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4 BEFORE THE WASHINGTON UTILITIES
5 AND TRANSPORTATION COMMISSION
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7 In the Matter of the Petition of

8 STERICYCLE OF WASHINGTON, INC.,

9 For an Order Suspending Tariff Filing and
10 Initiating an Adjudicatory Proceeding
11 concerning the Abandonment of Authority
12 Under G-237 and Proposed Biomedical Waste
13 Collection and Transportation Services of
Waste Management of Washington, Inc., dba
WM Healthcare Solutions (G-237)

Docket No. TG-110553

WASTE MANAGEMENT OF
WASHINGTON, INC.'S OPPOSITION
TO STERICYCLE'S MOTION FOR
LEAVE TO FILE REPLY

14
15 **ARGUMENT**

- 16 1. Stericycle's Motion for Leave to File Reply should be denied. Its request is nothing more
17 than a "second bite at the apple" to refashion the arguments presented in its Motion for
18 Summary Determination. Stericycle should not be permitted to file a reply that simply
19 restates and repackages the same contentions made in its original Motion. Where proffered
20 replies are largely repetitive of the arguments both parties have made in prior filings, a
21 motion for leave to reply should be denied. *Sandy Judd and Tara Herivel v. AT&T*
22 *Communications*, Order 25, Final Order at FN 34 (Docket UT-042022, March 31, 2011)
23 (2011 WL 1251317).
- 24 2. The Commission's rules do not contemplate a party moving for summary determination to
25 have a reply. WAC 480-07-480. On this procedural point, the Commission's process varies
26 from the rules of the Washington superior courts, which under CR 56(c) expressly permit a

1 moving party to file a reply. Stericycle was on notice of this variation, but presumably
2 Stericycle did not request that the schedule for this proceeding include an opportunity to vary
3 from the Commission's rules. Certainly, Order 01 does not schedule dates for filing a reply.

4 3. In contrast, the Commission's process governing petitions for administrative review
5 specifically accommodates a request to file a reply. WAC 480-07-825(5). Even where the
6 rules specifically allow for further argument, however, the party must cite to new matters
7 raised in the other party's response, and state "why those matters were not reasonably
8 anticipated..." The arguments made by Waste Management and other parties were directly
9 refuting the legal issues presented in Stericycle's Motion, and thus Stericycle cannot now say
10 that any of those responsive arguments could not be reasonably anticipated by it. They were
11 indeed anticipated and addressed, albeit not in the fashion Stericycle wishes to present if its
12 request for leave to reply were granted.

13 4. Now, however, having received the other party's responses to its Motion for Summary
14 Determination, Stericycle feels those arguments "require clarification" because the parties
15 have "misconstrued or misrepresented" Stericycle's arguments. Thus, Stericycle apparently
16 believes that the Commission needs Stericycle's help to understand the legal analysis
17 presented in this case. This hardly constitutes grounds for granting leave to reply, and the
18 need for clarification suggests that Stericycle did in fact anticipate the arguments made in
19 responses, it just failed to anticipatorily refute them as thoroughly and as well as it now
20 wishes it had.

21 5. Stericycle's suggestion that Waste Management in its responsive pleading made "new
22 arguments" not known to Stericycle is disingenuous. Stericycle itself first raised the issue of
23 whether pre-petition marketing and solicitation activities were sufficient to defend against
24 abandonment. Waste Management has the right to rely on evidence regarding those activities
25 in its response to Stericycle's Motion, and providing a declaration that simply supports
26 Stericycle's assertions does not constitute a "new argument" for which a reply is warranted.

- 1 6. Furthermore, Stericycle has the burden of proving abandonment. The evidence presented by
2 Waste Management of its preparatory activities and unregulated programs can be considered
3 by the Commission in deciding whether to exercise its discretion for the purpose of showing
4 how that burden has not been met. The evidence does not present new arguments where
5 Waste Management has no burden of proof.
- 6 7. In responding to a summary motion, the responding party may rely on declarations and
7 evidence that refutes the moving party's legal conclusions. Doing so does not automatically
8 convert a response to a cross-motion. Either party to a summary judgment proceeding may
9 file declarations to supply the decision-maker with additional facts. 4 Wash. Prac., Rules
10 Practice CR 56 § 5 (5th ed.). Stericycle does not suggest that Waste Management's "new
11 evidence" is disputable; it instead argues the legal implications. Waste Management's
12 response does not raise "genuine issues of material fact" as a grounds for denying
13 Stericycle's Motion, and Stericycle does not suggest otherwise. Waste Management is
14 entitled, as a nonmoving party, to have judgment entered in its favor, so long as the original
15 moving party had an adequate opportunity to present materials and arguments in rebuttal. *Id.*
16 at § 17. In this case, Stericycle's Motion presented essentially the same arguments it now
17 wishes to reiterate – but repetition is not the same as a rebuttal.
- 18 8. There is no basis for Stericycle to reargue the same points and cases merely because it is
19 concerned that it has not convinced the Commission. The extent to which Stericycle relied
20 on and how it characterized common carrier precedent can be discerned by reading its
21 Motion, and the pleadings speak for themselves. The factual basis on which Stericycle urges
22 the Commission to find abandonment is not disputed, and can be evaluated by the
23 Commission, without further help from Stericycle to "prevent the Commission from being
24 confused...." If, however, the Commission feels the need for further assistance in evaluating
25 the legal arguments presented, Waste Management respectfully requests oral argument to
26 articulate why Stericycle failed – as a matter of law, as a matter of proof, and as a matter of

1 public policy – to prove that biomedical waste services may or should be excised from Waste
2 Management’s solid waste certificate.


3 **CONCLUSION**

4 9. Waste Management respectfully requests that the Commission:

5 a. Deny Stericycle’s Motion for Leave to File Reply; or

6 b. In the alternative, if the Commission grants Stericycle’s Motion for Leave to File
7 Reply, Waste Management respectfully requests oral argument.

8 DATED this 7th day of June, 2011.

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CERTIFICATE OF SERVICE

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

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DATED at Seattle, Washington, this 7th day of June, 2011.


Kathy Moll