

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| STERICYCLE OF WASHINGTON, |) | DOCKET TG-121597 |
| INC., |) | |
| |) | |
| Complainant, |) | ORDER 03 |
| |) | |
| v. |) | |
| |) | ORDER DENYING PETITION FOR |
| WASTE MANAGEMENT OF |) | INTERLOCUTORY REVIEW OF |
| WASHINGTON, INC., d/b/a WM |) | ORDER 02 |
| HEALTHCARE SOLUTIONS OF |) | |
| WASHINGTON, |) | |
| |) | |
| Respondent. |) | |
| |) | |

MEMORANDUM

- 1 Stericycle of Washington, Inc. (Stericycle) filed a complaint and petition for declaratory relief against Waste Management of Washington, Inc., d/b/a WM Healthcare Solutions of Washington (Waste Management) on October 3, 2012. Stericycle’s complaint states two causes of action. Stericycle alleges that Waste Management is soliciting biomedical waste collection business from Washington generators by offering discounts on Waste Management’s recycling or other services or otherwise offering unlawful rebates on biomedical waste tariff rates. Stericycle also alleges that Waste Management is misclassifying its ecoFinity sharps waste program as recycling in order to unlawfully provide biomedical waste collection services both inside and outside its authorized territory at rates lower than or different from its tariff filed with the Commission.

- 2 Stericycle filed a motion for Summary Determination with respect to its second claim on November 8, 2012. Waste Management filed its answer opposing Stericycle’s motion and its cross-motion for summary determination on November 28, 2012. Waste Management also asked the Commission to dismiss Stericycle’s complaint on

procedural grounds. The Commission's regulatory staff (Staff)¹ filed a response opposing Waste Management's motion to dismiss on November 30, 2012. Stericycle filed its answer opposing the motion to dismiss on December 18, 2012.

- 3 The presiding Administrative Law Judge entered Order 02 on January 4, 2013, denying Waste Management's motion to dismiss and denying both motions for summary determination. Order 02 determines that "[t]he parties have not supplied the Commission with sufficient factual evidence to allow a complete evaluation of Waste Management's ecoFinity service as either solid waste collection or recycling." The order identifies specific matters as to which the record is deficient.
- 4 Stericycle filed a Petition for Interlocutory Review on January 14, 2013. Staff and Waste Management filed their respective responses on January 24, 2013, and January 24, 2013.
- 5 WAC 480-07-810, which governs review of interlocutory orders, provides:

- (1) **Defined.** Orders entered during the course of an adjudicative proceeding are "interlocutory orders," as distinguished from initial orders that may be entered by an administrative law judge at the conclusion of a proceeding and final orders entered by the commission at the conclusion of a proceeding. ...
- (2) **When review is available.** Interlocutory review is discretionary with the commission. The commission may accept review of interim or interlocutory orders in adjudicative proceedings if it finds that:
 - (a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;
 - (b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

- 6 Stericycle argues that the Commission should exercise its discretion to grant interlocutory review of Order 02 on the basis of WAC 480-07-810(2)(c). Stericycle's argument, however, fails to establish that review of Order 02 would save the Commission or the parties "substantial effort or expense" or that there is "some other factor present that outweighs the costs in time and delay of exercising review." Stericycle's petition is essentially nothing more than a restatement of the arguments it presented in its motion for summary determination.
- 7 Waste Management, for its part, argues that the Commission should "grant Stericycle's Petition for Interlocutory Review, grant Waste Management's cross-motion for summary determination, and affirm the denial of Stericycle's cross-motion for summary determination." Waste Management, however, also fails to establish any basis for review that meets the requirements of WAC 480-07-810(2)(c). Waste Management's response to Stericycle's petition simply incorporates by reference the company's Opposition to Complainant Stericycle's Motion for Summary Determination re Waste Management's Unlawful Biomedical Waste Collection Operations Outside its Certificated Territory and Cross-Motion for Summary Determination and Dismissal, filed November 27, 2012.
- 8 In other words, neither principal party to this matter would have the Commission exercise its discretion under WAC 480-07-810 because it will save the Commission or the parties "substantial effort or expense." Rather, apparently because neither party is satisfied that its motion for partial summary determination is denied by Order 02, they want a second administrative law judge (ALJ) to consider the same arguments as to which the presiding judge already ruled.
- 9 Even were a second ALJ to expend the considerable effort that would be required to study the record in this case, as so far developed, reconsider substantively the arguments that the presiding ALJ found not suitable for summary determination because the record is not sufficiently developed, and grant one or the other of the cross-motions for summary determination, this would not hasten the ultimate resolution of the dispute between these parties. The remaining cause of action would still need to be resolved following additional process. The parties and the Commission would still be required to prepare for, and conduct, hearing proceedings as to Stericycle's second claim.

10 It will be far more efficient to continue with the process already in place under the presiding ALJ's procedural orders, leading to an Initial Order resolving the entire case on its merits. The Commission determines for the reasons stated that it should not exercise its discretion to grant interlocutory review of Order 02.

ORDER

THE COMMISSION ORDERS:

- 11 (1) Stericycle's Petition for Interlocutory Review of Order 02 is denied.
- 12 (2) The Commission retains jurisdiction to resolve this dispute.

Dated at Olympia, Washington, and effective February 4, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Senior Review Judge