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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)

EVIDENTIARY HEARING, VOLUME VI
Pages 301 - 525
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

9:03 A.M.
DECEMBER 4, 2012

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22
23
24
25

I N D E X

JEAN LONGHENRY	PAGE
Direct Examination by Ms. Goldman	308
Cross-Examination by Mr. Van Kirk	308
Cross-Examination by Mr. Sells	325
Redirect by Ms. Goldman	326
Recross-Examination by Mr. Van Kirk	328
MICHAEL WEINSTEIN	PAGE
Cross-Examination by Mr. Sells	330
JEFF NORTON	PAGE
Direct Examination by Ms. Goldman	340
Cross-Examination by Mr. Van Kirk	343
Redirect Examination by Ms. Goldman	349
Recross-Examination by Mr. Van Kirk	351
Recross-Examination (Cont.) By Mr. Van Kirk	492
Cross-Examination by Mr. Sells	511
Further Redirect Examination by Ms. Goldman	512
Further Recross-Examination by Mr. Van Kirk	518
RAY MOORE	PAGE
Direct Examination by Ms. Goldman	383
Cross-Examination by Mr. Van Kirk	384
Cross-Examination by Mr. Sells	396
Redirect Examination by Ms. Goldman	400
DANNY G. WARNER	PAGE
Direct Examination by Ms. Goldman	403
Cross-Examination by Mr. Van Kirk	404

0305

1 I N D E X (Continued)

2 ROGER LYCAN PAGE

3 Direct Examination by Ms. Goldman 415

4 Cross-Examination by Mr. Van Kirk 416

5 Cross-Examination by Mr. Sells 444

6 Cross-Examination by Ms. Woods 446

7 Redirect Examination by Ms. Goldman 449

8 Recross-Examination by Mr. Van Kirk 454

9 CARLA PATSHKOWSKI PAGE

10 Direct Examination by Ms. Goldman 459

11 Cross-Examination by Mr. Van Kirk 460

12 Cross-Examination by Mr. Sells 483

13 Cross-Examination by Ms. Woods 484

14 Redirect Examination by Ms. Goldman 487

15 Recross-Examination by Mr. Van Kirk 489

12

13 EXHIBIT INDEX

14 EXHIBIT A R DESCRIPTION

15 JL-1T 308 Direct Testimony of Jean Longhenry

16 RM-1T 384 Direct Testimony of Ray Moore

17 DW-1T 403 Direct Testimony of Danny Warner

18

19 RL-1T 415 Direct Testimony of Roger Lycan

20

21 CP-1T 460 Direct Testimony of Carla Patshkowski

22 JN-1T 354 Direct Testimony of Jeff Norton

23

24 JN-2 342 Waste Management BD ecoFinity Flyer

25

0306

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EXHIBIT INDEX (Continued)

2

EXHIBIT	A	R	DESCRIPTION
---------	---	---	-------------

3

JN-3T		342	Response Testimony of Jeff Norton
-------	--	-----	-----------------------------------

4

JN-7		522	Excerpts of Deposition of Jeff Norton referenced in the evidentiary hearings
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1 OLYMPIA, WASHINGTON; DECEMBER 4, 2012

2 9:03 A.M.

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4

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

6

7 JUDGE KOPTA: Let's be back on the
8 record in Docket TG-120033. We are resuming the
9 evidentiary hearings in this case.

10 At this point, Waste Management will be
11 calling their next witness. Ms. Goldman.

12 MS. GOLDMAN: Good morning. Waste
13 Management calls Jean Longhenry on behalf of the
14 applicant.

15 JUDGE KOPTA: All right.

16 Ms. Longhenry, would you stand and raise your
17 right hand, please.

18 THE WITNESS: Yes.

19

20 JEAN LONGHENRY, witness herein, having been
21 first duly sworn on oath,
22 was examined and testified
23 as follows:

24

25 JUDGE KOPTA: Thank you.

0308

1 D I R E C T E X A M I N A T I O N

2 BY MS. GOLDMAN:

3 Q Could you please state your name and spell it
4 for the record?

5 A Jean Longhenry, J-E-A-N, L-O-N-G-H-E-N-R-Y.

6 Q And by whom are you employed?

7 A Wendel Family Dental Center.

8 MS. GOLDMAN: The parties have
9 stipulated to the admission of Ms. Longhenry's direct
10 testimony and we ask that it be admitted.

11 JUDGE KOPTA: And Exhibit JL-1T will be
12 admitted into the record.

13 Do you have anything further?

14 MS. GOLDMAN: We will reserve for
15 redirect.

16 JUDGE KOPTA: Okay. Then Ms. Longhenry
17 is available for cross-examination, and we will begin
18 with Stericycle, Mr. Van Kirk.

19

20 C R O S S - E X A M I N A T I O N

21 BY MR. VAN KIRK:

22 Q Good morning, Ms. Longhenry. Thank you for
23 taking the time to do this this morning.

24 A Yes.

25 Q My name is Jared Van Kirk. As Judge Kopta

0309

1 said, I'm one of the attorneys for Stericycle. I will
2 have a few questions for you this morning.

3 A Okay.

4 Q First of all, can you describe the Wendel
5 Family Dental Center for us?

6 A The facility?

7 Q Yes, what facilities do you have?

8 A We have three locations, all in Vancouver, and
9 we range from like 13 doctors and like 12 hygienists
10 in our offices.

11 Q And that's across all three offices?

12 A It's across all three offices.

13 Q Okay. And what's your -- is your role the
14 same for all three facilities?

15 A Yes, I'm the facilities manager for all three
16 offices, and I deal with all the different sorts of
17 businesses on behalf of Wendel.

18 Q Okay. Is there any -- is there any
19 person at -- I'm sorry, first of all, which -- do you
20 work physically at one of the locations?

21 A I work at the 7012 Northeast 40th Street
22 office, but I visit the other two locations on like a
23 biweekly basis.

24 Q Where are those other two locations located?

25 A One is 1300 Northeast 134th, and the other one

0310

1 is 19111 Southeast 34st Street.

2 Q At the 134th Street and the 34th Street
3 locations, is there somebody else there who has
4 facilities responsibilities when you are not there?

5 A Yes, Mindy at our 1300 office. She calls and
6 lets me know what's going on there, if she has
7 questions about the facility. And Kari out at the
8 19111 will call to get directions on what to do when
9 things are going on.

10 Q And when -- let's take this case as an
11 example. When Stericycle comes to pick up waste at
12 those facilities, if they interacted with somebody,
13 would it be Mindy and Kari?

14 A Yes, if they are there. Otherwise, it would
15 just be with whoever is the receptionist when they
16 came. Kari and Mindy may not be there on the days or
17 times that they come, so then one of the front desk
18 staff would sign Stericycle's pickup receipt.

19 Q And the same would be true at your facility.
20 Would you interact with Stericycle unless you weren't
21 there?

22 A If I'm present, yes. Otherwise, the girls at
23 the front desk would also interact with them.

24 Q Okay. Tell us what services Stericycle
25 provides to your facilities, and if it's different

0311

1 between the facilities let us know what those
2 differences are.

3 A All Stericycle provides for us right now is
4 they pick up our biohazard at all three offices, and
5 they are all on an on-call basis.

6 Q Do you have any kind of separate service for
7 sharps or is it all --

8 A That is the sharps.

9 Q Okay. Do you have -- only have sharps
10 service, then?

11 A Through Stericycle, yes.

12 Q Does somebody else provide a different kind of
13 service for some other kind of biomedical waste that's
14 not sharps?

15 A No. We have Spartan that picks up our amalgam
16 waste.

17 Q What's amalgam waste?

18 A Mercury.

19 Q Okay. Thank you.

20 A Yes.

21 Q And about how often do your facilities request
22 an on-call pickup? And again, if it's different
23 between them, you can go through all three of them.

24 A I would say the two satellite offices probably
25 request services like once every two months, and for

0312

1 the 40th Street address sometimes monthly, sometimes
2 every two months. It all depends upon how fast the
3 sharps containers get full. Roughly speaking,
4 probably about every month, two months.

5 Q And how long -- first of all, how long have
6 you been working in this capacity at Wendel?

7 A I've been in the facility managing capacity
8 for 12 years.

9 Q How long has -- do you know when Wendel first
10 signed up for this service with Stericycle?

11 A I do not.

12 Q Was it --

13 A We just resigned up with them probably like
14 last May.

15 Q You said "resigned up." So before last May,
16 was there a time when you also had Stericycle service?

17 A We had Stericycle service a few years back.

18 Q So let me see if I -- so a few years before
19 last May you also had service. At some point it was
20 cancelled?

21 A With Stericycle.

22 Q With Stericycle. And then at some point it
23 was cancelled?

24 A Yes.

25 Q Do you know when that occurred?

0313

1 A I don't know the exact date off the top of my
2 head.

3 Q An estimate by month or season would be
4 helpful.

5 A I would say we discontinued it probably a year
6 prior, like May of 2010 -- no, probably 2011. Yeah,
7 2011, May, we probably quit, and then we started back
8 up a year later.

9 Q Okay.

10 A The best I can recall.

11 Q And so in between May 2010 and last May, what
12 did you do for your collection of sharps?

13 A We used Spartan.

14 Q Was that an in-person pickup? Would they
15 drive trucks up to pick up your sharps?

16 A They drove trucks to pick up, yes.

17 Q And was that also an on-call service from
18 Spartan?

19 A Correct.

20 Q How did you come to decide to use Spartan to
21 collect your sharps waste in that year period?

22 A They were doing our services for our amalgam,
23 and we decided it would be easier to have it all under
24 one company, so we gave them a try.

25 Q And who did you -- did you have a contact at

0314

1 Spartan for this service?

2 A Yes, we do. I cannot think of the name off
3 the top of my head. I met with the owner of the
4 company. I don't remember his name either.

5 Q Okay, that's fine.

6 Did you ever have discussions with Spartan
7 about its authority to provide biomedical waste
8 service in Washington?

9 MS. GOLDMAN: Objection. Beyond the
10 scope.

11 JUDGE KOPTA: Her testimony does not
12 really address what other options that they used
13 before specific to Stericycle, so I will sustain the
14 objection.

15 Q And before we move on to a new topic,
16 Ms. Longhenry, I just want to clarify the dates. I
17 have that you discontinued service in May of 2010 and
18 that you resigned up this last May, which would be
19 2012.

20 A I was fuzzy on the date. I knew it was like
21 in May, and I didn't know if it was '10 or '11.

22 Q Okay.

23 A I don't have that in front of me.

24 Q Okay. I just wanted to clarify.

25 A Okay.

0315

1 Q Can you tell me, why did you resign up for
2 Stericycle's service last May?

3 A We decided to give them another try. No
4 particular reason.

5 Q Was there some aspect of the service you were
6 getting from Spartan that you were unhappy with?

7 MS. GOLDMAN: Objection. Beyond the
8 scope. Irrelevant.

9 MR. VAN KIRK: I think this goes to --

10 JUDGE KOPTA: I will allow that
11 question. I think that is appropriate.

12 Q Do you remember the question, Ms. Longhenry,
13 or would you like me to repeat it?

14 A I don't.

15 Q The question was, was there some aspect of
16 your service from Spartan that you were unhappy with?

17 A No, not that I can recall.

18 Q Okay. Ms. Longhenry, I am now turning to the
19 written testimony that you put in. First, can I ask,
20 do you have a copy of that written testimony in front
21 of you?

22 A I do not have it in front of me.

23 Q That's fine. I just wanted to know whether I
24 needed to read things or whether I could just ask you
25 to look at them.

0316

1 Now, one of the first things you put in your
2 testimony is -- and I'm just going to quote it for
3 you. You said, We have experienced ongoing monthly
4 errors in Stericycle's bills.

5 I would like you to let me know when these
6 billing errors occurred.

7 A It would have been in 2010. The way they bill
8 that ends up with -- you get your statement, and
9 you've already paid it, and you get service charges on
10 your account. I was constantly calling to correct the
11 billing on it. They finally get things taken care of,
12 but not until after a lot of calls.

13 Q So the billing errors you are referring to
14 occurred in 2010, then?

15 A Correct.

16 Q Okay. And is this something that was -- that
17 occurred for all three facilities or just some of
18 those facilities?

19 A The statements all come with all three
20 facilities to one office. I don't -- can't tell you
21 if it was a particular -- one office, because the
22 statements were combined with all three offices on
23 one.

24 Q Okay. Did you look at the statements closely
25 enough to determine whether the errors were related to

0317

1 service to one particular office?

2 A I don't recall that. I'm sure I did at the
3 time, but without going back and looking at the
4 statements, I could not tell you.

5 Q And again in 2010, how many times did you
6 receive a bill that you thought contained an error?

7 A I don't know how --

8 JUDGE KOPTA: Ms. Longhenry, would you
9 speak directly into your phone. It's hard for the
10 court reporter to hear you and it is a little bit
11 muffled.

12 THE WITNESS: Okay.

13 A I feel -- I believe it was several months that
14 we had called and finally got it taken care of.

15 Q Okay. So ultimately Stericycle did correct
16 the error, correct?

17 A Correct.

18 Q And I just want to clarify my understanding.
19 It sounds like there was a billing error that took
20 several months for you to clear up. Am I
21 characterizing that correctly?

22 A Correct.

23 Q It's not that there were multiple billing
24 errors, multiple different billing errors on different
25 occasions?

0318

1 A Right.

2 Q And were you the person who communicated with
3 Stericycle about these errors, or this error?

4 A No, that would be accounts payable, after we
5 discussed it, and she would call and clarify those.

6 Q Do you know who she called?

7 A Just the normal line, the phone number, and
8 talked to anyone in accounts payable. I don't know
9 the name of a specific person.

10 Q So you conferred with your accounts payable
11 person, but it was this person who actually made the
12 calls to Stericycle, correct?

13 A Correct.

14 Q You weren't in on any of the communications
15 with -- directly with Stericycle?

16 A No, I get the bills ready and then pass them
17 on.

18 Q You have also testified that Stericycle's
19 representatives responded to our complaints by e-mail,
20 which you said made it more difficult to clear up the
21 billing errors.

22 Again, I was mostly quoting from your
23 testimony, it was a slight paraphrase.

24 A Correct.

25 Q Now --

0319

1 A They were more --

2 Q One second, Ms. Longhenry. I'm going to ask
3 you --

4 A That was more setting back up the account, was
5 all the e-mail.

6 Q Okay. So this is something different than
7 before?

8 A Yeah, the billing we -- they spoke over the
9 phone. And then when we were resetting it back up,
10 that was all done through e-mail.

11 Q Okay. So there was no issue with e-mails when
12 it came to the billing errors?

13 A No, we never discussed that over the phone,
14 that was all -- or that was over the phone, that
15 wasn't by e-mail.

16 Q Okay. So that error was fixed over the phone.
17 I've got it now.

18 A Okay.

19 Q And then when you -- so as I understand it,
20 then, the issue of communicating by e-mail came when
21 you wanted to reset up service in 2012?

22 A Correct.

23 Q And were you personally responsible for
24 setting up that service, or did you direct somebody
25 else to do it?

0320

1 A I did that personally.

2 Q Okay. And how did the -- what was the first
3 contact that you initiated to restart the service?

4 A I think the first contact was a phone call.

5 Q Okay.

6 A They talked to someone in person, and then
7 from there we just e-mailed back and forth.

8 Q Okay. So the -- and this was a Stericycle
9 customer service representative?

10 A Correct.

11 Q Now, did you call a general toll-free number
12 or did you contact a Stericycle Washington office
13 directly?

14 A The toll-free number, and then gave them my
15 e-mail, and they contacted me by the e-mail.

16 Q Okay. On the -- in your call to set up
17 service, you gave them an e-mail as a contact address
18 for you?

19 A Phone number and e-mail, yes.

20 Q Okay. And then it sounds like there was sort
21 of an exchange of e-mails related to setting up the
22 new service?

23 A Correct.

24 Q At any point in this exchange of e-mails, did
25 you ask that they stop communicating by e-mail and

0321

1 communicate by phone instead?

2 A I would call them in -- you know, I would call
3 them and try to clarify stuff.

4 Q Okay. And did you let them know that the
5 e-mail contact address you gave them, that they
6 shouldn't use that anymore?

7 A No, because I felt like I could call when I
8 needed to.

9 Q Okay.

10 You indicated in your testimony -- I'm moving
11 on to a new subject now. You indicated in your
12 testimony that if Waste Management's application is
13 granted by the Commission, you would -- Wendel Family
14 Dental Center would move its medical waste services to
15 Waste Management, correct?

16 A Correct.

17 Q Okay. And just as a point of clarification,
18 again, you mean the sharps service that you receive,
19 correct?

20 A Correct.

21 Q Have you done any investigation of Waste
22 Management's history of billing errors?

23 A We have Waste Management for our trash pickup
24 and we've had no problems with them.

25 Q You've never experienced a billing error

0322

1 through their solid waste service or their trash pick
2 up?

3 A No.

4 Q Are you aware of any instance in which Waste
5 Management's solid waste part of the business has
6 committed a billing error?

7 MS. GOLDMAN: Objection. Beyond the
8 scope. Irrelevant.

9 JUDGE KOPTA: Overruled. I think that
10 this is an appropriate line of questioning.

11 Q Again, do you have the question in your mind
12 or should I repeat it?

13 A You can repeat it.

14 Q Okay. I believe what I asked was if you are
15 aware of whether Waste Management's solid waste side
16 of its business has committed billing errors?

17 A No.

18 Q And you have never looked into whether they
19 have committed billing errors --

20 A No.

21 Q -- with customers other than yourself?

22 A No.

23 Q Okay. Would you be surprised to know that --
24 to find out that Waste Management had committed
25 billing errors in its solid waste services?

0323

1 MS. GOLDMAN: Objection. Beyond the
2 scope. It calls for speculation. Lack of foundation.

3 JUDGE KOPTA: I'll sustain that
4 objection. That's going too far afield.

5 Q New topic, Ms. Longhenry. And I believe the
6 final topic, but we'll see.

7 I think the last main part of your testimony
8 here is you have testified that Wendel Family Dental
9 Center wants an alternative to Stericycle, and that is
10 because the lack of competition means you don't have
11 leverage to obtain consistently good service. Do you
12 recall that testimony?

13 A Yes.

14 Q Okay. So it sounds to me like your testimony
15 is that you want leverage because you think it will --

16 A Options.

17 Q -- lead to better service, or an option, I
18 guess, if you want to use that word, would lead to
19 better service, correct?

20 A Correct.

21 Q Would that option have to be Waste Management,
22 or could it be any company that was able to pick up
23 and collect your waste?

24 A Any company that could collect. That would
25 give us options.

0324

1 Q Have you ever done -- performed any study or
2 assessment of what the effects of competition would be
3 in a regulated market for medical waste?

4 A No.

5 Q Do you still consider that you have Spartan as
6 an option for your medical waste service?

7 A Do I consider what?

8 Q You used Spartan in the past to collect the
9 sharps. Do you not consider them an option for your
10 service?

11 MS. GOLDMAN: Objection. Beyond the
12 scope. Irrelevant.

13 JUDGE KOPTA: I will allow it. That's
14 within the scope of her testimony.

15 Q I'll repeat the --

16 A Yeah --

17 Q Oh, go ahead.

18 A -- I feel they would be an option.

19 Q Okay. So at this point, you do believe you
20 have an option between two carriers, correct?

21 A Correct.

22 Q Okay. And in your testimony in this
23 proceeding, you are looking for a third option?

24 A Yes.

25 Q Isn't it possible, Ms. Longhenry, that with

0325

1 competition between two or even three carriers, the
2 result would actually be significant cost cutting by
3 all the carriers?

4 A It could possibly be.

5 Q And have you considered in your -- before your
6 testimony the possibility that the result would be
7 that the level of service would be decreased through
8 that competition rather than increased?

9 A No.

10 Q And again, do you have any expertise in
11 competitive analysis in these kinds of markets to sort
12 of decide one way or the other whether competition
13 would improve or damage service?

14 A No.

15 MR. VAN KIRK: Ms. Longhenry, again I
16 want to thank you for your time this morning. I will
17 turn over questioning to the next attorney.

18 JUDGE KOPTA: Thank you.

19 Mr. Sells, do you have any questions for this
20 witness?

21 MR. SELLS: Just one, Your Honor.

22

23 C R O S S - E X A M I N A T I O N

24 BY MR. SELLS:

25 Q Ms. Longhenry, my name is Jim Sells, I

0326

1 represent a statewide association of solid waste
2 haulers.

3 I'm just double-checking. Are all three of
4 your locations in the Vancouver area served by Waste
5 Management for their regular garbage?

6 A I believe they are, yes.

7 Q All right.

8 MR. SELLS: Thank you. That's all I
9 have.

10 THE WITNESS: Yes.

11 JUDGE KOPTA: Ms. Woods, anything?

12 MS. WOODS: No, Your Honor.

13 JUDGE KOPTA: Redirect?

14

15 R E D I R E C T E X A M I N A T I O N

16 BY MS. GOLDMAN:

17 Q Good morning again, Ms. Longhenry. It's
18 Jessica Goldman. I have a couple of follow-up
19 questions for you.

20 When you cancelled your service with
21 Stericycle in 2010 or 2011, did Stericycle come
22 collect its containers?

23 A Only at two of the --

24 MR. VAN KIRK: Objection.

25 A -- locations. They never picked it up at --

0327

1 MR. VAN KIRK: Beyond the scope.

2 JUDGE KOPTA: That's within the scope of
3 your direct.

4 Would you repeat the answer, Ms. Longhenry.

5 A They picked it up at two of the locations and
6 they did not pick it up at our 1300 location.

7 Q Did you ever --

8 A The driver didn't want to come pick it up.

9 Q I'm sorry, I talked over you there. Could you
10 repeat the last sentence again.

11 A The driver said, after repeated calls, that
12 they just did not want to come pick the container up.

13 Q And did you get charged for those containers?

14 A We did but we never paid it, and they
15 eventually wrote it off. We told them it's here for
16 you to pick up at any point.

17 Q Did they ever pick it up?

18 A No, we started using it when we picked back up
19 service with them.

20 Q When you reinitiated service with Stericycle
21 in 2012, can you describe how that process went for
22 us?

23 A As I said before, we had several e-mail
24 contacts back and forth. They tried to set up one of
25 our locations that is no longer in operation. And I

0328

1 had to finally call and say we only have the three
2 locations, we do not have that fourth location
3 anymore. We finally got it taken care of.

4 MS. GOLDMAN: Nothing further.

5 Thank you for your testimony.

6 THE WITNESS: Thank you.

7 JUDGE KOPTA: All right.

8 THE WITNESS: Am I free to hang up?

9 MR. VAN KIRK: Momentarily.

10 THE WITNESS: Okay.

11 JUDGE KOPTA: That concludes this
12 witness.

13 MR. VAN KIRK: I have small amount of
14 recross.

15 JUDGE KOPTA: Very briefly.

16 MR. VAN KIRK: Of course.

17

18 R E C R O S S - E X A M I N A T I O N

19 BY MR. VAN KIRK:

20 Q I just want to clarify that when you informed
21 Stericycle of the location that didn't need to be set
22 up, they ended up setting up the correct locations,
23 correct?

24 A They still set that location up and the stuff
25 went to our 19111 office.

0329

1 Q Okay.

2 A So we had double shipment out there.

3 Q And then did they correct that double
4 shipment?

5 A They did, yes. The UPS driver knew where we
6 changed to. He just brought it over to our new
7 address.

8 MR. VAN KIRK: I'm done. Thank you
9 again, Ms. Longhenry.

10 JUDGE KOPTA: All right.

11 THE WITNESS: Thank you.

12 JUDGE KOPTA: Yes, thank you,
13 Ms. Longhenry. We appreciate you calling in to
14 testify. You are now excused and you can hang up.

15 THE WITNESS: Okay. Thank you. Have a
16 great day.

17 JUDGE KOPTA: Thank you. You too.

18 THE WITNESS: Good-bye.

19 JUDGE KOPTA: Your next witness.

20 MS. GOLDMAN: We will recall

21 Mr. Weinstein for the completion of his
22 cross-examination by Mr. Sells.

23 JUDGE KOPTA: Okay.

24 (Pause in the proceedings.)

25 JUDGE KOPTA: Good morning,

0330

1 Mr. Weinstein.

2 THE WITNESS: Good morning.

3 JUDGE KOPTA: You will recall you are
4 still under oath.

5 THE WITNESS: Yes.

6 JUDGE KOPTA: And make sure that your
7 microphone is on. The red light should be on.

8 THE WITNESS: Here it is.

9 JUDGE KOPTA: All right. Great.

10 Mr. Sells, you have some questions for

11 Mr. Weinstein.

12 MR. SELLS: Thank you, Your Honor, I do.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. SELLS:

16 Q Mr. Weinstein, my questions are based upon
17 your responsive testimony as it relates to the -- what
18 you have described as the impact to the WRRRA
19 protestants, and that's Exhibit MAW-4T and there's
20 some brief reference to MAW-14. I won't be going into
21 your original testimony.

22 It appears to me that when you are discussing
23 the four companies involved, that your testimony, your
24 written testimony -- written response testimony, I'm
25 sorry, is pretty much the same for each one of the

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1 companies. Is that a fair statement?

2 MS. GOLDMAN: Objection. The testimony
3 speaks for itself.

4 JUDGE KOPTA: He is asking for a
5 characterization. I think that's a proper question.

6 A Yes.

7 Q And you state, I believe in all of those, that
8 there's no reason -- and I'm paraphrasing here -- no
9 reason to believe that any of these four companies,
10 customers would switch to Waste Management for medical
11 waste. Do you recall that?

12 A Please direct me to where it's --

13 Q Let me do that. For example, on the top of
14 Page 18 involving Pullman Disposal, the first full
15 sentence.

16 A Yes, I recall that.

17 Q I guess my question is, isn't that the whole
18 purpose of this application, is to get customers to
19 come to Waste Management, whether they come from
20 Stericycle or Pullman or whether they are new
21 customers?

22 A The purpose is to be able to provide our
23 services statewide.

24 Q And you will be marketing those services
25 statewide, correct?

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1 A Yes.

2 Q Can we not reasonably assume that you will be
3 marketing these services in the areas of our four WRRRA
4 protestants?

5 A I'm sure we will.

6 Q And can I also presume that if, for example --
7 let's call this a hypothetical. If another solid
8 waste company were somehow granted authority in your
9 area of G-237 -- I think I've got that right --
10 wouldn't you expect to lose some customers to that new
11 entity?

12 MS. GOLDMAN: Objection. Calls for
13 speculation and beyond the scope.

14 MR. SELLS: It's a hypothetical, Your
15 Honor.

16 JUDGE KOPTA: He is asking as a
17 hypothetical. It's an appropriate question.
18 Overruled.

19 A It's possible.

20 Q And anytime you lose any customer you lose
21 revenue, do you not?

22 A You lose revenue, and you reduce a certain
23 amount of costs associated with that revenue.

24 Q And if you lose enough revenue and reduce
25 enough costs, pretty soon you may or may not be able

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1 to continue to provide the service, correct?

2 A I think it depends on whether or not you are
3 making appropriate business decisions along the line.

4 Q What kind of business decisions would you make
5 if, under our hypothetical, another garbage company
6 had the ability to serve 237?

7 MS. GOLDMAN: Again, I'm going to
8 object. It is beyond the scope, calling for
9 speculation and an incomplete hypothetical.

10 JUDGE KOPTA: I think that this is
11 exploring the witness's testimony. I will overrule
12 the objection.

13 A Would you restate your question, please?

14 Q I was afraid you were going to say that.

15 MR. SELLS: Is it possible to read it
16 back?

17 (The requested portion of the
18 transcript was read by the reporter.)

19 A As far as the, you know, business decisions, I
20 think it would be something that collectively -- you
21 know, I -- we would meet with our management team to
22 determine how we could best service those customers
23 under that circumstance.

24 Q But you still may lose them?

25 A There's always the possibility you are going

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1 to lose customers, and there's a possibility you are
2 going to gain customers.

3 Q Yesterday, you testified that you expect to
4 receive a certain market share in the new territory.
5 I don't know that it matters what that market share
6 was, I forget. Do you recall?

7 A I think we project over a period of several
8 years, that our hope -- and it is strictly a
9 projection. It is our hope that we would get around a
10 third of the market.

11 Q Of that -- with that hope -- understanding
12 that that's a projection, and I understand that. Of
13 that additional third of the market, have you done any
14 calculations or any projections as to how much of that
15 third will come from Murrey's, Rubatino, Consolidated
16 or Pullman?

17 A No, but I would expect a very small portion
18 would come from those areas, because they don't do
19 very much business themselves.

20 Q But if this application is granted, you are
21 prepared to serve, for example, one generator in the
22 Pullman area, if they ask?

23 A If the customer wants an option, yes.

24 Q Are you aware of any customer complaints to
25 Waste Management from any of Murrey's, Rubatino's,

0335

1 Consolidated or Pullman's medical waste customers?

2 A No, I'm not.

3 Q And I believe you indicate that there is no
4 indication that they are not provided renewable
5 service?

6 A I'm not aware of any problems.

7 Q Moving on to MAW-14. Just a couple questions
8 about your analysis. You refer to something called a
9 New Lurito/Gallagher. What's the New
10 Lurito/Gallagher? Did I miss something?

11 A Well, you have to go back several years,
12 Mr. Sells. When Lurito/Gallagher was initially
13 adopted in the late '80s, it was done -- there were
14 modifications made to the Lurito/Gallagher curve in
15 the early '90s. Some of those modifications involved
16 the individual capital investment of some of the -- of
17 entities, whereas the original Lurito/Gallagher curve
18 had fixed capital investment, or net equity ratio.
19 There were modifications to the original
20 Lurito/Gallagher curve that went into effect in the
21 early '90s.

22 Q And I believe that was resolved, as I recall,
23 in a Waste Management rate case of some sort; is that
24 correct?

25 A Yes, we were involved in that.

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1 Q All right. So now I know which one you are
2 talking about.

3 A Okay.

4 Q There may be another one. That's why I'm --
5 as you are well aware, that's why I'm asking.

6 Is it your understanding that Class C garbage
7 companies are held to the Lurito/Gallagher theory?

8 A Quite honestly, I'm not very knowledgeable of
9 what Class C companies are held to, because until this
10 case, Stericycle is the only Class C company that I
11 knew that even existed.

12 Q Do you have any opinion one way or another
13 whether medical waste divisions, for lack of a better
14 term, of other G certificate holders should apply the
15 Lurito/Gallagher or the Class C methodology?

16 A Well, quite honestly, I believe all solid
17 waste companies, if -- if this is the regulatory
18 mechanism that we are going to use in the state, I
19 think it should be applied to all solid waste
20 companies, regardless of whether or not it is medical
21 waste or not.

22 Q You also make reference to a time when there
23 were, in some areas, three medical waste carriers in
24 the state: Stericycle, BFI, and then individual
25 smaller companies. When was that?

0337

1 A It was --

2 Q In round figures.

3 A It probably was in the mid-'90s.

4 Q And how long did that go on for?

5 A I can't recall.

6 Q All right.

7 Finally, you indicate in your testimony
8 that -- and in your response, that you hope to be
9 profitable by the year 2015 in the new territories; is
10 that correct, or did you mean the entire medical
11 waste?

12 A Well, we -- with -- in the entire medical
13 waste because the analysis was based on statewide. It
14 wasn't -- I didn't bifurcate how much was this
15 territory versus this.

16 Q Very well.

17 What happens if you are not profitable by
18 2015?

19 A We'll have to address that situation at the
20 time.

21 Q Who is making up the difference between now
22 and when that happens, when and if that happens?

23 A Well, like any start-up operation, our
24 company, you know, provides capital support from that
25 standpoint. I think it's -- it is assumed that,

0338

1 within any kind of start-up company, even within the
2 UTC regulatory system, that it's expected that for a
3 period of time that you may not make money until you
4 are fully operational, and then you are providing more
5 efficient operations.

6 Q When you say "our company," are you referring
7 to Waste Management of Washington, Inc.?

8 A I'm referring to our corporate parent, as far
9 as capital and investment and financial support.

10 Q And your corporate parent is whom?

11 A Waste Management, headquartered in Houston.

12 Q So do you know whether the subsidies for the
13 Washington Waste Management medical waste program are
14 coming from Washington dollars or Illinois dollars
15 or --

16 A I don't know. If the implication is that it
17 is coming from other regulatory or operations, no, it
18 isn't.

19 Q You are way ahead of me, aren't you, here.

20 That was where I was heading.

21 A I'm sure. I could figure that out.

22 Q So it is your testimony that the ratepayer
23 of -- here in the state of Washington is not
24 providing -- keeping Waste Management medical waste
25 division afloat?

0339

1 A Absolutely not.

2 Q All right.

3 MR. SELLS: That's all I have.

4 Thank you.

5 JUDGE KOPTA: Ms. Woods, anything from
6 Commission Staff?

7 MS. WOODS: No, Your Honor.

8 JUDGE KOPTA: Redirect?

9 MS. GOLDMAN: Nothing further.

10 JUDGE KOPTA: Thank you, Mr. Weinstein.

11 You are excused.

12 Next witness.

13 MS. GOLDMAN: Waste Management calls
14 Jeff Norton on behalf of the applicant.

15

16 JEFFREY NORTON, witness herein, having been
17 first duly sworn on oath,
18 was examined and testified
19 as follows:

20

21 JUDGE KOPTA: Ms. Goldman.

22 MS. GOLDMAN: Excuse me just a minute.

23 (Pause in the proceedings.)

24 MS. GOLDMAN: And, Your Honor, just for
25 planning purposes, our next shipper witness is

0340

1 available only at 11:00. So we will be, with your
2 permission, stopping in time to allow that testimony.

3 JUDGE KOPTA: If that's what we need to
4 do, that's what we will do.

5 MS. GOLDMAN: Thank you.

6 (Pause in the proceedings.)

7 MS. GOLDMAN: I'm sorry, Your Honor, I'm
8 just looking for testimony.

9 (Pause in the proceedings.)

10

11 D I R E C T E X A M I N A T I O N

12 BY MS. GOLDMAN:

13 Q Good morning, Mr. Norton. Could you please
14 state your name and spell it for the record?

15 A My name is Jeffrey Norton, J-E-F-F-R-E-Y,
16 N-O-R-T-O-N.

17 Q By whom are you employed?

18 A Waste Management.

19 Q And you have before you a binder of exhibits.
20 I would like you to turn, please, to your direct
21 testimony, which is marked JN-1T.

22 A Okay, I'm here.

23 Q Is this testimony true and correct to the best
24 of your knowledge?

25 A It is, with one exception. On Page 4, Lines 8

0341

1 through 10, I made a mistake in my -- the example I
2 gave, where I said, "For example, Stericycle's black
3 31-gallon container is \$50.22 if only one is
4 collected. Stericycle's new 31-gallon Rehrig
5 container, which Stericycle offers only in Waste
6 Management's Certificate No. G-237 territory, is
7 \$44.95." I would like that taken out.

8 Q That is incorrect?

9 A That is incorrect.

10 Q Thank you.

11 MS. GOLDMAN: With that exclusion and
12 revision, we offer the direct testimony for admission,
13 Exhibit 4T -- 1T, sorry.

14 MR. VAN KIRK: I do object to the
15 admission of portions of this testimony. In
16 particular, I believe there is an analysis in this
17 testimony related to the risk of liability from
18 transportation that is without foundation and not
19 supported by any basis in his testimony, and I do plan
20 to explore that.

21 JUDGE KOPTA: All right. And I'm also
22 assuming that Waste Management is offering JN-2, which
23 is an exhibit to the direct testimony?

24 MS. GOLDMAN: That's correct, Your
25 Honor.

0342

1 JUDGE KOPTA: And that has been
2 stipulated for admission?

3 MR. VAN KIRK: Yes.

4 JUDGE KOPTA: Exhibit JN-3T, which is
5 the response testimony of Jeff Norton, directed toward
6 testimony from Stericycle, that during the prehearing
7 conference we discussed, and will not be admitted.

8 I will at this point reject admission of
9 Exhibit JN-3T. I will admit JN-2, and will reserve
10 ruling on Exhibit JN-1T, pending Stericycle's
11 exploration of the foundation of portions of that
12 testimony that you find objectionable, which I would
13 ask that you do to start your cross-examination.

14 MR. VAN KIRK: Okay.

15 JUDGE KOPTA: Anything further?

16 MS. GOLDMAN: Yes, your Honor. I
17 believe we have also stipulated to the admission of
18 the Norton declaration.

19 JUDGE KOPTA: Those have already been
20 admitted.

21 MS. GOLDMAN: Thank you.

22 JUDGE KOPTA: All right. Mr. Van Kirk.

23 MS. GOLDMAN: Actually, I'm sorry to
24 interrupt, Your Honor. We would also seek the
25 admission of -- well, actually, never mind. You

0343

1 addressed it.

2 JUDGE KOPTA: All right.

3 Now Mr. Van Kirk.

4 MR. VAN KIRK: Thank you, Your Honor.

5 Just give me one minute to sort of reorder my plan

6 here, so I can address the questions you want

7 addressed first.

8

9 C R O S S - E X A M I N A T I O N

10 BY MR. VAN KIRK:

11 Q Good morning, Mr. Norton. We met at your

12 deposition, as I'm sure you well remember. Thanks for

13 coming in today.

14 You heard some exchange between us. I had one

15 objection to your testimony. I'm going to skip ahead

16 and just ask you a few questions about that, I think

17 we will resolve the objection, and then I will go back

18 and we will have a more orderly process.

19 The part of your testimony I am getting to,

20 you probably can imagine from our previous testimony,

21 is the part in which you state -- and it's on Page 5.

22 You say two things. You say that Waste Management's

23 Seattle facility, treatment facility is closer to most

24 of the facilities generating RMW in Washington.

25 That's thing No. 1.

0344

1 And thing No. 2 is that you say less travel
2 time for untreated waste from a generator to the
3 treatment facility reduces the risk of liability of
4 the transportation. I know there's another part of
5 that sentence, but I'm not objecting to that part of
6 that sentence. Those are the two things I'm going to
7 ask you about briefly here.

8 So on issue number one, with respect to
9 whether the Waste Management facility is closer to
10 most facilities that generate biomedical waste, have
11 you studied whether this is true in fact?

12 A I have. I've been doing this a long time, so
13 I know the -- where the waste is generated.

14 Q And have you measured the comparative distance
15 between every Washington generator and Waste
16 Management's facility and Stericycle's facility?

17 A No, but I have from the transfer stations, and
18 based on population, Washington state is 6.8 million,
19 King, Pierce and Snohomish County is about 3.5 million
20 people, so almost over half of the population is in
21 those three counties, which puts most of the waste
22 generated in those areas.

23 Q Okay. It sounds like you just told me that
24 you have studied how close the volume of waste is to
25 your facility, but that's not what you testified to.

0345

1 You testified that Waste Management's treatment
2 facility is closer to most of the facilities
3 generating RMW in Washington. My question is: Have
4 you looked at those facilities generating RMW and
5 determined whether they are closer to Waste
6 Management's processing facility or Stericycle's
7 processing facility?

8 A I have not looked at all 6,000 or more
9 customers, but I have in general, just being in the
10 business and knowing where that waste is generated. I
11 have done some research.

12 Q Which facilities have you looked at those
13 distances for?

14 A Most of the Peacehealth facilities, which
15 cover most of the state. Most Pathology Associates
16 Medical Laboratories that cover most of the state.

17 Q Any others?

18 A Some of the Providence facilities.

19 Q Is that it?

20 A Yeah. I did it -- more of my research was
21 done county by county.

22 Q So the Peacehealth, Providence and the PAML
23 facilities, about how many facilities is that?

24 A 200.

25 Q And do you know how many biomedical waste

0346

1 generators there are in Washington?

2 A Roughly about 5,000, probably.

3 Q Okay.

4 A Or more. I'm not sure exactly.

5 Q So it could be more.

6 I believe if -- well, let's start with 5,000.

7 I think Mike Weinstein had a larger number in his
8 testimony. Of the 5,000 or more generators, you've
9 looked at 200. My question is to you: How can you
10 say with certainty in your testimony that Waste
11 Management's treatment facility is closer to most of
12 the facilities generating RMW in Washington, if you
13 have only looked at a very small percentage?

14 A Well, that's what I researched for those
15 facilities. Again, starting in 1996, working with
16 BFI, all the way up until now, I've worked very
17 closely with operations on both teams, with Stericycle
18 and with Waste Management. I am very familiar with
19 the routes, where they go, and know how those routes
20 are established. I'm very confident, based on that
21 experience, of where the medical waste is generated
22 and how close it is to our Seattle facility versus
23 Morton.

24 Q But again, to beat a dead horse, your
25 testimony was just that you are confident where the

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1 waste is generated, but that's different than
2 testifying to where the facilities are.

3 Isn't it true that you don't really know
4 whether Waste Management's processing facility is
5 closer to most Washington -- most facilities
6 generating medical waste in Washington?

7 A Again, based on my experience of the
8 facilities, I'm confident that they are closer to
9 Seattle than they are to Morton, where most of the
10 medical waste is generated in Washington.

11 MR. VAN KIRK: I think I've done the
12 foundational questioning I need to do on this. Do you
13 want to take up this issue, or I can move on to No. 2?

14 JUDGE KOPTA: Well, let's move on to all
15 the issues that you --

16 MR. VAN KIRK: Okay.

17 JUDGE KOPTA: -- raise your objection to
18 the admission of the testimony on.

19 Q So Issue No. 2, that I'm sort of skipping
20 ahead to talk to you about, was the issue, your
21 testimony that -- that -- I want to get it right
22 here -- less travel time for untreated waste between
23 generator and treatment facility reduces what you
24 called the risk of liability. And so that's what I'm
25 going to talk about now.

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1 preliminary questions.

2 JUDGE KOPTA: Did you want to ask any
3 questions on these subjects, Ms. Goldman?

4 MS. GOLDMAN: Yes, your Honor.

5

6 R E D I R E C T E X A M I N A T I O N

7 BY MS. GOLDMAN:

8 Q Mr. Norton, where are the minority of
9 facilities generating biomedical waste located in
10 Washington?

11 MR. VAN KIRK: Objection. Foundation.

12 JUDGE KOPTA: I think that's responsive
13 to the questions that you asked. I will overrule the
14 objection.

15 You may answer.

16 A King, Pierce and Snohomish County.

17 Q And have you conducted an analysis as to
18 whether those three counties are closer to the Seattle
19 facility or to the Morton facility and reached a
20 conclusion?

21 A Yes.

22 Q And what's your conclusion?

23 A My conclusion is that they are all closer to
24 the Seattle facility.

25 Q Thank you.

0350

1 How many years have you been in the biomedical
2 waste business?

3 A 15.

4 Q And are you aware of any vehicular accidents
5 occurring in the biomedical waste business since you
6 have been involved with it?

7 A I know they have happened. I'm not
8 particular -- in other states, not in Washington, but
9 I know they have happened.

10 Q And are you aware of what concerns are raised
11 if there are vehicular accidents involved with a
12 vehicle that is laden with biomedical waste?

13 MR. VAN KIRK: Objection. I'm not sure
14 how this goes to the foundation for his testimony, as
15 opposed to the testimony itself.

16 JUDGE KOPTA: I think that this is
17 within the scope. Your objection is lodged. I will
18 overrule the objection and allow him to answer.

19 A Yes, as with -- whether you are just driving
20 on the road is an inherent risk and liability, so when
21 you add a cargo that has infectious waste in it -- you
22 know, there's a reason we segregate it, so it -- it
23 exacerbates or makes any vehicular accident much more
24 toxic.

25 MS. GOLDMAN: Thank you. Nothing

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1 further.

2 JUDGE KOPTA: Do you have anything else,
3 Mr. Van Kirk, on these two issues?

4 MR. VAN KIRK: Briefly.

5

6 R E C R O S S - E X A M I N A T I O N

7 BY MR. VAN KIRK:

8 Q You just responded that the -- you believe the
9 majority of facilities were in King, Pierce and
10 Snohomish County. Before you told me that you hadn't
11 looked at the distances, the relative distances for
12 all but 200 facilities. How do you -- without having
13 studied it, how do you know where the majority of
14 generators of biomedical waste are?

15 A It's been my job --

16 MS. GOLDMAN: Objection. Misstates the
17 testimony.

18 JUDGE KOPTA: I'll allow the question.
19 He can clarify.

20 A My job for the last 15 years has been calling
21 on all of these facilities in one way or another, and
22 so that's -- it goes back to my experience.

23 Q Now, your job is as a representative to large
24 generator customers, correct?

25 A Majority IDN, where they have multiple

0352

1 hospitals and clinics. Small quantity as well.

2 Q Unless it's associated with a large quantity
3 generator, you don't call on small quantity
4 generators, do you?

5 A It, I guess, depends on the definition of a
6 small quantity generator, but in general, no.

7 Q And do you know how many small quantity
8 generators there are versus large quantity generators?

9 A That's -- I can venture a guess. It's about
10 90 percent small quantity, or 85 percent small
11 quantity.

12 Q And how many of those are there in King,
13 Pierce and Snohomish counties?

14 A I believe there's approximately 3,000.

15 Q Okay. And again, you don't know how many
16 total waste generators there are in Washington,
17 correct?

18 MS. GOLDMAN: Objection. Asked and
19 answered.

20 JUDGE KOPTA: Sustained.

21 Q And you gave me this 3,000 figure. How do you
22 know that?

23 A That's just a number that I remember from my
24 years in the business that I have heard.

25 Q I guess just to be clear, how many large

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1 quantity generators do you think there are in King,
2 Pierce and Snohomish counties?

3 A Again, I mean "large" is a very general term.
4 I mean, there's 108 hospitals. If we go down to
5 biotechs and medium quantity there's -- again, it's
6 about 10 percent of the total account base.

7 Q So all told, how many -- in your opinion, how
8 many generators are there in these three counties that
9 you have looked at?

10 A Again, it was just a number that I heard, that
11 it was 3,000. I don't know where I got that.

12 JUDGE KOPTA: And your objection is
13 based on inadequate foundation, is that what I
14 understand?

15 MR. VAN KIRK: Yes. Mr. Norton hasn't
16 studied these issues, hasn't looked into them, he
17 doesn't work with the customers he's talking about.
18 He doesn't -- hasn't expressed any basis for his
19 knowledge of what's actually in his testimony, which
20 is that Waste Management's treatment facility is
21 closer to most of the facilities generating regulated
22 medical waste in Washington.

23 JUDGE KOPTA: All right. I'm satisfied
24 that Mr. Norton's experience gives him adequate
25 foundation to make the testimony that he has made.

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1 You can certainly explore to the extent you need to
2 further, or discuss the weight to which we will give
3 the testimony based on his experience. I believe it
4 is sufficient to allow the testimony in. I will
5 overrule the objection and admit Exhibit JN-1T.

6 MR. VAN KIRK: There was the second
7 issue as well, with respect to having conducted no
8 studies related to this transportation risk.

9 Mr. Norton has expressed no basis for this
10 understanding of this transportation-based risk.

11 JUDGE KOPTA: My ruling was as to both
12 issues.

13 MR. VAN KIRK: Okay.

14 Q Mr. Norton, I do have a few other questions I
15 think that go to foundation. I suggest we just run
16 this topic into the ground and then start from the
17 beginning to the end.

18 THE WITNESS: Can I request some water?
19 Sorry.

20 MR. VAN KIRK: Yes, sure.

21 (Pause in the proceedings.)

22 THE WITNESS: Thanks.

23 Q Okay, Mr. Norton. Back to it.

24 Now, after -- as part of this testimony that
25 we have been talking about, you have also said that

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1 less travel time causes less environmental impact,
2 correct?

3 A Yeah, I suppose. I guess I've said that,
4 sure.

5 Q Okay. You suppose you said that, not you
6 suppose it's correct?

7 A Yes, sure. Correct.

8 Q I take it -- and correct me if I'm wrong, but
9 I take it the environmental impact you are referring
10 to is emissions from transportation, correct?

11 A Sure, yes.

12 Q Okay. I can see how that would be -- you
13 know, anytime you drive less you create less
14 emissions, that's understandable. My question is:
15 You are not testifying that overall allowing Waste
16 Management to have statewide authority in the areas it
17 can't serve right now would lead to reduced emissions,
18 are you?

19 A No.

20 Q Wouldn't it be true that having two companies
21 each serve every area of the state would actually
22 create more emissions than exist right now?

23 A Possibly. If you've got two trucks going to
24 the same city, possibly.

25 Q Probably, right?

0356

1 A I'll say possibly. I'm not an expert.

2 Q I already asked you, and I believe you agreed,
3 that when you are talking about the risk of liability,
4 that the key risk here we are talking about is that
5 through contact with infectious waste, a person could
6 become infected with something contained in that
7 waste, right?

8 A That's one of the risks. The risk of having
9 trucks -- a truck on the road for a period of time is
10 a risk in itself. But yeah, the cargo is also a risk.

11 Q But your testimony is about the potential
12 liability to generators, correct?

13 A Correct.

14 Q And the potential generator liability is from
15 the potential risk of transmitting disease, right?

16 A That's one of them, correct.

17 Q The generators wouldn't be liable if Waste
18 Management or Stericycle got into a car accident and
19 injured somebody in a car accident, correct?

20 A Well, not liable, but generators are as
21 concerned with liability as they are having their name
22 associated with an accident, whether, you know, the
23 liability is with them or not.

24 Q But your testimony is as to the risk of
25 liability, correct?

0357

1 A That's correct.

2 Q Your testimony is about the liability you
3 think is associated with an increased amount of
4 transporting untreated waste, right?

5 A That's one of them, correct.

6 Q And when we're talking about increase, we're
7 basically talking about the difference, in your view,
8 of transmitting waste to Waste Management's facility
9 in Seattle and Stericycle's facility in Morton, right?
10 That's the additional transportation you are talking
11 about?

12 MS. GOLDMAN: Objection. Asked and
13 answered.

14 JUDGE KOPTA: I'll allow it.

15 A Correct, from the waste that's collected that
16 goes to our transfer -- that goes to either to Morton
17 or goes to Kent, Woodinville for Stericycle, or
18 strictly to Seattle. That extra transport from those
19 transfer stations to Morton.

20 Q That extra transport is mostly on highways,
21 right, the difference between the two?

22 A Correct.

23 (Pause in the proceedings.)

24 Q Pardon me, Mr. Norton, I'll be right back with
25 you here.

0358

1 (Pause in the proceedings.)

2 Q So when we're talking about the highway
3 transportation and the risk that somebody might become
4 infected, the liability you are talking about would
5 require that during this period of additional highway
6 transportation, the waste would -- through some event,
7 become released from the truck, number one, and number
8 two, come in contact with a person, correct?

9 MS. GOLDMAN: Objection. Asked and
10 answered.

11 MR. VAN KIRK: I don't think I've gone
12 that far yet.

13 JUDGE KOPTA: I'll overrule the
14 objection.

15 A Yeah, there's that risk.

16 Q And that's the risk we are talking about,
17 correct, the risk that you talk about in your
18 testimony?

19 A That's correct, that's one of the risks, yes.

20 Q It's the risk you talk about in your
21 testimony, correct?

22 A Correct.

23 Q And here is where we would insert my previous
24 questions about having studied the transportation
25 risk, and I won't repeat them.

0359

1 And it sounded like, from your previous
2 testimony, that you thought an accident was one way
3 that this -- that the release of untreated waste from
4 a truck could happen?

5 A That's one way. Or a door being left open and
6 stuff falling out the back, sure. Driver error.

7 Q But you weren't aware of any of the accidents
8 that had happened in Washington, correct?

9 A Correct.

10 Q And are you aware of waste having been
11 released through this other mechanism, a door opening
12 and waste falling out the back of the truck?

13 A Yes.

14 Q Okay. And what are you aware of in that
15 regard?

16 A I'm just aware that it has happened at my time
17 at Stericycle, as well as just reading about it in
18 other states.

19 Q In other states, not in Washington?

20 A Correct.

21 Q And when you say you are aware of it from your
22 time at Stericycle, are you saying that it happened to
23 Stericycle or that's when you learned about this
24 happening somewhere?

25 A Correct, it happened in -- when I was at

0360

1 Stericycle. I can't recall the specifics, but it did
2 happen.

3 Q When do you think that happened?

4 A Between 2000 and 2008.

5 Q And were you involved in the response or
6 the -- to that?

7 A I was not.

8 Q Do you know whether any waste was released
9 from --

10 A I don't believe so. I believe it was cleaned
11 up and taken care of.

12 Q Okay. Have you performed -- this is a
13 question I didn't ask before. Have you performed any
14 study, even of the risk of accidents occurring in
15 transportation?

16 A I've done some, yes.

17 Q What sort of study have you made of the risk
18 of accidents?

19 A It's mostly been in just conversation with
20 other operations people within the industry. Just
21 that there's a high rate of fatalities when a
22 semitruck is in an accident.

23 Q This is related to fatality rates in
24 accidents?

25 A Yes.

0361

1 Q But you have never looked at and don't know
2 anything about accidents per mile or anything like
3 that?

4 A No.

5 Q Now, you probably know where I'm going to go
6 next, Mr. Norton. We've talked about this before, but
7 I think we should have our conversation again at the
8 hearing here.

9 If liability -- if infection, and therefore
10 the risk of liability is to come from contacting
11 people with waste, wouldn't it stand to reason that
12 you could mitigate that risk by reducing the chance of
13 contact between untreated waste and people?

14 A Can you repeat that?

15 Q Sure. I will cut off the preliminary part of
16 that question and just ask you: Isn't it true that
17 you can mitigate this risk we have been discussing by
18 reducing the chance of contact between untreated waste
19 and people?

20 A Yes.

21 Q So isn't it possible that transporting waste
22 to a rural area, like Morton, actually would lower the
23 risk compared to transporting into a populated area
24 like Seattle?

25 A The problem with that is that if we both have

0362

1 trucks going out of Seattle and Kent and Woodinville,
2 all of the stuff is picked up and brought back to that
3 site. The extra travel comes from the transfer
4 station to Morton. Whereas if the routes are the
5 same, and we each had half of the accounts in those
6 areas for those transfers -- for the transfer station
7 that Stericycle has versus coming right back to
8 Seattle, ours is done transporting. They have to put
9 it on another trailer and it goes to Morton, so
10 whether it's rural or not is irrelevant.

11 Q I understand that what we are talking about is
12 the risk that you say is coming from the additional
13 amount of transportation that Stericycle has to
14 perform, correct?

15 A Correct.

16 Q Okay. But that additional transportation
17 Stericycle performs, you would agree with me, in an
18 area with less people than Seattle?

19 A Correct.

20 Q Okay. And you would also agree that, if every
21 company has some risk of having a spill that could
22 infect somebody, that that spill could occur for Waste
23 Management on its way to its treatment facility in
24 Seattle and it could occur for Stericycle on its way
25 to its treatment facility in Morton, right?

0363

1 A Morton is their transfer station, sure.

2 Q So to the extent that the operations overlap
3 in the transportation, that they have transfer
4 facilities in the same area, I understand. But to the
5 extent there's a difference between our systems, isn't
6 it at least possible that the risk that we have been
7 talking about is lower for Stericycle because instead
8 of going to a treatment facility in Seattle, it is
9 going to Morton? Isn't that at least possible?

10 A It doesn't make sense to me, no.

11 Q Did you consider this possibility when you
12 wrote your testimony?

13 A Yes.

14 MR. VAN KIRK: One second, Mr. Norton.

15 (Pause in the proceedings.)

16 Q Having conferred, Mr. Norton, I just want to
17 backtrack on two points, and then we will move on to
18 something else.

19 We were talking about accidents, and we were
20 also talking about what I think we thought was the
21 only other way something -- some kind of release that
22 we've been talking about that could occur, which is
23 the door coming open on a truck in transit. Just
24 focusing on that one, that risk wouldn't really depend
25 on miles traveled, right, that depends on, at the

0364

1 point of loading, whether someone has closed the door
2 properly, correct?

3 A I guess it depends on the equipment. You
4 know, it could come halfway down the road or, you
5 know -- yeah, there's numerous possibilities.

6 Q But it's not the same as, for example,
7 accidents, where accidents will, on average, tend to
8 occur in some amount of time, with some frequency that
9 we don't know, depending on how much you drive,
10 correct? And if you don't know that's fine.

11 A Yeah, I don't know.

12 Q Now --

13 JUDGE KOPTA: Mr. Van Kirk, are you
14 going to a different line of questioning at this
15 point?

16 MR. VAN KIRK: I was going to ask one
17 more question on this line and then we can take a
18 break, if that's why you are asking.

19 JUDGE KOPTA: You read my mind, yes.

20 MR. VAN KIRK: No problem.

21 Q At this point in time, Waste Management only
22 provides service in its certificate and territory,
23 right?

24 A Correct.

25 Q Okay. If Waste Management gets statewide

0365

1 authority, how do you know that the customers you have
2 will come mostly from King, Pierce and Snohomish
3 counties?

4 A I'm basing that on because that's where most
5 of the facilities are, so we're -- a certain
6 percentage of those will come. We'll get facilities
7 from all over the state.

8 Q At this point, you have no way of -- you could
9 have -- you could end up having a customer mix that's
10 very heavy in Eastern Washington customers, for
11 example.

12 A Correct.

13 Q Okay. And in that scenario, it could very
14 well end up that Waste Management ends up driving more
15 miles than Stericycle, correct?

16 A Incorrect.

17 Q Why is that incorrect?

18 A Well, Stericycle's Spokane facility is 310
19 miles from Morton. Our transfer station over there is
20 311. I think we have about a mile more for the waste
21 that's collected in Eastern Washington.

22 Q To your transfer station?

23 A Correct.

24 Q And then you would have to additionally drive
25 to Seattle?

0366

1 A Correct.

2 Q So if you had a heavy mix of
3 Eastern Washington customers, counting your
4 transportation all the way to Seattle, you could end
5 up driving more miles?

6 A I mean, I think that's a hypothetical. That
7 wouldn't happen.

8 Q At this point we don't know who -- which
9 company is going to be driving more or fewer miles,
10 correct?

11 A Based on population and where the waste is
12 generated, I would say that most of the waste is
13 collected for Stericycle on this side of the
14 mountains, so they will always have to transfer it and
15 take it to Morton, and vice versa. I think that's the
16 scenario we would have as well.

17 Q Again, we just talked about how we don't know
18 that that would be the case.

19 A No, that's a hypothetical. I can't predict
20 the future.

21 MR. VAN KIRK: All right.

22 JUDGE KOPTA: All right. Let's take a
23 break until 20 until 11:00 by the clock in the hearing
24 room. We will be off the record.

25 (A brief recess.)

0367

1 JUDGE KOPTA: Let's be back on the
2 record and resume Mr. Van Kirk's examination of
3 Mr. Norton.

4 Q Mr. Norton, I have a couple more follow-up
5 questions that came up, and then we will move on.

6 I think you have the white binder in front of
7 you.

8 MR. VAN KIRK: May I approach and find
9 the right exhibit for him to look at?

10 JUDGE KOPTA: Yes.

11 Q I have directed your attention to Exhibit
12 MAW-9, which has already been admitted in this
13 proceeding. This is a copy of Stericycle of
14 Washington's 2011 Class C Solid Waste Companies Annual
15 Report to the Commission.

16 I will ask you to turn to page -- what's
17 marked Page 5 at the bottom.

18 A (Complies.)

19 Q In the first box there, do you see there's a
20 reference to "Number of Customers At Year End"? Do
21 you see that?

22 A I do.

23 Q And you understand that refers to the number
24 of customers that Stericycle had served at the end of
25 2011, or by the end of 2011?

0368

1 A Yes.

2 Q And what's that number of customers?

3 A 7,713.

4 Q Okay. So when you testified previously that
5 there were -- there might be about 5,000 biomedical
6 waste generators in Washington, that was a little low,
7 right?

8 A It looks like it, based on what Stericycle
9 says, yes.

10 Q Would you agree with me that it's probably
11 closer to 8,000?

12 A I agree that Stericycle says it's 7,713, is
13 how many they serve.

14 Q And do you know how many customers Waste
15 Management has right now?

16 A For medical waste services?

17 Q Yes.

18 A Actually, I can't remember right this second.
19 250.

20 Q Somewhere around there?

21 A Ballpark.

22 Q Do you remember what the number was, and again
23 ballpark, around the end of 2011?

24 A I don't, I don't.

25 Q It would have been fewer, though, probably?

0369

1 A Correct.

2 Q And I believe you -- and again, how many --
3 how many of the generators in Washington do you
4 believe are large quantity generators, in the way that
5 you understand that term?

6 A 10 to 15 percent.

7 Q 10 to 15 percent of all generators are --

8 A Of the medical waste generators?

9 Q Of the medical waste generators.

10 A Sure.

11 Q Okay. So if we use 8,000, because it's a
12 round number, understanding that it's -- may not be
13 exact, that would mean you could either be between 800
14 and 1200 large quantity generators in Washington?

15 A Correct. Again, "large quantity generator" is
16 a general term. I'm using, you know, anything that's
17 400 bucks a month or more, or 300 bucks a month or
18 more, somewhere in there.

19 Q Thank you for giving us your definition of
20 large quantity.

21 Again, I believe you testified that you had
22 looked at the locations of approximately 200 of those
23 customers?

24 A Correct.

25 Q Waste Management uses transfer stations,

0370

1 right, for medical waste?

2 A Correct.

3 Q Which transfer stations does Waste Management
4 use for its medical waste service and where are they
5 located?

6 A We use one in Coeur d'Alene, Idaho.

7 Q And that's it?

8 A And Portland, Oregon.

9 Q Okay. What waste goes to Coeur d'Alene?

10 A Waste that we collect in Spokane and the
11 Tri Cities.

12 Q Okay. Now I need to take a quick step back.
13 So when we were talking about -- in general about
14 which company had to drive farther, the waste that
15 Waste Management collects out in Spokane doesn't just
16 go from Spokane to Seattle. It goes from Spokane,
17 into Idaho, to Coeur d'Alene, and then turns around
18 and comes back to Seattle, correct?

19 A That's correct.

20 Q And did you calculate that additional
21 transportation when you were considering how far Waste
22 Management had to travel?

23 A I did not.

24 Q And is there a -- to your knowledge, is there
25 a transportation route from Tri Cities to Morton,

0371

1 Washington, that wouldn't require going through
2 Seattle?

3 A Yes.

4 Q But Waste Management's Tri Cities' waste again
5 goes to Coeur d'Alene first and then to Seattle?

6 A Currently.

7 Q Okay. And again, did you consider that
8 additional transportation when you were considering
9 the distance that Waste Management had to --

10 A I didn't.

11 Q -- truck its waste?

12 A Correct.

13 Q You considered it for Tri Cities but not for
14 Spokane?

15 A Correct.

16 Q Now we're going to move on to a new topic.
17 We're going to --

18 A Can I turn this back to my --

19 Q Please turn it back.

20 A (Complies.)

21 Q We're going to talk about Rehrig containers.

22 Just so we're all on the same page, by "Rehrig
23 containers," I mean these hinged lid containers that
24 you have offered testimony about, correct?

25 A Correct.

0372

1 MR. VAN KIRK: And that's R-E-H-R-I-G.

2 Q Now these -- and Waste Management offers these
3 containers in three sizes, correct?

4 A That's correct.

5 Q And what are the sizes again?

6 A 17-gallon, 31-gallon and 43-gallon.

7 Q And these -- those containers, the three sizes
8 of the Rehrig containers, those are the only reusable
9 plastic container that Waste Management offers to
10 Washington generators, correct?

11 A Correct.

12 Q And hasn't it been your experience that large
13 generators value having a choice between different
14 kinds of containers?

15 A No.

16 Q That has not been your experience?

17 A My experience has been that they want a
18 container that works. It depends on the generator.
19 They -- they want a container that stores well, that
20 the lids fit, that they don't stick between -- they
21 don't stick together. They want clean containers.
22 There's a myriad of reasons a customer wants a
23 container. That's never been based on how many
24 different sizes that you have.

25 Q And I was referring to the choice of different

0373

1 kinds of containers. Is your answer the same when
2 we're talking about the different kinds of containers
3 as opposed to different sizes?

4 A It hasn't been my experience, no.

5 Q Okay. In your black binder there, you will
6 find an exhibit marked -- more towards the end than
7 the beginning -- marked JN-7. You can see it on the
8 tab there.

9 A JN-7? Mine goes from MAW-24 to JN-8.

10 Q It's before MAW-24.

11 A Oh, sorry. Okay.

12 MS. GOLDMAN: And I'm sorry, what is
13 JN-7?

14 MR. VAN KIRK: They are excerpts from
15 Mr. Norton's deposition.

16 MS. GOLDMAN: I don't know that we have
17 a version of JN-7. We have an entire transcript, but
18 I don't think I have whatever you are referring to as
19 JN-7.

20 MR. VAN KIRK: You should have both.
21 They were both cross-examination exhibits that were
22 submitted. It comes -- like I told Mr. Norton, it
23 comes before -- well, you printed your own binder, so
24 I'm not sure what order you put that in.

25 JUDGE KOPTA: Let's go off the record.

0374

1 (Discussion off the record.)

2 JUDGE KOPTA: Back on the record.

3 Q So I've directed you to a document. I will
4 tell you that these are excerpts from your deposition.
5 If you can turn to the page that's marked 8 at the
6 bottom for you, and it's Page 14 of your deposition.

7 A (Complies.)

8 Q Have you found that page?

9 A I did.

10 Q Okay. And this was a deposition you gave in
11 this proceeding, correct?

12 A Correct.

13 Q And you gave testimony -- and you gave that
14 testimony under oath, correct?

15 A I did.

16 Q Okay. And in that testimony I asked you, "It
17 was your experience that the large generators at least
18 valued having that choice between different kinds of
19 containers," and you answered "Yes." Do you see that?

20 A I do.

21 Q And that is different than the answer you have
22 just given me today, isn't it?

23 A It is.

24 Q Okay. And so is it your testimony that the
25 testimony you gave me in your deposition was untrue or

0375

1 is the testimony you are giving me today untrue?

2 A I may just be confused. I'll go with the one
3 that I just gave. I'll say yes, there is some value
4 to having different containers.

5 Q Okay.

6 A It's -- it's -- when I'm comparing containers,
7 I am thinking of the containers that are offered by
8 Stericycle and --

9 Q And right now I'm just asking about --

10 A Correct.

11 Q -- Waste Management's containers.

12 A Correct.

13 Q So I just want to make sure that was clear.
14 The final testimony we are landing on is yes, the
15 generators do value having a choice between different
16 kinds of containers?

17 A Yes.

18 Q And wouldn't you also agree, Mr. Norton, that
19 a biomedical waste service that offers a choice
20 between Rehrig containers and several other choices of
21 containers would be a better service than a service
22 where only Rehrig containers are available?

23 A It depends on what those other containers are.
24 I would not say that's the case for the containers
25 that are offered by Stericycle.

0376

1 Q Again, that was not my question. So is your
2 answer yes, or it depends?

3 MS. GOLDMAN: Objection. Asked and
4 answered.

5 JUDGE KOPTA: I think he's entitled to
6 clarify the answer. Overruled.

7 A It depends on the containers.

8 Q Okay. In the same exhibit there, turn to what
9 is numbered for you page -- referring to the number at
10 the bottom, 35. For everybody else that's Page 102 of
11 Mr. Norton's deposition.

12 A (Complies.)

13 Q Again I will read from your testimony.

14 At your deposition I asked you, "In your
15 knowledge of customers, would service offerings where
16 customers could choose between a Rehrig container and
17 several other choices be better than services where
18 only the Rehrig containers were available?"

19 And then you answered, "Yes, choices are
20 good."

21 And then I asked a follow-up, "And that choice
22 in particular?"

23 And you answered "Correct."

24 Do you see that testimony?

25 A I do.

0377

1 Q And again, was that testimony true when you
2 gave it?

3 A Correct.

4 Q And is it the case, then, you are trying to
5 change that testimony in your answer you have just
6 given me?

7 A I just clarified it and added depending on the
8 containers for the choices.

9 Q So you think there are situations in which a
10 generator would not like to have a choice, to make
11 their own choice about which containers to use?

12 A I think there are situations where it wouldn't
13 matter.

14 Q And wouldn't you agree that it's up to the
15 generator to make that choice about whether a
16 container is serviceable or operational for their
17 needs?

18 A Yes.

19 Q And Waste Management doesn't offer that choice
20 to generators, correct?

21 A What choice?

22 Q The choice between different kinds of
23 containers.

24 A We currently have reusable containers and
25 boxes.

0378

1 Q And Stericycle also offers cargo boxes, right?

2 A Correct.

3 Q So referring to reusable containers, Waste
4 Management doesn't offer a choice of containers,
5 correct?

6 A Correct.

7 Q When did Waste Management first deliver Rehrig
8 containers to customers in Washington?

9 A I want to say in June of 2010.

10 Q Can you be more specific? When in June?

11 A I'm sorry, 2011.

12 Q Right, I understood that. Thank you for the
13 clarification.

14 Can you be more specific about when in June
15 you first put those containers in play?

16 A I believe it was the end of June. I can't be
17 specific, but I believe we delivered them to -- Sacred
18 Heart Medical Center in Spokane was one of our first
19 customers and Holy Family Hospital in Spokane. I
20 believe it was the last week of June somewhere, give
21 or take a week.

22 Q And do you know when Stericycle first
23 purchased its containers -- strike that.

24 First of all, we all understand that
25 Stericycle also is offering Rehrig containers?

0379

1 A Correct.

2 Q Do you know when Stericycle purchased those
3 containers?

4 A I don't know when they purchased them.

5 MS. GOLDMAN: Your Honor, I just wanted
6 to point out that it is two minutes to 11:00. We have
7 a witness anticipated to be calling in at 11:00.

8 JUDGE KOPTA: I am aware of that. Thank
9 you for the reminder. I have not heard anyone join
10 the bridge line. I will wait until I hear that.

11 MR. VAN KIRK: I will finish this line
12 and then I will pause.

13 Q Do you know when Stericycle started making its
14 Rehrig containers available to customers?

15 A I believe it was the same time. Around June
16 is the first time I heard about it. Mr. Adams had
17 gone to Sacred Heart Medical Center in Spokane and had
18 mentioned that they had the same containers at the
19 same price.

20 Q At the same time as when Waste Management
21 introduced its Rehrig containers?

22 A At the time we started servicing them, yes.

23 Q Okay. Now, referring to your testimony, then.
24 If those events occurred at the same time, and you
25 don't know when Stericycle started purchasing its

0380

1 containers, how can you state in your testimony that
2 within a month of Waste Management starting its RMW
3 services, in June 2001, Stericycle purchased -- 2011,
4 Stericycle purchased and started marketing the exact
5 Rehrig containers Waste Management was using?

6 A Where is that? Can I read that?

7 Q Yes, absolutely. It is Page 3 of your
8 testimony, Lines 22 through 24.

9 A So I guess "purchased" is probably the
10 wrong -- purchased can probably be taken out of there.
11 I don't know exactly when they purchased them, but
12 that's when I heard them -- heard of them marketing
13 them.

14 Q Now, would you -- is this testimony intended
15 to indicate that Stericycle started marketing its
16 containers only after Waste Management started using
17 its containers?

18 A It's intended to relay that our container
19 choice and pricing we put into the tariff were copied
20 by Stericycle, yes.

21 MR. VAN KIRK: I move to strike that
22 answer. That's nonresponsive. Let me ask my question
23 again.

24 JUDGE KOPTA: I will let the answer
25 stand. I believe it was at least in part responsive

0381

1 to your question. You may clarify it.

2 And just to let you know, let me know when you
3 are through with this line of questioning. I believe
4 our next witness has joined the bridge line.

5 Q My question was, you've stated that -- in your
6 testimony that Stericycle started marketing the Rehrig
7 containers within a month of Waste Management starting
8 its RMW services. Is that a correct characterization
9 of your testimony?

10 A To the best of my knowledge, that's correct,
11 yes.

12 Q And did you mean to say within a month after
13 Waste Management started offering its medical waste
14 services?

15 A I don't think so. That's when I learned of it
16 in -- during that time, within a month.

17 Q So in fact, service with Rehrig containers was
18 started at approximately the same time by both
19 companies?

20 A To the best of my knowledge.

21 Q You're not aware --

22 MR. VAN KIRK: Three questions and then
23 I'm done.

24 Q You're not aware of any internal discussions
25 at Stericycle about adding Rehrig containers, are you?

0382

1 A I'm not.

2 Q And you don't have any personal knowledge
3 about what Stericycle's plans were for introducing
4 Rehrig containers?

5 A No.

6 Q And you don't have any personal knowledge
7 about the reasons why Stericycle introduced Rehrig
8 containers, correct?

9 A Correct.

10 MR. VAN KIRK: We can take a break here.

11 JUDGE KOPTA: Thank you, Mr. Van Kirk.

12 I appreciate your cooperation.

13 Mr. Norton, we are going to pause and go with
14 another witness at this point. We will resume your
15 testimony later.

16 At this point I will turn it over to
17 Ms. Goldman.

18 MS. GOLDMAN: Mr. Moore, have you joined
19 the bridge line?

20 THE WITNESS: I am here.

21 Q Could you please state and spell it for the
22 record?

23 JUDGE KOPTA: Just a moment.

24 Mr. Moore, will you stand and raise your right
25 hand, please.

0383

1

2 RAY MOORE, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:

6

7 JUDGE KOPTA: Thank you.

8 Now, Ms. Goldman.

9

10 D I R E C T E X A M I N A T I O N

11 BY MS. GOLDMAN:

12 A Okay. I'm sorry, spell my name?

13 Q Yes, I'm sorry. Could you please state your
14 name and spell it for the record?

15 A Ray Moore, R-A-Y, M-O-O-R-E.

16 Q And for whom are you employed, Mr. Moore?

17 A Peacehealth.

18 Q Did you submit direct testimony in support of
19 Waste Management's application on October 1st, 2012,
20 for consideration by the Commission?

21 A I did submit. It was signed on
22 September 27th.

23 MS. GOLDMAN: We move the admission of
24 RM-1T.

25 JUDGE KOPTA: Any objection to the

0384

1 admission of that testimony?

2 MR. VAN KIRK: One moment, please.

3 (Pause in the proceedings.)

4 MR. VAN KIRK: No, Your Honor.

5 JUDGE KOPTA: Then that testimony is
6 admitted. Exhibit RM-1T is now part of the record.

7 MS. GOLDMAN: And that's all I have at
8 this time. I will turn the microphone over to the
9 next lawyer. Thank you.

10 JUDGE KOPTA: Thank you, Ms. Goldman.

11 Mr. Van Kirk, do you have any
12 cross-examination for this witness?

13 MR. VAN KIRK: I do.

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. VAN KIRK:

17 Q Good morning, Mr. Moore. My name is Jared
18 Van Kirk, I'm one of the attorneys for Stericycle, and
19 I will have a few questions for you this morning.

20 A All right.

21 Q Can you summarize for my benefit your -- in
22 brief what your history is with Peacehealth?

23 A I have been in supply chain at Peacehealth for
24 21 years, and I am currently the lead contract manager
25 for supply chain at our system office.

0385

1 JUDGE KOPTA: Mr. Moore, would you speak
2 directly into the phone and speak a little bit louder?
3 We are having a little trouble hearing you in the
4 hearing room.

5 THE WITNESS: Oh, I actually have the
6 phone right on my head. I apologize for that.

7 JUDGE KOPTA: That's much better.
8 Thank you.

9 THE WITNESS: I will just speak louder.

10 JUDGE KOPTA: Terrific.

11 THE WITNESS: Do you need me to repeat?

12 JUDGE KOPTA: If you would be so kind.

13 THE WITNESS: Okay.

14 A I have been with Peacehealth for 21 years in
15 our supply chain, and last several years I have been
16 lead contract manager at our system office for supply
17 chain.

18 Q And in this lead contract position, describe
19 to me what you do.

20 A My team is responsible for all contracts that
21 relate to supplies and related services. I have a
22 team of seven individuals that report to me. And then
23 I am personally, in addition for overseeing my staff,
24 I am directly responsible for all pharmaceutical and
25 purchased services.

0386

1 Q Is there a member of your team who has
2 responsibility for biomedical waste services?

3 A That is myself. That falls into our category
4 called services.

5 Q So that's something that you deal with
6 personally. It isn't off-loaded to some other member
7 of your team?

8 A Yes, correct.

9 Q So tell me how it works. If you make a
10 decision to contract for a service, does that
11 automatically mean that every facility in the
12 Peacehealth system gets that, or is it more
13 complicated?

14 A It can be more complicated than that.

15 Q Okay.

16 A But I am the one that is on point for bringing
17 in an agreement or committing to an agreement.

18 Q Would these agreements be mandatory, or does
19 each individual facility get to sign on to them as
20 they choose?

21 A Again, that can vary.

22 Q Okay. Well, let's say for -- let's say for
23 biomedical waste. Does your decision go for
24 biomedical waste services for all Peacehealth
25 facilities or do facilities get to make individual

0387

1 choices?

2 A Currently, that is -- it gets complicated, but
3 that is a committed agreement, so there is a -- and we
4 are with Stericycle currently. There can be different
5 levels of what that commitment entails. It can be
6 volume-based, depending -- I can't remember on this
7 one. Volume-based, market share-based.

8 In this particular example, there -- we only
9 have one agreement. That's just because Stericycle is
10 the only one that has the geography that can cover all
11 of our entities.

12 Q Do all of your entities actually use
13 Stericycle services?

14 A All of our larger entities do. I'm not sure
15 about all of the smaller ones.

16 Q And who would know about that?

17 A The individual facilities.

18 Q So when it comes to -- and by larger
19 facilities, do you mean hospitals? Is there
20 anything --

21 A Hospitals and -- correct, hospitals, dialysis
22 centers, medical groups. Yes.

23 Q And so it sounds like large facilities go with
24 the group contract that you negotiate, but small
25 facilities are free to make their own decisions?

0388

1 A That is not entirely accurate. Again, it can
2 depend on who we committed to an agreement. There's
3 discussions that have to take place before we commit
4 to an agreement.

5 Q You just --

6 A I just haven't been tracking the smaller ones.
7 The agreement is available to all of them, I just
8 don't track the small ones on that example.

9 Q So I'm just trying -- it sounds like you don't
10 track whether or not they've used the agreement,
11 although the agreement is available to them. I guess
12 I'm trying to understand whether they are required to
13 use this agreement or whether they can choose to sign
14 on to some other agreement?

15 MS. GOLDMAN: Objection. Asked and
16 answered.

17 MR. VAN KIRK: I did ask it. I didn't
18 quite understand the answer.

19 JUDGE KOPTA: It's an appropriate
20 clarification. You probably need to ask the question
21 one more time so that he understands.

22 Q Did you follow my question or should I ask it
23 again?

24 A I'm trying to think how to explain it. If we
25 have a committed agreement, then we define in the

0389

1 agreement what that commitment means. Typically, I
2 make a committed agreement based on the aggregation,
3 not on an individual facility. If we get into an
4 agreement that it is 100 percent, then it will be
5 100 percent of the Peacehealth entities. We have
6 several hundred affiliates, down to small doctor
7 offices. I typically am most focused on the several
8 dozen larger entities.

9 Q Okay. So -- and do you know, then, whether
10 the Stericycle contract is something that commits all
11 the entities or not?

12 A The Stericycle agreement, I am not sure. I
13 didn't come prepared to answer that. But it is one
14 that is made available to all of the entities.

15 Q Is --

16 A It seems like that would be a question you
17 would be able to answer.

18 Q If only I had the opportunity. This would go
19 a lot faster.

20 A Okay.

21 Q Is Lake Chelan Community Hospital one of your
22 entities?

23 A Yes, sir.

24 Q And is that one of the what you would call a
25 large entity?

0390

1 A They are one that we are monitoring. It's a
2 smaller hospital, but yeah, I would include that in
3 that group.

4 Q Okay. And so would your testimony be that
5 Lake Chelan Community Hospital would sort of be bound
6 by the agreement you signed with Stericycle, for lack
7 of a better word?

8 A Again, I can't -- I didn't come prepared to
9 say if folks were bound to it or if it was available
10 to them.

11 Q Okay. I think I understand you, that it is
12 available to everybody. And now I do understand that
13 you can't answer right now whether people are bound to
14 it. Is that a fair characterization?

15 A Yes.

16 Q Okay. Just -- this may seem a silly question
17 to you. Can you explain what Peacehealth is? What
18 sort of organization is Peacehealth?

19 A We are an integrated delivery network that
20 spans Alaska, Washington and Oregon. We own nine
21 hospitals, plus a number of medical groups, medical
22 labs, some other peripheral care centers. And then in
23 addition to what Peacehealth owns -- we're a
24 not-for-profit health system with a Catholic-based
25 mission.

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1 We also have a contracting side, so for supply
2 contracts. We also have relationships with a number
3 of other facilities in Washington, Alaska and Oregon,
4 who come to us for help with their supply and related
5 service negotiations, and to aggregate volume with us,
6 to move market share, to gain better pricing in the
7 marketplace than any individual facility could do on
8 their own, or that Peacehealth could do within its own
9 facilities.

10 Q Is it correct to say that Peacehealth, then,
11 operates a buying group of various healthcare
12 facilities?

13 A Yes.

14 Q Okay.

15 A I mean, we are -- also are a shareholder in a
16 larger national group purchasing organization called
17 Premiere, which our affiliations are then able to
18 access through affiliation with us.

19 Q Okay. And does Premiere have any involvement
20 in selecting biomedical waste services for
21 Peacehealth's purchasing group?

22 A In this case they did. They negotiated the
23 Stericycle agreement that we are signed up on.

24 Q Okay. So you didn't negotiate the Stericycle
25 agreement currently?

0392

1 A No, sir.

2 Q Okay.

3 A So Premiere has more than one. We selected
4 the Stericycle because that one at this time was able
5 to fit what our two key states needed. Preference is
6 to go with one award in this category and not to split
7 it up.

8 Q One award for two states, right?

9 A Preferably for all three, but there are times
10 when the inside passage is an exception to how things
11 are done.

12 Q Okay. Which states are we talking about?

13 A Washington and Oregon.

14 Q And you said three preferably. What's the
15 third preferable state?

16 A Alaska.

17 Q Alaska, okay.

18 A But our own facility in Prince of Wales and
19 Ketchikan tend to be exceptions, especially in
20 something like this. I don't believe Stericycle or
21 Waste Management are servicing that island.

22 Q Okay. So for some facilities, you allow an
23 exception from the single provider preference?

24 A Geography can be a challenge in some
25 agreements, yes.

0393

1 Q Okay. Mr. Moore, let me turn a little more
2 concretely to what you have actually written in this
3 case. Do you have your testimony in front of you?

4 A Yes.

5 Q Okay. And I think I will be mostly referring
6 to Page 4, the final page of your testimony.

7 Now, your testimony is, and I will read it,
8 that competition in biomedical waste -- and now I am
9 starting to read -- "will give Peacehealth the
10 leverage to obtain the best possible service and
11 pricing," correct?

12 A Correct.

13 Q Okay. So if I understand correctly, what you
14 are saying is Peacehealth wants another option of a
15 service provider so that competition would be --
16 statewide competition would be introduced into
17 Washington, correct?

18 A Yes.

19 Q And that option doesn't have to be Waste
20 Management, does it?

21 A It does not, but Waste Management is who we
22 identified as being the best fit, the next best fit.

23 Q In terms of introducing competition, it could
24 be any provider out there that provides the service
25 you are looking for, right?

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1 A Certainly.

2 Q Looking at your testimony, you're not
3 testifying that Stericycle is not currently treating
4 and disposing biomedical waste safely and effectively,
5 right?

6 A I absolutely am not stating that, no.
7 Stericycle has been a good partner.

8 Q Okay. And elaborate on what you mean by
9 "Stericycle has been a good partner," please.

10 A No complaints and performing the services that
11 they are paid to do.

12 Q Okay. So even though Stericycle currently
13 provides what you have said are services you have no
14 complaint with, what you are asking for in this
15 proceeding, or what you hope to get is a competitive
16 alternative that you think will promote better
17 services in the future, correct?

18 A And lower pricing.

19 Q Fair enough. I am talking about services.
20 Now I will talk about pricing.

21 (Pause in the proceedings.)

22 A May I use an analogy?

23 Q I'm just thinking of my next question,
24 Mr. Moore, and then I will ask it. Pardon me for
25 pausing here.

0395

1 (Pause in the proceedings.)

2 Q Okay. Mr. Moore, sorry for the extended pause
3 there. I know you can't see what's going on so you
4 are left there in silence on your end of the phone. I
5 just want to ask you a few more questions about the
6 final points you make in your testimony.

7 You have said that you think competition will
8 help mitigate Peacehealth's risk of residual liability
9 arising from the transportation handling of its RMW by
10 third parties. I know that's what you said because I
11 just read it, but I'm going to ask you some questions
12 about it now.

13 My first question is I didn't understand
14 completely what you meant. Is this the same thing as
15 saying that you think competition will promote better
16 services in the future and therefore reduce liability
17 through better services? Is this saying the same
18 thing?

19 A That works. Choice and competition allow
20 flexibility to meet whatever needs there are, helps
21 strengthen what different companies will bring to the
22 table. I'm not saying that there hasn't been -- I'm
23 not saying there has been a problem. What we have for
24 my network in Washington -- Washington is the one
25 that's keeping us from having choice -- we only have

0396

1 Stericycle. We have one choice to service all of our
2 members and aggregates. For us a good business model
3 for quality control and for cost containment, it's
4 best to have everybody using standardized services and
5 products to the greatest extent we can. So for us,
6 Stericycle has a monopoly.

7 Probably not the best word to use in
8 testimony, I apologize.

9 Q I understand, and there is no -- as a factual
10 matter, Stericycle is the only service provider.

11 MR. VAN KIRK: Mr. Moore, I just want to
12 say thank you for taking the time today. I am done
13 with my examination. I will pass it on to another
14 attorney.

15 JUDGE KOPTA: All right. Thank you,
16 Mr. Van Kirk.

17 Mr. Sells, do you have any questions?

18 MR. SELLS: Just a couple, if I may,
19 Your Honor.

20

21 C R O S S - E X A M I N A T I O N

22 BY MR. SELLS:

23 Q Mr. Moore, my name is Jim Sells, in this room
24 full of lawyers here. I am representing several of
25 the smaller medical waste haulers in Washington state.

0397

1 I am a little bit confused. I am looking at
2 Page 3 of your testimony, and looking at -- starting
3 at Line 5, 6 and 7. You use the words "alternative
4 RMW service providers," and then there's a colon there
5 and a list of facilities, starting with Columbia Basin
6 in Ephrata. Do you see that?

7 A Starting on Line 5?

8 Q On Page 3. Why don't I just read the sentence
9 for you? "Peacehealth owns or provides contracting
10 services for the following Washington hospitals where
11 Peacehealth has alternative RMW service providers."
12 Do you see that?

13 A Yes.

14 Q All right. Does that mean that the facilities
15 that come after that colon are not serviced by
16 Stericycle?

17 A I apologize for my -- I'm not sure where I was
18 at with that. I actually cannot explain why the
19 verbiage is that way.

20 Q Well, let me tell you the ones I am
21 particularly concerned with. If you know who provides
22 the service, fine; if you don't, just simply say so.

23 I am looking at Columbia Basin Hospital in
24 Ephrata, Pullman Regional Hospital in Pullman, and
25 Samaritan Hospital in Moses Lake. Do you know if

0398

1 Stericycle provides the service for those three or if
2 someone else does?

3 A Can I ask, who are you representing?

4 Q I represent the Washington Refuse and
5 Recycling Association, which is a statewide trade
6 association, and four haulers, certificate and garbage
7 companies which provide medical service.

8 A Okay.

9 Q One of them is Pullman Disposal in Pullman,
10 obviously. The other is Consolidated Disposal in the
11 Moses Lake/Ephrata area. That's why I'm asking about
12 those hospitals.

13 A So you said Coulee Medical, Pullman, and which
14 other one?

15 Q Columbia Basin, Pullman and Samaritan in Moses
16 Lake.

17 A From those, Pullman is the only one I am
18 showing with Stericycle. I can't say if that's
19 directly serviced by Stericycle or if they are
20 subcontracting.

21 Q And same then for Moses Lake, for Samaritan?

22 A Nothing being reported with Stericycle for
23 Samaritan.

24 Q All right.

25 A I am aware there are some areas where there

0399

1 are contracts that have to be still awarded to another
2 provider.

3 Q Areas where perhaps a smaller provider would
4 service one of these smaller facilities under contract
5 with Stericycle and then Stericycle would eventually
6 receive the waste; is that correct?

7 A Correct.

8 Q Okay.

9 A And there are a couple of areas known that
10 certain aspects of the waste management have to be
11 provided a -- either a city or a county contracted
12 group as well.

13 Q And that arrangement that I just described,
14 apparently that's satisfactory with Peacehealth as
15 well?

16 A That is one that's outside of my control, so
17 yes, we're okay with that.

18 MR. SELLS: That's all I have.

19 Thank you.

20 JUDGE KOPTA: Thank you, Mr. Sells.

21 Anything from Commission Staff?

22 MS. WOODS: No, Your Honor.

23 JUDGE KOPTA: Redirect?

24 MS. GOLDMAN: Yes.

25

0400

1 R E D I R E C T E X A M I N A T I O N

2 BY MS. GOLDMAN:

3 Q Hi again, Mr. Moore. It's Jessica Goldman on
4 behalf of Waste Management. I have a couple of
5 follow-up questions.

6 Is Lake Chelan Community Hospital owned by
7 Peacehealth?

8 A Lake Chelan is affiliated with Peacehealth.

9 Q Is it owned?

10 A No.

11 Q Are you aware whether Premiere is paid by
12 Stericycle for marketing?

13 MR. VAN KIRK: Objection. Beyond the
14 scope of both his original testimony and my
15 cross-examination.

16 JUDGE KOPTA: I don't recall that being
17 part of the examination.

18 MS. GOLDMAN: He asked him questions
19 regarding Premiere as the source of contracting.

20 JUDGE KOPTA: I'll allow the question.

21 Q Do you have my question in mind, Mr. Moore, or
22 should I repeat it?

23 A I have it. Is it still okay for me to answer
24 it?

25 Q Yes, thank you.

0401

1 A I don't know about marketing being the right
2 term, but Premiere contracts typically involve admin
3 fees that are paid to Premiere.

4 Q By whom?

5 A By the vendor that has the award.

6 Q Thank you.

7 You testified earlier, or you referenced an
8 analogy you had in mind. I would like to ask you if
9 you could share that analogy with us, please.

10 JUDGE KOPTA: I'm sorry, that's not
11 permissible. He asked if he could provide an analogy.
12 That was not responsive to the question. That is
13 beyond the scope of the examination.

14 MS. GOLDMAN: Nothing further.
15 Thank you for your testimony.

16 MR. VAN KIRK: No more questions.
17 Thank you.

18 JUDGE KOPTA: Thank you, Mr. Moore. We
19 appreciate your testimony and you are excused.

20 THE WITNESS: All right. Thank you,
21 everyone.

22 JUDGE KOPTA: Let's be off the record
23 for a moment.

24 (Discussion off the record.)

25 JUDGE KOPTA: Let's be back on the

0402

1 record.

2 We discussed scheduling issues and have
3 decided at this point to take our lunch recess. It's
4 now 11:35. The parties are expected to be back at
5 1:00, when we will take up Dr. Warner as our next
6 witness.

7 We are off the record and in recess until
8 one o'clock.

9 (Lunch recess.)

10 JUDGE KOPTA: Let's be back on the
11 record after our lunch recess, and turning to
12 Ms. Goldman for Waste Management's next witness.

13 MS. GOLDMAN: Thank you, Your Honor.
14 Waste Management calls Dr. Dan Warner on behalf of the
15 applicant.

16 JUDGE KOPTA: Dr. Warner, would you
17 stand and raise your right hand, please.

18

19 DANNY G. WARNER witness herein, having been
20 first duly sworn on oath,
21 was examined and testified
22 as follows:

23

24 JUDGE KOPTA: Ms. Goldman.

25 MS. GOLDMAN: Thank you.

0403

1 D I R E C T E X A M I N A T I O N

2 BY MS. GOLDMAN:

3 Q Good afternoon, Dr. Warner. Could you please
4 state your name and spell it for the record?

5 A My name is Danny G. Warner, D-A-N-N-Y, initial
6 G, W-A-R-N-E-R.

7 Q By whom are you employed?

8 A Self-employed. I'm a dentist.

9 Q What is your relationship to the Washington
10 State Dental Association?

11 A I'm their president.

12 Q Did you submit direct testimony on
13 October 1st, 2012, on behalf of Waste Management's
14 application for statewide authority?

15 A Yes, I did.

16 MS. GOLDMAN: We move for entry and
17 admission of DW-1T, the direct testimony of Danny
18 Warner.

19 JUDGE KOPTA: Any objections to that
20 testimony?

21 MR. VAN KIRK: No, I don't object.

22 JUDGE KOPTA: Thank you.

23 Exhibit DW-1T is admitted.

24 MS. GOLDMAN: Dr. Warner, at this time I
25 have no further questions. I will turn it back to

0404

1 Judge Kopta.

2 JUDGE KOPTA: All right. Dr. Warner is
3 available for cross-examination. We will begin with
4 counsel for Stericycle. Mr. Van Kirk?

5 MR. VAN KIRK: Thank you.

6

7 C R O S S - E X A M I N A T I O N

8 BY MR. VAN KIRK:

9 Q Good afternoon, Dr. Warner. Thank you for
10 taking the time to be with us today.

11 A Okay.

12 Q My name is Jared Van Kirk, and I am an
13 attorney for Stericycle in this proceeding. I will
14 have a few questions to ask you about your testimony.

15 A Okay.

16 Q First of all, can you please just let me know
17 about your practice. Are you one office, more than
18 one office?

19 A We're one office, two dentists.

20 Q Okay. And you are located in Vancouver,
21 Washington, correct?

22 A Yes.

23 Q And tell me more about the Washington State
24 Dental Association. What is -- what's the membership
25 of the association? Let's start with that.

0405

1 A Approximately 4,000 members throughout
2 Washington state. It's a representative group to
3 advocate for oral health in the state of Washington
4 and provide other services to the dentists themselves,
5 information, continuing education. That's what it
6 does.

7 Q Okay. Does the Dental Association have any
8 role in either identifying, recommending or
9 contracting for services like biomedical waste
10 service?

11 A No. The only thing we have is a connection
12 with a gold or precious metal recycling company called
13 BMB back in the Midwest, I think. They are one of
14 our -- not a sponsor, but we recommend them as a place
15 to send the recycled and scrap metals. That's the
16 only thing I can think of regarding recycling.

17 Q So does the Dental Association -- is there any
18 staff or is it run entirely by its members?

19 A No, it's got a staff. It has an executive
20 director, assistant executive director,
21 representatives that are in charge of membership,
22 government affairs so that we're in touch with the
23 American Dental Association or the legislature in
24 Olympia, so that we have an advocacy for that. We
25 have a Pacific Northwest dental conference, so we have

0406

1 staff organizing that. At the Pacific Northwest
2 Dental Conference, we have vendors and education
3 providers, other doctors who give lectures. The
4 vendors are like dental supply companies, things like
5 that.

6 Q Does the Association have a board?

7 A Yes, we have a board of twelve elected members
8 and five officers.

9 Q And I would like to understand, just as
10 briefly as I can, the governance of the Association.
11 If the Association wants to do something, who has to
12 approve of those decision?

13 A The house of delegates. We have
14 representation by population throughout the state. We
15 have 17 local components and they are representing a
16 part of the population. Seattle/King County is one
17 section, and it has I think 25 delegates. Don't hold
18 me to that. I'm in Clark County, we have four
19 delegates, and that's all according to population.

20 Each year we have an annual house of delegates
21 meeting that reviews items that will be promoted by
22 the Association. These are called house of delegate
23 bills, and they are voted on by the delegates
24 themselves. Then there's also in between items that
25 we make decisions through the board of directors,

0407

1 through research and recommendations, that we might
2 find pertinent to different issues. We have task
3 forces if we have an immediate need for someone to
4 research something.

5 So it's not -- the executive director doesn't
6 set the tone for the entire representation. He has to
7 give direction to the board, the officers, and then we
8 provide information to the delegates. The delegates
9 pass or don't pass issues.

10 Q Okay, thank you.

11 Did your board -- did your board research the
12 issues you addressed in your testimony today?

13 A No, it was just a request last year signed
14 by -- we talked about it at the board of directors --
15 and felt that this would be an opportunity for some
16 other provider to accept waste. So this request or
17 this advocacy was set by Dr. Wentworth, when he was
18 president, and then it just sort of transferred over
19 to me when this came up, as far as testimony goes.

20 Q You said last year. When did this -- are you
21 referring to the opportunity to submit testimony?

22 A No, it was on June 1st of 2012, a letter to
23 Mr. David Danner, executive director, Washington
24 Utilities and Transportation Commission. It just says
25 the Washington State Dental Association supports the

0408

1 approval of Waste Management to provide medical waste
2 collection services throughout the state of
3 Washington. That's what the promotion was.

4 Q Okay. And --

5 A It was just more of a support letter.

6 Q Right. And that's what you are saying was
7 looked at by the board?

8 A Right, not by the house of delegates.

9 Q Correct, I understand that.

10 Your testimony today, was that looked at by
11 your board?

12 A No.

13 Q Okay. I take it it wasn't approved by either
14 the board or the house of delegates, correct?

15 A Correct.

16 Q And in your testimony, you offer more than
17 just a statement that you support Waste Management's
18 application, right?

19 A Well, I just offered the thought that with an
20 alternative for Waste Management's services, for, you
21 know, recycling services, that there might be more
22 competition if there was more than one provider.

23 Q Sure. Thank you for clarifying. That's
24 exactly what I was thinking of.

25 So as I understand it, that portion of your

0409

1 testimony that is different from the letter, that's
2 testimony from Dr. Warner, it's not testimony that's
3 been approved by the Association?

4 A Well, because the Association -- no, the whole
5 association didn't. But because of the support, the
6 first letter lends itself for me to continue, with the
7 support of the board, with my name on it.

8 Q Did you -- now, you mentioned the board
9 research functions. Did the -- did you have the board
10 research your testimony here, that competition will
11 ensure your members get the best possible service and
12 price?

13 A No. There was no research done whereby we
14 determined -- it was just, like I say, an advocacy
15 letter to promote the idea.

16 Q So this is in the vein of advocacy for the
17 Association?

18 A Yes.

19 (Pause in the proceedings.)

20 Q Sorry for the pause.

21 A That's okay.

22 Q Anytime we are pausing, we are probably
23 mumbling to ourselves here, but you can't tell because
24 you can't see.

25 A I heard your papers shuffling.

0410

1 Q Thanks for your patience.

2 A That's fine.

3 Q So moving from your board to you. Did you
4 perform any study or research about competition for
5 biomedical waste services before you wrote your
6 testimony?

7 A No.

8 Q Are you aware of any such studies out there
9 that discuss the consequences or effects of
10 competition in biomedical waste services?

11 A No, it's more of a generalization. Most
12 people assume that if there's two opportunities,
13 there's -- you've got the competitive rate situation
14 coming in, or maybe the ease of utilization of one
15 company to another. More of a generic assumption.

16 Q Okay, thank you.

17 Let me ask you -- you just mentioned rates.
18 Let me ask you a couple questions about that issue.
19 You've testified that you believe competition will
20 ensure the best possible price. My question is: Have
21 you done -- does the competition to -- strike that.
22 That was a bad question.

23 The competition you are talking about, does
24 that have to be Waste Management providing service, or
25 can it be any company that's capable of providing

0411

1 service?

2 A I would say any company.

3 We have -- may I offer something?

4 Q Um...

5 A No? Okay.

6 Q Yes, you said it --

7 A We have --

8 Q -- succinctly.

9 A That's what we use, we use Stericycle.

10 Q Yes, okay. Let me -- I was getting to that.

11 Let me ask you this question: I take it some of

12 your -- some number of your members at the Association

13 use Stericycle services?

14 A I would assume, since I do.

15 Q Have you taken a poll or made any efforts to

16 find out how many of your members use the services?

17 A No.

18 Q Do you know what kind of services your

19 membership uses?

20 A What I use, and what others use, is just a

21 person that comes by, picks up the red bag every

22 couple three weeks or so and takes it away. That's

23 the last we see of it. They pick up sharps, mainly

24 sharps and gauze that is contaminated, cotton rolls

25 that are contaminated. We don't have them pick up any

0412

1 metal.

2 Q Is it the case that most dentist offices
3 have -- generate primarily sharps waste?

4 A Primarily, yes.

5 Q Okay.

6 A We have amalgam separators --

7 Q Okay.

8 A -- which then are dispensed of by some other
9 service, or some service. It's kind of one of those
10 things your staff does. I'm not privy to where the
11 separators are stationed.

12 Q And your testimony, Dr. Warner, you're not
13 testifying that Stericycle doesn't currently
14 transport, treat and dispose of biomedical waste
15 properly, correct?

16 A Correct.

17 Q What you are saying, if I understand
18 correctly, is that even though Stericycle currently
19 provides satisfactory services, you want a competitive
20 alternative to possibly promote better services in the
21 future, and price?

22 A Yes. I don't -- I have no problem with the
23 service at all. Just the idea that if there's another
24 choice someone else wants to make, they have the
25 available choice.

0413

1 Q Okay. And just to be clear, you have no
2 problem with the Stericycle service at all. Is that
3 what you intended to say?

4 A That's what I mean. I have no problem with
5 the service, with Stericycle's service.

6 MR. VAN KIRK: Thank you for your time
7 this afternoon, Mr. Warner. I'm going to pass you on
8 to the next attorney.

9 JUDGE KOPTA: All right. Thank you,
10 Mr. Van Kirk.

11 Mr. Sells, do you have any questions?

12 MR. SELLS: I have no questions, Your
13 Honor.

14 JUDGE KOPTA: All right. Thank you.
15 Commission Staff, do you have any questions?

16 MS. WOODS: No questions, Your Honor.

17 JUDGE KOPTA: Any redirect?

18 MS. GOLDMAN: No questions, Your Honor.

19 JUDGE KOPTA: Dr. Warner, that was short
20 and hopefully not too painful. We appreciate you
21 testifying here today and you are excused.

22 THE WITNESS: All right. Thank you very
23 much.

24 JUDGE KOPTA: Thank you.

25 THE WITNESS: Bye.

0414

1 JUDGE KOPTA: Let's be off the record.

2 (A brief recess.)

3 JUDGE KOPTA: Let's be back on the
4 record.

5 THE WITNESS: What's that?

6 JUDGE KOPTA: We are back on the record.

7 THE WITNESS: Oh, okay, sounds good.

8 JUDGE KOPTA: Ms. Goldman, if you would
9 like to call your next witness.

10 MS. GOLDMAN: Yes. Thank you, Your
11 Honor. Waste Management calls Rodger Lycan on behalf
12 of the applicant.

13 JUDGE KOPTA: Mr. Lycan, would you stand
14 and raise your right hand.

15

16 RODGER LYCAN, witness herein, having been
17 first duly sworn on oath,
18 was examined and testified
19 as follows:

20

21 JUDGE KOPTA: Good. Thank you.

22 You may proceed, Ms. Goldman.

23 MS. GOLDMAN: Thank you.

24

25

0415

1 D I R E C T E X A M I N A T I O N

2 BY MS. GOLDMAN:

3 Q Good afternoon, My Lycan. Jessica Goldman on
4 behalf of Waste Management.

5 Could you please state your name and spell it
6 for the record?

7 A Rodger Lycan. It's spelled R-O-D-G-E-R, Lycan
8 is L-Y-C-A-N.

9 Q By whom are you employed, Mr Lycan?

10 A Pathology Associates Medical Laboratories.

11 Q Did you authorize for submission testimony on
12 your behalf on October 1st, 2012, for the UTC's
13 review?

14 A I couldn't swear to the date, but that sounds
15 right, yes.

16 MS. GOLDMAN: We move for admission of
17 Mr. Lycan's direct testimony, which has been numbered
18 RL-1T.

19 JUDGE KOPTA: Any objections?

20 MR. VAN KIRK: (Shakes head.)

21 JUDGE KOPTA: Then Exhibit RL-1T is
22 admitted.

23 MS. GOLDMAN: Thank you.

24 At this time I have no questions.

25 JUDGE KOPTA: All right. We will go to

0416

1 cross-examination, beginning with Stericycle,
2 Mr. Van Kirk.

3

4 C R O S S - E X A M I N A T I O N

5 BY MR. VAN KIRK:

6 Q Good afternoon, Mr. Lycan. My name is Jared
7 Van Kirk, and I am an attorney for Stericycle in this
8 proceeding. I am going to have a few questions for
9 you.

10 A All right.

11 Q Thank you for joining us.

12 A You're welcome.

13 Q Background first. Can you describe for me
14 what PAML is and what operations it has?

15 And if I say "PAML," we understand we are
16 referring to the Providence -- to your employer,
17 correct?

18 A Yeah, we are a part of Providence. Yes, I
19 understand what you are saying.

20 Q PAML is an okay abbreviation for us to use?

21 A Yes, it is.

22 Q So with that, tell me about PAML's operations
23 in Washington.

24 A Well, PAML is -- their strength is in the
25 Northwest. Certainly, I guess the primary strength is

0417

1 around the Spokane area, but we also have a joint
2 venture partner over in Renton, in the Seattle area,
3 and they are affiliated with us. We are a clinical
4 laboratory. We do have joint ventures in other states
5 as well, and so consider ourselves to be a national
6 organization.

7 Q So the PAML facilities are located in and
8 around the Spokane area, and then you also have a
9 joint venture with another company in Renton; is that
10 correct?

11 A Correct, as well as other cities in other
12 states.

13 Q Right. Okay, fair enough.

14 Sorry, one question here. Was there any other
15 cities in Washington or was it other cities in other
16 states besides Washington?

17 A As far as my last comment is concerned, it's
18 other cities in other states besides Washington.

19 Q Okay, thank you.

20 Now, does -- what's the name of the Renton --
21 your joint venture partner in Renton?

22 A PACLAB.

23 Q And when it comes to biomedical waste
24 services, does PACLAB do its own contracts or is all
25 of that done by PAML on behalf of PACLAB?

0418

1 A I believe with regard to waste services, that
2 they do their own contracting over there.

3 Q So for today's purposes, you are testifying on
4 behalf of the PAML labs in the Spokane area; is that
5 right?

6 A Correct.

7 Q And how many labs are there, of those labs in
8 the Spokane area?

9 A Well, there's only one, and that's here at
10 110 West Cliff Drive in Spokane. That is the lab.
11 All of the facilities where the biomedical waste
12 pickup is done are things like patient service centers
13 and things such as that, where we do blood draws and
14 urine samples and things like that.

15 Q So I'll use the word facilities instead of
16 labs. Can you tell me what facilities PAML operates?

17 A Not exhaustively, no.

18 Q How many are there?

19 A I believe there are about 60. That changes
20 because -- from time to time, because they will close
21 one down that isn't profitable and may open up another
22 one in another area. The last time that I checked we
23 were somewhere around 60.

24 Q Are these all facilities owned by PAML, or are
25 they facilities serviced by PAML?

0419

1 A I believe they are all owned in the -- I mean
2 they are managed by PAML, yes.

3 Q Managed by PAML?

4 A We don't own any of the buildings that these
5 things are in, it's all rented and all of that.

6 Q Yes.

7 A They are PAML employees that work there.

8 Q The businesses belong to PAML?

9 A Yes.

10 Q Do all those facilities generate medical
11 waste?

12 A I don't know that every single business is a
13 patient service center. There may be places that are
14 not related to collecting tissue samples. But as far
15 as I know, these -- those sites are generators of
16 medical waste.

17 Q Okay. So your best guess is that all, or a
18 very large portion of those 60 facilities do generate
19 medical waste?

20 A Yes.

21 Q These 60 facilities were the ones we were
22 talking about that were in and around the Spokane
23 area, plus the lab?

24 A Well, some of those are on the west side of
25 the state, but are still managed by PAML in Spokane.

0420

1 But most of them are on the west side of the -- I mean
2 on the east side of the state, over here, around
3 Spokane.

4 Q Were you including any PACLAB facilities in
5 this number?

6 (Pause in the proceedings.)

7 JUDGE KOPTA: Let's go off the record.

8 (Discussion off the record.)

9 JUDGE KOPTA: Let's be back on the
10 record.

11 Q My question, Mr. Lycan, was -- when we were
12 talking about these 60 facilities, plus your lab, were
13 you including in that number any PACLAB facilities?

14 A I don't believe so. I believe those were all
15 ones that were handled by PAML.

16 Q Just so I have a sense of it, how -- what size
17 are these 60 facilities? How many employees on
18 average would a facility like this have?

19 A There are some of them that are simply
20 in-office phlebotomists, which means there's one
21 employee there, and then there are others where they
22 are patient service centers, and there might be 5 or
23 10. It will vary on where they are located and the
24 number of patients that they see.

25 Q What are your responsibilities for overseeing

0421

1 these PAML operations?

2 A I'm the purchasing manager.

3 Q So you purchase goods and services on behalf
4 of all 60 facilities and the lab in Spokane?

5 A I oversee the purchase of those things, yeah.

6 Q There's other people who work with you to do
7 that?

8 A Yes.

9 Q Is there anybody who works with you who has
10 involvement in biomedical waste services?

11 A Is there anybody who what?

12 Q Is there anybody who works with you who helps
13 you purchase or identify biomedical waste services?

14 A At this point that is being handled by me
15 personally. Up until August, those duties were being
16 handled by Lori Creighton.

17 Q What happened in August?

18 A We had a reorganization of the supply chain
19 organization and Lori now reports to another manager.

20 Q Does she still have responsibilities for
21 biomedical waste services?

22 A No, I -- I thought I said that I was taking
23 care of that now.

24 Q Okay. You did. I was just -- when you said
25 she moved, I didn't know whether that meant she

0422

1 changed responsibilities or she just was reporting to
2 anyone else now.

3 A There was a responsibility change. She is no
4 longer a part of the purchasing organization, and so
5 those duties had to be reassigned.

6 Q Since that time, is there anybody who helps
7 you perform, you know, manage the biomedical waste for
8 the system?

9 A No.

10 Q Was there any -- before -- back when it was
11 Lori's responsibility, or Ms. Creighton's
12 responsibility, did she have any employees that she
13 used to help her manage these services?

14 A No. I mean she had no employees. I mean she
15 was a supervisor, but she had none of her people
16 helping her. Those were handled directly by her. And
17 there were times, as far as setting up biomedical
18 waste pickup in other states, that I would handle
19 those at that time as well.

20 Q Okay. No other states?

21 A Correct.

22 Q Now tell me about -- now talking about the
23 facilities. What responsibilities do the facilities
24 have directly for managing their biomedical waste
25 services?

0423

1 A The individual facilities do not have any
2 involvement in that, other than just day-to-day
3 discussion with a driver when they come in.

4 Q And when you say no involvement, do you mean
5 no involvement in negotiating or contracting for
6 biomedical waste services?

7 A Correct.

8 Q Do they have responsibility for -- strike
9 that.

10 And you said they have day-to-day
11 responsibilities. Would that include sort of managing
12 their -- the schedule of their pickups as needed?

13 A Well, they are not to be changing the services
14 on their own, no. I mean, if it's something where --
15 I mean, like they might call the company and find
16 out -- I mean, if somebody is late for picking up
17 something, they might call them up without notifying
18 me. But as far as services, who performs them and the
19 like, all of that would go to purchasing.

20 Q And by "purchasing," do you mean Lori
21 Creighton before August 2012, or was that somebody
22 else?

23 A Correct, Lori for Washington state.

24 Q Okay. So if I understand you correctly, you
25 are saying that individual facilities have no

0424

1 responsibility for -- or do not have the ability to
2 alter the schedule of their services?

3 A They are not supposed to.

4 Q Okay.

5 A There is a chain where -- I mean that they are
6 supposed to follow to make those kind of changes and
7 they are not supposed to unilaterally make those.

8 Q Do you know that individual facilities do do
9 that, whether or not they are supposed to?

10 A I am not aware that they have, but I am not
11 involved in the day-to-day functioning of those
12 facilities.

13 Q Did you ever ask Ms. Creighton whether
14 facilities had been acting on their own to alter their
15 schedules if need be?

16 A No.

17 Q Are some or a lot of your facilities on-call
18 customers with Stericycle?

19 A I don't believe they were. I think we were on
20 a regular schedule of pickups. I mean generally, it
21 was like a once a week or it was a twice a month or
22 that kind of a pickup, not one where they just call in
23 when things are full.

24 Q Let me take one quick step back. So some of
25 your facilities receive service, biomedical waste

0425

1 medical service from Stericycle, correct?

2 A Are you talking about the present state?

3 Q Yes.

4 A Yes.

5 Q Which facilities receive service from

6 Stericycle?

7 A I do not know that. I would have to do some
8 searching through my e-mail files and my Excel files
9 to see which ones were assigned to Waste Management
10 and which ones were assigned to -- or kept with
11 Stericycle.

12 Q When you took over from Lori in August 2012,
13 do you know which facilities were receiving service
14 from Stericycle?

15 A I thought I just answered that. I -- it's 60
16 facilities. The areas where Waste Management is
17 authorized to pick up biomedical waste are not
18 contiguous, and so there was some towns where we could
19 transfer the business to Stericycle [sic] and there
20 were other towns that might be very close by where we
21 could not. And so it was a rather convoluted way of
22 us to arrive at, you know, which facilities we could
23 transfer. We worked through it with Waste Management,
24 identified which ones we could transfer, and then
25 moved those over.

0426

1 I did not memorize them, I did not attempt to.
2 We just provided a list, I believe it was in an Excel
3 format, and made the transition.

4 Q Now, this transition, this occurred in 2011,
5 correct?

6 A Correct.

7 Q And if you remember, if you can confirm that
8 it was in October of 2011?

9 A Well, it wasn't an overnight transition.
10 The -- so it was going on for several months on our
11 side.

12 Q Okay.

13 A But the cutoff date, according to our internal
14 communications, was 11/01 was supposed to be the start
15 date for Waste Management.

16 Q So when this happened in 2011, it was Lori who
17 was in charge of these services at the time, correct?

18 A Correct.

19 Q And did you have any personal involvement in
20 changing service of some facilities over to Waste
21 Management?

22 A That was a project that I delegated to her.
23 We conferred regularly, but no, I did not take
24 personal charge of any of that transfer.

25 Q Did you communicate with any of the PAML

0427

1 facilities about transferring their service to Waste
2 Management?

3 A No, I didn't.

4 Q Did you find out from Ms. Creighton which
5 facilities she communicated with about that
6 transition?

7 A I can't guarantee that every single
8 communication she had was conveyed to me. As I say,
9 we communicated regularly and she usually -- I mean
10 she brought me up to speed regularly on any issues
11 that we were encountering.

12 Q Do you have an account manager or some other
13 contact at Stericycle that you communicate with?

14 A Actually, there have been several, depending
15 upon the state in which I'm working in.

16 Q Okay. In Washington?

17 A I believe that I said that I hadn't -- that
18 that was delegated for Lori, for Washington state.
19 She was making the phone calls and then reporting to
20 me.

21 Q Okay. So it sounds like you answered my --
22 what was going to be my next question, which was who
23 was Lori's contact. I also wanted to ask right now,
24 who is your contact at Stericycle, if you have one?

25 A I have not communicated with Stericycle in

0428

1 Washington since those responsibilities have come back
2 to me. I do not know who the current contact at
3 Stericycle is.

4 Q And did Lori inform you who the contact for
5 this account was?

6 A Do you mean back when she was in charge of it?

7 Q When she handed over responsibilities to you.

8 A No, the responsibilities were kind of abrupt,
9 and things just kind of got tossed back my way.

10 Q Mr. Lycan, I apologize if I go quiet for a
11 minute. Sometimes we have to look at notes here. I
12 will be back with you as soon as I can.

13 A Okay.

14 (Pause in the proceedings.)

15 Q So part of your testimony, Mr. Lycan, has to
16 do with this transition, correct?

17 A Yes.

18 Q I believe your testimony is -- and I'm going
19 to paraphrase it, just so we're on the same page. I'm
20 not asking you to agree with my words. It has to do
21 with transferring certain facilities over to Waste
22 Management and when Stericycle finished its services
23 to those clinics. That's what I'm going to be talking
24 about now.

25 A Okay.

0429

1 Q I understand that because of the -- that
2 because of the responsibilities, you weren't involved
3 in any -- coordinating any of that transition,
4 correct?

5 A Other than just supervising Ms. Creighton,
6 that is correct.

7 Q And you didn't communicate with Stericycle
8 about the final service date that these facilities
9 requested, correct?

10 A Correct, I simply gave that date -- well, I
11 didn't actually. It was agreed upon in meetings with
12 Waste Management and myself and Lori that that would
13 be the date.

14 Q So you agreed on the date Waste Management was
15 supposed to start its new services?

16 A Correct.

17 Q And then at some point, Stericycle was
18 informed that they should stop service at certain
19 facilities, correct?

20 A Correct.

21 Q And which facilities are we talking about?
22 Which ones are related to your testimony?

23 A I believe that I made clear earlier, I did not
24 memorize which facilities went to Waste Management and
25 which ones stayed with Stericycle. They are not a

0430

1 contiguous portion of the state, they are scattered
2 around, and so I didn't memorize the ones that were
3 staying with Stericycle, and I did not memorize the
4 ones that were going to Waste Management.

5 Q Okay. Let me ask you an even narrower
6 question. Your testimony says that Stericycle stopped
7 providing services too early. Do you know, at which
8 facilities did that happen?

9 A I do not know that off the top of my head. I
10 do -- based on the testimony of Mr. Adams, did some
11 research of my own through old e-mails and found
12 the -- some of the e-mails where we had received
13 feedback from the PSC management and -- where they
14 were complaining that the pickups had stopped. And
15 with our understanding as to the date when this was
16 supposed to cut over, we were surprised that that had
17 happened.

18 Q I'm sorry, what's PSC management?

19 A Patient service centers. That's where the
20 samples are drawn, blood, urine, stool.

21 Q So that's your acronym for the facilities we
22 are talking about, PSCs?

23 A Correct.

24 Q Okay, thank you. I just didn't know what that
25 meant.

0431

1 A I apologize for that. I should not use
2 acronyms.

3 Q No problem.

4 When you prepared your testimony in this case,
5 did you ask these facilities about their
6 communications about the final service date?

7 A No.

8 Q Did you ask Ms. Creighton about her
9 communications with the facilities about their final
10 service day?

11 A No.

12 Q Do you have any knowledge at all about the
13 process by which the final service day was scheduled
14 with the facilities?

15 A Yes, I did.

16 Q Tell me what you learned about how the
17 facilities scheduled their final date of service.

18 A Well, as I said earlier, Lori and I conversed
19 regularly about the progress of the project. She
20 copied me in -- on several e-mail strings as the
21 project was progressing. I was aware of some of the
22 issues that she was experiencing through the course of
23 the project.

24 Q And by "issues," are you referring to
25 facilities having service dates earlier than

0432

1 expected -- service terminated?

2 A That is one of the issues that we had.

3 Q And do you know whether -- do you know
4 anything Ms. Creighton did to communicate these issues
5 to Stericycle?

6 A Yes, I know that she at least used e-mail. I
7 don't -- I can't say how often she phoned or how often
8 she e-mailed, but some of the things that she copied
9 me on were e-mails to Ms. Padberg. And then I believe
10 she had phone conversations with Mr. Adams, but I
11 do -- I -- I was not privy to the content of those,
12 and she -- other than in very general terms.

13 (Pause in the proceedings.)

14 THE WITNESS: Is everybody still there?

15 MR. VAN KIRK: Yes.

16 THE WITNESS: Okay.

17 Q I know you said you didn't know which
18 facilities were involved in this transition. Do you
19 know how many?

20 A Not precisely. I think we moved more than
21 half of them over to Waste Management, but it's been
22 too long and the staffs are waning.

23 Q Among those, how many different termination
24 dates were there among the facilities?

25 A We were simply working for an 11/01

0433

1 transition.

2 Q What I was wondering is how many actual dates
3 of termination of service were there?

4 A Well, in order to know -- I guess I'm a little
5 confused on what you are meaning. If you are counting
6 every facility as a separate termination date, then in
7 order to answer your question, I would have to know
8 how many facilities there were that we were
9 transitioning. I testified that I don't know the
10 exact number of those. But if you are asking me if
11 there was particular dates for this facility and a
12 different date for another facility, that was not the
13 case. We were aiming for a singular transition date
14 of 11/01.

15 Q I believe you testified earlier on that all of
16 your facilities were on -- at least the vast majority
17 of your facilities were on -- are on a schedule, they
18 are not on-call; is that right?

19 A Correct.

20 Q So to the extent you were aiming for an 11/01
21 termination of service, isn't it the case that that
22 date wouldn't necessarily fall on a pickup date for
23 all of the facilities?

24 A It would have probably been advantageous for
25 us were it not falling upon a date of service.

0434

1 Q So was your -- your idea was that service
2 should be cut off on 11/01, no matter whether you were
3 in midcycle of pickups, or if a generator had -- a
4 facility had sort of had their pickup a week before
5 and wasn't expecting for another week and it
6 accumulated one week of waste, the service still
7 should have stopped right on 11/01, no matter what?

8 A Well, the "no matter what" sounds rather --
9 more dramatic than I think it was. If we were made
10 aware of any problems or logistics issues with that
11 date, I think we would have worked with both Waste
12 Management and Stericycle to make it a reasonable
13 transition, not -- I mean, it wasn't do or die.

14 Q So it sounds like you would have expected --
15 or you expected that the actual final pickup date
16 would vary from facility to facility, and they
17 wouldn't all necessarily be exactly on 11/01?

18 A I can say that was my expectation, but that
19 would be reasonable, that that one date might not work
20 for everybody.

21 Q And your understanding is that in the
22 communication with Stericycle, they were told to stop
23 service on 11/01/2011?

24 A Yes.

25 Q Was that a written communication?

0435

1 A I do not know. I mean I would think so, but
2 that would have been -- the detail would have been
3 handled by Lori and --

4 Q Did you make -- sorry, I didn't mean to cut
5 you off there.

6 A That's all right. I was pretty well finished.

7 Q Okay. Did you make any attempt to find this
8 communication when preparing your testimony?

9 A No.

10 Are you talking about today's testimony, or
11 are you talking about my deposition?

12 Q I'm referring to your written testimony, yes,
13 in preparing for your written testimony, did you look
14 for the communications to Stericycle indicating when
15 you wanted them to terminate service?

16 A No.

17 Q It is the case, isn't it, that the employees
18 of the facility sign for waste to be picked up when it
19 gets picked up, correct?

20 A I have never been in a PSC whenever medical --
21 biomedical waste has been picked up, so I am not sure
22 of what Stericycle's process or Waste Management's
23 process is, as far as documenting a pickup.

24 Q You said you looked at Mr. Adam's testimony
25 and there was a list in there of facilities with

0436

1 termination dates. Do you have any reason to believe
2 that the dates listed on there are inaccurate?

3 A I have no reason to believe they are
4 inaccurate or that they are accurate. I'm not sure
5 what he based his dates on. It's a rather small list
6 compared to the total number of facilities that were
7 transitioned. I'm not sure how he picked those, and
8 I'm not sure -- I mean, since there were other things
9 within his testimony that were what I considered to be
10 less than accurate, I don't necessarily believe that
11 this is, without a doubt, 100 percent truthful.
12 Nevertheless, I have nothing to -- you know, nothing
13 in my possession to dispute it.

14 Q Did Ms. Creighton review your testimony before
15 you submitted it?

16 A No.

17 Q You didn't ask her if it was an accurate
18 representation of her experience in this process?

19 A I didn't.

20 Q Did you ask her about any of the information
21 in Stericycle's response, the Ron Adams testimony?

22 A Yes, I did.

23 Q And did she indicate there were not
24 communications between Stericycle and the facilities
25 to arrange the termination of service dates?

0437

1 A She indicated that what I had stated was
2 accurate and that some of the final pickups -- I mean
3 that the last pickup by Stericycle was too early for
4 the transition date.

5 Q Did she tell you that that date had not been
6 arranged between Stericycle and the facilities?

7 MS. GOLDMAN: Objection. Vague.

8 A Excuse me, you are breaking up a little bit,
9 and I did not catch that question.

10 Q I will ask it again. Did Ms. Creighton tell
11 you that the final service date was not in fact
12 arranged between Stericycle and each of the
13 facilities?

14 A No, she did not tell me that.

15 Q And you don't have any way of knowing whether
16 or not that's the case, correct?

17 A If I searched through e-mails, I may be able
18 to find something that dates that. Yeah, I mean,
19 I'm -- I'm assuming that between her e-mail history
20 and my own e-mail history, we could probably dig up
21 that information eventually.

22 Q I'm going to move on to a new subject,
23 Mr. Lycan.

24 A Okay.

25 Q You have put in your testimony that in PAML's

0438

1 experience, Stericycle does not have much interest in
2 offering competitive prices or in reducing its costs.
3 That's Line 13 on Page 3.

4 Do you have your written testimony in front of
5 you?

6 A No, I don't.

7 Q I just wanted to find out.

8 Now, it's true, isn't it, that you don't know
9 what Stericycle does to reduce its costs?

10 A That is correct.

11 Q You're not an employee or privy to any of
12 Stericycle's cost savings measures?

13 A No.

14 Q So when you say that Stericycle doesn't have
15 much interest in reducing its costs, that's more in
16 the vein of a guess than anything, right?

17 A No, that's based on our experience as
18 customers. What they do internally to reduce their
19 own costs did not translate to a reduction in costs to
20 our facility. Despite what Mr. Adams is saying about
21 offering to do these audits on our behalf, neither
22 Ms. Creighton nor myself can locate any record of such
23 an offer. And so -- and the fact that he does testify
24 in his deposition that we did ask is proof positive
25 that we were looking for cost savings.

0439

1 We did not get a response from Stericycle in
2 that regard and heard nothing about it until we
3 notified them that we were transitioning some
4 facilities over to Waste Management.

5 Q So what you are saying is because the cost to
6 you of service didn't decline, you assumed that
7 Stericycle itself wasn't controlling its costs?

8 A No, I made the observation that we had asked
9 for ways to reduce our costs, as far as biomedical
10 waste management, and that we had gotten no response
11 that helped us.

12 Q You said you found no record of any offer
13 for -- to perform audits. Those offers could have
14 been made in telephone conversation, correct?

15 A They could have been.

16 Q And you would have --

17 A It would be hotly disputed between Lori and
18 Mr. Adams as to the accuracy of those comments.

19 Q But you don't know, because you weren't -- you
20 weren't responsible for this part of the service at
21 the time, correct?

22 A Correct.

23 Q Are you aware that -- strike that.

24 Has Stericycle ever increased its rates to

25 PAML?

0440

1 A Not that I'm aware of.

2 Q And how long has PAML been using Stericycle's
3 services?

4 A Since before I became an employee at PAML.

5 Q And how long ago was that?

6 A Since before I became an employee at PAML.

7 Q My next question was how long ago did you
8 become an employee at PAML?

9 A That was about two and a half years ago.

10 Q Now, in your job, you are responsible for
11 purchasing a lot of different services besides
12 biomedical waste services, right?

13 A Yes.

14 Q What are some examples of some other kinds of
15 services that you are responsible for purchasing?

16 A Shredding services for paper documents that
17 have to be destroyed. There's -- we subcontract some
18 of our IT services. We have professional services
19 hired, consultants. We also have -- subcontract some
20 of our maintenance on lab equipment. There's probably
21 other examples, but I mean it's not exhaustive.

22 Q Has it been your experience that over time,
23 the costs of -- in general the costs of those services
24 have gone down or have they gone up?

25 MS. GOLDMAN: Objection. Beyond the

0441

1 scope.

2 JUDGE KOPTA: I'll allow the question.

3 A In answer to your question, I would say that
4 over time that most anything will eventually go up, I
5 mean just based on the inflationary pressures and
6 things such as that, but not without exception.

7 Q So it sounds like Stericycle's services are
8 one of those exceptions if they haven't been raised,
9 correct?

10 A If Mr. -- I don't know, either Mr. Adams or
11 the other fellow stated that they haven't raised their
12 prices since they've been -- started business in
13 Washington state, then correct.

14 Q In your experience, is that something that
15 would be accomplished without having an interest in
16 reducing Stericycle's costs?

17 MS. GOLDMAN: Objection. Calls for
18 speculation.

19 JUDGE KOPTA: Sustained.

20 MS. GOLDMAN: Beyond the scope.

21 THE WITNESS: I didn't hear what the
22 ruling was on that.

23 Q The ruling was you don't have to answer, but
24 thank you.

25 A Okay.

0442

1 Q Okay. Mr. Lycan, on Page 4 of your testimony,
2 starting at the very bottom of Page 3, and then on to
3 Page 4, you say that PAML believes competition in the
4 biomedical waste market will ensure the best quality
5 of customer service and the most competitive pricing.
6 That's the subject we're moving to now.

7 A Okay.

8 Q Have you ever analyzed the effects of
9 competition on regulated medical waste services?

10 A No.

11 Q Is it part of your job to perform that kind of
12 a competitive analysis?

13 A No, it's my job to save money.

14 Q And have you ever done any study that would
15 indicate that competition would in fact lead to better
16 quality customer service?

17 A Well, I think I've pretty well indicated that
18 I don't do studies. I do have extensive experience in
19 procurement, and that procurement experience has
20 allowed me to see a number of cases where competition
21 within a particular area has forced prices in the
22 market downward and has therefore resulted in cost
23 savings.

24 Q And these examples you are thinking of, were
25 these regulated services or were these just open

0443

1 market services?

2 A They were not regulated services.

3 Q Now, isn't it possible, Mr. Lycan, that price
4 competition between two carriers could lead to cost
5 cutting that reduces rather than increases the quality
6 of services?

7 A I suppose anything is possible. Whether it's
8 likely, I don't really know. But I mean, I think that
9 you've already submitted that argument to the judge.
10 I mean my opinion is worthless in this regard. I can
11 tell you my -- how I -- what my personal opinion is,
12 but I don't believe that the judge is going to value
13 that.

14 Q And this competition you are talking about,
15 would it have to be Waste Management providing the
16 competition, or could it be anybody who could come
17 pick up your waste and deal with it effectively?

18 A As long as they deal with it effectively, I
19 don't think that it has to be Waste Management. I'm
20 just talking about competition in the general sense.

21 Q So what you want is competition in the general
22 sense?

23 A Yes.

24 Q Pardon me one moment. I am going to collect
25 my thoughts. I will be right back with you.

0444

1 (Pause in the proceedings.)

2 MR. VAN KIRK: Mr. Lycan, thank you for
3 being with us today. I'm done with my questions for
4 now.

5 JUDGE KOPTA: Thank you, Mr. Van Kirk.
6 Mr. Sells, do you have any questions for this
7 witness?

8 MR. SELLS: I do, Your Honor.

9

10 C R O S S - E X A M I N A T I O N

11 BY MR. SELLS:

12 Q Mr. Lycan, my name is Jim Sells, I'm yet
13 another lawyer sitting at the table here. I represent
14 a statewide association of solid waste haulers, some
15 of whom do provide medical -- biomedical waste
16 service. Rather than waste all our time, I will just
17 find out if you have any facilities located where
18 these four companies are, and that is Pullman, the
19 general Pullman area. Do you have any facilities
20 there?

21 A I'm not sure I'm going to be able to answer
22 that question. I do believe -- I don't remember any
23 of our facilities being in Pullman.

24 Q How about the Moses Lake/Ephrata area?

25 A I'm sorry, I'm not -- I can't answer that.

0445

1 Q The City of Everett?

2 A I believe that would fall under the PACLAB
3 area, but like I said, over there, there were areas of
4 the Seattle Metroplex that could be taken care of by
5 Waste Management, and there were other areas that
6 could not be. I don't remember which ones went where.

7 Q And how about Eastern Pierce County, Puyallup,
8 Sumner, that area?

9 A I believe we have some facilities in the
10 Olympia -- I'm pretty sure there's a facility in
11 Olympia. Beyond that, I couldn't tell you.

12 Q All right. That's fair.

13 If in fact we find out at some point that you
14 do have a facility that can be served by a local
15 garbage hauler who is performing, according to
16 regulatory structure, medical waste, would you be
17 interested, or would someone on your behalf, in at
18 least talking to them as an alternative to either
19 Stericycle or Waste Management?

20 A Well, as a buyer, I am always willing to
21 consider alternatives.

22 Q Thank you.

23 A So I guess the answer is yes.

24 Q Thank you.

25 MR. SELLS: That's all I have, Your

0446

1 Honor.

2 JUDGE KOPTA: Thank you, Mr. Sells.

3 Commission Staff.

4 MS. WOODS: Thank you, Your Honor. I
5 have a few questions.

6

7 C R O S S - E X A M I N A T I O N

8 BY MS. WOODS:

9 Q Good afternoon, Mr. Lycan. My name is Fronda
10 Woods, I'm an attorney for the Staff of the Utilities
11 and Transportation Commission.

12 Mr. Van Kirk asked you a number of questions
13 about the switch from Stericycle to Waste Management
14 for some of PAML's facilities. I would like to ask a
15 few additional questions about that.

16 A Okay.

17 Q I believe you testified that the date when
18 service was switched over to Waste Management was
19 November 1, 2011; is that right?

20 A That is the target date that we were striving
21 for, yes.

22 Q I didn't catch the date on which PAML gave
23 notice to Stericycle that it wished to terminate
24 certain biomedical waste accounts. Do you know that
25 date?

0447

1 A I don't. I believe the question was asked,
2 and I did not -- I do not have immediate knowledge of
3 when Lori contacted Stericycle to notify them of the
4 switch. I don't believe I have ever been made aware
5 that they were decrying that they had a lack of notice
6 from us.

7 Q Do you have any ballpark estimate as to how
8 much time PAML gave to Stericycle?

9 A I would guess that we gave them a month.

10 Q And I believe you have testified that some --
11 at least some of the facilities' service was stopped
12 too early; is that right?

13 A Yes.

14 Q Did Stericycle provide PAML with any reason it
15 stopped service earlier than November 1, 2011?

16 A That was -- that would be details that would
17 have gone to Lori. Lori sent me -- she copied me on
18 an e-mail that went to Ms. Padberg, where she
19 explained to her that we were very dissatisfied with
20 the way that they were handling this transition.
21 Ms. Padberg sent back a very professional e-mail
22 saying that she was sorry to hear of that and that she
23 would check into it. After that, I was not copied on
24 any detail that was passed back and forth between Lori
25 and Ms. Padberg.

0448

1 Q At the time of those e-mails, were you aware
2 that the UTC regulates Stericycle?

3 A Yes. Well, I mean not specifically UTC, but I
4 would say more generally I knew the State of
5 Washington regulated this business.

6 Q Did Stericycle ever provide PAML with
7 information about how it might be able to contact the
8 UTC about problems with service?

9 A No, I was not -- I mean, I was never made
10 aware of that. I never had a reason to look into
11 that.

12 Q I see in your testimony, which I understand
13 you don't have in front of you, but you described
14 having facilities with regulated medical waste sitting
15 uncollected. Did that cause hardship for PAML?

16 A I would answer yes, because they would not
17 have brought it to my attention here in Spokane had
18 they not been concerned about what was -- what was
19 going on. We immediately started scrambling to try to
20 figure out how we could get service to that as they no
21 longer had storage for any more sharps.

22 Q Do you have any idea how many facilities were
23 affected by that?

24 A It was not a -- it was not a great quantity.
25 I would have guessed maybe six or so.

0449

1 MS. WOODS: Thank you very much.

2 THE WITNESS: You're welcome.

3 JUDGE KOPTA: Redirect?

4 MS. GOLDMAN: Yes. Thank you, Your
5 Honor.

6

7 R E D I R E C T E X A M I N A T I O N

8 BY MS. GOLDMAN:

9 Q Hello again, Mr. Lycan. Jessica Goldman on
10 behalf of Waste Management with some follow-up
11 questions.

12 A Okay.

13 Q You testified that you reviewed Mr. Adams'
14 testimony which was proposed in response to yours and
15 that you found it to be inaccurate; is that right?

16 A Certainly some of the things stated there,
17 yes.

18 Q And can you tell us what you found to be
19 inaccurate?

20 A Well, I mean, he states that -- for some
21 reason, that Lori retired in February of 2011. I have
22 no idea what that's all about. I mean she is still
23 working for PAML today and did not transition out of
24 the responsibilities that she had in 2011 until the --
25 until August of 2012. So that was -- that was

0450

1 something which was not necessarily accurate.

2 The account of -- I mean, he focused
3 intensively on our not taking advantage of offers to
4 go in and do a waste audit at our facilities. And
5 when I had seen the testimony and went in to check
6 with Lori, Did this happen? And she said, No, he
7 said -- you know, and she was very upset that that --
8 that she had been accused of being offered lower cost
9 services through audits and that -- that we hadn't
10 taken advantage of it. A report to me -- I mean, all
11 of my people are supposed to be generating cost
12 savings. It didn't sound right to me either.

13 But the weird thing about that testimony was
14 the fact that in working with Jeff Norton on this
15 transition, he mentioned during the transition process
16 that they could help us beyond just the savings that
17 Providence told us we would experience whenever they
18 contracted with Waste Management, that they could save
19 us money through going through and doing an audit of
20 our facilities, seeing if our containers are too
21 large, if we are being picked up too often, and all of
22 that, and that they could do that one or two months
23 into the service. And that was exciting to both she
24 and I, whenever that was mentioned. And as soon as we
25 were able to do it, we had Waste Management perform

0451

1 those audits and give us feedback on what they found.

2 And it's so -- it just -- to me, it seemed odd
3 that we would, at a time when we didn't even know the
4 existence of Waste Management, that Lori would have
5 just poo-pooed any offer from Stericycle to save us
6 money, and yet as soon as it's mentioned from Waste
7 Management, we would have just jumped all over it. I
8 mean, it just -- it isn't the way that I ever
9 remembered it happening, and Lori was quite incensed
10 that it was suggested otherwise.

11 Q Are you still with us, Mr. Lycan?

12 A I am.

13 I guess that is...

14 Q Have you completed your answer to my question
15 regarding the inaccuracies in Mr. Adams' testimony?

16 A That's all that I can remember off the top of
17 my head.

18 Q Thank you.

19 Why, in your experience, does Stericycle not
20 have much interest in offering competitive prices or
21 in reducing its costs?

22 A Well, I guess that my -- it's based on
23 observation, that -- that our costs -- whenever we've
24 gone to most suppliers who are in a competitive
25 situation, and we asked them for ideas on what we can

0452

1 do to save money, they are generally very forthcoming
2 in cooperating with us, to try to help us identify
3 areas where we can save money. We never had that
4 experience happen with Stericycle.

5 In other competitive nonregulated
6 environments, where I have been working with
7 competitive environments, I've had situations where
8 we've been able to have dramatic drops in cost, just
9 simply because somebody came into town and said I'll
10 do it for this. And whether they are doing it just to
11 buy the market share or whether they are doing it
12 because they are genuinely more efficient than their
13 competitors, I don't know.

14 But sometimes people that we've been dealing
15 with, when they've heard that somebody else is in the
16 market, trying to gain a position in the market, those
17 businesses will suddenly be able to pull out cost
18 savings for you. And so in my opinion, competition,
19 healthy competition, is a good thing.

20 Q You testified a couple minutes ago about
21 Providence having told you something about cost
22 savings. What Providence entity were you referring
23 to?

24 A This was something that was brought up on a
25 teleconference that I have to attend every Wednesday

0453

1 morning -- no, every other Wednesday morning, with the
2 contracting organization for Providence in the
3 Washington and Montana -- Eastern Washington/Montana
4 region. At that time, it was headed up by a gentleman
5 named Jerry Quinn. He was in charge of the contract
6 management part of the organization.

7 It was announced during one of those meetings
8 that they had signed on with Waste Management and that
9 they believed that we would see a 10 percent reduction
10 in costs over what Stericycle was currently offering.
11 That had nothing to do with audits or anything like
12 that. That was just a, you know, switch and get
13 10 percent.

14 We were lagging behind, but Sacred Heart and
15 Holy Family and some of the other hospitals that are
16 controlled by Providence here in Eastern Washington
17 switched over immediately.

18 Q Switched over to Waste Management?

19 A Yes.

20 Q Thank you.

21 MS. GOLDMAN: Nothing further.

22 JUDGE KOPTA: Anything further,

23 Mr. Van Kirk?

24 MR. VAN KIRK: Briefly, yes.

25

0454

1 R E C R O S S - E X A M I N A T I O N

2 BY MR. VAN KIRK:

3 Q Back to me, Mr. Lycan.

4 A Howdy.

5 Q I believe you told Ms. Woods that you don't
6 have the notice dates when PAML gave notice to cancel
7 the service, correct?

8 A Correct.

9 Q Was this one notice or multiple notices?

10 MS. GOLDMAN: Objection. Asked and
11 answered.

12 JUDGE KOPTA: Sustained.

13 Q Mr. Lycan, you said that you were copied on an
14 e-mail to Ms. Padberg about this transition and that
15 she sent back a professional response, but you weren't
16 copied on further communications.

17 A Correct.

18 Q So you don't know whether in the follow-up
19 communications between Ms. Padberg and Lori Creighton,
20 whether Lori ever asked Stericycle to continue service
21 until they were ready?

22 A No, I cannot confirm or deny that.

23 Q Okay. Do you have any reason to believe that
24 if Ms. Creighton had asked Stericycle to keep
25 providing service until they were ready, that

0455

1 Stericycle would have refused?

2 MS. GOLDMAN: Objection. Calls for
3 speculation. Lack of foundation.

4 JUDGE KOPTA: Sustained.

5 MR. VAN KIRK: I think we need to know
6 whether he has that knowledge.

7 JUDGE KOPTA: It's speculative.
8 Sustained.

9 Q Now, you testified, at least in response to
10 Ms. Woods, that there are six facilities affected by
11 sort of early termination of service?

12 A I think that I said that was a guess.

13 Q Okay. But it's somewhere around that number,
14 right?

15 A It's as good as my guess is.

16 Q Okay.

17 A It was not a high quantity, it was not like a
18 wholesale abandonment.

19 Q So would you say that the majority of
20 facilities were transitioned correctly?

21 A Yes.

22 Q Would you say 80 percent of them were
23 transitioned correctly?

24 A I don't want to -- I would say yes. But if we
25 go any further up the scale, I'm just going to bow out

0456

1 because I don't know.

2 Q So this was a case where a small number of
3 facilities, around six, had service cut off before you
4 expected?

5 A Yes.

6 Q And you don't know about any efforts that were
7 made to keep that service going until everybody was
8 ready?

9 A I know from the context of Mr. Adams'
10 testimony that he said that Stericycle was working
11 with the people in the facilities. Neither Lori nor I
12 ever gave any impression to Stericycle that the
13 transition was going to be guided by the people in the
14 facilities. We were managing this transition from the
15 purchasing department in Spokane. We were not aware
16 of their communication with our facilities and did not
17 know that they were gauging their behavior on
18 information which the people in those facilities would
19 not have been in a position to know, which was why we
20 never steered them to go that direction.

21 Q So you didn't know about those communications,
22 but you're not testifying that they didn't happen,
23 correct?

24 A No, I'm not saying that they didn't
25 communicate with the people in those facilities. I'm

0457

1 just saying, going back to your very first question,
2 that we don't -- we didn't have those people involved
3 in the -- in the transition project.

4 Q Wouldn't a local representative need to be
5 involved to arrange for Stericycle to pick up the
6 final equipment and the final pickup, especially if it
7 was to occur on a nonstandard pickup day?

8 A The information was being communicated to the
9 managers over all of our patient service centers
10 and -- so that they knew this was when the transition
11 was going to happen. It was not up to the people in
12 the local patient service center to notify Stericycle
13 that we don't want to change yet, or that we would
14 like to change early, or we don't want to change at
15 all. It wasn't -- that is not something that was
16 under their purview.

17 Q And how long did these six facilities have
18 waste that wasn't picked up before --

19 A It was a matter of -- it was a matter of a few
20 days.

21 Q So these six facilities, the early
22 cancellation, in your view, was no more than a few
23 days early?

24 A Yeah, early enough that the containers were
25 full and needed to be emptied and they weren't being

0458

1 emptied.

2 MR. VAN KIRK: I have no further
3 questions. Thank you, Mr. Lycan.

4 JUDGE KOPTA: Thank you, Mr. Van Kirk.
5 Anything further for this witness?

6 MS. GOLDMAN: Nothing further, Your
7 Honor.

8 Thank you for your testimony.

9 JUDGE KOPTA: Thank you, Mr. Lycan. You
10 are excused and we appreciate you testifying this
11 afternoon.

12 THE WITNESS: Thank you.

13 JUDGE KOPTA: Let's be off the record.

14 (A brief recess.)

15 JUDGE KOPTA: Let's be back on the
16 record. We are going to take our afternoon recess.
17 We will be adjourned until 5 minutes until three
18 o'clock based on the clock here in the hearing room.
19 At that time, we will present Waste Management's next
20 witness.

21 Let's be off the record.

22 (A brief recess.)

23 JUDGE KOPTA: Let's be back on the
24 record after our afternoon break. We will turn to
25 Ms. Goldman to present her next witness.

0459

1 MS. GOLDMAN: Thank you, Your Honor.

2 Waste Management presents the testimony of Carla

3 Patshkowski on behalf of the applicant.

4 JUDGE KOPTA: Ms. Patshkowski, will you

5 stand and raise your right hand, please?

6

7 CARLA PATSHKOWSKI, witness herein, having been

8 first duly sworn on oath,

9 was examined and testified

10 as follows:

11

12 JUDGE KOPTA: Thank you.

13 Ms. Goldman, you may proceed.

14

15 D I R E C T E X A M I N A T I O N

16 BY MS. GOLDMAN:

17 Q Good afternoon, Ms. Patshkowski. Could you
18 please state your name, so that we will all pronounce
19 it correctly, and spell it for the record?

20 A Carla Patshkowski, P-A-T-S-H-K-O-W-S-K-I.

21 Q By whom are you employed, Ms. Patshkowski?

22 A Providence Medical Group.

23 MS. GOLDMAN: The parties have
24 stipulated to the admissibility of Ms. Patshkowski's
25 direct testimony and we ask that it be admitted.

0460

1 That's CP-1T.

2 JUDGE KOPTA: Exhibit CP-1T is admitted.

3 I believe we are ready for cross-examination,
4 starting with counsel for Stericycle.

5

6 C R O S S - E X A M I N A T I O N

7 BY MR. VAN KIRK:

8 Q Good afternoon, Ms. Patshkowski. My name is
9 Jared Van Kirk. I am an attorney for Stericycle in
10 this proceeding. I will have a few questions for you
11 this afternoon.

12 A Okay.

13 Q First of all, can you describe for me what
14 your responsibilities are for Providence Medical
15 Group?

16 A For Providence Medical Group, I do a lot of
17 on-boarding of new clinics and I work a lot with the
18 vendors' invoices and purchasing for the whole medical
19 group.

20 Q And does part of your responsibility relate to
21 biomedical waste collection services?

22 A Yes. Because I do on-boarding and so start-up
23 of new clinics, it is my responsibility to get all the
24 vendors set up in each clinic so that they are ready
25 to go for service of all different sorts.

0461

1 Q So --

2 (Interruption in the proceedings.)

3 Q That may happen from time to time,

4 Ms. Patshkowski.

5 A Okay.

6 Q Are you still on the line?

7 A Yes.

8 Q So it sounds like when a new clinic joins the
9 Providence Medical Group, your responsibility is to
10 make sure they are set up with biomedical waste
11 services, among other things?

12 A Correct.

13 Q Do you have any other responsibilities with
14 respect to biomedical waste services?

15 A No.

16 Q So tell me about Providence Medical Group.
17 What is Providence Medical Group?

18 A Providence Medical Group is an employer of
19 physicians. So we employ physicians. It started back
20 in the early '90s. We did -- we would bring in
21 providers, and we would help them get started in
22 private practice. We were more or less of an income
23 support company. Later we turned into a clinic base,
24 to where we not only employ providers, but we employ
25 the staff that goes with them in each clinic, and we

0462

1 continue to do that today.

2 Q So it sounds like --

3 A And we have a -- I'm sorry. Today we have
4 about 35 different clinics.

5 Q So it sounds like Providence Medical Group is
6 basically the employer organization for all clinic
7 staff today. Is that the correct understanding?

8 A Correct.

9 Q Okay.

10 A Correct.

11 Q Providence Medical Group itself doesn't own
12 any clinics; is that correct?

13 A No, we do own the clinics.

14 Q Okay. So you own the clinics?

15 A And the staff.

16 Q And staff?

17 A We employ the staff.

18 Q Is this full-service management of these
19 clinics, or is there any part of the clinic operations
20 that you aren't -- that the group isn't responsible
21 for?

22 A No, we're responsible for all of it. I don't
23 really quite understand what you are asking. Do you
24 mean like we have the clinic and then perhaps there's
25 a different service that's done within that clinic

0463

1 that's not ours?

2 Q I got a little turned around because the first
3 thing you said is you employ the staff, but it sounded
4 like there was more to it. I'm just trying to
5 understand whether Providence Medical Group manages
6 the operations of these clinics or whether they have a
7 more limited role?

8 A No, we do manage the full operation of each
9 clinic that we own.

10 Q Is there anybody else you work with who has
11 responsibility for biomedical waste services?

12 A That would be probably our chief operating
13 officer, which is Kathy Tarcon.

14 Q Do you know what her responsibility is with
15 respect to biomedical waste services?

16 A She is just probably one that if there was a
17 problem or a big change or something, we would go to.
18 She would have the final say on everything.

19 THE WITNESS: Are you there?

20 MR. VAN KIRK: Yes.

21 A She kind of oversees all of the operations.

22 Q Okay. Can you spell her name, please. We
23 have a court reporter here.

24 A Yes, it's K-A-T-H-Y, her last name is
25 T-A-R-C-O-N.

0464

1 Q What are the responsibilities of each of the
2 different clinics with respect to biomedical waste
3 services?

4 A There is a manager for every clinic. It is up
5 to the manager to be sure that the clinic is doing
6 everything that they are supposed to in regards to
7 biohazard medical waste.

8 Q So would this person be responsible for all
9 the day-to-day management of biomedical waste or
10 biohazardous waste?

11 A They are overseeing their staff, so I guess
12 you might say that, yeah.

13 Q Okay.

14 A I mean, they are there in the trenches every
15 day with the staff.

16 Q Right. So the clinic managers may themselves
17 have staff that help them, but ultimately each clinic
18 has a person who is responsible for the biomedical
19 waste service to that clinic, correct?

20 A Yes. Well, they don't make the decisions, if
21 that's what you are asking. The managers themselves
22 don't.

23 Q You mean they don't decide, for example, which
24 company to hire, right?

25 A Exactly.

0465

1 Q But once a company is selected and once you do
2 your job of setting up a new clinic with a vendor, at
3 that point it's up to the manager to manage the
4 biomedical waste service?

5 A Correct. They would call me if there was a
6 problem. Like if it wasn't picked up or there was an
7 issue with a bin or there was something that happened,
8 they would contact me.

9 Q And these clinic managers, do they have a --
10 do they have a contact at the biomedical waste
11 companies that they communicate with
12 for service-related issues?

13 A No, that all -- they used to, but that all now
14 comes to me.

15 Q And when you say they -- it sounds like it
16 changed at some point. When did that change happen?

17 A It changed I believe in -- I have it written
18 down here. September 13, 2011.

19 Q Okay. In September of 2011 --

20 A It's when --

21 Q -- is when you took responsibility for
22 managing the clinics' services, biomedical waste
23 services?

24 A Well, before that I would just call Stericycle
25 and say we have a clinic that needs to be set up and

0466

1 they would get it on the list.

2 Q And then -- okay. And then -- that is what I
3 understand. What changed in the way biomedical waste
4 services are managed by the clinics in September 2011?

5 A That's when the COO had a meeting with Mike
6 Kelly, who is our construction director for Providence
7 Hospital, all the hospitals here in Spokane. At that
8 time they were in the meeting, it was brought up about
9 biohazardous waste. Mike Kelly was surprised that the
10 clinics were using Stericycle because Providence as a
11 whole had already moved over to Waste Management. And
12 so the COO of Providence Medical Group then came to me
13 and said, We need to follow Providence in this, and we
14 need to cancel Stericycle and move to Waste
15 Management, because that was a system decision. So
16 she created the letter that was sent to Stericycle,
17 and then we started with Waste Management right after
18 that.

19 Q Okay. So the decision to make the transition
20 from Stericycle to Waste Management was just a
21 decision to follow the practices of the rest of the
22 Providence group --

23 A Correct.

24 Q -- made by your COO?

25 A Correct.

0467

1 Q And then I just want to back up a little,
2 because I -- I appreciate that information, but at
3 least I thought I was asking you a different question,
4 so let me try again.

5 I'm still trying to understand the role of the
6 managers of the clinics in managing the biomedical
7 waste services up to this September transition that
8 you talked about and then beyond.

9 A If we were setting up a clinic, then I would
10 call Stericycle and I would say can you add this
11 clinic. At that time the managers, if there was a
12 problem, would contact Stericycle themselves. I would
13 just get it started.

14 Q Right. And is that not the way it works
15 anymore?

16 A That is not the way it works anymore.

17 Q How does it work now?

18 A How it works now is I basically -- when we
19 have a new clinic, I have a sales rep with Waste
20 Management that I currently work with, and that is
21 Jeff Norton. When we have a clinic starting up, I set
22 up a meeting with him and we go over the options and
23 needs for each individual clinic that we are setting
24 up. And then a contract is drawn up and it is signed
25 and then we start service.

0468

1 Q Okay. So the transition you are talking about
2 wasn't a transition in how you communicated with
3 Stericycle. This is just the different way that you
4 manage the relationship between Stericycle and Waste
5 Management, then, correct?

6 A Correct.

7 Q Okay, I understand.

8 Now, before this transition, all 35 clinics,
9 did they receive service from Stericycle?

10 A They did.

11 Q Okay.

12 A No, it wasn't at the time, because we only had
13 16. Let me look at my thing here. No, we had 13
14 clinics.

15 Q In September 2011?

16 A Correct, that were signed up with Stericycle.

17 Q Okay. And when you made the transition, did
18 you move all the clinics for which Waste Management
19 was an option?

20 A We moved all but one, yes.

21 Q All but one of the 13 clinics?

22 A Yes.

23 Q Okay.

24 A And that's only because Waste Management does
25 not service that area.

0469

1 Q Right. So in September 2011, there was
2 just -- there was only one clinic that was in a
3 portion of the state that Waste Management couldn't
4 service?

5 A Correct.

6 Q And of the 35 clinics that you have now, how
7 many are there that are outside of Waste Management's
8 service area?

9 A We have one currently, to date, and then
10 starting January, we will be acquiring four more.

11 Q Okay. So right now there's just one clinic
12 that -- where Waste Management is not an option?

13 A Correct.

14 Q Which clinic is that?

15 A Chewelah.

16 Q Can you spell that for the court reporter,
17 please?

18 A C-H-E-W-E-L-A-H. Chewelah, Washington.

19 Q And then these four that you are going to be
20 acquiring in January, these are four that will also be
21 outside of Waste Management's service area?

22 A Correct.

23 Q Okay. Thank you, Ms. Patshkowski. I'm going
24 to move and talk about some of the testimony that you
25 provided in this proceeding.

0471

1 with?

2 A With Stericycle, I never had a sales rep. I
3 never was contacted by a sales rep.

4 Q I suppose that's because at the time the
5 facility managers were in contact with Stericycle,
6 correct?

7 A Probably. Right. After I set it up, it was
8 the driver and the manager speaking, yes.

9 Q You mentioned the Indian Trail facility, and I
10 forget the name of the second facility you mentioned.
11 It was --

12 A Well, I'm trying to think back at that time,
13 because they were -- they were called -- different
14 than where they are at now. We've combined them all
15 now. I'm trying to remember what we called them back
16 then. There was one on Nevada and there was one
17 attached to Holy Family Hospital.

18 Q And those were the facilities that you thought
19 were having -- had containers that were too large?

20 A Yes.

21 Q And which facilities were there where you
22 thought the service was -- by Stericycle was too
23 frequent?

24 A Where we had smaller ones. Like we had one
25 that was the afternoon clinic, so it wasn't even

0472

1 available in the morning -- or open in the morning,
2 and that was still a weekly scheduled pickup.

3 Q And which facility was that?

4 A That was our adult GI clinic.

5 Q Any other facilities where the service was too
6 frequent?

7 A I really don't have a recollection of that.
8 It's because I really didn't start paying attention to
9 it until I was -- I had a sales rep that told me there
10 were different sizes or there were different options
11 and different deliveries -- or pickup dates, I'm
12 sorry.

13 Q For the facilities where you mentioned that
14 the container was too large, when is it that the
15 facility manager contacted Stericycle to ask for a
16 different container?

17 A That I do not -- I do not have a specific
18 date.

19 Q And were you involved at all in any request to
20 adjust the container size?

21 A Not with Stericycle, no.

22 Q Do you even know whether the managers for
23 those facilities did contact Stericycle to request a
24 different size container?

25 A I cannot say that they did call or who they

0473

1 talked to, no. I just know what they told me.

2 Q And they told you they thought their container
3 was too large?

4 A Yes.

5 Q But they didn't tell you whether they had
6 called to try and make a change?

7 A No, sir.

8 Q And same with the frequency of service. Is it
9 the case that you don't know whether the local
10 facility manager of that adult GI clinic called and
11 tried to adjust the service schedule?

12 A Right. That manager is no longer with us, so
13 there was no way for me to contact her.

14 Q But each of these managers did have a person
15 at Stericycle that they communicated with, correct?

16 A I believe the driver.

17 Q Do you in fact know who they dealt with or do
18 you just --

19 A No, I do not.

20 Q Okay.

21 A I kind of came in at the tail end of that.

22 Q And you never personally called anyone at
23 Stericycle to discuss the container sizes or the
24 pickup frequency at the facilities?

25 A No, my contact with Stericycle was setting up

0474

1 the clinic and then the billing. I dealt a lot with
2 Stericycle when it came to the billing.

3 Q If I pause for a minute, I apologize. It just
4 means that I am reading something.

5 A Okay.

6 (Pause in the proceedings.)

7 Q It's also true, isn't it, that you never
8 requested a waste audit from Stericycle for any of the
9 facilities?

10 A No, I did not request a waste audit.

11 Q Would waste audits even have been something
12 that you would have communicated with Stericycle
13 about?

14 A Not at that time, no.

15 Q When you set up a -- when there's a new
16 clinic -- again, I'm talking about Stericycle, so this
17 would probably be the way you communicated with
18 Stericycle. But when you set up a new clinic with
19 Stericycle, and you informed them of the new clinic,
20 do you know what -- and you informed them of who they
21 should contact at that facility, do you know the
22 process that Stericycle goes through to get service
23 started at that location?

24 A They would deliver a bin, and that's all I
25 know.

0475

1 Q Okay. Do you know about any contacts or
2 communications with the manager to start up service?

3 A No, I do not.

4 Q Do you know whether there is communications
5 with the facilities related to scheduling and the
6 need -- and the needs of the facilities for
7 different-sized containers?

8 A Are you asking me --

9 Q That was a bad question. If you want me to
10 reask it. I think that was three questions in one,
11 now that I think about it.

12 A Okay. So --

13 Q Let me try it again.

14 A -- we're dealing with Stericycle?

15 Q Yes.

16 A At the time we were using Stericycle?

17 Q Yes, I'm talking about --

18 A Okay.

19 Q -- your relationship with Stericycle.

20 Do you know what communications Stericycle had
21 with the facilities about setting up a service
22 schedule?

23 A I would call -- no, they would -- it would
24 go -- let either the front desk person know when their
25 pickup was, when they took the container, or they

0476

1 contacted the manager, but I don't know who -- whose
2 name did that.

3 Q And then the first communication to make
4 arrangements for service schedule, that would have
5 happened at the clinic or with the clinic manager,
6 correct?

7 A Correct.

8 Q And the same question with respect to
9 selecting the range of containers needed by a
10 facility. That would have been something that would
11 have been handled at the clinic --

12 A Correct.

13 Q -- between the manager and Stericycle?

14 A Correct.

15 Q I'm sorry, I jumped on your answer there.

16 A Hold on one second. Sorry.

17 Q Sure.

18 A Someone is trying to get into the office.

19 (Pause in the proceedings.)

20 Q Now, you mentioned in your testimony that when
21 you switched most of the facilities to Waste
22 Management, they performed a waste audit and
23 determined the containers and collection frequency,
24 correct?

25 A Correct.

0477

1 Q Do you have any reason to believe that
2 Stericycle couldn't have done that if you asked for
3 it?

4 MS. GOLDMAN: Objection. Calls for
5 speculation.

6 JUDGE KOPTA: Would you reask the
7 question so that it doesn't require her to speculate
8 what was in Stericycle's mind?

9 Q Did you even understand that Stericycle had
10 the capability of providing audits, waste audits?

11 A No, I was never contacted by a sales rep at
12 all about any of the clinics.

13 Q Okay. And do you have any information about
14 whether the clinics themselves were offered waste
15 audits by Stericycle?

16 A I do not.

17 Q Okay. Ms. Patshkowski, I'm going to
18 transition to a new subject here.

19 You described a billing error made by
20 Stericycle that took a little while to clear up, so
21 that's what I'm talking about now.

22 A Okay.

23 Q First of all, I just want to make sure,
24 eventually these billing errors were corrected,
25 correct? The billing errors were corrected, right?

0478

1 A Yes.

2 Q Okay.

3 A I can give you the date. The last collection
4 letter that we received was May 16th, 2012.

5 Q And so it was after that point that the
6 billing error was corrected, right?

7 A Yes.

8 Q Now, during this transition, correct me if my
9 math is wrong, I think you said you had 13 clinics at
10 the time and all but one moved to Waste Management?

11 A Correct.

12 Q So 12 clinics moved over, right?

13 A Correct.

14 Q This billing error didn't -- wasn't made at
15 all 12 clinics, was it?

16 A Yes.

17 Q I keep saying clinics. I mean facilities.

18 A Yes, it was. We sent a letter September 13th,
19 2011, to your corporate office from our COO to end
20 service the end of October. None of the bins were
21 picked up. We started Waste Management November of
22 2011. On December 7th, we were still getting billed
23 and no containers were removed. And then on
24 February 16th, we kept getting bills. And so on
25 February 16th, I sent an e-mail to the corporate

0479

1 office again, scanning the letter. And then March 8th
2 we're still being billed and being sent past due
3 notices. In the meantime, though, they had closed the
4 account for Chewelah, which is the one that we wanted
5 to stay open. And then I started working with James
6 Ryan.

7 Like I said, the last collection letter that
8 we received from the collection company called ARM
9 Solutions was May 16th, 2012. So it took from
10 September 13th, 2011, until May 16th, 2012, for our
11 account to be straightened out.

12 Q I do understand that, Ms. Patshkowski.

13 In your testimony, Ms. Patshkowski, you have
14 stated that if Waste Management gets the authority
15 it's looking for, you would transition the remainder
16 of the facilities over to their service; is that
17 correct?

18 A Yes.

19 Q Okay. Before I go any further on that, the --
20 when you said they cancelled the service at Chewelah,
21 that was obviously reinstated, right?

22 A Yes.

23 Q Okay. Was there ever a long interruption of
24 service there?

25 A No. I -- I think -- because it is a small

0480

1 clinic, it was okay until the service was started up
2 again.

3 Q Okay. Now, have you done any research at all
4 into the -- into billing errors that have been made by
5 Waste Management?

6 MS. GOLDMAN: Objection. Beyond the
7 scope.

8 JUDGE KOPTA: Sustained.

9 MR. VAN KIRK: I'm attempting to inquire
10 into her reasoning behind stating that she is planning
11 to move.

12 JUDGE KOPTA: You may ask her that, but
13 don't make suggestions.

14 Q All right, Ms. Patshkowski, another new
15 subject.

16 A Okay.

17 Q So you testified that Providence Medical Group
18 desires competition in biomedical waste services to
19 ensure it gets the best service and pricing. I'm
20 paraphrasing. That's what I'm going to be asking you
21 questions about now.

22 A Uh-huh.

23 Q Have you performed any analysis or study of
24 the effects of competition in the regulated biomedical
25 waste market?

0482

1 or -- any posters or flyers that were delivered by
2 Stericycle to the clinics?

3 A Yes. When I would go back into the clinic,
4 they would have -- you know, they would be set up. I
5 didn't really pay attention, because I trusted the
6 manager and the vendor to do their job.

7 Q Do you recall if you had seen posters on which
8 there were numbers so people could call customer
9 service from Stericycle?

10 A You know, no, I don't. The bills at that time
11 were going to the individual clinic. The managers, if
12 they needed something, would call the number on the
13 invoices that they had.

14 Q So they had the number from the invoices.
15 Thank you for clarifying that the invoices went
16 directly to the clinics.

17 A Yes.

18 MR. VAN KIRK: Thank you,
19 Ms. Patshkowski. I have no further questions at this
20 time.

21 JUDGE KOPTA: Thank you, Mr. Van Kirk.

22 Mr. Sells?

23 MR. SELLS: Thank you, Your Honor.

24

25 C R O S S - E X A M I N A T I O N

0483

1 BY MR. SELLS:

2 Q Ms. Patshkowski, my name is Jim Sells. I
3 represent someone entirely different than Stericycle
4 or Waste Management, and that's a statewide
5 organization of solid waste haulers and some of their
6 members who provide medical waste services.

7 My question -- and I apologize if I missed
8 this, because you may have answered it already. I
9 heard you say that you have four new facilities under
10 acquisition or are going to acquire them soon; is that
11 correct?

12 A That is correct.

13 Q Where are they?

14 A They are up in Colville and Kettle Falls area.

15 Q Okay. They are all four up there?

16 A Yes.

17 Q All right. Do you have any facilities in
18 Western Washington?

19 A No.

20 Q No facility in Pullman?

21 A No, that's not -- that's not for this group.
22 We're the Providence Medical Group for
23 Eastern Washington.

24 MR. SELLS: That's all I have.

25 Thank you.

0484

1 JUDGE KOPTA: Ms. Woods?

2 MS. WOODS: Thank you, Your Honor.

3

4 C R O S S - E X A M I N A T I O N

5 BY MS. WOODS:

6 Q Ms. Patshkowski, my name is Fronda Woods. I
7 am an attorney for the Utilities and Transportation
8 Commission Staff. I would like to ask a few
9 questions.

10 A Okay.

11 Q At the time you were using Stericycle, were
12 you aware that the UTC regulates Stericycle?

13 A No.

14 What does that stand for?

15 Q UTC stands for Utilities and Transportation
16 Commission. That's the tribunal that is conducting
17 the hearing today.

18 A Okay.

19 Q At the time you were using Stericycle, were
20 you aware that the Washington Utilities and
21 Transportation Commission regulates Stericycle?

22 A No, I did not.

23 Q When you were using Stericycle, did you ever
24 receive a brochure or something like that describing
25 the service level options and rates of Stericycle?

0485

1 A No.

2 Q In the billing dispute that you had with
3 Stericycle, did Stericycle ever inform you that you
4 could contact the UTC for assistance in resolving that
5 dispute?

6 A No.

7 Q I think I heard you testify that each of the
8 clinics that Providence has, has a contract with its
9 biomedical waste provider; is that correct?

10 A We did not have the contract with Stericycle
11 we have now.

12 Q For the Chewelah facility?

13 A Well, we have -- I guess you would call it --
14 we don't have like a written contract, we have them
15 for service. There's not -- I haven't seen anything
16 signed.

17 Q Do you have a contract with Waste Management?

18 A Yes, we do.

19 Q To your knowledge, has that been filed with
20 the UTC?

21 MS. GOLDMAN: Objection. Calls for
22 speculation.

23 JUDGE KOPTA: Overruled.

24 Q You may answer.

25 A I have -- I do not know.

0486

1 Q When you set up new facilities with
2 Stericycle, did you ever receive a UTC customer
3 brochure?

4 A I personally did not.

5 Q Now that most of your facilities are switched
6 over to Waste Management, have you received a UTC
7 customer brochures from Waste Management?

8 A I did when we sat down and met with the rep, I
9 have a lot of paperwork that we went through at that
10 time. I don't recall exactly what's in that
11 paperwork. I know it had a lot of information.

12 Q Did Waste Management provide you with a list
13 of available service options?

14 A Yes.

15 Q Did Stericycle provide you with a list of
16 available service options?

17 A Personally to me, no. I can't speak for the
18 managers.

19 Q At the time you were dealing with the billing
20 problems with Stericycle that you've described, did
21 anyone from Stericycle notify you about the UTC 800
22 number that you could call?

23 A No.

24 MS. WOODS: That's all my questions.

25 Thank you.

0487

1 JUDGE KOPTA: Redirect?

2 MS. GOLDMAN: Thank you, Your Honor.

3

4 R E D I R E C T E X A M I N A T I O N

5 BY MS. GOLDMAN:

6 Q Good afternoon again, Ms. Patshkowski.

7 Jessica Goldman on behalf of Waste Management.

8 A Uh-huh.

9 Q I have a couple follow-up questions.

10 A Okay.

11 Q You testified that you at some point started
12 working with a sales rep and learned of the
13 availability of other-sized containers. For whom did
14 that sales representative work?

15 A For Waste Management.

16 Q You also testified that a sales representative
17 told you that you had options regarding when to have
18 the waste picked up. Who was that sales
19 representative?

20 A Jeff Norton with Waste Management.

21 Q Did Stericycle ever offer to perform a waste
22 audit?

23 MR. VAN KIRK: Objection. Foundation.
24 Asked and answered.

25 JUDGE KOPTA: I'll allow the question.

0488

1 Q You can answer, Ms. Patshkowski.

2 A They never, as far as I know. I was never
3 contacted about one, no. I again cannot speak for the
4 managers.

5 Q How long did Stericycle close the Chewelah
6 account?

7 A I believe it was for just -- it had to be just
8 under two weeks. We were pretty hot on getting it
9 resolved, so...

10 Q You mentioned the name A.R.M. Collections.
11 Was that a collections agency?

12 A Yes, it was. It's A.R.M. Solutions.

13 Q And can you explain what the contact -- what
14 the A.R.M. entity was trying to collect?

15 A They were trying to collect money for the past
16 due invoices that Stericycle had billed us after the
17 account was supposed to be closed. They continued to
18 bill us for services.

19 Q And what did you have to do? What did your
20 company have to do to resolve the issue with A.R.M.?

21 A My -- I got in touch with James Ryan, who
22 happened to be, I believe -- I got his e-mail from the
23 corporate office. James Ryan helped me after a letter
24 from our COO. She was on the e-mail. She sent James
25 an e-mail stating that this had gone on long enough,

0489

1 you know, we need to get this resolved. And so it was
2 shortly after that that he -- I sent the last
3 collection letter to him in May, and he sent the
4 e-mail back to me stating that he would get it all
5 taken care of, and he did. You know, that was the
6 last one that we received.

7 MS. GOLDMAN: That's all I have.
8 Thank you for your testimony.

9 JUDGE KOPTA: Anything further?

10 MR. VAN KIRK: Briefly with respect to
11 what Ms. Woods raised.

12 JUDGE KOPTA: Briefly.

13

14 R E C R O S S - E X A M I N A T I O N

15 BY MR. VAN KIRK:

16 Q Ms. Woods asked you questions about whether
17 you received information about the UTC's regulation
18 and some other things. Now, you don't know whether
19 information about the UTC's regulation was included in
20 information that was sent to the clinic managers by
21 Stericycle, correct?

22 A Correct, I stated I could not speak for the
23 managers.

24 Q Were you aware that the clinics received sort
25 of a welcome packet of information from Stericycle?

0490

1 A No, I was not aware of that. I did -- when I
2 called, and then I went back into the clinic for other
3 things, you know, I knew that that service was up and
4 running. That's all I really paid attention to.

5 Q Now, just one question with respect to the
6 billing error and then I'll let you go. Did
7 Stericycle ever dispute this billing was an error, or
8 was it just an issue that took too long to get
9 resolved?

10 A I think it was more of just an issue. I don't
11 think that everybody was talking together, so I think
12 it was a lack of communication from the corporate
13 office to the local office.

14 Q But it wasn't a dispute over whether money was
15 owed or not, was it?

16 A Well, it was because -- at first because we
17 continued getting billed and we didn't pay. The local
18 office continued to call us and send us letters and
19 stuff because they weren't getting their money. The
20 corporate office did not communicate that we shouldn't
21 have been billed in the first place. It did take
22 time.

23 Q Correct, I understand that. Once you started
24 communicating with the Stericycle rep, I guess all I
25 wanted to make clear was, if it's true, that the

0491

1 Stericycle people you talked to didn't -- didn't
2 dispute that the billings were wrong?

3 A Oh, no.

4 MR. VAN KIRK: That's all I have.

5 JUDGE KOPTA: Anything further?

6 MS. GOLDMAN: Nothing further, Your
7 Honor.

8 JUDGE KOPTA: All right. Thank you,
9 Ms. Patshkowski. We appreciate your testimony this
10 afternoon and you are excused.

11 THE WITNESS: Thank you.

12 JUDGE KOPTA: Let's be off the record.

13 (A brief recess.)

14 JUDGE KOPTA: Back on the record.

15 Mr. Norton has resumed the stand I will remind you
16 that you are still under oath.

17 THE WITNESS: Yes.

18 JUDGE KOPTA: Mr. Van Kirk, if you will
19 resume your cross-examination. Thanks again for your
20 flexibility allowing other Waste Management witnesses
21 to testify in between your cross of Mr. Norton.

22

23

24

25 R E C R O S S - E X A M I N A T I O N (Continued)

0492

1 BY MR. VAN KIRK:

2 Q Welcome back, Mr. Norton.

3 I believe in your -- in your testimony, you
4 stated that Virginia Mason decided to keep their
5 services with Stericycle because Stericycle met Waste
6 Management's pricing, correct?

7 A That's one of the reasons, correct.

8 Q You told me something different in your
9 deposition, didn't you?

10 A I'm not aware.

11 Q In the same binder we were looking at before,
12 under Tab JN-10, if you will turn to the page marked
13 113. This time the page numbers are in the upper
14 right-hand corner.

15 A Okay.

16 Q Look back to Page 112 at the very bottom.
17 Starting on Line 24, you will see we are discussing
18 Virginia Mason keeping its business with Stericycle.
19 Do you see that?

20 A I do.

21 Q And then I asked you, "Do you know why they
22 decided to stay with Stericycle?" And you testified,
23 "Andy Flodin mentioned to me that part of it is
24 because they're associated with Amerinet, which is a
25 group purchasing organization, and there was a

0493

1 2 percent rebate."

2 And then there was a -- you said, "That along
3 with -- is there anything else?" We were probably
4 miscommunicating. And then you added, "That's the
5 only thing that he mentioned to me."

6 Do you see that testimony?

7 A I do.

8 Q And that was true testimony when you made it?

9 A It was. They are both true.

10 Q Okay. So what I just read you was the only
11 reason that you were given by Virginia Mason that they
12 decided to stay with Stericycle?

13 A No, it wasn't the only reason. I misspoke
14 when I said the only reason.

15 Q Was it the only reason that Virginia Mason
16 told you why they were staying with Stericycle?

17 A It was a long process. That did come after
18 they awarded the contract to Stericycle. Before the
19 award was given, I was told that Stericycle had
20 approached them to change their containers into the
21 Rehrig containers, which are the same rate as Waste
22 Management's.

23 Q But my question was different. When it came
24 to the reason why Stericycle made their decision to --

25 MR. JOHNSON: Rephrase.

0494

1 Q When it came to what Virginia Mason told you
2 about why they decided to stay with Stericycle, isn't
3 it correct, what you told me before, that the decision
4 was because they were associated with Amerinet?

5 A Correct, that's the response I got after they
6 had made that decision.

7 Q But you didn't include that communication in
8 your testimony here, did you?

9 A That's correct.

10 Q Let's talk about ecoFinity. Now, for the
11 benefit of the record, ecoFinity is the name of a
12 sharps recycling service that's been piloted by Waste
13 Management, correct?

14 A That's correct, a partnership between Waste
15 Management and Becton Dickinson.

16 Q Can you spell ecoFinity, just so we have that?

17 A Sure, E-C-O-F-I-N-I-T-Y.

18 Q And that's provided as commercial recycling,
19 not biomedical waste, correct?

20 A That's correct.

21 Q And ecoFinity is a pilot program at
22 St. Joseph's Medical Center in Bellingham only?

23 A In Washington state, yes.

24 Q Thanks for the clarification. That's what I
25 meant to ask.

0495

1 And ecoFinity is not available in any other
2 facility in Washington, correct?

3 A At this time, no.

4 Q And that's because of limits to Waste
5 Management's processing capacity for the sharps waste
6 at its Vernon, California, facility?

7 A That's correct.

8 Q In your testimony, you said ecoFinity is a
9 more sustainable way to handle RMW. And I know we
10 went through this in your deposition, so bear with me.
11 When you said that, you really meant a more
12 sustainable way to handle waste collected in sharps
13 containers, correct, not all RMW?

14 A Could you rephrase?

15 Q Sure. You don't mean to say that eco -- let
16 me put it more simply. You don't mean to say that
17 ecoFinity is a program to handle all biomedical waste,
18 correct?

19 A That's correct.

20 Q So when you say RMW here, we should read it as
21 sharps waste collected in the sharps containers?

22 A Correct, from customers that are currently
23 using single use containers and mixing it with their
24 RMW waste, because that waste generally isn't mixed
25 together unless they are on a reusable sharps program,

0496

1 so yes.

2 Q So maybe this was me, but I didn't quite
3 understand. Let me ask one more question.

4 With respect to the ecoFinity program, it is
5 designed to just handle waste that's in sharps
6 containers, which would be largely sharps waste,
7 right?

8 A Correct, but sharps are regulated medical
9 waste, so that's what I'm clarifying. They are not
10 separate.

11 Q Now, in the phrase we've been talking about, a
12 more sustainable way to handle RMW -- let me back up.
13 When you use the phrase "RMW," other than the
14 clarification we just went through, but in general,
15 what do you mean -- RMW to mean?

16 A Regulated medical waste is, as defined in I
17 guess the WAC, as bodily fluids. Anything that kind
18 of has bodily fluids attached to it, including sharps
19 waste that's generated in medical facilities, or
20 actually anywhere.

21 Q So when you say that ecoFinity offers a more
22 sustainable way to handle sharps waste, by "more
23 sustainable," do you mean more sustainable than the
24 practice of simply disposing of the sharps containers
25 and the sharps waste in one landfill, right?

0497

1 A That's correct.

2 Q You are not testifying today that ecoFinity is
3 more sustainable than Stericycle's Biosystems service
4 that uses reusable containers?

5 A As a pilot program, we are still working
6 through that solution. You know, that's the goal.

7 Q But I just want to clarify what your testimony
8 is and isn't. It's true that your testimony is not --
9 you are not making a statement that ecoFinity is more
10 sustainable than Stericycle's Biosystems sharps
11 program?

12 A That's correct, but that system is generally
13 only offered to certain facilities. For a facility
14 that it is not generally offered to, it would be a
15 more sustainable program.

16 So yes, you are correct. I'll just answer
17 yes.

18 Q Okay. You would actually agree that under
19 your definition of sustainable, that Stericycle's
20 reusable sharps system or program is sustainable,
21 right?

22 A Correct.

23 Q And that's because it also keeps material that
24 would otherwise be thrown away in a landfill from
25 being thrown away in a landfill?

0498

1 A Well, inevitably for 500 to 600 turns, yes.
2 The container is eventually thrown away.

3 Q It saves a lot more than throwing every single
4 container and every pound of waste away?

5 A Correct.

6 Q This is mostly just clarification on this one.
7 In the next line -- two sentences after in your
8 testimony, you say, "Waste Management collects
9 uniquely marked, reusable, lined tubs filled with
10 sharps containers."

11 JUDGE KOPTA: What page are you on?

12 MR. VAN KIRK: Sure. It's Page 4, and I
13 started reading at Line 18 and a half, or 19 and a
14 half.

15 Q Do you see that?

16 A I do.

17 Q I just wanted to make clear that when you talk
18 about the reusable lined tubs here, those are the
19 overpacked tubs that the ecoFinity containers are put
20 into, correct?

21 A That's correct.

22 Q They are not the sharps containers themselves?

23 A That's correct.

24 Q Okay. In ecoFinity, the sharps containers are
25 not reusable?

0499

1 A That's correct.

2 Q Now, is ecoFinity marketed as an
3 environmentally friendly service?

4 A Yeah.

5 Q And did you market it that way in Washington?

6 A As a pilot program that's the goal, to be a
7 very environmentally friendly program.

8 Q Let's go through the process you describe in
9 your testimony. So first the sharps are collected at
10 this point from St. Joseph's Medical Center and they
11 are taken to the Seattle processing facility, correct?

12 A Correct.

13 Q But they are not processed there?

14 A That's correct.

15 Q They are stored on site for a period of time?

16 A Correct.

17 Q And then the collected sharps are transported,
18 driven from the Seattle facility to a Waste Management
19 facility in Vernon, California, correct?

20 A That's correct.

21 Q And that's where the waste is treated and
22 processed?

23 A Currently, yes.

24 Q Do you know how many transportation emissions
25 are generated by this interstate transport of the

0500

1 waste?

2 A I don't.

3 Q Have you ever studied the amount of emissions
4 that comes from trucking waste from Seattle to
5 Southern California?

6 A I have not.

7 Q Did you consider these emissions when you were
8 marketing the ecoFinity services as environmentally
9 friendly?

10 A The goal is to get it put up and then put a
11 facility in Seattle. Before they put up the capital
12 investment, they have to get it to a certain point.

13 Q So after the waste is treated and processed in
14 Vernon, California, next this process --

15 Let me ask one clarifying question. When I
16 say it is treated and processed, the sharps
17 containers, along with waste inside, are all processed
18 together?

19 A That's correct.

20 Q So when that's done, the containers and the
21 waste, which at this point are ground up, right?

22 A Correct.

23 Q That's all transported again to Talco
24 Plastics, which is also in California, correct?

25 A Correct.

0501

1 Q At Talco Plastics, they are put through a
2 system, I think you called it float-sink technology,
3 where some recyclable materials are separated from the
4 rest of the waste, correct?

5 A That's correct.

6 Q And then the -- whatever plastic materials are
7 separated are palletized by Talco Plastics, correct?

8 A Correct.

9 Q Do you know how much energy and emissions is
10 involved in the processing performed by Talco
11 Plastics?

12 A I don't. That process was -- I believe
13 there's a white paper on it and a lifecycle analysis,
14 an LCA, that was performed by Becton Dickinson, the
15 partner in the program.

16 Q Have you read that?

17 A I have read it, but I couldn't speak to it.

18 Q And you're not testifying about that in your
19 testimony, correct?

20 A That's correct.

21 Q Again, did you consider any of those energy
22 use or emissions at Talco Plastics when marketing the
23 product as environmentally friendly?

24 A I did not, but I didn't make up the
25 marketing -- or I was trained on it, that it would be.

0502

1 I wasn't in charge of any of that. I'm sure it was
2 done.

3 Q You were delivering the marketing to
4 Washington customers?

5 A Correct.

6 Q And then in the last step, it sounds like --
7 before I do that, one other question. Everything
8 that's not separated by Talco, the rest of that gets
9 thrown away, right?

10 A The amount that gets thrown -- yes, it goes to
11 a landfill. I think they were looking for other
12 options for it, but I don't know. I couldn't say that
13 they found options.

14 Q So finally, the palletized plastics at Talco
15 Plastics are sent to Becton Dickinson, which is your
16 partner in this project, correct?

17 A Correct.

18 Q So these palletized plastics are sent to
19 Becton Dickinson. Do you know where they are sent?

20 A I don't.

21 Q And Becton Dickinson, as far as you know, know
22 uses them in making new products, correct?

23 A Correct.

24 Q And do you have any idea what volume of the
25 palletized plastics that are delivered to Becton

0503

1 Dickinson are actually used in making new products?

2 A I do. It just depends on what the container
3 is used for. The problem with using recycled plastics
4 in a container is getting it opaque, so you can see
5 through it. So for the larger containers that
6 don't -- that are on the ground, that don't require
7 opaqueness, I believe that they have some that are up
8 to 100 percent and some that are 50 percent. The
9 containers that are in the patient rooms, they are in
10 the range of 10 to 20 percent.

11 Q Okay.

12 A Because they need that opaqueness to see
13 through.

14 Q Sure, and I understand your answer. I think I
15 asked a different question.

16 A Oh, sorry.

17 Q No, it's probably my fault. So let me ask the
18 question again.

19 The question was, of the amount of palletized
20 plastics that get sent to BD, do you know how much of
21 that volume actually gets used in making some new
22 product?

23 A I don't. I assume all of it.

24 Q So really it boils -- it seems to me it boils
25 down to, the claim of environmental benefit for the

0504

1 ecoFinity program, is that it recycles a portion of
2 the sharps and sharps containers, correct?

3 A Correct. The majority of the items in sharps
4 containers are plastic, so just getting them through
5 and separating them, correct.

6 Q I believe in your binder, the black binder,
7 can you turn to the tab called MP-17.

8 A (Reviews documents.)

9 Q It will be the page after that.

10 A Okay.

11 Q MP-17 are responses to data requests from
12 Waste Management in this proceeding. What I'm looking
13 at is labeled Data Request No. 7 and the response to
14 it and there's a table there. Do you see that?

15 A I do.

16 Q Okay. This table in this response, that
17 indicates the percentage of ecoFinity waste that's
18 reclaimed as recyclable material, right?

19 A I believe so, yes.

20 Q And there's a number of percentages for a few
21 different dates in there?

22 A Correct.

23 Q In your testimony, which I understand came
24 before this response, so this one is not a trap. In
25 your testimony, you said that the recycled sharps and

0505

1 sharps containers yielded between 17 and 28 percent,
2 correct?

3 A Correct.

4 Q The response -- the answer here in MP-17,
5 that's more detailed information than what you
6 initially provided in your testimony, correct?

7 A Correct.

8 Q Just for the benefit of the record,
9 Mr. Norton, can you read what the percentage is of
10 waste -- of reclaimed recyclable materials are in that
11 response?

12 JUDGE KOPTA: I don't think that's
13 necessary. It's in the record, or it will be as soon
14 as this is admitted, which I assume it will be.

15 MR. VAN KIRK: I believe this one has no
16 objection attached to it.

17 JUDGE KOPTA: Then it would be in the
18 record already. I would hate to use hearing time to
19 read into the record what is already going to be in
20 it.

21 MR. VAN KIRK: Fair enough.

22 Q Sorry to make you flip so much. If you will
23 flip back in the other direction to a tab marked JN-2.

24 A (Complies.)

25 Q Oh, actually, this one may be -- this one may

0506

1 be in the other binder.

2 MR. VAN KIRK: May I approach to find
3 the other one?

4 JUDGE KOPTA: Yes, you may.

5 Q JN-2 is the exhibit that you submitted with
6 your testimony, correct?

7 A Correct.

8 Q And in your testimony, you described this
9 document as a flyer describing the ecoFinity program,
10 correct?

11 A Correct.

12 Q And this flyer is two pages. The second page
13 includes a graph that, as I understand it, is intended
14 to demonstrate the lifecycle of ecoFinity waste; is
15 that right?

16 A Correct.

17 Q Now, if you look at No. 3, Collection and
18 Treatment, this graph doesn't include the interstate
19 transportation that occurs between collection and
20 treatment, does it?

21 A It does not.

22 Q And it also doesn't include a step in which
23 the plastics -- or the recycled materials is separated
24 from the rest of the waste, correct?

25 A No, there's nothing on here about

0507

1 transportation.

2 Q Okay, transportation. My next question was,
3 it also doesn't include a step in here in which the
4 recyclable materials are separated out from the rest
5 of the waste, correct?

6 A Correct.

7 Q And that is indeed what happens, right?

8 A That is correct.

9 Q And it also doesn't include in here any step
10 about palletizing the plastics, correct?

11 A That's correct. That's all a part of the
12 recycling.

13 Q And finally, it doesn't include in here the
14 transportation to Becton Dickinson before these
15 pallets are recycled, correct?

16 A Correct, no transportation.

17 Q If you look at the previous page on this
18 flyer, it says, "The BD ecoFinity Life Cycle Solution
19 can help hospitals achieve their sustainability goals
20 by safely and economically recycling 70% or more of
21 their sharps waste stream." Do you see that?

22 A I do.

23 Q And that figure is not correct, right?

24 A That's the goal, I guess. Yeah, it's not
25 correct based on the information we have here.

0508

1 Q It's pretty far from correct, right?

2 A In most cases, yes.

3 Q Is there any cases in which --

4 A Well, I just meant the number was variable on
5 there, so in some cases it's closer than in others.

6 Q True. The highest amount of recycling
7 achieved was, I think, 35 percent, correct?

8 A Correct.

9 Q And the lowest amount was 8 percent, correct?

10 A According to that table, correct.

11 Q You don't have to do this, but the average is
12 somewhere in between.

13 So wouldn't you agree with me, then,
14 Mr. Norton, that given these omissions from JN-2, that
15 the flyer does not in fact describe the ecoFinity
16 program as you have testified?

17 A That's correct.

18 Q In your deposition, and correct me if I'm
19 wrong, but I believe you told me that when you
20 communicated with St. Joseph's, you said you told them
21 they can recycle up to 60 percent of waste; is that
22 correct?

23 A That sounds right. I didn't use that flyer,
24 so correct. That's correct.

25 Q And at the time I asked if you had -- since

0509

1 you had gotten the more current figures on the
2 recycling percentage, whether you had given any update
3 to your contact at St. Joseph's about the actual
4 recycling percentages. Do you recall what your answer
5 was?

6 A I do. I have not.

7 Q And since our deposition, have you made any
8 effort to update St. Joseph's about that?

9 A I have not.

10 Q Has St. Joseph's Hospital asked you for any
11 current recycling figures?

12 A They have not.

13 Q And does Waste Management report back to
14 St. Joseph's about the results of the recycling
15 results of ecoFinity?

16 A We have not yet, to my knowledge, I should
17 say. Our corporate office may have had contact with
18 them, because this is a corporate run program.

19 Q But you don't really know one way or the
20 other?

21 A I don't.

22 Q Okay. And again, has St. Joseph's Hospital
23 asked you for any reports on the recycling results?

24 A No. My only contact with them is about
25 service, making sure it's going good.

0510

1 Q So from your connection with -- or
2 communication with St. Joseph's Medical Center, isn't
3 it true that they are not really interested in how
4 much of their sharps waste gets recycled through
5 ecoFinity?

6 A They understand it's a pilot, so there hasn't
7 been a lot of attention to any of the detail, to
8 the -- you know, to the actual number yet.

9 Q How long has the pilot been going on?

10 A I think we covered that in the -- in my
11 deposition. I can't remember what we figured out, but
12 it was over a year.

13 Q I actually couldn't remember that one either,
14 which is why I asked.

15 (Pause in the proceedings.)

16 MR. VAN KIRK: Sorry for the delay.

17 (Pause in the proceedings.)

18 MR. VAN KIRK: Would it be too much to
19 ask for a few -- just a couple-minute break, to look
20 over stuff for this witness, so everybody doesn't
21 watch me sitting here quietly?

22 JUDGE KOPTA: Sure. Is five minutes
23 enough?

24 MR. VAN KIRK: That's more than enough.

25 JUDGE KOPTA: Let's be off the record

0511

1 for five minutes, until 25 past the hour.

2 MS. GOLDMAN: Your Honor, perhaps we
3 could discuss the scheduling issue.

4 JUDGE KOPTA: Well, if he's going to be
5 tied up with that --

6 MS. GOLDMAN: Okay, never mind.

7 (A brief recess.)

8 JUDGE KOPTA: All right. Let's be back
9 on the record.

10 Mr. Van Kirk?

11 MR. VAN KIRK: I have no more questions.

12 JUDGE KOPTA: I love that.

13 Okay. Mr. Sells, you're up.

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. SELLS:

17 Q Mr. Norton, you have not testified, I don't
18 believe, that you have encountered any dissatisfied
19 medical waste customers in the area of Pullman
20 Disposal; is that correct?

21 A That's correct.

22 Q And same question for Consolidated Disposal?

23 A That's correct.

24 Q The same question for Rubatino?

25 A To my knowledge, yeah, that's correct.

0512

1 Q And same question for Murrey's?

2 And I should be careful to point out that we
3 are talking about the portion of Murrey's that
4 provides medical waste, which is Eastern
5 Pierce County, which I think you are aware.

6 Same question.

7 A Yes. To my knowledge, none.

8 MR. SELLS: That's all I have, Your
9 Honor.

10 JUDGE KOPTA: Thank you, Mr. Sells.

11 Ms. Woods?

12 MS. WOODS: No questions, Your Honor.

13 JUDGE KOPTA: Do you have redirect?

14 MS. GOLDMAN: Yes, your Honor.

15

16 FURTHER REDIRECT EXAMINATION

17 BY MS. GOLDMAN:

18 Q You were asked, Mr. Norton, about your
19 statement, on the record, in your deposition in here
20 today regarding whether you think choice of containers
21 is something that's worthwhile for a generator to
22 have. You mentioned that that was based on your
23 opinion as to that -- the answer to that question was
24 based on your experience with Stericycle's other
25 containers. Can you describe what you meant by that?

0513

1 MR. VAN KIRK: Objection to the
2 characterization of previous testimony.

3 JUDGE KOPTA: I'll allow him to explain
4 it if it is different than his understanding.

5 A Yes, I -- when I made that statement, I was
6 saying that in general, customers like choices,
7 containers, services, what have you. But what I
8 was -- they were trying to get me to say I was
9 contradicting myself. I was getting confused with
10 comparing the choices of Stericycle's containers in
11 general, outside of the Rehrig container that they
12 have, which I don't feel are very satisfactory.

13 Q And why not?

14 A Just from --

15 MR. VAN KIRK: Objection. This is
16 beyond the scope. I didn't ask him any questions
17 about his opinion of Stericycle containers, or
18 anything about his testimony about the shortcomings of
19 Stericycle containers.

20 MS. GOLDMAN: Your Honor, it's the basis
21 for his explanation of his testimony, which was the
22 subject of a gotcha with his deposition, as to why he
23 thinks choice is important or is not. One of the
24 answers he has given is that he didn't -- said choice
25 was not important if the alternative is what

0514

1 Stericycle is offering. He is now explaining what he
2 means by that.

3 MR. VAN KIRK: I think if we look at the
4 deposition testimony, we will find it doesn't have
5 anything to do with that. My question certainly
6 didn't have anything to do with it, which should be
7 the basis for the scope of redirect.

8 JUDGE KOPTA: I will allow the question,
9 but I will give you some latitude on recross to
10 examine his response.

11 A Just in general, there's probably not one
12 perfect container, but based on my experience with
13 Stericycle's containers, having separated lids causes
14 problems, as well as the nesting of the -- one of the
15 containers that Stericycle offers had problems
16 sticking together for customers. That's what I was
17 basing that on.

18 Q You were asked at some length about the timing
19 of when the Rehrig containers were made available to
20 customers by both Waste Management and by Stericycle.
21 Do you recall that line of questions?

22 A Yes.

23 Q You also testified that at some point, you
24 learned that Mr. Adams from Stericycle had gone to
25 Sacred Heart Hospital in Spokane to discuss Rehrig

0515

1 containers. Can you tell us what happened?

2 A Yes. So --

3 MR. VAN KIRK: Objection. Foundation.
4 Hearsay.

5 JUDGE KOPTA: Overruled.

6 A Providence/Sacred Heart had cancelled service
7 with Stericycle. Mike Charles from environmental
8 services -- I went there to build out a plan for the
9 transition. He told me that Ron Adam had been in
10 there and said that they had filed rates, had the same
11 containers at the same rates that we were offering.
12 And at the time, this was prior to them filing their
13 rates, they -- our pricing for the -- for the tier
14 that they were on for the volume was approximately 10
15 to 15 percent less.

16 Q And what did Mr. Adams tell you was going to
17 be his decision regarding his contract, as far as who
18 would be providing the biomedical waste service?

19 A I don't understand.

20 Q Okay. I'll strike the question.

21 So at some point, you learned that Stericycle
22 had filed a tariff; is that correct?

23 MR. VAN KIRK: Objection. This is well
24 beyond the scope of my --

25 JUDGE KOPTA: I'll sustain that

0516

1 objection.

2 MS. GOLDMAN: Your Honor, he just
3 testified about the fact that Mr. Adams advised him
4 that Stericycle had filed a tariff with the Rehrig
5 rates, and that was information regarding the very
6 issue that was the subject of significant
7 cross-examination, as to the timing of when the Rehrig
8 containers were deployed. We would request leave to
9 ask additional questions regarding the timing of the
10 tariffs.

11 JUDGE KOPTA: Well, that was elicited on
12 your redirect, not on Mr. Van Kirk's cross, and so I
13 think I'm not going to allow it.

14 Q On cross-examination, Mr. Van Kirk asked you
15 regarding what happened with Virginia Mason and the
16 reasons for Virginia Mason deciding where it would
17 take its biomedical waste service. You mentioned that
18 there was -- the changing of the containers to Rehrig
19 had something to do with the Virginia Mason decision.
20 Can you explain what you meant by that?

21 A Yes, a similar situation to Providence. One
22 time, when we started the conversation, our tariff
23 rates were offered, you know, for the volumes that
24 Virginia Mason generated, about a 10 to 15 percent
25 savings in cost. Plus extra auditing, we could

0517

1 probably add -- we could have added more savings. But
2 with -- so basically, they put it out kind of to bid.
3 And it was multiple services that we were bidding on,
4 including recycling. And, you know, during that
5 time -- this was over six months or something, the
6 process as well. Stericycle had changed them out into
7 their new Rehrig containers at those rates that we
8 offer, so that kind of -- that value was gone. And at
9 the end of the day, they chose Stericycle, chose not
10 to change.

11 Q You also were asked questions regarding the
12 difference between Biosystems, Stericycle's service,
13 and Waste Management's ecoFinity. You mentioned that
14 Biosystems, the Stericycle service, is only offered to
15 certain facilities. What did you mean by that?

16 A I'm speaking from my experience, as I sold
17 that program for -- helped launched that program here.
18 It was designed for larger quantity generators. But
19 some of those contracts, if those generators had
20 smaller facilities that they -- smaller hospitals,
21 would sometimes get worked into that service. But for
22 the most part, it's not offered to rural, small
23 hospitals.

24 MS. GOLDMAN: That's all I have.

25 JUDGE KOPTA: Mr. Van Kirk, did you want

0518

1 to follow up?

2 MR. VAN KIRK: Briefly, yes. It won't
3 be that long.

4

5 FURTHER RECROSS - EXAMINATION

6 BY MR. VAN KIRK:

7 Q Going back to the choice issue, Mr. Norton. I
8 believe you also testified when we were speaking
9 earlier that you agreed that it's the customer that
10 should make the choices between containers, correct?

11 A Correct.

12 Q Okay. It's not up to you to make the choices
13 of which container works best for the customer,
14 correct?

15 A Correct. I just use experience to try to find
16 the right one for them, correct.

17 Q Do you know whether Virginia Mason uses only
18 Rehrig containers?

19 A I do know. They do not, because they do not
20 have a small enough one to find in their lab, so they
21 had to go back, revert back to the 21-gallon, because
22 they couldn't fit it.

23 Q They use other kinds of containers?

24 A Correct.

25 Q Because the Rehrig doesn't work in some

0519

1 situations?

2 A Correct, because they didn't have a small
3 enough container in the Rehrig.

4 Q And you gave some testimony about Biosystems
5 might not be available everywhere. All I want to ask
6 you is, it is true, in fact, that ecoFinity is not
7 offered anywhere in Washington other than St. Joseph's
8 Medical Center?

9 MS. GOLDMAN: Objection. Beyond the
10 scope.

11 JUDGE KOPTA: Sustained.

12 Q Is there anywhere in Washington where -- where
13 you think Biosystems is available that ecoFinity is
14 currently available?

15 A No, not currently.

16 MR. VAN KIRK: Those are all the
17 questions that I have.

18 JUDGE KOPTA: Thank you.

19 Anything further?

20 MS. GOLDMAN: Nothing, Your Honor.

21 JUDGE KOPTA: Before we excuse this
22 witness, I note that there are several
23 cross-examination exhibits that have been identified
24 for Mr. Norton. Some of them were not even used. I
25 think only one or two of them were in fact used. Are

0520

1 you not offering these?

2 MR. VAN KIRK: I am glad you reminded
3 me. I was going to -- I wasn't going to offer them as
4 such. I was going to offer as an exhibit those
5 portions of the deposition testimony that were
6 actually discussed with Mr. Norton and I. Obviously,
7 I have to put those in the exhibit to file afterwards.
8 No exhibit contains exactly only those pieces of
9 testimony, but that's the deposition testimony I would
10 offer as an exhibit.

11 JUDGE KOPTA: So that would be
12 essentially a revised JN-7?

13 MR. VAN KIRK: Yes, it would be a
14 revised JN-7, correct.

15 JUDGE KOPTA: And You would anticipate
16 circulating that before the close of the hearing, so
17 we can make sure that that's an appropriate exhibit
18 and there won't be any objections.

19 MR. VAN KIRK: Yes. Although, I think I
20 might need the transcript to know exactly which
21 portions were talked about. My understanding was that
22 Your Honor would set a date for filing
23 cross-examination exhibits at the end of the hearing.

24 JUDGE KOPTA: Yes. Generally I would
25 admit the cross-examination exhibits that have been

0521

1 presented and not objected to.

2 Let me ask if there are any other parties that
3 have any problem with what Mr. Van Kirk is proposing,
4 in terms of a revised JN-7.

5 MS. GOLDMAN: I actually took notes of
6 the page numbers, so I can --

7 JUDGE KOPTA: I'm not asking for --

8 MS. GOLDMAN: Well --

9 JUDGE KOPTA: -- specifics at this
10 point.

11 MS. GOLDMAN: -- to the degree that he
12 is referencing Pages 14 and 102 of that transcript, we
13 have no objection.

14 JUDGE KOPTA: Okay. Then we will do
15 this. Prepare that exhibit, preferably before the
16 hearing, but if not, then we will do it shortly
17 thereafter, at least the time for filing
18 cross-examination exhibits. I will provisionally
19 admit that, subject to any objection by any party that
20 somehow or other doesn't accurately reflect what was
21 discussed during the hearings.

22 MR. VAN KIRK: I will make one that
23 appears as close to the transcript as I can.

24 JUDGE KOPTA: I have no doubt that you
25 will.

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1 So Exhibit JN-7 as to be revised will be
2 admitted. The remainder of the exhibits, JN-8 through
3 JN-12, I will list as not offered.

4 MR. VAN KIRK: Some of those exhibits I
5 put Jeff Norton's initials on them. Some of them
6 could potentially be offered, although I suppose we
7 only have one more witness left to go tomorrow in
8 cross-examination. We will deal with that if it
9 happens.

10 JUDGE KOPTA: Exactly.

11 And there is one other exhibit. I think
12 actually at this point, we can excuse Mr. Norton.
13 Thank you for your testimony.

14 THE WITNESS: Thank you, Your Honor.

15 JUDGE KOPTA: There is one other exhibit
16 that falls into that category, which is Exhibit
17 MAW-24, which was designated originally for
18 Mr. Weinstein. I know that you had reserved that also
19 for the possibility of another witness. Given that we
20 only have one other witness and you have not been
21 using it for any of the other generators, can we also
22 list that one as not offered?

23 MR. VAN KIRK: Let me make a proposal,
24 or I suppose it's a motion, or whatever. I will offer
25 that under the Commission rules allowing the

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1 Commission to accept as evidence files of the
2 Commission. These are records that were obtained from
3 the Commission through a data request. I don't
4 believe they are in need of authentication by any
5 particular witness under the Commission rules.

6 JUDGE KOPTA: So effectively you are
7 asking that we take administrative notice?

8 MR. VAN KIRK: Sure. I would like them
9 to be in the record, and I think the Commission rules
10 provide for that.

11 JUDGE KOPTA: Does anyone object to the
12 Commission taking administrative notice of the
13 documents that are included currently in MAW-24?

14 MS. GOLDMAN: We do, Your Honor, because
15 they were not offered, they were not the subject of
16 testimony, and so therefore, they were not -- there
17 was no opportunity for cross or redirect.

18 JUDGE KOPTA: Well, these are documents
19 in the Commission's files, more or less public
20 records, just like any other item that we could take
21 administrative notice of, like Commission orders or
22 tariffs or those sorts of things. If you have
23 objection to the substance of the documents, then I
24 will hear that objection. If it's because it hasn't
25 been discussed in the hearing, I'm less inclined to

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1 not take administrative notice on that basis.

2 MS. GOLDMAN: We will stand on our
3 objection, Your Honor. Nothing further.

4 JUDGE KOPTA: Well, then, that objection
5 is overruled. I will take administrative notice of
6 the records that are included in MAW-24. It will not
7 be known as Exhibit MAW-24, it will not be admitted
8 into the record as evidence, but instead the
9 Commission will take administrative notice so that the
10 parties may cite to those as Commission records in any
11 briefing following the evidentiary hearings.

12 MR. VAN KIRK: Thank you, Your Honor.

13 JUDGE KOPTA: Is there anything else
14 that we need to discuss while we are on the record?

15 Hearing nothing, we are off the record until
16 tomorrow morning at 9:00 a.m. Thank you.

17 (Evidentiary hearing adjourned 4:45 p.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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do hereby certify that the foregoing transcript is

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true and accurate to the best of my knowledge, skill

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and ability.

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