at this point precluding you from including it in your testimony. That doesn't
2 mean that I would not entertain a motion to strike. At this point, I don't see that it is
3 sufficiently relevant. This is not an occasion to air every complaint. I don't want to hear
4 from Waste Management about your profitability and your overearning. And I don't
5 want to hear from you about what you think Waste Management is doing wrong in its
6 current service territory. That's not what we are here to talk about.⁶

7 The Presiding Officer further directed Stericycle that "[i]f you have concerns about what Waste
8 Management is doing, you can always file a complaint."⁷

9 5. Pursuant to the Presiding Officer's suggestion, on October 1, 2012, Stericycle filed with
10 the Commission a "Complaint and Petition for Declaratory Relief."⁸ Stericycle has asserted the same
11 two claims in that complaint proceeding. First, Stericycle argues that Waste Management has
12 unlawfully solicited biomedical waste business from Skagit Valley Hospital, Northwest Hospital, and
13 Valley Medical Center by offering these generators "rebates"⁹ on recycling services.¹⁰ Second,
14 Stericycle alleges that Waste Management's pilot ecoFinity recycling program with St. Joseph Medical
15 Center is a regulated medical waste service, not a recycling service.¹¹

16 6. Earlier this month, the Presiding Officer ruled that these two allegations about Waste
17 Management would not be determined in this application proceeding. "As suggested in that prior ruling,
18 Stericycle has filed a complaint against Waste Management alleging the same or similar conduct into
19 which Stericycle seeks to inquire here, and **that docket is the appropriate proceeding to address**
20 **those issues.**"¹²

21 7. On October 1, 2012, Stericycle filed the Direct Testimony of its employee James Ryan.
22 Mr. Ryan's proffered testimony concerns only two subjects: (1) Waste Management's allegedly
23 wrongful "rebating" of recycling rates in combination with offers of RMW service to Skagit Valley

24 ⁶ *Id.* at 94:11-21.

25 ⁷ *Id.* at 92:17-18.

26 ⁸ *Stericycle v. Waste Management*, Docket TG-121597.

27 ⁹ In the recycling industry, where the waste collected is a commodity for resale, the term "rebate" refers to the amount of the
28 sales price for the raw commodity which the generator receives. McNeill Decl., Ex. 2 at 187:21-188:1.

¹⁰ *Stericycle v. Waste Management*, Docket TG-121597, Compl. § III, First Claim – Unlawful Rebating.

¹¹ *Id.*, Second Claim – Misclassification.

¹² Order 06 ¶ 10 (fn. omitted; emphasis added).

1 Hospital, Northwest Hospital, and Valley Medical Center;¹³ and (2) Waste Management's allegedly
2 wrongful classification as recycling of its pilot ecoFinity services to St. Joseph Medical Center.¹⁴ He
3 **does not** address any differences between Waste Management's ecoFinity program and Stericycle's
4 recycling program, a subject which is raised in **other** Stericycle witnesses' testimony.

5 **C. The Testimony of Mike Philpott and Ron Adams.**

6 8. Stericycle filed the Rebuttal Testimony of its employees Mike Philpott and Ron Adams.
7 Portions of each of those proffered testimonies are based on double hearsay and do not represent the best
8 evidence on the asserted points.

9 **III. STATEMENT OF ISSUES**

10 9. Should the Commission strike Stericycle's testimony which lacks foundation, is not
11 relevant, or is based on hearsay?

12 **IV. EVIDENCE RELIED UPON**

13 10. Waste Management relies on the Declaration of Polly L. McNeill filed herewith, the
14 Prefiled Response Testimony of Michael Weinstein filed November 16, 2012, and the record herein.

15 **V. ARGUMENT**

16 **A. The Direct Testimony of Christopher Dunn Should Be Stricken.**

17 11. Mr. Dunn's testimony lacks foundation. He lacks personal knowledge about the
18 statements made in his testimony and about the attached exhibit. His opinions are not based on his own
19 perception or on any specialized knowledge which he possesses. Moreover, his testimony addresses
20 the impact on Stericycle's profitability of competition from Waste Management, the very issue which
21 Stericycle represented it would not raise and which led the Presiding Officer to deny Waste
22 Management's motion to compel the production of complete financials.

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¹³ Prefiled Testimony of James Ryan ¶¶ 3-7.

¹⁴ *Id.* ¶¶ 8-14.

1 **1. Mr. Dunn Is Not Qualified to Offer an Opinion Regarding Impact to Stericycle’s**
2 **Profitability and His Proffered Testimony Lacks Foundation.**

3 12. To be admissible, testimony must be based on personal knowledge.¹⁵ Absent personal
4 knowledge, proffered testimony “cannot be relied on to prove or disprove any of the matters at issue in
5 this proceeding.”¹⁶ For opinions to be admissible, they must be based on the perception of the
6 testifying witness and on the testifying witness’s specialized knowledge.¹⁷ Mr. Dunn’s testimony
7 flagrantly fails each of these requirements.

8 13. Mr. Dunn is a truck driver and plant manager who lacks any education or training
9 regarding accounting or finance and is not qualified to project the probable impact on Stericycle’s
10 profitability from statewide competition with Waste Management. He never finished college and while
11 in college, he never took any courses in accounting. He has never had any accounting responsibilities
12 for Stericycle or any on-the-job training in accounting functions. He has never created a budget for
13 Stericycle. He has never been involved in preparing any of Stericycle’s rate filings with the
14 Commission and he has never reviewed Stericycle’s annual reports filed with the Commission. Prior to
15 submitting his Direct Testimony in this case, he never analyzed Stericycle’s tariff rates. Mr. Dunn does
16 not know who handles the accounting functions for Stericycle. He does not know what Stericycle’s
17 profit margin presently is, not even a ballpark number, nor does he know if that profit margin is within
18 the range the Commission has deemed acceptable for solid waste companies.¹⁸

19 14. With one minor exception, Mr. Dunn had nothing to do with creating Exhibit A to his
20 Direct Testimony which sets forth Stericycle’s view of the “effects of business loss in [the] new
21 territory” (“Exhibit A”). Exhibit A was created by John Suchla, an employee of Stericycle, Inc. in
22 Illinois whom Stericycle has not offered as a witness in this proceeding. Mr. Dunn has never met Mr.
23 Suchla and never had any communications with him until Mr. Dunn was asked to file the Dunn Direct
24 Testimony. Mr. Dunn’s sole contribution to Exhibit A was to select the three percentages of revenue
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26 ¹⁵ *Stevens v. Rosario Utils., LLC*, Docket No. UW-011320, 3rd Supp. Order at *6 (Jul. 12, 2002); WRE 602.

27 ¹⁶ *Stevens*, 3rd Supp. Order at *6.

28 ¹⁷ WRE 701, 702.

¹⁸ Prefiled Response Testimony of Michael Weinstein at 3:6-20.

1 loss to be applied in Mr. Suchla's model. Mr. Dunn selected 10, 25 and 50 percent. He "had to choose
2 something," and he acknowledges that he could have picked any other numbers instead.¹⁹

3 15. Mr. Dunn did not determine which of Stericycle's revenues come from the "current
4 territory" and which come from the "new territory" as reflected on Exhibit A. According to Mr. Dunn,
5 Mr. Suchla made that determination. Mr. Dunn did not even see any of the underlying data, and does
6 not know where the data comes from, which supports Exhibit A's assertion regarding the percentage of
7 Stericycle's revenues which come from the "new territory." Mr. Dunn states in his Direct Testimony
8 that Stericycle's "revenue per stop in the new territory is almost 19% lower than our revenue per stop in
9 WM's existing service territory,"²⁰ but Mr. Suchla, not Mr. Dunn, reached that conclusion and Mr.
10 Dunn does not know what Mr. Suchla did to reach this conclusion. Mr. Dunn does not know how
11 much revenue Stericycle generates per stop in Waste Management's existing service territory.²¹

12 16. Mr. Dunn knows nothing about the data or the methodology employed by Mr. Suchla to
13 prepare Exhibit A. He does not know what Stericycle's costs per stop are in the two territories and he
14 never looked at any data which supports his assertion in his Direct Testimony that Stericycle's "costs
15 per stop are higher on routes within the new territory than within WM's existing territory."²² He does
16 not know the source of the "stop, cost and revenue data for Stericycle in 2011" referenced in his Direct
17 Testimony²³ and which form the basis for Exhibit A. Mr. Suchla, not Mr. Dunn, came up with these
18 numbers.²⁴

19 17. The assumptions in the Dunn Direct Testimony further reflect his lack of qualifications
20 and relevant knowledge. He assumed that Washington's RMW market will remain static based on the
21 amount of Stericycle's gross revenues in 2011. He has assumed that, if statewide authority is granted
22 to Waste Management, the entire RMW market for which Stericycle will compete with Waste
23 Management is \$13,709,428.15. This number represents Stericycle's 2011 gross revenues as reported

24 ¹⁹ *Id.* at 4:1-9.

25 ²⁰ Prefiled Testimony of Christopher Dunn ¶ 5.

26 ²¹ Prefiled Response Testimony of Michael Weinstein at 4:11-20.

27 ²² Prefiled Testimony of Christopher Dunn ¶ 6.

28 ²³ *Id.*

²⁴ Response Testimony of Michael Weinstein at 4:21-5:12.

1 on its Annual Report filed with the Commission. The growth of Washington's RMW market in the last
2 11 years demonstrates that Mr. Dunn's assumption of a static market is completely unreasonable.
3 Since 2001, Stericycle's revenues have **grown cumulatively by 106.9%** and its net income has **grown**
4 **cumulatively by \$5,093,718.** Moreover, in 2011, the RMW market was larger than reflected by
5 Stericycle's gross revenues because those numbers fail to include Waste Management's gross revenues.
6 It is plain that in 2012 the RMW market already is larger than 2011. At his deposition, Mr. Dunn
7 acknowledged that it is "possible" that Stericycle's revenues can increase if the overall RMW market
8 continues to grow, but neither his Direct Testimony nor Exhibit A considered that possibility. Not
9 surprisingly, given his lack of training and experience with accounting and finance, Mr. Dunn
10 recognizes that he "ha[s] no way of knowing" if it "would be possible" for Washington's RMW market
11 to increase from its 2011 size. This is simply something he has never considered.²⁵ Basing his
12 opinions, which were not actually his own opinions, on such patently erroneous assumptions further
13 demonstrates why the Dunn Direct Testimony should be stricken.

14 18. Mr. Dunn also wrongly assumes that Stericycle's revenues will decrease from 2011 to
15 2012. He believes this will occur because some Stericycle customers within Waste Management's
16 Certificate No. G-237 territory have moved their business to Waste Management. However, the data
17 which Stericycle has produced demonstrates that in areas where Stericycle has lost customers,
18 Stericycle has nonetheless increased the volume of RMW collected and processed (further proving that
19 Washington's RMW market continues to grow). Moreover, Mr. Dunn acknowledges that Stericycle
20 has added new customers in 2012. Further evidence that Stericycle's 2012 revenues will not be lower
21 than its 2011 revenues is found in the fact that Stericycle did not have to lay off a single driver in 2012.
22 If Stericycle's revenues were shrinking, a corresponding reduction in labor would result.²⁶ Again, the
23 assumptions were so obviously wrong because Mr. Dunn lacks the expertise to critically evaluate the
24 information used in Mr. Suchla's analysis.

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28 ²⁵ *Id.* at 5:15-7:20.

²⁶ *Id.* at 7:22-9:2.

1 19. Mr. Dunn’s Direct Testimony also lacks foundation because contrary to that testimony,
2 Exhibit A is **not** “based on ... cost ... data for Stericycle in 2011.”²⁷ Although Exhibit A uses
3 Stericycle’s 2011 revenue as reported in Stericycle’s Annual Report to the Commission, it **does not** use
4 the 2011 expenses Stericycle reported to the Commission. Stericycle reported to the Commission that
5 its 2011 expenses were **\$12,850,339**. To the contrary, Exhibit A shows Stericycle’s 2011 expenses as
6 **\$9,423,122.28** (“fixed costs” of \$5,109,471.36 + “variable costs” of \$4,313,650.92). Mr. Dunn
7 acknowledges that Exhibit A does not include all of Stericycle’s 2011 costs.²⁸ He was unable to
8 explain his own testimony.

9 20. Moreover, Exhibit A’s division of “fixed” and “variable” costs lacks any foundation. It
10 is impossible to know which costs Stericycle included in each of these categories. Mr. Dunn, the
11 proponent of Exhibit A, testified that he does not know which costs were deemed “fixed” and which
12 costs were deemed “variable” in Exhibit A. However that was done, it is evident that the cost numbers
13 are incorrect. Mr. Dunn acknowledged that disposal costs are variable because they are based on
14 volume; if less waste is collected, fewer disposal costs are incurred. According to the information
15 Stericycle supplied in discovery, it incurred “disposal expenses” of **\$5,628,493** in 2011. Stericycle
16 reported that same number to the Commission in its Annual Report. To the contrary, Exhibit A states
17 that in 2011 Stericycle incurred **total** variable costs of **\$4,313,650.92**. Without taking into account any
18 other variable cost, this number is **\$1,314,842 lower** than Stericycle’s reported (and presumably actual)
19 variable disposal expenses. Furthermore, not only does he not know which costs were determined to be
20 variable and which ones fixed in Exhibit A, Mr. Dunn also is not able to hazard a guess as to how to
21 categorize many of Stericycle’s expenses.²⁹

22 21. Finally, Mr. Dunn’s ultimate conclusion that competition from Waste Management
23 “would impose a serious squeeze on [Stericycle’s] margins”³⁰ lacks any foundation. He does not
24 quantify the “squeeze,” but Stericycle has readily acknowledged that its economic viability is not
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26 ²⁷ Prefiled Testimony of Christopher Dunn ¶ 9.

27 ²⁸ Response Testimony of Michael Weinstein at 9:5-12.

28 ²⁹ *Id.* at 9:14-10:23.

³⁰ Prefiled Testimony of Christopher Dunn ¶ 13.

1 threatened by having to compete with Waste Management statewide.³¹ In any event, Mr. Dunn
2 acknowledges that “margin” is defined as “the difference between revenues and costs.” Having failed
3 to include all of Stericycle’s costs, Mr. Dunn has not demonstrated the effect on Stericycle’s margin (or
4 its costs) from statewide competition with Waste Management. Furthermore, he readily acknowledges
5 that he does not know whether or not Stericycle would be profitable if it had to compete with Waste
6 Management in the “new territory,” and he has no idea how much business Stericycle would need to
7 lose to Waste Management to become unprofitable. He did not consider and “would have no way of
8 knowing” at what rate Stericycle’s revenues will decline in the “new territory” if Stericycle has to
9 compete with Waste Management there like it does everywhere else in the state. Finally, Mr. Dunn
10 acknowledges that it is possible that Stericycle could compete with Waste Management statewide and
11 still have a sufficient profit margin without requiring Stericycle to raise its rates or decrease its service
12 levels.³²

13 22. Mr. Dunn’s testimony lacks any foundation whatsoever and should be stricken.

14 **2. Having Opposed Waste Management’s Discovery Based on Its Representation that**
15 **It Would Not Put Profitability at Issue, Stericycle May Not Now Introduce**
16 **Testimony Regarding Impact on Profitability.**

17 23. Stericycle stiff-armed Waste Management’s request for financial information necessary
18 for Waste Management to evaluate “Stericycle’s claim of financial harm,”³³ and on the basis of
19 Stericycle’s assertion that it was not “putting at issue in this docket its profitability,” the Presiding
20 Officer denied Waste Management’s motion to compel the financial data.³⁴ However, he warned
21 Stericycle that he was “taking Stericycle’s representations as to what it intends to present on its face. If
22 however, there is testimony filed that touches on profitability ..., then I will certainly entertain a motion
23 to strike based on my ruling here. It works both ways.”³⁵

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25 ³¹ See Stericycle’s Opp’n to Waste Management’s Mot. to Compel Disc. ¶ 7 (“Stericycle makes no claim that Waste
26 Management’s entry into the market in the territory covered by the application would drive Stericycle out of business.”)
(Aug. 6, 2012).

27 ³² Response Testimony of Michael Weinstein at 12:3-13:3.

28 ³³ Waste Management’s Mot. to Compel Disc. from Stericycle ¶ 8 (Jul. 31, 2012).

³⁴ McNeill Decl., Ex. 1 at 41:18-42:13.

³⁵ *Id.*

1 24. Notwithstanding its prior representations to the Presiding Officer, Stericycle has
2 submitted the Dunn Direct Testimony to support its contention that competition from Waste
3 Management “in the new territory would impose a serious squeeze on [Stericycle’s] margins”³⁶ Mr.
4 Dunn acknowledged that margin means the same thing as profit.³⁷ Waste Management now requests
5 that the Commission enforce its prior order and strike the Dunn Direct Testimony.

6 **B. The Direct Testimony of James Ryan Should Be Stricken.**

7 25. Mr. Ryan’s testimony is irrelevant and is based on inadmissible hearsay. It should be
8 stricken.

9 26. Mr. Ryan is a Stericycle salesman. He addressed two subjects in his proffered direct
10 testimony. First, he describes Waste Management’s offers to provide low-priced recycling to
11 generators who would also contract with Waste Management for RMW services. This is asserted to be
12 evidence of Waste Management’s unlawful “rebating” offers to Skagit Valley Hospital, Northwest
13 Hospital, and Valley Medical Center.³⁸ Second, Mr. Ryan describes Waste Management’s pilot
14 ecoFinity recycling program with St. Joseph Medical Center which is asserted to be evidence of Waste
15 Management improperly charging off-tariff rates for regulated services outside Waste Management’s
16 certificated territory.³⁹

17 27. The Presiding Officer has repeatedly ruled that these allegations are not relevant to any
18 issue in this proceeding. On August 8, 2012, in response to Stericycle’s request to press discovery on
19 these two alleged regulatory violations, the Presiding Officer explained that this application proceeding
20 “is not an occasion to air every complaint,” and that the Commission did not “want to hear from
21 [Stericycle] about what [Stericycle] think[s] Waste Management is doing wrong in its current service
22 territory. That’s not what we are here to talk about.”⁴⁰ He advised Stericycle that if it wished to press
23 these concerns, Stericycle “can always file a complaint.”⁴¹ On October 1, 2012, Stericycle filed with

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25 ³⁶ Prefiled Testimony of Christopher Dunn ¶ 13.

26 ³⁷ McNeill Decl., Ex. 3 at 24:17-23.

27 ³⁸ Prefiled Testimony of James Ryan ¶¶ 3-7.

28 ³⁹ *Id.* ¶¶ 8-14.

⁴⁰ McNeill Decl., Ex. 1 at 94:11-21.

⁴¹ *Id.* at 92:17-18.

1 the Commission a complaint against Stericycle asserting these same two claims of alleged wrongdoing
2 by Waste Management.⁴² On November 5, 2012, the Presiding Officer acknowledged that “Stericycle
3 has filed a complaint against Waste Management alleging the same or similar conduct into which
4 Stericycle seeks to inquire” in this application proceeding and ruled that the complaint “docket is the
5 appropriate proceeding to address those issues.”⁴³ Because Stericycle’s allegations that Waste
6 Management has improperly “rebated” its recycling rates to RMW customers and is improperly
7 providing its pilot ecoFinity recycling service to St. Joseph Medical Center are irrelevant in this
8 application proceeding, Mr. Ryan’s proffered testimony on these allegations should be stricken.⁴⁴

9 28. Mr. Ryan’s testimony should be stricken for the independent reason that it is
10 inadmissible hearsay. While the Commission is not required to strictly follow the rules of evidence,
11 evidence must nonetheless be “the best evidence reasonably obtainable.”⁴⁵ The Commission has
12 stricken hearsay evidence because the opposing party is deprived of the opportunity to cross-examine
13 the declarant to test the truth of the matter asserted.⁴⁶ Hearsay is particularly unreliable when the
14 witness fails to identify the principal who supplied the underlying information.⁴⁷ Mr. Ryan’s testimony
15 regarding Waste Management’s purported offers of RMW and recycling services to customers is
16 double hearsay and it fails to identify the Waste Management representative whose purported
17 statements Mr. Ryan describes. He reported what Mr. Spohn of Skagit Valley Hospital reported to Mr.
18 Ryan about what “a Waste Management representative” told Mr. Spohn.⁴⁸ Mr. Ryan reported what
19 Juan Escalante of Northwest Hospital reported to Mr. Ryan about what “Waste Management had
20 offered” Mr. Escalante.⁴⁹ There is no indication that the underlying witnesses are unavailable to testify

23 ⁴² *Stericycle v. Waste Management*, Docket TG-121597.

24 ⁴³ Order 06 ¶ 10.

25 ⁴⁴ *Stevens*, 3rd Supp. Order at *3 (striking testimony and exhibits that are irrelevant).

26 ⁴⁵ WAC 480-07-495(1).

27 ⁴⁶ *Stevens*, 3rd Supp. Order at *5.

28 ⁴⁷ *Id.*

⁴⁸ Prefiled Testimony of James Ryan ¶ 3.

⁴⁹ *Id.* ¶ 5.

1 and Mr. Ryan’s double hearsay cannot be the “best evidence reasonably available” and should be
2 stricken.

3 **C. Part of the Rebuttal Testimony of Mike Philpott and of Ron Adams Should Be Stricken.**

4 29. The hearsay testimony offered by Messrs. Philpott and Adams also is not the “best
5 evidence reasonably available,” and deprives Waste Management of the right to cross examine the
6 declarants. At paragraph 36 of his Rebuttal Testimony, Mr. Philpott purports to describe what
7 Stericycle customers have said about the Rehrig containers Stericycle began offering to compete with
8 Waste Management. Mr. Philpott layers hearsay upon hearsay from unnamed declarants to get to this
9 description. He reports what unnamed Stericycle “drivers and sales staff” reported to Mr. Philpott
10 about what unnamed Stericycle customers reported to the unnamed “drivers and sales staff.”⁵⁰ At
11 paragraphs 11 and 12 of his Rebuttal Testimony, Mr. Adams reports what unnamed “Stericycle[] staff”
12 and unnamed employees of unnamed PAML facilities said to each other. Each of these three
13 paragraphs should be stricken as inadmissible hearsay.

14 **VI. CONCLUSION**

15 30. For each of these reasons, Waste Management respectfully requests that the Commission
16 strike: (1) all of the Prefiled Testimony of Christopher Dunn; (2) all of the Prefiled Testimony of
17 James Ryan; (3) paragraph 36 of the Prefiled Rebuttal Testimony of Mike Philpott; and (4) paragraphs
18 11 and 12 of the Prefiled Rebuttal Testimony of Ron Adams. Waste Management further requests that
19 Mr. Dunn be barred from testifying on all matters at the Hearing and that Messrs. Ryan, Philpott and
20 Adams be barred from testifying at the Hearing regarding the subject matter of the stricken testimony.

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⁵⁰ Prefiled Rebuttal Testimony of Mike Philpott ¶ 36.

1 DATED this 21st day of November, 2012.

2 SUMMIT LAW GROUP PLLC

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4 By 

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*Attorneys for Waste Management of
Washington, Inc.*

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.

Table with 2 columns: Recipient Information and Service Method. Rows include Washington Utilities and Transportation Commission, Gregory J. Kopta, Fronda Woods, Stephen B. Johnson, Jared Van Kirk, Garvey Schubert Barer, James K. Sells, and Cheryl Sells.

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

Signature of Deanna L. Schow and name Deanna L. Schow