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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 VIII

Pages 718 - 854

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

9:30 A.M.

DECEMBER 6, 2012

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

REPORTED BY: SHERRILYN SMITH, CCR# 2097

Buell Realtime Reporting, LLC
1411 Fourth Avenue
Suite 820
Seattle, Washington 98101
206.287.9066 | Seattle
360.534.9066 | Olympia
800.846.6989 | National

www.buellrealtime.com

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

2 ADMINISTRATIVE LAW JUDGE:

3 GREGORY J. KOPTA
4 Washington Utilities and
5 Transportation Commission
6 1300 South Evergreen Park Drive SW
7 P.O. Box 47250
8 Olympia, Washington 98504
9 360.664.1136

7 FOR COMMISSION STAFF:

8 FRONDA WOODS
9 Attorney General's Office of Washington
10 PO Box 40128
11 Olympia, Washington 98504
12 360.664.1225
13 fwoods@utc.wa.gov

12 FOR STERICYCLE OF WASHINGTON, INC.:

13 JARED VAN KIRK
14 STEPHEN B. JOHNSON
15 Garvey Schubert Barer
16 1191 Second Avenue
17 Suite 1800
18 Seattle, Washington 98101
19 206.464.3939
20 jvankirk@ggsblaw.com
21 sjohnson@ggsblaw.com

19 FOR PROTESTANT WRRRA, RUBATINO, CONSOLIDATED, MURREY'S,
20 AND PULLMAN:

21 JAMES K. SELLS
22 Attorney At Law
23 3110 Judson Street
24 Gig Harbor, Washington 98335
25 360.981.0168
jamesells@comcast.net

0720

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2
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25

A P P E A R A N C E S (Continued)

FOR WASTE MANAGEMENT OF WASHINGTON, INC.:

JESSICA GOLDMAN
POLLY McNEILL
Summit Law Group PLLC
315 Fifth Avenue South
Suite 1000
Seattle, Washington 98104
206.676.7040
jessicag@summitlaw.com
pollym@summitlaw.com

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of Taya Briley

4

JM-1T 764 Prefiled Rebuttal Testimony
of Jeff Mero

5

6

ER-1T 812 Prefiled Testimony of Ed
Rubatino

7

ER-2 812 Certificate G-58

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MW-1T 835 Prefiled Testimony of Mark
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to Penny Ingram

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OLYMPIA, WASHINGTON; DECEMBER 6, 2012

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9:30 A.M.

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P R O C E E D I N G S

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JUDGE KOPTA: Let's be on the record.

8

Resuming evidentiary hearings in Docket

9

TG-120033. I believe we have a witness from

10

Stericycle who is first up today, so I will turn to

11

Mr. Van Kirk.

12

MR. VAN KIRK: Good morning, Your Honor.

13

Thank you. On the phone we have -- Stericycle would

14

like to call Jeff Mero of the Association of

15

Washington Public Hospital Districts.

16

JUDGE KOPTA: Mr. Mero, would you rise

17

and raise your right hand, please.

18

19

JEFF MERO, witness herein, having been

20

first duly sworn on oath,

21

was examined and testified

22

as follows:

23

24

JUDGE KOPTA: Thank you.

25

Mr. Van Kirk.

0724

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

2 BY MR. VAN KIRK:

3 Q Good morning, Mr. Mero. Again, thank you for
4 being with us this morning.

5 A Good morning, Mr. Van Kirk. My pleasure.

6 Q Can you state your name and spell it for the
7 court reporter, please?

8 A Certainly. My name is Jeff Mero. That's J-E,
9 F like Frank, F like Frank, M like Mary, E-R-O.

10 Q Thank you, Mr. Mero.

11 And, Mr. Mero, did you submit prefiled
12 testimony in this proceeding?

13 A I did.

14 Q Mr. Mero, is there any portion of your
15 prefiled testimony that you no longer wish to be
16 included in this proceeding?

17 A I need to have one sentence removed.

18 Q Okay. Please tell us what that is.

19 A At the top of Page 5, at the end of Line 1,
20 the sentence, "Most rural counties permit landfilling
21 of biomedical waste, so a combination of reduced
22 service and/or higher rates could force our members to
23 reconsider landfilling their biomedical waste."

24 Sadly, that sentence has to be removed from my
25 testimony.

0725

1 Q And can you please explain why you are asking
2 to have that removed?

3 A I believe this to be true, and I hoped to have
4 time to verify it between the time that I filed my
5 testimony and this morning's opportunity to speak with
6 you all. I simply -- I could not get verification
7 that this is an accurate statement, so I'm not willing
8 to have it stand in the record.

9 MR. VAN KIRK: So with that one
10 deletion, we would offer Mr. Mero's testimony into the
11 record.

12 JUDGE KOPTA: Any objection to the
13 admission of Exhibit JM-1T?

14 MS. GOLDMAN: Yes, your Honor, we
15 object.

16 JUDGE KOPTA: All right. Then I will
17 withhold ruling on that, pending cross-examination.

18 We will go to counsel for Waste Management,
19 unless, Mr. Van Kirk, you have anything further for
20 this witness?

21 MR. VAN KIRK: No, that's all I have,
22 Your Honor. I tender the witness for
23 cross-examination.

24 JUDGE KOPTA: Ms. Goldman.

25

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

2 BY MS. GOLDMAN:

3 Q Good morning, Mr. Mero. My name is Jessica
4 Goldman. I'm one of the attorneys representing Waste
5 Management.

6 A Good morning.

7 Q Who asked you to provide testimony in this
8 proceeding?

9 A I was offered the opportunity to provide
10 testimony at this hearing by general counsel for the
11 State Hospital Association, Taya Briley.

12 Q And what did Ms. Briley say to you in regards
13 to this proceeding?

14 A The initial contact with Ms. Briley was via
15 e-mail. She simply forwarded on to me a message that
16 she had -- a file that she had received, I believe
17 from Mr. Johnson, who had indicated that there was a
18 case pending. I'm going to call it a case. I'm not
19 sure exactly what this is, so I'm going to call it a
20 case. That might not be exactly right. But there was
21 a case pending related to Stericycle's ability to
22 continue to do work in Washington state. She knew
23 that I had a long history with that issue. She asked
24 if I would be interested in reviewing the information
25 that had been provided to her. I indicated I would

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1 be.

2 Included in that e-mail from Taya were a
3 number of questions around implications for rural
4 communities. I felt like there was enough there for
5 me to get on the record and express some concern.

6 I do want to try to be clear, as I think I am
7 in my testimony. I'm not actually taking a position
8 with regard to the question about whether there ought
9 to be -- we're not taking any position on the pending
10 application of Waste Management for authority. I
11 simply want to express a few concerns. I do want to
12 express some appreciation for the work that Stericycle
13 has done in this state. I think they've been a real
14 leader. I just want to make sure that gets on the
15 record.

16 Q Thank you.

17 You did not draft your testimony; isn't that
18 right?

19 A That is correct.

20 Q Who drafted it?

21 A The testimony came to me, as I said, from Taya
22 Briley. I believe that the testimony was -- the
23 testimony originated with Mr. Johnson.

24 Q Did you make any changes to the draft that
25 Mr. Johnson presented to Ms. Briley and that she

0728

1 forwarded to you?

2 A A few minimal changes.

3 Q Do you recall what those changes were?

4 A I don't.

5 Q How many member hospitals does AWPHD have?

6 A There were 56 public hospital districts in the
7 state of Washington. All of them belong to AWPHD. 44
8 of them operate hospitals.

9 Q Does the Association have a board of
10 directors?

11 A It does.

12 Q And what is the role of the board?

13 A The role of the board is to provide fiduciary
14 oversight for the resources that come to the
15 Association. They are also invited to make sure we
16 are kept up-to-date on matters of interest to them,
17 what's happening in the field. We meet with them
18 regularly to talk about the regulatory and operating
19 environment that they face, and work with them on
20 issues of major policy related to the organization and
21 delivery and financing in healthcare services in the
22 state of Washington.

23 Q You mentioned the resources that come to the
24 organization. What did you mean by that?

25 A Dues.

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1 Q Does the Association have any other source of
2 revenue other than dues?

3 A Very -- on a -- nothing regular. We
4 occasionally hold education conferences, and for those
5 we charge registration. In general, the purpose of
6 charging a registration fee is that if people put 15
7 or 20 bucks into the kitty, they are more likely to
8 show up than if they don't.

9 Q Do you ever have sponsors for your education
10 conferences?

11 A We do.

12 Q Has Stericycle sponsored any of them?

13 A I want to draw a distinction here between the
14 Association of Public Hospital Districts and the
15 Washington State Hospital Association. I'm not able
16 to speak -- I'm not able to answer that question for
17 the State Hospital Association. Stericycle has not
18 sponsored any events for the Association of Washington
19 Public Hospital Districts in the 11 years that I have
20 been its executive director.

21 Q What is the relationship between your
22 association and the Washington State Hospital
23 Association?

24 A We are, I guess you would call it, sister
25 organizations. The Public Hospital Districts in the

0730

1 state of Washington have a unique slice of law that
2 they need to pay attention to because they are public
3 entities. In the 1950s, they decided it would be a
4 good idea for them to create a separate association to
5 monitor those activities, things like activities out
6 of Secretary of State's Office related to elections,
7 State Auditor's Office related to public reporting and
8 public disclosure for public entities, the Open Public
9 Meeting Act, the Public Records Act. You know,
10 there's a chunk of law that Public Hospital Districts
11 need to pay attention to that regular hospitals don't.

12 As I said, for about 60 years or so, the
13 Districts hospitals in the state have had an
14 association to watch out for those areas for them.
15 I've had the privilege to run this organization now
16 since 2000.

17 Q How many members are on your board?

18 A Seven.

19 Q Did the board authorize you to provide
20 testimony in this proceeding?

21 A They did not.

22 Q Have you had any conversations with the board
23 regarding this testimony?

24 A Not beyond an e-mail that I sent out to the
25 general membership. When Ms. Briley asked me if I was

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1 interested in providing testimony to the hearing, I
2 did send out an e-mail to the District hospital list
3 serve, which includes all of our hospitals, and
4 reported to them what was going on, asked them if they
5 had any particular opinion. What I submitted is
6 consistent with what I heard back from them. There's
7 not -- there's no specific -- there's no -- I did
8 nothing specific to the board.

9 Q What was the response that you heard back from
10 your members in response to your e-mail?

11 A The way that I framed my e-mail to the members
12 was to let them know what was going on, to indicate
13 that we would not be taking a position with regard to
14 new entry into the state, but that we wanted to be on
15 the record with our views of Stericycle's performance
16 and our concerns about what the implications of having
17 another biomedical waste handler in the field might
18 mean. I asked them to let me know if they had
19 concerns about us doing that.

20 Q Did you get any responses from your members?

21 A I did not.

22 Q And was that the only communication you had
23 with your members was that e-mail?

24 A It is.

25 Q Association member Kennewick General Hospital

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1 moved its biomedical waste service from Stericycle to
2 Waste Management; isn't that right?

3 A I don't know.

4 Q Have you had any communications with Kennewick
5 General Hospital regarding its change of service?

6 A I have not.

7 Q Association member Skagit Valley Hospital
8 moved its biomedical waste service from Stericycle to
9 Waste Management; isn't that right?

10 A I don't know.

11 Q Do you know who provides biomedical waste
12 service to your members?

13 A I know that -- no. If you asked me to produce
14 a list or something like that, no, I can't do that.

15 Q Are you aware that Association member Lake
16 Chelan Community Hospital has testified in support of
17 Waste Management's application for statewide authority
18 because that Association member strongly supports a
19 competitive regulated medical waste market?

20 MR. VAN KIRK: Objection to the
21 question. Characterizes the testimony inaccurately.
22 This witness has no basis to know whether that's true
23 or not or even comment on that characterization.

24 JUDGE KOPTA: You might reframe that
25 question to ask whether he is aware whether Lake

0733

1 Chelan has taken a position on this docket.

2 Q Are you aware if Association member Lake
3 Chelan Community Hospital has filed any testimony in
4 this proceeding?

5 A No.

6 Q Are you aware if Association member Olympic
7 Medical Center has provided testimony in this
8 proceeding?

9 A Let me think about that for a minute. We met
10 with Mr. Van Kirk last week and he briefed us on how
11 the proceeding would work. He did give us an
12 indication of the hospitals that were in favor of
13 Waste Management's application. I believe he
14 identified Clallum County Public Hospital District No.
15 2 as one of those that is supporting that. That
16 district operates Olympic Medical Center.

17 Q Did you read the testimony that was supplied
18 to you by Mr. Van Kirk that had been filed by Olympic
19 Medical Center?

20 MR. VAN KIRK: Objection to the form.
21 That wasn't the witness's testimony.

22 JUDGE KOPTA: That's true. You might
23 ask it a little more generically.

24 Q Have you read the testimony that Olympic
25 Medical Center filed in this matter?

0734

1 A I have not.

2 Q Were you supplied a copy of that testimony?

3 A I was not.

4 Q What were you told about Olympic Medical
5 Center's testimony in this proceeding?

6 A My recollection of the conversation is simply
7 that Mr. Van Kirk walked us through what the current
8 situation was, indicated there were a number of
9 hospitals that were supporting Waste Management's
10 application. It's my recollection that -- I can't
11 remember if he offered or if Ms. Briley asked him to
12 tell us which members were in support. In response to
13 the question, he identified seven or eight or nine
14 hospitals.

15 Q Have you had any communications with Olympic
16 Medical Center regarding their testimony in this
17 proceeding?

18 A Not beyond the e-mail that I sent out to them,
19 to ask if they had concerns with the position I was
20 proposing to take.

21 Q So once you were advised by Mr. Van Kirk that
22 Olympic Medical Center was providing testimony in
23 support of the application, I'm correct, then, that
24 you didn't have any follow-up communications with
25 Olympic Medical Center; is that right?

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1 A Not on this matter, no. I think I talked to
2 the administrator at Olympic Medical Center, I think
3 three times since that e-mail went out, and he didn't
4 bring the matter up.

5 Q And you didn't either, right?

6 A That's correct. I didn't know -- yes, I --
7 yes, that's correct.

8 Q So I believe you said that you've worked for
9 the Association since 2000; is that right?

10 A Worked for the Washington State Hospital
11 Association for 30 years. I've been in this position
12 for the last 11, 12.

13 Q And so the Washington State Hospital
14 Association, that's where Ms. Briley works?

15 A That's correct.

16 Q And she formerly worked for your association?

17 A That's correct.

18 Q And I take it from your testimony you and
19 Ms. Briley worked together with Mr. Van Kirk to
20 prepare for this proceeding?

21 A That's correct.

22 Q What is the nature of your association's
23 relationship with Stericycle?

24 A I wouldn't -- I don't believe that there is
25 any way to characterize any relationship between the

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1 Association of Washington Public Hospital Districts
2 and Stericycle.

3 Q And that's because there is no relationship?

4 A I'd say that that's accurate.

5 Q Is the Association party to any contract with
6 Stericycle?

7 A No.

8 Q I would like to turn your attention to your
9 written testimony. Do you have that handy?

10 A I do.

11 Q I'm going to ask you a couple questions, or
12 probably more than a couple.

13 I would like to ask you, beginning on
14 Paragraph 3 of your testimony, which is Exhibit JM-1T.
15 The first sentence there you state that "AWPHD has
16 been aware of the services of Stericycle of
17 Washington, Inc. and medical waste market in
18 Washington in the early 1990s." Can you tell me what
19 you know about that?

20 A What I know about their entry?

21 Q What you know about the services that you
22 mention in that sentence.

23 A Well, I'll talk about the awareness. I guess
24 as I described AWPHD here, I think you're asking me
25 specifically from my awareness, and that's a sense in

0737

1 which I meant this testimony to be read.

2 In the early 1990s, I was a member of the
3 staff of the State Hospital Association. I had a
4 variety of titles at that time, but was a regular paid
5 lobbyist for the State Hospital Association in
6 Olympia, along with another gentleman named
7 Robb Menaul. Robb and I were and continue to be good
8 friends.

9 Robb -- at the time medical waste management
10 was a much higher profile issue than it seems to me to
11 be today. There were more routine reports, problems
12 handling biomedical waste, or at least I was more
13 aware of them than I am today. Robb was fortunate or
14 unfortunate enough to be the staff person for the
15 State Hospital Association, who was tasked with
16 figuring out what could be done to improve the
17 handling of the biomedical waste in the state of
18 Washington.

19 He brought Stericycle to my attention and to
20 the attention of the State Hospital Association. He
21 was quite excited at the technology that they were
22 introducing at the time. He stayed excited about the
23 technology that Stericycle introduced over time. He
24 was all the time dragging me around to look at stuff
25 that they were doing.

0738

1 Q Now, you are aware that the Washington State
2 Hospital Association has a contractual relationship
3 with Stericycle today; isn't that right?

4 MR. VAN KIRK: Objection to the form of
5 the question. Scope and foundation.

6 JUDGE KOPTA: You can ask whether he is
7 aware of any relationship between Stericycle and that
8 other association.

9 Q Mr. Mero, are you aware of any relationship
10 between Stericycle and the Washington State Hospital
11 Association?

12 A I will describe my understanding of the
13 arrangement. It's not specifically responsive to your
14 question.

15 Among the responsibilities that Robb Menaul
16 had at the time -- at the times that we are talking
17 about, in the 1990s, at some point in that period of
18 time, Robb became president of Washington Hospital
19 Services, which is a for-profit organization, that is
20 another arm, if you will, of the State Hospital
21 Association.

22 One of the reasons that Washington Hospital
23 Services was created was to try and identify and
24 promote preferred vendors for various services:
25 Physician recruiting, temporary nurse replacement,

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1 volume drug purchasing, telephone service, a whole
2 wide range of services. Stericycle was one of the
3 vendors that Robb was happy to welcome into the
4 Washington Hospital Services center preferred vendors
5 because of the work they had done, because of the
6 technology they brought to the state and because of
7 their commitment to try and ensure that biomedical
8 waste was handled in a fashion that was safe for the
9 humans that were around it and safe for the
10 environment.

11 I'm not sure if -- I'm not sure what the
12 relationship or -- I don't know that there's a
13 contractual arrangement between the State Hospital
14 Association and Stericycle directly or if that
15 contract is between Washington Hospital Services and
16 Stericycle. But I'm aware that there's a preferred
17 vendor arrangement that has its roots in the fact that
18 Robb, who was simultaneously president of the
19 Washington Hospital Services and vice president of the
20 State Hospital Association, had organized this
21 preferred vendor arrangement.

22 Q Thank you.

23 I would like to turn to Paragraph 4 of your
24 testimony. I want to ask you what you know about
25 Stericycle's waste segregation, training and OSHA

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1 compliance training for hospital personnel.

2 A This goes back some time. Again, almost all
3 of what I know, I know because of what Robb Menaul
4 talked to me about at the time, and because of the
5 opportunities I had working with Robb, to be exposed
6 to the work that Stericycle was doing. I would
7 include that. Most of the -- most of this paragraph,
8 in fact most of the next couple of paragraphs, you're
9 going to get the same kind of answer to.

10 Robb and I worked together a lot. We drove
11 back and forth to Olympia almost every day during
12 legislative sessions, worked together routinely, and
13 the biomedical waste issue was one that he got really
14 engaged with and talked a lot about.

15 Q So what do you know about Stericycle's waste
16 segregation training and OSHA compliance training for
17 hospital personnel?

18 A I know that until Stericycle showed up and
19 began to provide support to the hospitals who were
20 taking advantage of their service, that there wasn't
21 any training available to the hospital.

22 Q What do you know, please, about Stericycle's
23 biomedical waste tracking?

24 A Generally understanding that, because of the
25 role that Stericycle played in pioneering the

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1 management of biomedical waste for our hospitals, that
2 they introduced lots of new techniques and protocols
3 and policy and procedures. Among those were
4 technologies that allowed them to keep track of where
5 waste came from, allowed the hospitals that had
6 generated the waste to know where it had been taken
7 and so forth.

8 Q What do you know about Stericycle's reusable
9 sharps program?

10 A I think that two of my members have talked to
11 me about this program over time. Again, my basic
12 knowledge comes from Robb, in just the routine updates
13 that he had about what Stericycle was doing new. I
14 think that there were -- I'm trying to remember who
15 the two hospital districts were that talked to me
16 about this. My recollection is that one was from --
17 one of them was in Omak. I can't remember where the
18 other one was from. It likely occurred on the same
19 trip.

20 I think that people were pleased that those
21 containers could be reused. That's about what I know
22 about it.

23 Q Thank you.

24 A You're welcome.

25 Q What do you know about Stericycle's dealings

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1 with the Food & Drug Administration?

2 A Well, I know that they were routinely
3 required, in order to introduce new devices or to
4 bring new technology into the field, to get a
5 variety -- both state and federal agencies need to
6 approve and -- review and approve. And again, the
7 conversations with Robb kept me abreast of what sorts
8 of things Stericycle was trying to do to improve their
9 service and improve the management of waste. Among
10 those was the processes they went through with the FDA
11 to get new devices approved.

12 Q And what devices are you talking about?

13 A Oh, I think that it's just exactly what we
14 were just talking about, things like the reusable
15 sharps containers and the -- whether the waste bins
16 that they brought online were approved by the FDA or
17 not, I can't recall, but that would be another
18 example.

19 Q Do you know if the reusable sharps containers
20 were approved by the Food & Drug Administration?

21 A Well, it's kind of a refined question for me
22 to answer, I suppose. I'm not sure that I know
23 specifically that what the FDA gave Stericycle was a
24 formal approval or whether they simply allowed
25 Stericycle to use them. But I know that the FDA was

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1 involved in allowing Stericycle to bring those
2 containers online in Washington state.

3 Q And you know that from your conversations with
4 Mr. Menaul?

5 A Correct.

6 Q What do you know about Stericycle's
7 in-facility sharps waste management services?

8 A I know that in at least a few of the public --
9 a few of the hospitals operated by Public Hospital
10 Districts, that they were pleased again with the level
11 of service that Stericycle provided them, and that
12 included the opportunity for them to improve their
13 in-house management of sharps.

14 Q What do you mean by "in-house management"?

15 A I believe that Stericycle provided training to
16 Public Hospital District personnel, in terms of
17 handling sharps appropriately and managing the
18 discarded sharps safely.

19 Q So it's your understanding that Stericycle
20 trained hospital employees to handle the sharps
21 internally; is that correct?

22 A Yeah.

23 Q Which of your members indicated to you that
24 they were pleased with this in-house sharps training?

25 A Probably too long ago for me to recall

0744

1 specifically.

2 Q What do you know about Stericycle's wheeled
3 racks?

4 A As I mentioned earlier, this was another
5 innovation that Stericycle brought that Robb thought
6 was cool. He took me to Morton to look at that, I
7 think.

8 Q And so you have seen the racks?

9 A It was a long time ago, but yeah.

10 Q And what was cool about them?

11 A It was just a great -- a great new way to
12 manage the waste that hospitals develop.

13 Q Why?

14 A Because the alternative involved carrying
15 material in ways that was less convenient for hospital
16 personnel.

17 Q And how many of your member hospitals use
18 these wheeled racks?

19 A I can't answer that question.

20 Q Have you spoken to any of your members about
21 their use of the wheeled racks?

22 A I have not.

23 Q Do you know anything about Stericycle's
24 dealings with the United States Department of
25 Transportation?

0745

1 A No. Well, again, except that Robb was pleased
2 that the DOT had to be -- DOT authorized their use.

3 Q Where is Mr. Menaul today?

4 A Robb lives in West Seattle. He's retired.

5 Q Did you speak to him about the testimony that
6 you offered in this proceeding?

7 A I have not.

8 Q Do you have any personal knowledge regarding
9 programs that recycle sharps waste?

10 A I don't. I have some background knowledge
11 about the fact that the sharps -- that Robb thought
12 that the sharps approach that Stericycle was using was
13 better. I would have to say, I don't know very much
14 about the alternatives.

15 Q And why did Mr. Menaul think it was better?

16 A He was very upbeat about Stericycle's program
17 and their product line and their portfolio, and
18 regularly shared his excitement about those
19 developments as they occurred.

20 Q Why was he excited about that program?

21 A Well, I think that he was excited for a couple
22 of different reasons. He believed that Stericycle's
23 process was one that was dedicated to minimizing the
24 risk of having biomedical waste released, or having an
25 accident with waste that was being handled, and saw

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1 Stericycle's approach as one that minimized those
2 risks.

3 Q And did reusable sharps containers have
4 anything to do with that?

5 A Well, as I understood it, what Robb talked
6 about was the fact that in other places, the transport
7 of these materials required movement over much longer
8 distances.

9 Q And so I'm still not clear as to what you
10 know, then, about reusable sharps -- I'm sorry, about
11 recycled sharps programs.

12 A I'm not sure I understand your question.

13 Q I'll strike it.

14 Have you ever audited Stericycle's cost
15 structure to confirm that the rates being charged are
16 competitive?

17 MR. VAN KIRK: Objection to the form of
18 the question. Beyond the scope. I don't believe he
19 has testified to anything having to do with --

20 JUDGE KOPTA: Point to a particular
21 point in his testimony that you are asking him about
22 this. I'm not following the question either.

23 MS. GOLDMAN: Sure. Well, let's start
24 with Paragraph 10. "This reflects cost control
25 efforts responsive to the cost concerns of Washington

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1 healthcare providers."

2 It discusses the price remaining unchanged
3 since Stericycle entered the Washington market. He
4 then continues on Bureau of Labor Statistics. He's
5 all over the cost and propriety of the pricing issue.

6 JUDGE KOPTA: You were mixing cost and
7 price in the question. I think it is confusing. If
8 you would break that down, that is my concern.

9 MS. GOLDMAN: Oh, I'm sorry.

10 MR. VAN KIRK: Also the issue of
11 competition. Her question was going to price
12 competition and not cost control and prices in the
13 general nature.

14 JUDGE KOPTA: Just make the question a
15 little less complex.

16 MS. GOLDMAN: Okay. I can try that.

17 Thank you, Your Honor.

18 Q So, Mr. Mero, have you ever audited Stericycle
19 in any way?

20 A No.

21 Q Do you have any knowledge regarding
22 Stericycle's profits?

23 A No.

24 Q Do you know if Stericycle is charging an
25 appropriately competitive rate?

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1 MR. VAN KIRK: Objection to the form of
2 the question. Vague, as well as beyond the scope, and
3 lacking foundation.

4 JUDGE KOPTA: Well, I have a problem
5 with appropriate, so you might rephrase your question.
6 I understand where you are going. It's appropriate
7 subject matter, but the question itself is a little
8 bit vague.

9 Q Let me try that again.

10 Do you have any knowledge, Mr. Mero, regarding
11 whether Stericycle is charging a competitive rate?

12 MR. VAN KIRK: Again, I still object to
13 this question as beyond the scope.

14 JUDGE KOPTA: Overruled.

15 A Okay. So can I have that question again?

16 Q Yes.

17 MS. GOLDMAN: Can I have it read back,
18 please? Thank you.

19 (The requested portion of the
20 transcript was read by the reporter.)

21 A I don't have any knowledge about that
22 specifically. If someone had asked me about the rates
23 they charge, my answer would have involved just sort
24 of a vague reference to the fact that my operating
25 assumption is that their rates are reviewed by the

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1 Utilities and Transportation Commission for fairness
2 and appropriateness.

3 Q Are you aware if the Utilities and
4 Transportation Commission has ever reviewed
5 Stericycle's rates?

6 A I am not.

7 Q What do you know about Stericycle's pricing?

8 A Based again on conversations with a handful of
9 members over time, and mostly with Robb Menaul with
10 me, my impression is that their prices have changed
11 very little over time.

12 Is that what you asked me, their price?

13 Q Yes, thank you.

14 And which were the handful of members that you
15 have spoken about that subject with?

16 A I think that we had -- I think Robb and I had
17 that conversation with representatives from Omak,
18 again, and Tonasket, I think.

19 Q Any others?

20 A Not that I can recall.

21 Q And when did those conversations take place?

22 A Some time ago.

23 Q More than five years ago?

24 A Probably around that time.

25 Q Do you have any knowledge regarding

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1 Stericycle's price structure today?

2 A I don't.

3 Q Did you review the Bureau of Labor Statistics
4 data?

5 A On the Consumer Price Index increases?

6 Q Yes.

7 A Yes.

8 Q When?

9 A When did I review it? Last week.

10 Q Okay. Are you aware, Mr. Mero, that in 2011,
11 Stericycle changed its tariff rates to offer a lower
12 price per gallon container in direct response to Waste
13 Management's offering containers at a lower price per
14 gallon than previously offered by Stericycle?

15 MR. VAN KIRK: Objection to the form of
16 the question.

17 JUDGE KOPTA: It's argumentative, not a
18 question.

19 MR. VAN KIRK: As well as beyond the
20 scope.

21 JUDGE KOPTA: It's not beyond the scope,
22 but it is argument in the form of a question. I will
23 sustain the objection.

24 If you would like to rephrase your question.

25 Q Are you aware that Stericycle filed new tariff

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1 rates in 2011?

2 A No.

3 Q Have you ever looked at those rates?

4 A No.

5 Q Have you ever discussed those rates with any
6 of your members?

7 A No.

8 Q So as you sit here today, you have no
9 knowledge as to what rates Stericycle is actually
10 charging your members; isn't that right?

11 A That's correct.

12 Q Are you aware of any adverse effect on either
13 rates or service levels in the year and a half that
14 Waste Management has been competing with Stericycle in
15 large parts of the state of Washington?

16 A No, I've had no communication from members
17 about that.

18 MS. GOLDMAN: Thank you very much,
19 Mr. Mero. I have nothing further.

20 JUDGE KOPTA: And you have still an
21 objection to the admission of this testimony?

22 MS. GOLDMAN: Yes, your Honor. Would
23 you like me to argue it?

24 JUDGE KOPTA: Yes, please.

25 MS. GOLDMAN: Okay. Well, with all due

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1 respect, Mr. Mero lacks personal knowledge on any of
2 the subjects that he has testified to, other than
3 perhaps looking at the labor statistics last week.

4 The source of the information here is an
5 individual who is available in West Seattle and is
6 quoted repeatedly as the source of that information.
7 The knowledge regarding Stericycle's systems, when
8 Stericycle did things, when Stericycle made
9 applications to the United States Department of
10 Transportation, regarding recycling sharps waste, he
11 indicates he has no personal knowledge. This is --
12 none of this is based on any foundation or personal
13 knowledge and we move that it not be allowed.

14 JUDGE KOPTA: Mr. Van Kirk?

15 MR. VAN KIRK: I have a few redirect
16 questions that I would like to do first, and then I
17 can respond with argument, if that's all right with
18 you.

19 JUDGE KOPTA: That's fine, proceed.

20

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

22 BY MR. VAN KIRK:

23 Q Good morning again, Mr. Mero. This is Jared
24 Van Kirk again.

25 A Good morning.

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1 Q I just have a few follow-up questions based on
2 the questions you have been asked so far.

3 First of all, do you need the authorization of
4 your board to give the testimony you have given today?

5 A No.

6 Q And explain to us why that's the case.

7 A I've been involved in representing hospitals
8 in Washington state for quite a long time and am
9 called upon regularly to represent the Association of
10 Washington Public Hospital Districts and its
11 membership in legislative hearings, in hearings before
12 federal, congressional committees, agency and
13 regulatory hearings and so forth. Only on issues
14 where we are getting very clear and explicit messages
15 from our members that there is a very strong
16 difference of opinion and a very strong difference of
17 opinion about an issue that is high priority for them
18 would the board become involved in deciding whether it
19 was appropriate for us to offer testimony and what
20 that testimony ought to be.

21 Q You gave some testimony a moment ago on the
22 issue of costs, Stericycle's costs and prices. I
23 think that was related to Paragraph 10 of your
24 testimony. In the first line of that -- the first
25 sentence of that paragraph you -- well, in the first

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1 sentence, into the second sentence, you said, "This
2 reflects cost control efforts responsive to the cost
3 concerns of Washington healthcare providers."

4 Can you please explain for us what your basis
5 is for making that testimony?

6 A The basis for making the testimony simply
7 revolves around the ongoing concerns that everybody
8 has about healthcare costs and opportunities to hold
9 those costs down, and the efforts on the part of my
10 members in particular to be on the lookout for areas
11 where cost control is available to them.

12 Q Okay. I guess my question is, why is it that
13 you are -- what is your basis for saying that
14 Stericycle has made efforts to control its costs?

15 A Well, again, based on conversations that are a
16 little old. As Ms. Goldman has noted, there has been
17 very little change in the price that Stericycle had
18 charged our members over time, and that, as I note in
19 my testimony, is different from the experience that
20 they have with many of the rest of their vendors.

21 Q Have you received any complaints from any
22 members about increasing prices from Stericycle?

23 A I have not.

24 Q This next question is more general,
25 Mr. Menaul. As the -- Mr. Mero, apologies. As the

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1 director of the Association -- executive director of
2 the Association, excuse me, what do you do to keep in
3 touch with your members and understand their needs?

4 A We are in pretty regular contact with the
5 membership. For the past four or five months, we've
6 had a Thursday morning phone call. We instituted that
7 practice, I believe in the middle of August, because
8 there is enough going on and people are anxious for
9 weekly updates and anxious for a forum where they can
10 raise issues of concern. We are also easy to find via
11 e-mail and phone. I spend a good part of every day
12 responding to questions or concerns that are raised by
13 the members.

14 I will observe that it is not an altogether
15 common thing for me to send out an e-mail like the one
16 I did specific to this case, requesting that people
17 let me know if they had concerns about the path that I
18 was proposing. It would be rare indeed for that
19 request for feedback not to be read and not to be
20 responded to if people had concerns.

21 Beyond sort of the regular day-to-day
22 e-mailing and phone call opportunities, we are
23 regularly with the members and in a position to hear
24 from them about issues that are of concern to them.
25 There are a lot and they are not shy about talking to

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1 us about them. We have regional council meetings that
2 bring the members together on a regular basis. We
3 have a variety of different committees that the
4 members sit on. We are -- we make it our business to
5 get out in the field as often as we can to see the
6 environments that they are working in and to try and
7 get a better feel for the operating environment that
8 they are managing.

9 Q Mr. Mero, the reason I mistook your name
10 before is because I wanted to ask you a couple of
11 questions about your relationship with Robb Menaul.

12 MR. JOHNSON: Why don't you spell that.

13 MR. VAN KIRK: Good point.

14 Q Can you please spell Robb Menaul's last
15 name -- first name and last name?

16 A Sure. Robert, R-O-B-E-R-T, and Menaul is M,
17 like Mary, E-N-A-U-L.

18 Q Now, I believe you testified that you and Robb
19 both were working together in some capacity on the --
20 related to the introduction of Stericycle's reusable
21 sharps container system. Did I understand that
22 correctly?

23 A Robb and I worked shoulder to shoulder,
24 particularly during legislative sessions, day in and
25 day out for about six years in a row. As I mentioned

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1 in my testimony and in conversation/discussion this
2 morning, the Stericycle technology and the
3 introduction of Stericycle services to our members was
4 an important part of Robb's portfolio at that time.
5 It was work that he was excited about. He talked with
6 me a fair amount about what they were doing and how it
7 was working. As he had the opportunity, he often
8 introduced me sometimes through the members. A couple
9 of times we went to the plant in Morton to see what
10 was going on.

11 Q What did you mean when you were talking about
12 being introduced to -- through the members, I believe
13 is the term that you used?

14 A We -- as I mentioned just a couple of minutes
15 ago, one of the opportunities that we have to visit
16 with members are through regional council meetings.
17 Typically, those meetings are held in one of the
18 member's hospitals. In particular, I think the
19 comment that I made about re -- looking at the bins in
20 Omak happened as part of our North Central Regional
21 Hospital council meeting. Actually, it wasn't a part
22 of the meeting, it was after the meeting. It was as
23 we were touring the facility.

24 Q And have Stericycle's services been discussed
25 at those meetings, the ones where you have been

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1 present?

2 A I think when Stericycle first came on board as
3 a vendor, when they first introduced their biomedical
4 waste technology, that Robb highlighted them in
5 conversations, not just at council meetings I
6 attended, but sort of across the state. As I
7 mentioned, the biomedical waste handling issue 20
8 years ago seemed a lot higher profile than it seems
9 today. It seems as if there was a lot more concern, a
10 lot more in the news about biomedical waste being
11 mishandled. I think that Robb's commitment to bring
12 Stericycle on board and promote them to the membership
13 was part of his effort as a staff member to respond to
14 public policy concerns about how biomedical wastes
15 were being handled.

16 Q And were you and Mr. Menaul working together
17 in a professional capacity at this time?

18 A We were both employees of the State Hospital
19 Association.

20 Q Okay. And, Mr. Mero, are you aware of any
21 reason why Mr. Menaul is not available to testify
22 today?

23 A Robb is retired, and I'm not -- not certain if
24 any effort was made to reach him or not. I'm not
25 specifically aware. He's not in great health.

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1 Q Mr. Mero, a few more questions. Thank you
2 very much.

3 Have you ever observed Stericycle's -- any of
4 Stericycle's services in a medical facility, either
5 one of your member's or another facility?

6 A I think that Robb -- I think Robb and I looked
7 at the sharps recycling containers when they were
8 first introduced, again at that meeting in North
9 Central Washington.

10 Q And have you seen the -- have you seen these
11 containers in use at the facilities of your members?

12 A Yeah, that meeting happened -- as I said, I
13 think that meeting happened in Omak. I believe that
14 we also saw the same containers in Tonasket.

15 Q Okay. And these meetings were at Association
16 member facilities, then?

17 A That's correct.

18 Q I understand better now, thank you.

19 And again, just to be complete, have you
20 also -- have you also observed the sharps container
21 racks at any of your member facilities?

22 A Those I think I saw not at the facilities, but
23 at the Waste Management plant -- I mean at the
24 Stericycle plant.

25 Q Okay, thank you.

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1 And was it demonstrated to you how the racks
2 work in terms of carrying sharps containers?

3 A Yes.

4 MR. VAN KIRK: I think that's the end of
5 my redirect questions.

6 JUDGE KOPTA: And your response to the
7 objection?

8 MR. VAN KIRK: Yes. I have several
9 responses to the objection. The overarching response
10 is, I think that Mr. Mero has amply demonstrated his
11 knowledge to support the testimony, the testimony he
12 has actually given, I should say, both based on his
13 long personal experience with two different
14 associations, his personal involvement both with and
15 without Robb Menaul present, in the introduction of
16 the services to which he has testified to, and then
17 ongoing. He has talked extensively about his -- about
18 how his association keeps track of member interests,
19 and to the extent he has talked about -- and he's
20 discussed how that informs his -- the knowledge here.
21 He has discussed how he is authorized to give this
22 testimony.

23 Another point to make is, I think the
24 testimony -- in Ms. Goldman's motion, the testimony
25 has been unfairly mischaracterized to exaggerate the

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1 claims. You know, for example, in her questions, she
2 asked Mr. Mero what he knew about certain services,
3 when in fact he doesn't offer testimony to describe in
4 detail services.

5 For example, with respect to waste segregation
6 and compliance training. His testimony is that
7 Stericycle introduced this. He did give that
8 testimony, and he has given a basis for that testimony
9 because he was personally involved with the
10 introduction of Stericycle services at the time. The
11 same is true with respect to biomedical waste tracking
12 and reusable containers.

13 The question to him, you know, what do you
14 know about them is a fair question, but it doesn't
15 speak directly to the actual testimony he has given.
16 The testimony he has given is amply supported by his
17 experience and his knowledge and his direct
18 involvement in most of these proceedings.

19 You know, the motion is very general to the
20 entire testimony. As a global whole, I think that's
21 my response, is that it is amply supported. If there
22 were specific issues on specific text, maybe there
23 would be a more specific response as well. The
24 question, as I understand it, is does Mr. Mero have
25 the personal knowledge and the authority to give the

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1 testimony he has given. I think the answer is clearly
2 yes.

3 Any remaining issues can be and should be
4 addressed as to the weight his testimony is given. I
5 think that would be entirely consistent with the
6 deference that was given to any other generator who
7 has appeared here. Some of the generator witnesses on
8 Waste Management's side have said things that are far
9 more removed from their day-to-day responsibility and
10 day-to-day authority. I objected to some of them.
11 For example, statements of what competition is without
12 any particular experience in that matter, and those
13 were admitted, and I understand that. They will be
14 given the weight they deserve. I think the same
15 approach should be taken with Mr. Mero's testimony.

16 JUDGE KOPTA: Ms. Goldman?

17 MS. GOLDMAN: Well, Your Honor, with all
18 due respect, Mr. Menaul is not present and has not
19 been offered for cross-examination regarding what is
20 in fact the basis for 80 percent of this testimony. I
21 am happy to go paragraph by paragraph, if Your Honor
22 would like me to do so. I do believe that you have a
23 lobbyist before you who was presented with testimony
24 that was drafted by counsel for Stericycle, and is
25 95 percent identical to the next witness's testimony.

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1 We submit that this testimony is not based on personal
2 knowledge, it lacks foundation, and it is not proper
3 for consideration.

4 We know from an exhibit that has already been
5 admitted that Mr. Menaul, as of 2010, was the
6 president of the Washington Hospital Services. That's
7 JR-9. That is the agency that contracted for a price
8 with Stericycle and still does get paid every year by
9 Stericycle for marketing Stericycle's services.

10 MR. VAN KIRK: I can give some response,
11 if it would be helpful to you.

12 JUDGE KOPTA: Not at this point. I
13 don't agree that it is amply supported, the testimony
14 is amply supported. I think in many cases that
15 support is marginal at best and it is based on
16 secondhand information. However, that's primarily the
17 first part of the testimony, and it deals with
18 background, things that happened many years ago, which
19 frankly are not terribly probative of the issues in
20 this proceeding. I am less concerned with the level
21 of support for that testimony, because I think it is
22 largely background, as opposed to anything that's
23 going to be determinative of the issues of this case.

24 I think the latter part of the testimony in
25 which Mr. Mero discusses the Association's concerns

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1 are certainly within his purview in his current
2 position. I think that he does have sufficient
3 personal knowledge of Stericycle's relationship with
4 his members, that he can make the statements that he
5 has made in his testimony.

6 As you suggest, Mr. Van Kirk, we have given a
7 lot of latitude to generator witnesses to provide
8 testimony that is outside of what they do in their
9 daily basis, and I will continue to do so as well for
10 witnesses that Stericycle has proposed.

11 I recognize that counsel often drafts
12 testimony for witnesses. There is a remarkable
13 similarity between much of the language in the
14 generator testimony that Waste Management provided,
15 which I suspect was provided by counsel, as opposed to
16 those witnesses. As long as a witness is willing to
17 swear to that testimony, I do not have a problem with
18 that. That's one of the benefits of having prefiled
19 testimony.

20 I will admit this exhibit. I will give it the
21 weight it merits, in light of the examination by both
22 Ms. Goldman and Mr. Van Kirk. We will consider it in
23 due course. JM-1T is admitted.

24 Anything further for this witness?

25 MS. GOLDMAN: Nothing further, Your

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1 Honor.

2 MR. VAN KIRK: Nothing further.

3 Thank you.

4 JUDGE KOPTA: Thank you for your
5 testimony, Mr. Mero. I don't want to mispronounce
6 your name, which I probably did anyway. We appreciate
7 you testifying this morning. You are excused.

8 THE WITNESS: Thank you.

9 MR. JOHNSON: Can we go off the record
10 for a second?

11 JUDGE KOPTA: Yes, let's go off the
12 record.

13 (A brief recess.)

14 JUDGE KOPTA: Let's be back on the
15 record. We will take our morning recess until 20
16 minutes until 11:00, so we'll be off the record until
17 then.

18 (A brief recess.)

19 JUDGE KOPTA: Let's be back on the
20 record after our morning break. We are back to
21 Mr. Van Kirk for his, what I assume, last witness.

22 MR. VAN KIRK: That is correct.

23 Ms. Briley, you may take your phone off mute
24 now. Stericycle would call Ms. Taya Briley,
25 Washington Hospital Services.

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1 JUDGE KOPTA: Ms. Briley, would you
2 stand and raise your right hand, please?

3

4 TAYA BRILEY, witness herein, having been
5 first duly sworn on oath,
6 was examined and testified
7 as follows:

8

9 JUDGE KOPTA: Thank you.

10 Mr. Van Kirk.

11

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

13 BY MR. VAN KIRK:

14 Q Good morning, Ms. Briley. Thank you for being
15 here today.

16 You submitted prefiled testimony in this
17 proceeding, correct?

18 A Yes.

19 Q And can you spell your name for the court
20 reporter, please?

21 A It is spelled T-A-Y-A, first name, and the
22 last name is Briley, B, like boy, R-I-L-E-Y.

23 MR. VAN KIRK: And Stericycle would
24 offer Ms. Briley's testimony, TB-1T, into the record.

25 JUDGE KOPTA: All right. And I note

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1 that the copy that I have has the designation as
2 TB-1CT and it should be TB-1T.

3 MR. VAN KIRK: That one I'm certain we
4 did an errata to, but I will make extra certain.

5 JUDGE KOPTA: I'm not worried about
6 having to refile it on something like that, but I
7 just -- the only reason I mention it is, not only for
8 accuracy, but because that designates confidential,
9 and that's not something that we have --

10 MR. VAN KIRK: No, it was just a
11 mistake. There's nothing confidential in the
12 testimony.

13 JUDGE KOPTA: Okay. That's my concern.

14 Any objection to the admission of this
15 exhibit?

16 MS. GOLDMAN: We object, Your Honor.

17 JUDGE KOPTA: Then I will withhold
18 ruling until the conclusion of cross-examination.

19 Are you concluded with your direct?

20 MR. VAN KIRK: I am concluded with my
21 direct examination. I pass Ms. Briley to counsel for
22 Waste Management.

23 JUDGE KOPTA: All right.

24 Ms. Goldman.

25 MS. GOLDMAN: Thank you.

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

2 BY MS. GOLDMAN:

3 Q Good morning, Ms. Briley. My name is Jessica
4 Goldman. I am one of the attorneys representing Waste
5 Management.

6 A Good morning.

7 Q Who asked you to provide testimony in this
8 proceeding?

9 A I was first contacted by the attorney for
10 Stericycle, Steve Johnson.

11 Q And when did he contact you?

12 A I'm not sure as of the exact date. Probably a
13 month or so ago.

14 Q Has he provided you information regarding any
15 other testimony that has been submitted in this
16 proceeding?

17 A By other individuals?

18 Q By any -- I'm sorry, I cut you off there.

19 A I'm just trying to -- I'm sorry, I'm just
20 trying to understand the question. So is the question
21 that you are wondering whether he has told me about
22 other individuals who are testifying in this
23 proceeding?

24 Q Has he told you or provided you information
25 about any testimony that has been offered in this

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1 proceeding?

2 A We have had conversations about the
3 information provided in my own testimony.

4 Q Okay, understood. Other than your own
5 testimony, have you had communications with him or
6 with anybody else regarding any of the other testimony
7 that has been submitted in this proceeding?

8 A Okay, now I understand. Yes, with
9 Mr. Van Kirk. I was informed that there are other
10 individuals who are providing testimony on behalf of
11 Waste Management. And also, of course, I know about
12 Mr. Mero testifying on behalf of the Hospital District
13 Association. I don't know the details of any of the
14 Waste Management testimony.

15 Q Do you know the identity of any of the
16 witnesses who have provided testimony in support of
17 Waste Management's application?

18 A In conversations with Mr. Van Kirk, he
19 provided me with the names of some of the individuals,
20 none of whom were familiar to me. I did not write
21 them down. I could not recount them to you.

22 Q Did he inform you about the entities for whom
23 these various witnesses were employed?

24 A He did, and I don't remember specifically
25 which hospitals were involved. I know that there were

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1 some hospitals and some other entities, and I can't
2 remember specifically which ones.

3 Q Now, you are employed by the Washington
4 Hospital Services; is that correct?

5 A I am employed by the Washington State Hospital
6 Association in part and by Washington Hospital
7 Services in part.

8 Q And you are appearing here today on behalf of
9 which entity?

10 A Washington Hospital Services.

11 Q And that's a for-profit company?

12 A Correct, it's a wholly owned subsidiary of the
13 Washington State Hospital Association.

14 Q Does the Washington Hospital Services have a
15 board of directors?

16 A Yes, it does.

17 Q How many members?

18 A Seven.

19 Q What is the role of the board?

20 A The role of the board is to provide governance
21 and oversight to the company and to staff on behalf of
22 the company.

23 Q And the board of the Washington Hospital
24 Services is distinct from the board of the Washington
25 State Hospital Association; is that right?

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1 A Yes, it is.

2 Q Did the board of Washington Hospital Services
3 authorize you to provide testimony in support of
4 Stericycle?

5 A Yes, it did.

6 Q Can you describe that process, please, with
7 your board?

8 A Yes. I sent an e-mail out to the board of
9 directors and informed them of the request from
10 Stericycle, and received from the board members either
11 a response in the affirmative, of I was okay to
12 testify, or in a couple of cases, received no -- a
13 response of no concern.

14 Q Did you receive any response from the
15 president of the -- I mean from the chair of the
16 board?

17 A The chair of our board is turning over. I'm
18 thinking out loud right now I guess. The current
19 chair is Joe Kortum, who is the president of Southwest
20 Washington Medical Center. The response from him -- I
21 can't recall if it was either affirmative or no
22 concern, but in neither case were any concerns raised
23 about my providing the testimony.

24 Q And you are aware that Mr. Kortum is the
25 president of Peacehealth's Southwest Medical Center;

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1 is that correct?

2 A Yes.

3 Q Are you aware that Peacehealth has provided
4 testimony in support of Waste Management's
5 application?

6 MR. VAN KIRK: Objection to the form of
7 the question. Vague.

8 JUDGE KOPTA: I will allow it.

9 A So I do recall, as Mr. Van Kirk provided,
10 that -- some of the names of entities that were
11 involved, that yes, Peacehealth was one of them.

12 Q And did you have any follow-up communications
13 with anyone at Peacehealth regarding either their
14 testimony in support of the application or your
15 testimony?

16 A No.

17 Q Did you have any response to your e-mail to
18 your board of directors from Greg Davidson, the CEO of
19 Skagit Valley Hospital?

20 A I can't recall what the response was from
21 Mr. Davidson. And I have to also express, you know,
22 the testimony that we are providing is informative.
23 It's not -- it's not -- I feel as though this is being
24 teed up as a us versus our members, or being at
25 opposition with our members. We are providing

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1 information in the testimony, as opposed to standing
2 in opposition to our members.

3 Q Does your organization oppose the application
4 by Waste Management for statewide biomedical waste
5 authority?

6 A Our organization is not taking a position on
7 the application.

8 Q Are you aware that Skagit Valley Hospital
9 moved its biomedical waste service from Stericycle to
10 Waste Management?

11 MR. VAN KIRK: Objection.

12 A No.

13 MR. VAN KIRK: Beyond the scope.

14 JUDGE KOPTA: Overruled.

15 Q I'm sorry, we talked over you. Could you
16 repeat your answer, please?

17 A No, I was not aware.

18 Q Have you had any communications with anybody
19 at Skagit Valley Hospital, including its CEO, who is a
20 member of your board, regarding the reasons for the
21 change in its service providers?

22 A No.

23 Q Ms. Briley, you are an attorney; isn't that
24 correct?

25 A Correct.

0774

1 Q How long have you worked for the Washington
2 Hospital Services?

3 A Approximately one year. Maybe just a little
4 bit more than a year.

5 Q And who was the prior president of the
6 Washington Health Services?

7 A Up until his retirement in, I believe, 2010,
8 Robb Menaul, who you have referred to previously, has
9 served as the president. Between 2010 and 2011, the
10 president of the Washington State Hospital Association
11 served an interim role. That was Leo Greenawalt for a
12 period of time, and then it became Scott Bond. And
13 just about a year ago, I was designated to fulfill the
14 president role for Washington Hospital Services.

15 Q Thank you.

16 You mentioned that I had referred previously
17 to Mr. Menaul.

18 A Uh-huh.

19 Q What did you mean by that?

20 A I was in -- I was listening to the previous --
21 excuse me, I was listening to the previous testimony
22 provided by Mr. Mero, just the tail end of it, and I
23 heard the reference to Mr. Menaul.

24 Q Okay, thank you.

25 Where were you employed prior to -- so as I

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1 understand it, you have been in your current position
2 at Washington Hospital Services for about a year or
3 so; is that correct?

4 A Correct, it is -- part of my duties here are
5 with the Washington State Hospital Association and
6 Washington Hospital Services. It's probably about
7 20 percent of my time.

8 Q And prior to becoming president, were you an
9 employee of Washington Hospital Services?

10 A No.

11 Q But you were an employee of the Washington
12 State Hospital Association?

13 A Yes.

14 Q And when did you first become an employee of
15 the Washington State Hospital Association?

16 A In 1998.

17 Q And what were you doing for the Washington
18 State Hospital Association when you first became
19 employed?

20 A I spent the first three years working with
21 hospital districts in the state, and then went on to
22 become director of legal and clinical policy, serving
23 in a role that provided legal and policy analysis with
24 respect to clinical issues on behalf of the
25 Association, and in 2010 became general counsel for

0776

1 the Association.

2 Q And are you today general counsel for the
3 Washington State Hospital Association as well?

4 A Yes.

5 Q So you are president of Washington Hospital
6 Services and general counsel for Washington State
7 Hospital Association. Did I get that right?

8 A Yes.

9 Q Do you serve in any other capacity for either
10 of these entities?

11 A No.

12 Q What is the nature of Washington Hospital
13 Services's relationship with Stericycle?

14 A Well, Washington Hospital Services has a
15 long-standing relationship with Stericycle. I have
16 not been a part of the history, so much of my
17 understanding of the relationship, past relationships,
18 has been informed by conversations and correspondence
19 with Robb Menaul.

20 The current relationship is that Stericycle is
21 an industry partner of the Washington Hospital
22 Services. Because of the good rates and services
23 provided by Stericycle to our membership, and the
24 environmental stewardship that we believe that
25 Stericycle offers to our members, Washington Hospital

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1 Services has a marketing agreement that is in place.
2 We would characterize the relationship with Stericycle
3 as one of an industry partner that offers good
4 services at good rates and that we believe benefits
5 our membership.

6 Q What is the basis of your conclusion that
7 Stericycle is offering your members good rates?

8 A That has been informed by, like I said,
9 conversations and correspondence with Robb Menaul. I
10 have also been provided by counsel with a rate
11 schedule over many years that provides information
12 about Stericycle's rates, that show that they have not
13 increased over the years.

14 Q And that was something that counsel for
15 Stericycle provided to you in the last month?

16 A Correct.

17 Q Prior to that time, had you reviewed
18 Stericycle's tariff rates?

19 A No.

20 Q And what did your review of Stericycle's
21 tariff rates lead you to conclude about its rates?

22 A That they have not increased substantially
23 over a period of many years. At that time, when
24 almost every other type of service that is being
25 provided to our members is increasing substantially,

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1 that seems like a real benefit.

2 Q Now, you are aware, then, that Stericycle
3 amended its tariff rates in 2011, aren't you?

4 A I have a sheet in here that includes some
5 information about 2011, but I have had no conversation
6 about amendment to tariff rates in 2011.

7 Q Have you reviewed the 2011 tariff rates?

8 A I believe that I have got them in front of me.

9 Q Have you had an opportunity to actually look
10 at them?

11 A Yes, and I'm looking at them right now. And
12 I'm looking -- and I'm looking at them relative to
13 some of the rates that were in place in previous
14 years.

15 Q And what have you concluded regarding the
16 rates that were added in 2011, as compared with the
17 rates that were in effect in prior years?

18 A Well, I'm looking at something that says --
19 that has container quantities and that has prices per
20 size of gallons, and I'm looking at something from
21 2001, and I'm looking at something from 2011, and
22 there are not substantial increases in the container
23 prices.

24 Q Do you know that there are new containers that
25 Stericycle offered in 2011 that were never previously

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1 offered?

2 A I guess I'm not seeing that -- that difference
3 in the materials that are in front of me. Oh, I guess
4 maybe I am. Okay. So yes, I am now seeing a -- one
5 type of container that was not there previously.

6 Q And what kind of container was that?

7 A Well, it looks like it is a medium to large
8 31-gallon container.

9 Q Is that the only container that was added by
10 that tariff?

11 A I have to tell you I am not an expert in this.
12 All I can tell you is what I'm looking at in front of
13 me.

14 Q Have you looked at Waste Management's tariff
15 rates?

16 A No.

17 Q Do you have any knowledge about what those
18 rates are?

19 A No.

20 Q Have you ever performed a comparison of Waste
21 Management's tariff rates with Stericycle's tariff
22 rates?

23 A No.

24 Q Do you know if anybody else at your
25 organization has performed that analysis?

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1 A I'm pretty certain that they have not, at
2 least not currently. I suspect that in the past, this
3 has been something that Robb would have looked into in
4 detail.

5 Q Did he ever tell you anything about that?

6 A I do know that he has described to me in the
7 past that Stericycle has offered very good rates to
8 our membership.

9 Q And did he -- I'm sorry, I didn't mean to cut
10 you off there. Were you done?

11 A Yes.

12 Q And did he tell you what analysis he performed
13 or who he spoke with to reach that conclusion?

14 A No.

15 Q So as you sit here today, you don't know if
16 the rates that are being offered to your members by
17 Stericycle are different than, better than, worse than
18 the rates that are being offered by Waste Management
19 to your members; isn't that right?

20 MR. VAN KIRK: Objection. Beyond the
21 scope of her direct testimony. There's nothing about
22 Waste Management in that.

23 JUDGE KOPTA: I think we have beat that
24 horse enough. I will sustain the objection.

25 MS. GOLDMAN: Your Honor, I will note

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1 that just as in the prior testimony, there are -- the
2 statements that she has made go directly to the
3 benefits of the pricing that's being offered here by
4 Stericycle. We are entitled to understand clearly
5 whether there has been any comparison here to the
6 rates that are presently in effect since Waste
7 Management began competing directly. Respectfully, we
8 request the opportunity for an answer to that
9 question.

10 JUDGE KOPTA: Well, I believe that she
11 answered the question in your previous questions. I
12 think that was duplicable. I am sustaining the
13 objection based on the fact that it's largely been
14 asked and answered.

15 Q What did you do to prepare for your testimony,
16 the written testimony that you've offered, Ms. Briley?

17 A I reviewed the testimony, and I sent it over
18 for review to Robb Menaull, and had e-mail
19 correspondence with Robb Menaull to ensure the accuracy
20 of the statements that were provided. Having been in
21 this position for only a year, much of the historical
22 information is information that Robb holds, as opposed
23 to my having had the personal experience with it. And
24 then were to finalize the testimony with counsel.

25 Q Did you make any changes to the draft that was

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1 sent to you by counsel for Stericycle?

2 A Yes.

3 Q What changes did you make?

4 A There were changes based on Robb's history.

5 One of them related to -- sorry, I'm looking through
6 the testimony right now. I believe that he added some
7 additional information about the reusable sharps
8 containers and the -- the dynamic of concerns about
9 biomedical hazards in the early 1990s, when Stericycle
10 began its work here, in this state. I also added some
11 clarification about the statements related to our
12 interactions with our membership with respect to
13 satisfaction around Stericycle.

14 Q So Mr. Menaul provided you some changes that
15 he wished to make to your testimony; is that correct?

16 A Yes.

17 Q And those changes were made?

18 A Yes.

19 Q Did you speak with anybody else in preparation
20 for your testimony?

21 A I had some conversations with Jeff Mero and
22 with counsel for Stericycle, and as we noted earlier,
23 some correspondence with the board members of
24 Washington Hospital Services, to ensure that they were
25 comfortable with my providing the testimony.

0783

1 Q I would like to ask you to turn to your
2 testimony. I believe you have it in front of you; is
3 that correct?

4 A Yes, I do.

5 Q So I would like to run through my questions
6 regarding your testimony.

7 So Paragraph 3, tell me what you know, please,
8 about Washington Hospital Services being asked to
9 evaluate the services proposed by Stericycle.

10 A This relates to the information about --
11 excuse me, this relates to our members' concerns in
12 the early 1990s about how medical waste was being
13 disposed. Robb was the staff member at Washington
14 Hospital Services, and on behalf of the Washington
15 State Hospital Association, tasked with helping to
16 find a way to ensure that biomedical waste was
17 disposed of safely. It is my understanding -- again,
18 this is not personal knowledge, but through
19 conversation and correspondence with Robb Menaull --
20 that Robb at that point began having the interactions
21 with Stericycle that led to Stericycle -- that in part
22 led to Stericycle coming into Washington state.

23 Q And what did he tell you about those
24 conversations that he had that led to Stericycle
25 coming into Washington state?

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1 A He described the need for something other than
2 just putting waste into landfills or incinerating the
3 waste, and described Stericycle as an innovative
4 company that offers safer solutions, and that he was
5 very interested in helping to bring Stericycle here so
6 that those types of services -- you know, alternative
7 services could be provided to our hospital members.

8 Q Ms. Briley, keeping in mind what you have
9 testified to regarding your tenure in your position
10 and your knowledge about these issues, I would like
11 you to take a minute, please, to look at your
12 testimony, and tell me what in your testimony you have
13 personal knowledge of, please.

14 A Well, I can tell you that much of the
15 background information I do not have personal
16 knowledge of. The information that is provided about
17 our members, our current interactions with our
18 membership with respect to Stericycle, I do have some
19 information about, because I have been working with
20 Stericycle and our membership over the past year on
21 issues related to disposal of sharps in a safe way.

22 Q So can you point me to the part of your
23 testimony that you are referring to, that you have
24 personal knowledge of, please, by line number and
25 page, if you wouldn't mind?

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1 (Pause in the proceedings.)

2 A I am having a hard time finding it right now.
3 There is a statement in the testimony that refers to
4 our not being aware of significant concerns about
5 Stericycle's services. That statement was based on my
6 personal interactions with our members over the past
7 year with respect to Stericycle. So again, I can't
8 find the exact page number and line item. I do recall
9 the statement in the testimony, though.

10 Q Okay. Thank you. That's fine.

11 Is there anything else in your testimony that
12 is based on your personal knowledge?

13 MR. VAN KIRK: Your Honor, I would like
14 to interject. If this is going to be a comprehensive
15 exercise, I believe Ms. Briley needs to have
16 sufficient time to review this line by line, if that
17 is what Ms. Goldman is getting after.

18 JUDGE KOPTA: I don't know that she is
19 keeping her from doing that. She just asked the
20 question.

21 Q Ms. Briley, do you have the question in mind
22 or should I repeat it?

23 A So I think what you are asking is what else do
24 I have personal knowledge of. Would you -- well, much
25 of the background, like I said, I do not. The current

0786

1 views of our membership with respect to Stericycle, I
2 do feel comfortable with. The statements that we are
3 making about our position with respect to the pending
4 application, I feel are based on my own personal
5 knowledge.

6 I don't know what more you would like me to
7 do. If you do want me to go line by line and page by
8 page, it would be helpful to have more time.

9 Q Yes, please.

10 A So you would like me to go paragraph by
11 paragraph?

12 Q Yes, please. I think given the structure of
13 this, it seems like the first three pages are
14 background, so that shouldn't be too arduous.

15 MR. VAN KIRK: I'm going to object as to
16 the relevance of this inquiry. I don't know what it
17 is getting to. I think it is getting to an issue that
18 we discussed in a similar vein with the last witness.
19 Given your previous ruling, I am not sure this is a
20 necessary exercise at this point in time.

21 JUDGE KOPTA: Well, I view it as very
22 different. Mr. Mero has a long history of dealing
23 with Stericycle and with the other association. He
24 also had personal contacts in terms of going to the
25 waste generating or recycling or whatever kind of

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1 plant it is that Stericycle has.

2 This witness, I will be frank with you, I am
3 concerned has no information, other than her
4 conversations, the fact that she consulted with
5 Mr. Menaull in preparing her testimony makes me think
6 that most of this testimony is not supported.

7 I don't have a problem if you want to continue
8 with this, but at this point, I am prepared to admit
9 only a very limited portion of this testimony.

10 Would you like to proceed, Ms. Goldman?

11 MS. GOLDMAN: Yes, thank you.

12 JUDGE KOPTA: I think it would
13 facilitate things if you would, rather than have an
14 open-ended question, go paragraph by paragraph.

15 MS. GOLDMAN: Okay.

16 Q So let's start going backwards. Let's start
17 with Paragraph 12, please, Ms. Briley. Can you give
18 your attention to that, and let us know what your
19 personal knowledge is regarding that paragraph?

20 A I can tell you that this is the position of
21 Washington Hospital Services, that we would like the
22 Commission to carefully consider the potential effects
23 that divvying up of the market will have, but we are
24 not experts in this.

25 Q And in regards to Paragraph 12, are you aware

0788

1 of any adverse effects on either rates or service
2 levels in the year and a half that Waste Management
3 has been competing directly with Waste Management in
4 large portions of the state -- I'm sorry, that
5 Stericycle has been competing -- let me try that
6 again. Let me try that question again, since I don't
7 know where I went wrong.

8 Are you aware of any adverse effect on rates
9 or service levels in the year and a half that Waste
10 Management has been competing directly with Stericycle
11 in large portions of the state?

12 MR. VAN KIRK: Objection to the
13 characterization of the question. "Large portions of
14 the state" is Ms. Goldman's words. It's not in
15 evidence.

16 JUDGE KOPTA: Overruled.

17 A No. However, my understanding is that there
18 are a number of rural areas in which competition has
19 not been introduced, so we don't know the full
20 effects.

21 Q And which rural areas are those?

22 A I can't tell you exactly which areas. My
23 understanding is that there are very rural areas of
24 this state that have not been subject to the service
25 of both Stericycle and Waste Management at this point.

0789

1 Q And that's information that was supplied to
2 you by Stericycle's counsel, correct?

3 A Yes.

4 Q Any other personal knowledge you have
5 regarding Paragraph 12, or have we exhausted that?

6 A No, you have exhausted that.

7 Q Okay. So then moving backwards, Paragraph 11.
8 Can you tell us, please, your personal knowledge
9 regarding any of the statements that have been made
10 there?

11 A I can tell you that the -- indeed Washington
12 Hospital Services is not taking a position on the
13 application, and that we understand that we do have
14 hospitals that are -- members of the Washington State
15 Hospital Association that are expressing a desire for
16 competition, and that we are hoping that the
17 Commission will use its expertise in determining what
18 the best way of proceeding is in determining whether
19 competition will be the best way to produce good
20 service and fair pricing.

21 Q Okay. Thank you.

22 And does that exhaust Paragraph 11?

23 A Yes.

24 Q Thank you.

25 So moving backwards. I think now we may be

0790

1 getting into past history, but you can correct me if I
2 am wrong.

3 JUDGE KOPTA: I'm going to short-circuit
4 this at this point. All of this testimony that has
5 been provided, the first part of the prior paragraphs,
6 is virtually identical to the testimony that Mr. Mero
7 gave. Based on your questioning earlier, I think I
8 understand what the basis of her knowledge is. I
9 don't think we need to go through those.

10 MS. GOLDMAN: Okay.

11 JUDGE KOPTA: Do you have anything
12 further?

13 MS. GOLDMAN: Maybe a couple, Your
14 Honor, but I will get there quickly.

15 (Pause in the proceedings.)

16 Q I do have an additional question for you
17 regarding Paragraph 11. It says there that WHS can
18 report many of its members are highly satisfied with
19 Stericycle's services. Who are those members, please?

20 A We are working with a number of members on the
21 sharps waste issue that I described. I can provide
22 you with a list of those members. I don't -- I don't
23 have them with me at this time. I would be concerned
24 about describing exactly who they are off of the top
25 of my head, but I can provide a list.

0791

1 Q What is the sharps waste issue?

2 A This is an issue that I referred to earlier,
3 about ensuring that sharps -- waste that goes into
4 sharps containers is disposed of properly.

5 Q And what has been the concern?

6 A The concern has been that drugs or
7 pharmaceuticals do not wind up in sharps containers
8 and therefore pose a waste hazard.

9 Q And are you aware of that occurring?

10 A I am aware that it is a concern for the State
11 Department of Ecology and something that we are
12 working with our hospital members on and Stericycle
13 on. And I should add, other medical waste providers
14 as well. Stericycle has been a great partner, but our
15 work is not confined exclusively to Stericycle.

16 Q I would like to turn your attention, if you
17 have it handy, to the marketing agreement between
18 Washington Hospital Services, Inc., and Stericycle,
19 which has been admitted as Exhibit JR-9.

20 A Okay.

21 Q I don't know if that was provided to you by
22 counsel for Stericycle or if you have that handy?

23 A It was provided to me, thank you.

24 Q And you have that in front of you?

25 A Yes, I do.

0792

1 Q Now, this is the agreement that Mr. Menaul,
2 who we've heard so much about, executed in May 2010
3 with Stericycle, correct?

4 A Yes.

5 Q Was there an agreement between Washington
6 Hospital Services and Stericycle that preceded this?

7 A I believe that there was, but I don't have a
8 copy, and I haven't discussed that with Mr. Menaul.

9 Q Okay. So I would like to just ask you a
10 couple questions about this agreement. Under this
11 agreement, Washington Hospital Services provides
12 certain marketing services to market Stericycle to its
13 members; isn't that correct?

14 A Yes.

15 Q And in exchange for those services, Stericycle
16 this year is paying Washington Hospital Services
17 \$47,500; is that correct?

18 A Yes.

19 Q Is there a new contract in place that will
20 take over in 2013, when this one terminates?

21 A No. There is -- however, there is one that is
22 under discussion.

23 Q And so it's your anticipation that Washington
24 Hospital Services will be renewing its contract with
25 Stericycle?

0793

1 A Yes.

2 Q And what will be the amount that Washington
3 Hospital Services gets paid from Stericycle in 2013?

4 A It's undetermined.

5 Q What has been your proposal?

6 A We are not far enough into conversations to
7 have any sort of firm proposal. I think that the
8 conversations right now center on a certain percentage
9 increase.

10 Q So it's clear to you that the number will go
11 up in some fashion in 2013; is that correct?

12 A We will see. We have not yet heard back from
13 Stericycle about -- about our initial proposals.

14 Q Who at Stericycle are you dealing with on this
15 issue?

16 A A gentleman named Ron Adams.

17 MS. GOLDMAN: Thank you very much for
18 your testimony, Ms. Briley. That is all I have.

19 THE WITNESS: Thank you.

20 JUDGE KOPTA: Mr. Van Kirk, did you want
21 to do some redirect?

22 MR. VAN KIRK: I do, and I will keep it
23 limited.

24

25

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

2 BY MR. VAN KIRK:

3 Q Good morning, Ms. Briley. Again, this is
4 Jared Van Kirk. I have some follow-up questions for
5 you.

6 You said you have been involved with -- in
7 particular with your members related to Stericycle's
8 sharps service, correct?

9 A Yes.

10 Q Can you describe to me, to the best of your
11 knowledge, what Stericycle's sharps service is and how
12 it is performed?

13 A Well, I know that Stericycle provides
14 recyclable -- excuse me, reusable sharps containers,
15 and that that is a benefit to our membership and to
16 the environment, in cutting down the amount of sharps
17 containers that are provided. Our work with our
18 members really has, however, focused on safe disposal
19 of sharps.

20 Q And does Stericycle offer any services that
21 are of benefit on that issue, safe disposal of sharps?

22 A To my knowledge, it does. I believe that one
23 of the things that it does to ensure safe disposal of
24 sharps is ensure that the containers do not become
25 overfilled with sharps and ensure that the sharps

0795

1 containers are emptied before the sharps can
2 essentially become piled up and unsafe for healthcare
3 providers.

4 Q Let me refer you to Paragraph 8 of your
5 testimony.

6 A Okay.

7 Q Does this paragraph reflect the services that
8 you just discussed with me related to safely handling
9 sharps waste?

10 A Yes.

11 Q And can you describe for us how that aspect of
12 the program works, what exactly the service -- in your
13 knowledge, the services are that Stericycle provides?

14 A Well, I know that they have individuals that
15 ensure the sharps containers are disposed of -- or
16 taken -- excuse me, taken out of the facility safely,
17 and they put them on these racks and move them through
18 facilities and out of the facilities, and then are
19 able to reuse the containers in many cases.

20 Q And explain for us how you know -- how you
21 have this information. What's the basis for your
22 knowledge?

23 A The basis for my knowledge is correspondence
24 with Robb Menaul, largely.

25 Q Have you discussed --

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1 A That, and I should --

2 Q Go ahead.

3 A -- say I also have had the experience of being
4 in our hospitals and seeing sharps containers, that
5 are Stericycle's sharps containers, in use.

6 Q And were these -- these were member hospitals
7 that you have been in?

8 A Yes.

9 Q And has anybody in your membership explained
10 to you Stericycle's sharps services and how they work?

11 A Not in detail. Aside from the conversations
12 that we have had, like I said, with our membership
13 around the sharps container issues, with ensuring that
14 pharmaceuticals do not wind up in the sharps
15 containers. There has been extensive conversation
16 about that.

17 Q Ms. Briley, you have mentioned conversations
18 with your members about the sharps program. I think
19 it would be helpful if you could explain in a little
20 more detail what the conversations have been about.

21 MS. GOLDMAN: Objection. Beyond the
22 scope.

23 JUDGE KOPTA: Sustained.

24 MR. VAN KIRK: I think they are -- her
25 conversations with her members about the sharps

0797

1 program relate to her personal knowledge about the
2 sharps program.

3 JUDGE KOPTA: I will allow you one more
4 question on this one, but we are not going much
5 farther.

6 Q Do you have my question in mind, Ms. Briley?

7 A Could you please repeat it?

8 Q Sure. I think what I asked is could you
9 explain in more detail what the conversations with
10 your members, related to the Stericycle sharps
11 program, involved.

12 A Yeah. So the issue that has been a concern
13 from the State Department of Ecology is whether sharps
14 containers that are being produced or come out of our
15 hospitals have pharmaceuticals or drugs within the
16 sharps that are being disposed of in the containers.
17 Stericycle representatives and our hospital members
18 have come together for conversations about how to
19 ensure that the sharps that are disposed of do not
20 contain pharmaceutical waste. And so as a part of
21 those conversations, there has been discussion about
22 how to ensure that the staff know how to properly
23 dispose of the pharmaceuticals before the
24 containers -- before placing sharps into the
25 containers. That's really been the focus of the

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1 conversation.

2 Stericycle has been quite heavily involved in
3 the conversations. Although this is not an issue -- I
4 understand that it is limited just to Stericycle, but
5 also may involve others as well, other entities as
6 well.

7 Q Let me ask you a general question on a
8 different subject, Ms. Briley. Can you describe for
9 us what you do and what WHS does under your direction
10 to keep track of your members' needs and concerns?

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

13 JUDGE KOPTA: I will allow it.

14 A So Washington Hospital Services is in regular
15 contact with member hospitals. We have a very small
16 staff of about -- between all of us, it probably
17 constitutes about three -- three FTEs that are not
18 devoted to workers' compensation and unemployment
19 compensation work. That's the other significant area
20 of work for Washington Hospital Services.

21 The work that we do outside of employees who
22 are really focused on those issues, involves getting
23 out into the field, to talk with our members about
24 services that are provided, and hear from them, what
25 their concerns are and what their needs are for

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1 additional types of services. So we want to ensure
2 that through Washington Hospital Services, we are
3 offering -- offering services that are responsive to
4 our needs. So a lot of our dialogue with our members
5 is about what it is that they need in terms of
6 services for their hospital operations.

7 We do -- we accomplish those conversations by
8 being in correspondence with our members on a regular
9 basis, through phone calls and e-mails. We also have
10 staff that are out in the field quite a bit, either
11 through hospital council meetings or through hospital
12 visits. A number of our staff have involvement not --
13 or work not just for Washington Hospital Services, but
14 have some relationship with the Washington State
15 Hospital Association as well. So there may be
16 multiple reasons that our staff are out in the field
17 talking to hospitals. But from the Washington
18 Hospital Services angle, we really are concerned about
19 getting the services to the hospitals that they need.

20 Q One final question and then I will be done.

21 You mentioned in response to a question from
22 Ms. Goldman that there are plans to renew the contract
23 with Stericycle. I would like to ask you why WHS is
24 renewing its contract with Stericycle.

25 A Well, that's a good question. I have had the

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1 experience over the last year of working with
2 Stericycle through the test issue with the
3 pharmaceuticals and the sharps containers, and I have
4 to say have learned a lot about the company and its
5 approach through that process. So we are relying in
6 part on what we know are good rates offered to our
7 members and the fact that Stericycle is able to
8 provide an environmentally sound solution and a
9 reliable service to our membership. And the fact
10 that, you know, we have confidence over the past year
11 of working on this issue with the pharmaceuticals and
12 the sharps containers, that Stericycle and its staff
13 can be highly responsive to needs that our hospitals
14 have, ensuring that they are providing safe care and a
15 safe environment in which their employees can work.

16 MR. VAN KIRK: Thank you, Ms. Briley. I
17 have no further questions.

18 JUDGE KOPTA: And do you want to respond
19 to the objection to the admission of this exhibit?

20 MR. VAN KIRK: Yes, I will respond in
21 two parts again. The first part of the response is
22 with respect to the historical knowledge portion. I'm
23 sort of -- I think you understand what I mean when I'm
24 saying that.

25 Obviously, it is clear that Ms. Briley has

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1 relied on the knowledge of Mr. Menaul, with whom she
2 has worked, and also with whom Mr. Jeff Mero has
3 worked, as we learned. I personally think in this
4 capacity, in this testimony, as the director of the
5 organization here, for which Mr. Menaul formally work
6 and which Taya Briley now leads, it is appropriate for
7 her to consult with him on her testimony, and have
8 received specific edits and additions, and present
9 that. Especially in light of what we heard from
10 Mr. Mero, that Mr. Menaul is ill, as well as retired.

11 I don't think this is out of line from what we
12 heard from other generators from Waste Management,
13 several of whom relied extensively on the knowledge of
14 other people interrelated to their organizations,
15 including Mr. Lycan and Ms. Patshkowski and
16 Ms. Newcomer, who testified about the operations of
17 the infectious waste committee at the University of
18 Washington, that she was not personally involved in.
19 I'm sure I can come up with a number of other
20 examples. I don't believe this is any different in
21 character than that. In fact, I believe it is a
22 little better in character, given the direct
23 involvement of Mr. Menaul. That's my argument on what
24 I term the historical information.

25 On the remainder, I believe that remainder is

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1 indeed amply supported by her position and her
2 responsibilities and her knowledge as director of WHS,
3 and is helpful in this proceeding to the Commission.

4 And just so you know, my division between the
5 two portions of this testimony would be -- Paragraphs
6 1, 2, 3, 10, 11 and 12 would relate to the second of
7 my two arguments, and the remainder would relate to
8 the first of my two arguments.

9 JUDGE KOPTA: All right. In the
10 preparation of prefiled testimony, we expect that the
11 witness's knowledge and expertise is reflected in the
12 testimony, even if counsel writes it. In this case, I
13 think it is pretty clear that the reverse was true in
14 your redirect -- or very little relationship to what
15 was actually in the prefiled testimony. The
16 information that she gave should have been reflected
17 in prefiled testimony. It was largely direct, not
18 redirect. That's not consistent with our rules or our
19 expectations.

20 I am going to grant or sustain the objection
21 with respect to Paragraphs 4 through 10. Those will
22 be stricken. The remainder of the testimony will be
23 admitted. I will also allow the oral testimony to
24 remain in the record, that she gave today. I will
25 also allow Waste Management some additional time, if

0803

1 they would like, to prepare some cross-examination on
2 what I believe was direct testimony that was offered
3 today for the first time.

4 MS. GOLDMAN: Thank you, Your Honor. We
5 are prepared to proceed with several additional
6 questions.

7 JUDGE KOPTA: Then please do.

8

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

10 BY MS. GOLDMAN:

11 Q Ms. Briley, can you tell me what happens to
12 the contents of the sharps containers that are
13 delivered to Stericycle?

14 A I believe that they go to the Morton plant for
15 processing.

16 Q And how are they processed?

17 A I don't know the details of how they are
18 processed. I am anticipating taking a trip to Morton,
19 but have not gotten there yet.

20 Q Have you ever had any communications with
21 Waste Management?

22 A No, I have not.

23 Q Do you have any knowledge regarding Waste
24 Management's services?

25 A I have had some conversations about how Waste

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1 Management disposes of its sharps containers, and I
2 know that they are not reused. That is one thing that
3 distinguishes Stericycle from -- Stericycle services
4 from Waste Management services.

5 Q Are you aware of the ecoFinity pilot program
6 that Waste Management has in the state of Washington
7 with one of your member hospitals for recycling the
8 actual sharps waste?

9 A I have heard reference to a pilot program. I
10 do not have any detailed knowledge of the pilot
11 program.

12 Q In what context did you hear about the pilot
13 program?

14 A It may have been -- I don't remember
15 specifically. It may have been conversation with
16 counsel, it may have been conversation with some of
17 our members during the work that we are doing on the
18 issue with the pharmaceuticals and the sharps
19 containers. I really cannot say.

20 Q And by "counsel," do you mean counsel for
21 Stericycle; is that right?

22 A Correct.

23 Q Have you discussed with any other biomedical
24 waste service providers entering into a contract with
25 Washington Hospital Services, like the one that you

0805

1 currently have with Stericycle?

2 A No.

3 Q So has there been any discussion about seeing
4 what other alternatives there are before you
5 renegotiate this contract that gets you paid about
6 \$50,000 a year from Stericycle?

7 MR. VAN KIRK: Objection.
8 Argumentative.

9 JUDGE KOPTA: I will allow it.

10 A What we have planned to do is to round back
11 with our members and better understand from their
12 perspective what they would like to see in terms of
13 services on any type of service to which we are
14 offering our endorsement. So while we are planning to
15 continue our relationship with Stericycle, and we feel
16 like it is a very good company, we are undertaking a
17 new effort, with respect to all of our services, to
18 vet alternatives and ensure that the companies in
19 which we are offering our endorsement really is the
20 one that can offer the best services and the best
21 prices to our membership.

22 That is part of the work that we are going to
23 be doing in 2013. And I could -- but it's also not
24 going to be something that happens -- probably right
25 before we enter into a new agreement with Stericycle,

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1 that will cover at least the next year.

2 Q So it's your anticipation that Washington
3 Hospital Services is going to sign a new marketing
4 agreement with Stericycle before it has an opportunity
5 to vet its members; is that correct?

6 A We are comfortable with the extent to which we
7 have had communications with our members that
8 indicates satisfaction with Stericycle currently, and
9 on a going-forward basis, we are going to institute
10 this new process of doing more extensive research. I
11 consider it sort of a two-step process.

12 Q And which of your members who are customers of
13 Waste Management have you had those discussions with?

14 A Like I referred to earlier, I can get you a
15 list of the folks with whom we have been having
16 conversations, but I don't feel comfortable right now
17 telling you which members exactly we have had
18 conversations with about Waste Management versus
19 Stericycle.

20 Q But you have had conversations with your
21 members about Waste Management's services to those
22 members?

23 A Not specifically about their -- about their
24 in-depth satisfaction with certain aspects of
25 services. We have had conversations about -- again, a

0807

1 lot of conversations about the issue relating to
2 sharps containers.

3 Q And that's an issue that is industrywide, is
4 my understanding; is that correct?

5 A Yes. And through those conversations, we have
6 had additional dialogue about services that are
7 provided by Stericycle, and some services that are
8 provided by Waste Management, and potentially other
9 service providers. But again, we are overall having
10 indication from our members that they are satisfied
11 with the relationship that we have with Stericycle and
12 feel comfort proceeding to renew, at least for a
13 period of time, as we undertake this broader
14 examination of membership and how it views the
15 services.

16 Q Have you surveyed your members on that
17 question?

18 A No, we have not. We plan to.

19 Q So your testimony is based on anecdotal
20 comments that have been made to you in the course of
21 dealing with this sharps disposal question raised by
22 the Department of Ecology; is that correct?

23 MR. VAN KIRK: Objection. Misstates
24 testimony.

25 MS. GOLDMAN: It's a question.

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1 JUDGE KOPTA: She is asking her what --
2 I will allow it.

3 Q Do you have the question in mind, Ms. Briley,
4 or shall we have it read back?

5 A Yes, I do.
6 Yes, because those conversations have been
7 quite extensive and in depth, and the response of our
8 membership has been general satisfaction -- not in
9 every case, but general satisfaction, and so we feel
10 comfortable proceeding at this time.

11 Q So you have had members who have not been
12 satisfied with Stericycle?

13 A There have been specific issues that have
14 arisen. One of the things that I have appreciated
15 about Stericycle is its willingness to engage with
16 Washington Hospital Services and members.

17 Q And what have those issues been?

18 A There have been some concerns about various
19 levels of pricing. Part of it we believe, as we are
20 digging down further, is a misunderstanding of a
21 pricing structure, and so we are working to remedy
22 that. It's not something that I have been involved in
23 extensively, one of our staff members has been, so I
24 can't tell you all of the specifics.

25 Q What is your understanding of what the

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1 misunderstanding about pricing has been?

2 A Like I said, I can't tell you any details
3 about what exactly it was for. There are a couple of
4 individuals on our staff that are working on it.

5 Q Any other issues that have come up with
6 Stericycle's service to your customers -- to your
7 members?

8 A That's the one that really stands out in my
9 mind.

10 MS. GOLDMAN: That's all, Your Honor.

11 JUDGE KOPTA: Ms. Woods, did you have
12 any questions for this witness?

13 MS. WOODS: No, I don't, Your Honor.

14 JUDGE KOPTA: Thank you.

15 Any redirect on the last questions that
16 counsel for Waste Management asked?

17 MR. VAN KIRK: No, Your Honor. I have
18 no more redirect.

19 JUDGE KOPTA: All right.

20 Just so the record is clear, then, Paragraphs
21 1 through 3 and 11 and 12 of Exhibit TB-1T are
22 admitted; the remainder is not.

23 We thank you for your testimony, Ms. Briley.

24 We appreciate you appearing before us this morning.

25 You are excused.

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1 THE WITNESS: Thank you.

2 JUDGE KOPTA: And let's be off the
3 record.

4 (A brief recess.)

5 JUDGE KOPTA: Let's be back on the
6 record. After brief colloquy, we have decided to take
7 our lunch break. It is now approaching noon. We will
8 be back at 1:30. We will be off the record until
9 then.

10 (Lunch recess.)

11 JUDGE KOPTA: Let's be back on the
12 record after our lunch recess.

13 I believe that concludes Stericycle's
14 witnesses; is that correct, Mr. Van Kirk?

15 MR. VAN KIRK: That is correct.

16 JUDGE KOPTA: All right. Then we are on
17 to Mr. Sells' witnesses.

18 Would you call your first one, please.

19 MR. SELLS: Thank you. If Your Honor
20 please, I call Ed Rubatino. That's R-U-B-A-T-I-N-O.

21 JUDGE KOPTA: Before you sit down,
22 Mr. Rubatino, will you raise your right hand?

23 THE WITNESS: (Complies.)

24

25

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1 EDWARD RUBATINO, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:

5

6 DIRECT EXAMINATION

7 BY MR. SELLS:

8 Q State your full name, please.

9 A Edward Rubatino.

10 Q And you are president of Rubatino Refuse
11 Removal, Inc.?

12 A I am.

13 Q And did you submit in this matter what has
14 been nominated as prefiled testimony of Ed Rubatino
15 and exhibits of Rubatino Refuse Removal, Inc.?

16 A I did.

17 Q And you have a copy of that with you?

18 A I do.

19 Q Marked at the right-hand top would be ER-1T?

20 A Yes.

21 Q And then looking at the attachments to that,
22 you should have an ER-2, which is a copy of your G
23 certificate. Do you have that?

24 A I do.

25 Q And then finally ER-3, which is a copy --

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1 purports to be a copy of your tariff; is that correct?

2 A That is correct.

3 MR. SELLS: Move the admission of all of
4 the -- of the -- ER-1T, ER-2 and ER-3.

5 JUDGE KOPTA: Any objections?

6 MS. GOLDMAN: No objections, Your Honor.

7 JUDGE KOPTA: Those exhibits are
8 admitted.

9 MR. SELLS: We tender the witness.

10 JUDGE KOPTA: Ms. Goldman?

11 MS. GOLDMAN: Thank you.

12

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

14 BY MS. GOLDMAN:

15 Q Good afternoon, Mr. Rubatino. We met this
16 morning. My name is Jessica Goldman. I am one of the
17 lawyers representing Waste Management.

18 When did your company begin providing
19 biomedical waste services in Washington?

20 A Approximately 1988.

21 JUDGE KOPTA: Would you put that
22 microphone in front of you?

23 THE WITNESS: (Complies.)

24 JUDGE KOPTA: Thank you.

25 Q And have you operated your biomedical waste

0813

1 services continuously since 1988?

2 A We have.

3 Q How many customers do you have now?

4 A Approximately 200. A little under 200.

5 Q And how many customers did you have when you
6 began providing biomedical waste in approximately
7 1988?

8 A Well, in 1987, we had none.

9 Q How about in 1988?

10 A I did not look that up. We had a few, enough
11 to make a living.

12 Q Has your customer base been steady in the last
13 ten years?

14 A We've grown as we try to promote more
15 business. Not rapidly, but we have been growing.

16 Q Have you added customers this year?

17 A Not to my knowledge, this year.

18 Q To your knowledge, are your customers
19 satisfied with your services?

20 A They are satisfied with our services.

21 Q Do you have any reason to believe that your
22 customers would move to Waste Management if given the
23 option?

24 A That's very difficult, to put myself in my
25 customers' point [sic]. I think they are pleased, but

0814

1 there's a lot of advertising that goes on and there's
2 no way of knowing what the customer will do, even to
3 try and come back.

4 Q What do you mean, "even to try and come back"?

5 A Oh, if they've got an option to try a new -- a
6 new entity, they may well do it and realize they were
7 being treated much better where they were, so -- but
8 there's no way of knowing.

9 Q Have you lost any customers to Stericycle?

10 A Yes.

11 Q How many?

12 A One major one.

13 Q And any less than major ones?

14 A No, they are not generally in our area, like
15 the little customer.

16 Q I'm sorry, they are not what?

17 A There has not been a great -- I have not
18 noticed a push for them to solicit small customers.

19 Q "Them" being Stericycle?

20 A Yes.

21 Q So you have lost one major customer to
22 Stericycle; is that right?

23 A Correct.

24 Q And do you have any knowledge regarding --
25 which entity is that, by the way?

0815

1 A Providence Hospital.

2 Q Have you had any communications with
3 Providence regarding their current services with
4 Stericycle?

5 A Yes.

6 Q And do you have any reason to believe that
7 Providence would be interested in coming back to your
8 company?

9 A I have solicited them and have been told they
10 are happy -- or they are pleased with where they are.

11 Q What were your total revenues for your
12 biomedical waste services in 2011, ballpark?

13 A 100,000.

14 Q And would you say that was a typical year for
15 you, for your biomedical waste revenues?

16 A For revenues it was.

17 Q What was your total company revenue in 2011
18 for both regulated and nonregulated operations, again
19 ballpark?

20 A Approximately 17 million.

21 Q If I told you that your annual report to the
22 UTC indicated that you had total company revenues in
23 2011 of 18.407 million, would that sound about right
24 to you?

25 A You said total revenue, not just regulated?

0816

1 Q Correct.

2 A That sounds pretty good.

3 Q And if I told you that your UTC regulated
4 operations revenue for 2011 was reported at 16.397
5 million, does that sound correct to you?

6 A I wouldn't argue with what was filed with the
7 UTC.

8 Q Did you file a tariff for your rates when you
9 began doing biomedical waste, or began offering
10 biomedical waste collection services in Washington?

11 A Yes.

12 Q Do you recall when? Would that have been in
13 or about 1988?

14 A Correct.

15 Q Have you revised those tariff rates since
16 then?

17 A No.

18 Q When was your last general tariff rate filing?

19 A 2009.

20 Q And I take it, then, that that general tariff
21 rate filing did not change your biomedical waste
22 rates; is that correct?

23 A That's correct.

24 Q Is your biomedical waste operation profitable
25 today?

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1 A Today, no.

2 Q And when was the last time that it was
3 profitable?

4 A I'm thinking about a year and a half, maybe
5 two years ago.

6 Q Thank you.

7 It's my understanding that your assets consist
8 of one Peterbilt truck; is that correct?

9 A Dedicated to medical waste, yes.

10 Q Yes, thank you.

11 When did you purchase that truck?

12 A About two years ago. Time goes too quickly.
13 Maybe three, but I think just two.

14 Q And is that truck fully depreciated at this
15 point?

16 A Oh, no.

17 Q And as I understand it, that Peterbilt truck
18 is used solely for biomedical waste; is that correct?

19 A Correct.

20 Q How many drivers do you have, or employees in
21 total, I should say, assigned to your medical waste
22 collection business?

23 A I have one primarily assigned to that.

24 Q And that's a driver?

25 A Yes.

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1 Q And does that driver perform any services for
2 you outside of the biomedical waste service?

3 A Yes.

4 Q What services does he -- he is the right
5 gender?

6 A Yes.

7 Q What services does he provide to you?

8 A He also provides standard garbage service.

9 Q What percentage of his time is dedicated to
10 picking up biomedical waste?

11 A Oh, approximately 20 hours a week.

12 Q And so the balance of his time is spent on
13 your solid waste business; is that right?

14 A Right.

15 Q And he's a full-time employee, correct?

16 A Correct.

17 MS. GOLDMAN: That's all I have.

18 Thank you for your time.

19 JUDGE KOPTA: Anything from Commission
20 Staff?

21 MS. WOODS: I have just a couple
22 questions, Your Honor.

23 JUDGE KOPTA: Proceed.

24

25

0819

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

2 BY MS. WOODS:

3 Q Good afternoon, Mr. Rubatino. My name is
4 Fronda Woods, I'm an attorney for the UTC Staff.

5 Do you have written contracts with the medical
6 waste generators that you serve?

7 A I do not. I do not have a written contract
8 with any customers.

9 MS. WOODS: All right. Thank you.
10 That's all I have.

11 JUDGE KOPTA: Redirect?

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

14 JUDGE KOPTA: All right.

15 Mr. Rubatino, thank you for your testimony.
16 You are excused.

17 THE WITNESS: Thank you, Your Honor.

18 MR. SELLS: Ed, you can either stick
19 around or --

20 THE WITNESS: I think I'm going to go
21 drive.

22 JUDGE KOPTA: I would.

23 MR. SELLS: Thanks, Ed.

24 (Discussion off the record.)

25 JUDGE KOPTA: Your next witness,

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1 Mr. Sells.

2 MR. SELLS: I call Mark Gingrich, if

3 Your Honor please.

4

5 MARK GINGRICH, witness herein, having been

6 first duly sworn on oath,

7 was examined and testified

8 as follows:

9

10 DIRECT EXAMINATION

11 BY MR. SELLS:

12 Q State your full name, please.

13 A Mark Gingrich.

14 Q I'm pronouncing it wrong already.

15 A That's quite all right.

16 Q That's spelled G-I-N-G-R-I-C-H?

17 A Yes, sir.

18 Q And your employment, please?

19 A I'm the operations manager for Murrey's

20 Disposal.

21 Q And did you submit what's been marked as

22 Exhibit MG-1T, the MG standing for Mark, as direct

23 testimony in this matter?

24 A Yes, I did.

25 Q And attached to that now is MG-2, which is --

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1 originally was a one-page document, it's now a
2 three-page document, of the operating authority for
3 Murrey's Disposal; is that correct?

4 A Yes.

5 Q And MG-3 is something purported to be Murrey's
6 Disposal Company Biomedical Waste, 12 Months, ending
7 12/31/2011, which appears to be basically an
8 abbreviated balance sheet; is that correct?

9 A Yes, it is.

10 Q And was that prepared at your request and
11 direction by financial people within Murrey's?

12 A In concert between myself and our senior
13 pricing manager, Irmgard Wilcox.

14 Q If you will turn to Page 2 of your testimony,
15 MG-1T, and look down on Line 21, where it indicates,
16 the question in general terms, to where is that
17 territory, referring to your G certificate.

18 MS. GOLDMAN: I'm sorry, what page are
19 you on, Mr. Sells?

20 MR. SELLS: I'm sorry, MG-1T, Page 2,
21 Line 21.

22 MS. GOLDMAN: Thank you.

23 Q You were asked in general terms where your G
24 certificate territory was, and you answered Eastern
25 and Southeastern Pierce County. Did we leave

0822

1 something off there as far as your territory is
2 concerned?

3 A Yes, sir, it should have also included, you
4 know, Peninsula territory, Gig Harbor, for lack of a
5 better explanation.

6 Q So the proper answer to that question would be
7 Eastern and Southeastern Pierce County and the Key
8 Peninsula, Gig Harbor area?

9 A Narrows, et cetera, yes.

10 Q West of the Narrows Bridge?

11 A Yes.

12 MR. SELLS: Move the admission of MG-1T,
13 MG-2 and MG-3, if Your Honor please.

14 JUDGE KOPTA: Any objection?

15 MS. GOLDMAN: No, none. Thank you.

16 JUDGE KOPTA: Those exhibits are
17 admitted.

18 Ms. Goldman?

19 MS. GOLDMAN: Thank you, Your Honor.

20

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

22 BY MS. GOLDMAN:

23 Q Good afternoon, Mr. Gingrich. My name is
24 Jessica Goldman, I am one of the attorneys for Waste
25 Management.

0823

1 When did Murrey's Disposal commence biomedical
2 waste services in Washington?

3 A I don't know the specific date. I know since
4 at least 2007, since that's the date of the last
5 tariff revision. I don't know the answer to that.

6 Q How long have you been employed by Murrey's?

7 A I've been with the Murrey's company since 2009
8 and with the corporate parent company since 2002.

9 Q What is the corporate parent company?

10 A Waste Connections.

11 Q To your knowledge, has Murrey's operated
12 continuously since at least 2007, when it filed its
13 last tariff?

14 A Yes.

15 Q How many customers does Murrey's have at this
16 point in its biomedical waste business?

17 A Around 90 customers that are regular, and then
18 that can increase a little bit, you know, for some
19 sporadic collections. 90 customers.

20 Q And by how much would it increase with the
21 sporadic customers?

22 A You may have some, maybe another 50 or so,
23 that have very infrequent collection.

24 Q In 2007, are you aware of how many biomedical
25 waste customers Murrey's had?

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1 A Not for 2007, no.

2 Q What about 2008?

3 A I've looked at the last three years, 2010 to
4 current.

5 Q And what did you note for 2010?

6 A Basically our -- from 2010 to now, our gallons
7 collected per year has basically been flat.

8 Q Have you lost any biomedical waste customers
9 in that three-year period?

10 A There were around five or so that we were
11 providing service to in 2010, that we are not any
12 longer. I don't know if it's a matter of "lost them"
13 or a matter of they went out of business.

14 Q Have you added any customers in that time
15 frame?

16 A I can't say. I'm not -- I didn't -- I don't
17 know. I would anticipate if we did, it would be in a
18 similar vein of what we lost, considering our total
19 gallons collected was relatively flat.

20 Q To your knowledge, are your biomedical waste
21 customers satisfied with Murrey's services?

22 A Yes, the feedback we get are, you know,
23 complimentary, especially to the driver and his
24 service.

25 Q Have you lost any customers to Stericycle?

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1 A Again, for those small that we looked at, I'm
2 not sure if we -- if they were lost to Stericycle or
3 if they were -- you know, for their own business
4 reasons they discontinued it, so I'm not sure if
5 that's been the case.

6 Q So to your knowledge, you have not lost any to
7 Stericycle; is that fair to say?

8 A It's fair to say I wouldn't know why those
9 five customers are not customers anymore.

10 Q And those five customers were small quantity
11 generators?

12 A They were small quantity generators. We have
13 a -- our concern is we have a group of large quantity
14 generators, that if we were to lose them, it would do
15 major harm to us.

16 Q But just to confirm, my understanding is that
17 the five customers that you have lost were themselves
18 small quantity generators, correct?

19 A Yes.

20 Q Okay. Thank you.

21 Do you have any basis for believing that any
22 of your customers would change to Waste Management if
23 that option were available to them?

24 A I -- you know, I would be concerned that --
25 especially the large generators, that, you know,

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1 probably our top ten customers make up maybe
2 45 percent of our total gallons collected. So we
3 would be concerned that, you know, if a small number
4 of those were to leave to a new entrant into the
5 market, we would have -- be harmed in that way.

6 Q Do you have any reason to believe that any of
7 those top ten customers would move their business away
8 from Murrey's to Waste Management if given that
9 alternative?

10 A I couldn't put myself in their shoes. I would
11 know they would be satisfied with our service, but at
12 the same time, you know, in business sometimes loyalty
13 and customer satisfaction is not always, you know,
14 the -- isn't a lockdown. So we would be concerned,
15 yes, that we would lose customers.

16 Q And Murrey's has not lost any of its top
17 customers to Stericycle; is that correct?

18 A Correct.

19 Q What were Murrey's total revenues from biomed
20 service in 2011?

21 A I believe roughly 120,000.

22 Q And was 2011 a typical year for Murrey's, for
23 purposes of those revenue numbers?

24 A I didn't review the revenue for the previous
25 couple years, but again, based on the gallons, I would

0827

1 say yes, it would be.

2 Q And since you have been with Murrey's, have
3 the revenues from the biomedical waste services been
4 steady?

5 A Basically flat, I would say, based on the
6 gallons collected.

7 Q According to the UTC records, Murrey's total
8 company revenue, which would include both regulated
9 and nonregulated operations, was 27.583 million. Does
10 that sound about right to you?

11 A That sounds about right, especially if it's
12 something that was filed with the UTC. I would say
13 it's correct, yes.

14 Q And for regulated operations, Murrey's
15 reported to the UTC that it had revenue of 27.365
16 million. Does that sound about right to you?

17 A That would seem reasonable, especially -- I'm
18 not the one that prepares the financial statements.
19 If that's what you are telling me we filed with the
20 UTC, then I would say that's correct.

21 Q When you filed the tariff in 2007, were any
22 changes made to your biomedical waste rates?

23 A That's a good question. I do not know the
24 answer to that.

25 Q And was that your last general tariff rate

0828

1 filing in 2007?

2 A For regulated medical waste, yes.

3 Q Is Murrey's biomedical waste operation
4 profitable today?

5 A Yes.

6 Q And what is the basis for your opinion that
7 it's profitable?

8 A I guess reviewing the Exhibit, MG-3. I
9 believe that it shows -- shows our revenue and
10 expense. It reflects a profitability.

11 Q Do you know how much Murrey's would need to
12 lose in revenue to become unprofitable?

13 A Well, considering we've got about \$31,000 in
14 margin or profit, if we were to lose \$31,000 in
15 revenue, then we would at that point be at the
16 break-even point and going downward.

17 MR. SELLS: Excuse me, Your Honor. I'm
18 wondering, and I should have spoke up. Was that
19 question directed to the medical waste only?

20 MS. GOLDMAN: Yes.

21 MR. SELLS: Okay.

22 A My answer was medical waste-related.

23 Q If you lost \$31,000 in revenues, there would
24 also be cost savings there; isn't that right?

25 A There would be. But again, you know, in terms

0829

1 of our customer base being many small and few large --
2 our ten large customers making 45 percent of our
3 volume, basically. So if we lost half of those
4 customers, you know, you lose a substantial piece of
5 revenue, but your costs don't decrease, you know, in
6 the same way. You still have the same -- you know, if
7 you are going to two less large locations, for
8 instance, your fuel cost is similar because you are
9 still driving the route, your driver wage is still
10 similar, it's just you have two less stops. It's not
11 as -- it's not a one-to-one ratio.

12 Q So there would be a saving in cost, but it
13 wouldn't be one-to-one?

14 A Yes. And the same with cost. It would be, I
15 would say minimal compared to the revenue loss, in
16 terms of a large -- one large generating customer.
17 You know, if you lose ten small generating customers,
18 then you have more incremental savings there.

19 Q And what impact would you see in your
20 processing costs?

21 A Processing costs actually are surprisingly --
22 you know, it's fairly inexpensive when you --

23 Q I'm sorry, fairly what?

24 A Inexpensive. I think we had \$8,000 or so in
25 disposal costs for 2011. So we had 63 gallons --

0830

1 63,000 gallons of material, I believe, that was
2 disposed of. Our disposal -- I guess my point is that
3 the disposal cost in our total cost structure is not a
4 substantial piece.

5 Q So you would see a savings there, but you
6 would not consider it substantial; is that correct?

7 A Correct.

8 Q So your assets, as we understand it, for your
9 biomedical waste service consist of one Ford F350 and
10 a rental truck for transporting to disposal; is that
11 correct?

12 A Well, the Ford would be an asset to us, yes.

13 Q And the other is simply a rental?

14 A Correct.

15 Q And so the Ford F350 is your only asset
16 devoted to biomedical waste?

17 A I am not the best -- you know, in terms of an
18 accounting background, just to say, you know, where --
19 in the accounting world what a -- is considered an
20 asset and what is not. That would be my
21 understanding. Yes, that would be an asset. We have
22 certain supplies and things like that. Those to me
23 are an asset. Yes, I believe our only asset would be
24 the Ford vehicle.

25 Q And is that vehicle, the Ford F350, used only

0831

1 for biomedical waste?

2 A Yes.

3 Q So that vehicle is not used for solid waste,
4 general solid waste; is that correct?

5 A Correct.

6 Q Who owns the rental truck?

7 A I'm not sure. It can vary based on -- you
8 know, it's infrequently used and it's going to vary
9 depending on circumstance, who it's gotten from, who
10 it's rented from.

11 Q And --

12 MR. WASH: This is Mark Wash,
13 Consolidated Disposal.

14 JUDGE KOPTA: Let's be off the record
15 for a moment.

16 (Discussion off the record.)

17 JUDGE KOPTA: Back on the record.

18 Q It's our understanding that you have one
19 driver and one backup driver assigned to medical waste
20 collection; is that correct?

21 A Yes.

22 Q And what does the -- and are those -- is the
23 primary driver devoted exclusively to biomedical waste
24 collection?

25 A Yeah, the primary driver, Daryl, he is medical

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1 waste two, two and a half days a week. And then the
2 backup driver is basically, you know, if Daryl is on
3 vacation, then John does the routes and such.

4 Q So for 48, 49 weeks out of the year, John is
5 doing solid waste collection, outside of the
6 biomedical waste; is that correct?

7 A Correct.

8 Q And then Daryl is half time doing the
9 biomedical waste and half time doing general solid
10 waste; is that correct?

11 A That's correct, yes.

12 MS. GOLDMAN: That's all we have.

13 Thank you for your testimony.

14 THE WITNESS: Thank you very much.

15 JUDGE KOPTA: Anything from Commission

16 Staff?

17 MS. WOODS: I have a couple of

18 questions, Your Honor.

19

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

21 BY MS. WOODS:

22 Q Good afternoon, Mr. Gingrich. My name is
23 Fronda Woods, I'm an attorney for UTC Staff.

24 Do you have written contracts with your
25 medical waste customers?

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1 A No, we do not.

2 MS. WOODS: All right. Thank you.

3 That's all I have.

4 JUDGE KOPTA: Any redirect?

5 MR. SELLS: No, Your Honor.

6 JUDGE KOPTA: Then thank you for your
7 testimony, Mr. Gingrich. You are excused.

8 THE WITNESS: Thank you.

9 JUDGE KOPTA: And last but not least,
10 your witness on the phone, I believe, Mr. Sells.

11 MR. SELLS: And I want somebody to tell
12 me the timing was almost perfect.

13 Mark, are you still there?

14 THE WITNESS: I am here.

15 MR. SELLS: I call Mr. Mark Wash, if
16 Your Honor please.

17 JUDGE KOPTA: Mr. Wash, would you stand
18 and raise your right hand, please?

19

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

24

25 JUDGE KOPTA: Thank you.

0834

1 Mr. Sells.

2

3 DIRECT EXAMINATION

4 BY MR. SELLS:

5 Q State your full name, please.

6 A Mark Wash.

7 Q Spelled W-A-S-H; is that correct?

8 A It is, yes.

9 Q And your position with Consolidated Disposal
10 Services, Inc. is what?

11 A I am the general manager.

12 Q Did you submit in this matter what's been
13 marked as Exhibit MW-1T, which is the testimony of
14 witness Mark Wash? Do you recall that?

15 A Yes.

16 Q And do you have a copy of it there with you?

17 A I do.

18 Q And attached to that is something marked MW-2,
19 which is your G certificate, Certificate No. 190. Do
20 you have that as well?

21 A Yes.

22 Q And MW-3 is a depreciation schedule, which
23 basically shows the piece of equipment involved with
24 your medical waste. Do you have that as well?

25 A Yes, I do.

0835

1 Q And finally, MW-4 is a document entitled
2 Summary of Medical Waste Information 2011. And was
3 this document prepared at your direction?

4 A Yes.

5 Q And with figures supplied -- with information
6 supplied either by you or someone on your staff?

7 A Yes, it was.

8 Q And who actually prepared the document?

9 A Robert Toll, our UTC accountant.

10 MR. SELLS: Move admission of MW-1T and
11 MW-2, 3 and 4, Your Honor.

12 JUDGE KOPTA: Any objection?

13 MS. GOLDMAN: No objection, Your Honor.

14 I did want to point out to Mr. Sells that before your
15 other witness disappears, you had an issue with an
16 exhibit that you wanted to clarify, about Murrey's.

17 MR. SELLS: We basically have.

18 MS. GOLDMAN: We have no objections to
19 Mr. Wash's exhibits.

20 JUDGE KOPTA: All right. Then Exhibits
21 MW-1T through MW-4 are admitted.

22 MR. SELLS: We will tender the witness
23 for cross-examination, Your Honor.

24 JUDGE KOPTA: Ms. Goldman.

25

0836

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

2 BY MS. GOLDMAN:

3 Q Good afternoon, Mr. Wash. My name is Jessica
4 Goldman. I am one of the attorneys representing Waste
5 Management.

6 A Hello.

7 Q Can you please tell us when Consolidated
8 Disposal Services began offering biomedical waste
9 collection services in Washington?

10 A To the best of my recollection, it was nine or
11 ten years ago.

12 Q And has Consolidated Disposal Services
13 operated continuously since then it's biomedical waste
14 services?

15 A Yes, it has.

16 Q And approximately how many biomedical waste
17 customers do you have now?

18 A I believe we are at about 60, 65.

19 Q When you first began offering biomedical waste
20 services that first year, do you recall how many
21 customers you had, ballpark?

22 A Probably -- you know, within the year of when
23 we first started?

24 Q Yes.

25 A 35 or 40.

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1 Q For how many years would you say you've been
2 at your present number of customers, give or take?

3 A Probably close to eight, eight years.

4 Q To your knowledge, are your customers
5 satisfied with Consolidated Disposal Services'
6 biomedical waste services?

7 A Yes, they are.

8 Q Have you lost any customers to Stericycle?

9 A I believe we've lost one or two.

10 Q Do you know who those customers are?

11 A Not certain. One -- not certain of their
12 name. One was a medical clinic associated with a firm
13 that has other offices in the state, who dealt with
14 Stericycle, who wanted to deal with Stericycle
15 corporately.

16 Q And do you recall who the other was or the
17 type of entity?

18 A Again, I believe it was just a medical clinic.
19 Actually, I think this one was a nursing home that was
20 also affiliated with a corporate account with
21 Stericycle for other facilities.

22 Q So the two -- the one or two customers that
23 Consolidated lost to Stericycle both involved
24 customers that were parts of a much larger chain that
25 had a corporate relationship with Stericycle; is that

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1 right?

2 A Yes, that's correct.

3 Q In Exhibit MW-4 to your testimony, it reflects
4 that Consolidated had annual revenue for its
5 biomedical waste service of \$110,887 in 2011. Do you
6 see that?

7 A Yes.

8 Q Are you aware that in the report that
9 Consolidated filed with the UTC, it reflected annual
10 revenue for its biomedical waste services in 2011 of
11 \$112,545?

12 A Yes, I do -- I do remember that.

13 Q Can you explain the disparity in those two
14 numbers, please?

15 A I am not certain of the disparity. I would
16 have to give that some further thought.

17 Q Do you know which number is correct?

18 A I believe the 112,545 would be the correct
19 number.

20 Q Was 2011 a typical year for Consolidated as
21 far as its biomedical waste revenues go?

22 A Yes, it was.

23 Q And would you say that your revenues have been
24 steady in the last five years?

25 A Yes, I would.

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1 Q According to the reports filed with the UTC,
2 Consolidated's total company revenue, including both
3 regulated and nonregulated services for 2011 was 7.584
4 million. Does that number sound right to you?

5 A Yes, it does.

6 Q And those reports indicate for 2011, revenue
7 for regulated operations of \$4.305 million. Does that
8 sound right?

9 A Yes, it does.

10 Q Did Consolidated file a tariff for its rates
11 when it began offering biomedical waste collection
12 service in Washington?

13 A Yes, we did.

14 Q And have those rates been revised at any point
15 since?

16 A No, they have not.

17 Q When was Consolidated's last general tariff
18 rate filing?

19 A It's been about a year and a half, maybe.
20 Maybe 20 months.

21 Q Is Consolidated's biomedical waste operation
22 profitable today?

23 A Yes, it is.

24 Q And what is the basis for your conclusion that
25 it is profitable?

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1 A That our net revenue -- our gross revenue
2 exceeds our overall expenses, so it is profitable.

3 Q Do you know how much Consolidated -- how much
4 revenue Consolidated would need to lose to become
5 unprofitable?

6 A I'm not -- I'm not sure. Probably 60 -- we
7 could stand to probably drop to 35 percent, still
8 remain profitable or break even. That would have to
9 be evaluated as well, as far as being able to provide
10 cost effective services to the remaining customers.

11 Q When you say drop 35 percent, you mean to lose
12 35 percent of your revenue?

13 A Yes.

14 Q And have you conducted any analysis to
15 determine how much revenue you could stand to lose
16 before Consolidated's biomedical waste service would
17 become unprofitable?

18 A I have not at this point.

19 Q It's our understanding that Consolidated has
20 one Chevy flatbed truck devoted to biomedical waste
21 service; is that correct?

22 A That is correct.

23 Q And that's the one asset devoted to that
24 service?

25 A That's the one piece of rolling stock

0841

1 dedicated to that, yes.

2 Q And does Consolidated use that truck for
3 anything other than biomedical waste?

4 A No.

5 Q So it's used solely for biomedical waste; is
6 that correct?

7 A That is correct.

8 Q You provided a depreciation schedule along
9 with your testimony. Was that depreciation applied to
10 just the biomedical waste income statement or to your
11 solid waste operations as a whole?

12 A I'm not -- I imagine it was included in the
13 solid waste operations as a whole.

14 Q You have one part-time driver assigned to
15 biomedical waste; is that correct?

16 A Yes.

17 Q And what does that driver do with the rest of
18 his or her time?

19 A Works in the -- well, yeah, works in the solid
20 waste part of our company.

21 MS. GOLDMAN: That's all we have. Thank
22 you very much for your testimony.

23 JUDGE KOPTA: Ms. Woods?

24 MS. WOODS: Yes, your Honor. I have a
25 couple of questions.

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

2 BY MS. WOODS:

3 Q Good afternoon, Mr. Wash. My name is Fronda
4 Woods. I'm an attorney for the UTC Staff. I just
5 have just a couple of questions.

6 Do you have written contracts with your
7 medical waste customers?

8 A No, we do not.

9 MS. WOODS: All right. Thank you.
10 That's all I have.

11 JUDGE KOPTA: Redirect?

12 MR. SELLS: No, Your Honor.

13 JUDGE KOPTA: Mr. Wash, we thank you for
14 your testimony. We appreciate you appearing today.
15 You are excused.

16 THE WITNESS: Thank you very much.

17 MR. SELLS: Thanks, Mark.

18 THE WITNESS: Thank you.

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

20 (A brief recess.)

21 JUDGE KOPTA: Let's be back on the
22 record.

23 We have discussed some procedural issues while
24 off the record, and one of them we need to discuss on
25 the record. For that I will turn to Ms. Woods.

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1 MS. WOODS: Thank you, Your Honor.

2 Off the record, we discussed an exhibit that
3 Staff would like to offer. It has been marked Exhibit
4 PLI-1. I have a witness to sponsor it, if necessary.
5 It is an e-mail that Staff received last night from
6 one of Waste Management's witnesses. It appears to
7 relate to the subject matter of the testimony of that
8 witness.

9 Staff would like to offer the exhibit for the
10 sole purpose of demonstrating that Staff received this
11 e-mail and not for the truth of the matter asserted.

12 JUDGE KOPTA: Thank you.

13 Just very briefly, the witness is Carla
14 Patshkowski, and it has to do with the billing dispute
15 that she describes in her testimony.

16 I will allow each of the parties to address
17 whether they either support or object to having this
18 exhibit be included in the record, beginning with
19 Waste Management, whose witness provided this document
20 to Commission Staff.

21 MR. JOHNSON: Your Honor, just to
22 clarify. It is marked as PLI-1 because that's Penny
23 Ingram's initials, I believe. It's not Waste
24 Management's witness that is offering this exhibit.

25 JUDGE KOPTA: That is correct, Staff is

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1 offering the witness. It would come in, if it does,
2 as an exhibit for a Staff witness, Penny Ingram, who
3 otherwise has not testified prior to today.

4 Ms. Goldman, would you like to address this
5 proposed exhibit?

6 MS. GOLDMAN: Yes. Thank you, Your
7 Honor.

8 We have no objection to introduction of this
9 testimony. We would also request the opportunity, as
10 we have off the record, to make available for rebuttal
11 testimony, Carla Patshkowski, who is the author of the
12 e-mail to Ms. Ingram from yesterday evening, and who
13 testified previously.

14 I would also indicate that in addition to
15 going to Ms. Patshkowski's testimony, this is also an
16 issue that was raised in the testimony, the prefiled
17 rebuttal testimony, of James Ryan that was submitted
18 on behalf of Stericycle, which has been marked as
19 JR-7T.

20 JUDGE KOPTA: Mr. Sells, do you have an
21 opinion on this?

22 MR. SELLS: Well, not much of one. My
23 view is pretty much the same as Your Honor's. I
24 certainly don't see a big problem with it being
25 included in the record under the caveats that have

0845

1 been stated. I think I could say that if there is
2 further testimony in this matter, I will probably be
3 on the bridge line or I will request to be on the
4 bridge line.

5 I don't know what to make of it, other than
6 it's part of the case and I guess it should go in
7 there and we should go from there.

8 JUDGE KOPTA: All right. Thank you.

9 And Mr. Johnson or Mr. Van Kirk?

10 MR. JOHNSON: Thank you, Your Honor.
11 I'm going to speak to this one.

12 I think we've stated before off the record
13 that we think this e-mail that has been offered as
14 PLI-1 is not probative of any issue relevant to this
15 case. It deals with peripheral matters. It deals
16 with a -- what appears to be an effort to initiate a
17 complaint proceeding with the consumer office of the
18 UTC, concerning an issue Ms. Patshkowski is raising.

19 We remind Your Honor -- and I know you are
20 aware because you mentioned it off the record, or you
21 responded to it, but I mentioned it off the record --
22 that you have declined to even take administrative
23 notice of complaints filed against Waste Management
24 that we offered as MAW-24, on the -- presumably, and I
25 believe I recall your ruling correctly, that it is

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1 simply not probative, not subject to
2 cross-examination, not available -- not something
3 that's available for -- for -- on the basis of
4 testimony to be included.

5 Just as a matter of looking at the document,
6 on its face it indicates that it's not something that
7 Stericycle -- there was nothing sent by Stericycle to
8 Ms. Patshkowski. So the only person that these
9 e-mails went to, it apparently went to a regional
10 accounts payable analyst by the name of Tammy Soto, in
11 the Providence health group in Portland, Oregon.
12 That's what the e-mail string indicates.

13 If you look back further in the string, you
14 see there is a process of reconciliation going on
15 between Tammy Soto and people at Stericycle concerning
16 the status of accounts with Providence, Portland area.
17 Apparently, from the face of the document, there were
18 invoices included in that that were forwarded to the
19 Portland office of Providence, that were invoices
20 related to services to the Spokane area of Providence.
21 And so the folks in Portland turned around and said,
22 Well, these aren't ours, we'll send them on to
23 Spokane, and they then did so.

24 The invoices that are attached to PLI-1 are
25 from May 2011, October 2011, April 2011, June 2011,

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1 September 2011, July 2011, again June 2011, May 2011,
2 October 2011 and February 28th, 2011. So it's
3 apparent that these invoices relate to the billing
4 problem that was discussed on the record by
5 Ms. Patshkowski, and that the testimony indicates it
6 was resolved.

7 In the process of this reconciliation with the
8 folks in Portland, apparently the Stericycle
9 headquarters folks included a batch of these old
10 invoices related to Spokane. They were then forwarded
11 on from Portland to Spokane, and now Ms. Patshkowski
12 thinks that Stericycle is still trying to collect on
13 these old invoices.

14 In order to evaluate what this means, we would
15 have to -- it's not Ms. Patshkowski that knows what
16 these invoices were sent to Portland for, or why they
17 were included. It would require us to bring in the
18 people at Providence in Portland, and have them
19 testify what they understood was going on between
20 themselves and Stericycle, and the Stericycle folks
21 probably at the headquarters office, who forwarded
22 these e-mails to them.

23 I believe the testimony that was given stands
24 on its own. It was given as true when it was given.
25 This sort of flurry of accounts reconciliation,

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1 confusion that is going on between Stericycle and the
2 Portland office of Providence has really nothing to do
3 with any effort to collect these accounts from
4 Ms. Patshkowski. And I think the notion is here, it's
5 essentially just a reprise of the testimony that
6 Ms. Patshkowski gave before, dealing with an old issue
7 that's been resolved. We see no reason to open the
8 record for additional testimony with respect to that.

9 JUDGE KOPTA: Do you want to respond,
10 Ms. Goldman?

11 MS. GOLDMAN: Yes, your Honor. Thank
12 you.

13 I don't know if it's appropriate, but I would
14 just move to strike all of that testimony. This
15 exhibit, PLI-1, reflects on Page 2 that yesterday, the
16 Stericycle collections department sent these invoices
17 to Providence. They happened to send these invoices,
18 which are indeed precisely the same invoices that were
19 the subject of Ms. Patshkowski's testimony, and
20 Mr. Ryan's testimony, Paragraph 20 of his rebuttal, in
21 which he indicated that all of these erroneous
22 billings have been credited, are no longer at issue.
23 Well, they are apparently still at issue, because
24 Stericycle collections sent them yesterday to
25 Providence because they claim that they haven't been

0849

1 paid.

2 So at this point, there is no need for any
3 testimony from anybody, other than from
4 Ms. Patshkowski and Ms. Ingram, to indicate that the
5 customer again, still is getting copies of these
6 invoices from the collections department at
7 Stericycle.

8 I would also note that Your Honor has admitted
9 as two exhibits a humongous stack of complaints
10 against Waste Management. You declined to take public
11 notice of those. However, MP-20 and MP-21, which were
12 offered by Stericycle through Mr. Philpott, are about
13 4 inches thick of complaints that were made to the UTC
14 and apparently were deemed relevant to this
15 proceeding.

16 MS. McNEILL: One more. Thank you, Your
17 Honor. Poly McNeill for Waste Management.

18 I think the important point that I would like
19 to make, is that I think Ms. Goldman's first sentence
20 deserves some recognition, rather than having the
21 attorneys testify about this e-mail, which
22 Mr. Johnson's so-called argument was rife with
23 conclusory statements. I would recommend that you
24 grant the motion to strike his testimony, and this as
25 well. If you are going to take e-mail, take the

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1 e-mail as it is, but these gratuitous statements into
2 the record by Mr. Johnson of his assumptions that this
3 was just a reconciliation process, when
4 Ms. Patshkowski is apparently the person who actually
5 has personal knowledge of these invoices, and she was
6 incensed enough to send the e-mail to Staff, I think
7 that should just stand as it is.

8 Thank you for letting me chime in. Sorry.

9 JUDGE KOPTA: Certainly. I want to hear
10 everyone.

11 MR. JOHNSON: Your Honor, can I just
12 correct one point? The comment that this is a
13 reconciliation is made by Tammy Soto, the person from
14 Providence Health Services, in her e-mail. That is
15 not something I made up, Ms. McNeill.

16 JUDGE KOPTA: Well, just to clarify that
17 first point. Argument of counsel is not evidence. I
18 don't consider it as such. It is the argument of
19 counsel and I take it as such.

20 With respect to other complaints that are part
21 of the record, it is my recollection that you did not
22 object to those being included in the record. There
23 was no basis at that time to exclude them. And those
24 also were prefiled and came in before we started these
25 evidentiary hearings.

1 My concern is that, with this document, we
2 open up something of a can of worms, because while it
3 may be that the document speaks for itself, I suspect
4 that I would have to give Stericycle an opportunity to
5 call a witness to explain why these invoices were
6 sent, where they came from, what the problem is, and I
7 don't see that as an issue that needs to be decided in
8 this proceeding.

9 My understanding of Ms. Patshkowski's
10 testimony is that this billing dispute is one of the
11 reasons that she would like to have an alternative to
12 Stericycle and supports the application of Waste
13 Management. I don't think that this exhibit changes
14 that testimony. My primary concern is that we don't
15 get into a situation in which counsel says that this
16 billing dispute has been resolved based on the
17 testimony that's been presented here, or has not been
18 resolved.

19 I think at this point, I will -- in light of
20 this discussion today, I will put little weight, if
21 any, on that aspect of the testimony. I will not,
22 however, admit this particular exhibit, because I
23 think it would cause more problems than it would
24 solve. At this point, I will consider the exhibit as
25 offered and reject it, so that if necessary, it can be

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1 raised with the Commission on administrative review by
2 any party that so chooses to do so.

3 But as I say, I will largely disregard any
4 argument over whether this billing dispute has or has
5 not been resolved: A, because I don't think that it
6 is germane or determinative of the issues in this
7 proceeding; and B, because there is some indication
8 that it may not be, and therefore, I think leaving it
9 up in the air at this point is the best resolution,
10 the most efficient resolution, and the preferable
11 resolution from my perspective.

12 So the other issue that I wanted to address is
13 posthearing briefs. While we were off the record, we
14 discussed posthearing briefing. The parties are
15 largely in agreement that opening briefs will be due
16 on January 11th, 2013, with response briefs two weeks
17 later, on January 25th. The response briefs have a
18 page limit of 15 pages.

19 And I think, unless I'm wrong, that that's all
20 we need to discuss, but please correct me if there is
21 anything else.

22 MR. JOHNSON: Your Honor, there was just
23 one other point off the record. We, I think, agreed
24 that, and I think you indicated that the deadline for
25 filing would be 5:00 p.m. on these items by electronic

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1 means.

2 JUDGE KOPTA: Yes, the electronic filing
3 is due by 5:00 p.m. on the due date for each of the
4 briefs.

5 Anything further?

6 MS. GOLDMAN: Nothing further, Your
7 Honor, for Waste Management. Thank you for your time.

8 JUDGE KOPTA: We are adjourned.

9 MR. JOHNSON: Thank you, Your Honor.

10 MR. VAN KIRK: Thank you.

11 (Discussion off the record.)

12 JUDGE KOPTA: We are back on the record.

13 I neglected to establish a deadline by which
14 cross-examination exhibits need to be filed. We had
15 that discussion off the record. The cross-examination
16 exhibits that have been admitted into the record need
17 to be filed on the same date as the opening briefs,
18 which is January 11th, 2013.

19 So with that, I think we are now finally off
20 the record. Thank you.

21 (Hearing adjourned 2:54 p.m.)

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C E R T I F I C A T E

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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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SHERRILYN SMITH

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