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March 4, 2011

**VIA EMAIL AND FEDEX**

Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
Olympia, WA 98504-7250

Re: In the Matter Petition of the Stericycle of Washington, Inc., For an Order Suspending Tariff Filings and Initiating an Adjudicatory Proceeding concerning the Proposed Biomedical Waste Collection and Transportation Services of Waste Management of Washington, Inc., dba WM Healthcare Solutions (G-237); Docket No. TG-110287; Comments of Stericycle of Washington, Inc.


Dear Secretary:

Enclosed are the original and 12 copies of the Comments of Stericycle of Washington, Inc., regarding the above-captioned matter which was e-filed earlier today, together with a cover page to conform stamp and return in the enclosed self-addressed stamped envelope.

Please let me know if you have any questions regarding the enclosed.

Very truly yours,

GARVEY SCHUBERT BARER

By   
Stephen B. Johnson

Enclosures

cc: Waste Management of Washington, Inc., dba WM Healthcare Solutions  
Poly McNeill  
Brad Lovaas  
James K. Sells  
Stericycle of Washington, Inc.

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	
	)	
STERICYCLE OF WASHINGTON, INC.,	)	<b>Docket No. TG-110287</b>
	)	
For an Order Suspending Tariff Filings and	)	Comments of Stericycle of
Initiating an Adjudicatory Proceeding concerning	)	Washington, Inc.
the Proposed Biomedical Waste Collection and	)	
Transportation Services of Waste Management	)	
of Washington, Inc., dba WM Healthcare	)	
Solutions (G-237)	)	
_____	)	

Stericycle of Washington, Inc. (“Stericycle”), through its attorneys Garvey Schubert Barer, Stephen B. Johnson and Donald B. Scaramastra, respectfully submits its comments concerning the Commission’s jurisdiction to consider Stericycle’s Petition for Order Suspending Tariff Filings and Initiating an Adjudicatory Proceeding. Stericycle submits these comments pursuant to the Commission’s February 16, 2011 Notice of Opportunity to Comment.

**A. Overview**

1. Waste Management of Washington, Inc. (“Waste Management”) operates as a solid waste collection company under the authority of a Certificate of Public Convenience and Necessity (G-237) issued by this Commission.

2. Waste Management has been soliciting Washington generators of biomedical waste for months to provide a new biomedical waste collection and transportation service that Waste Management has represented is imminent. For example, Waste Management hired a former Stericycle employee, Jeff Norton, as its Pacific

Northwest Business Development Manager for a business entity identified as “WM (Waste Management) Healthcare Solutions.”<sup>1</sup> On behalf of this new business, Mr. Norton has been soliciting biomedical waste generators and Stericycle customers for new “Medical and Pharmaceutical Waste” services. Waste Management communications to generators have represented that these new services will be offered in Washington very soon. Although Waste Management’s rates for the proposed services have not been published in its tariff or approved by the Commission, in Mr. Norton’s known meetings and solicitations, Waste Management has represented that its tariff rates for the new service will be lower than those offered by Stericycle. In one such communication, Waste Management indicated that its rates will be “10-15% less than the rates currently offered by [the] only other vendor [Stericycle].” Many generators solicited by Waste Management are current Stericycle customers.<sup>2</sup> As a result of Waste Management’s solicitations, Stericycle customers have declined or postponed renewal of service agreements with Stericycle. While Waste Management has not yet commenced physical collection of biomedical waste, Waste Management’s solicitation activities have damaged and are continuing to damage Stericycle.

3. The Commission has plenary jurisdiction over Waste Management’s activities as a solid waste collection company operating under a Certificate of Public

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<sup>1</sup> On January 6, 2011 Waste Management secured from the Commission an order adding “WM Healthcare Solutions of Washington” as new trade name to their certificate. Waste Management does not appear to be using that trade name in its solicitations but, rather, using the unregistered name “WM (Waste Management) Healthcare Solutions.” The latter is, in fact, the name of a Delaware corporation (“WM Healthcare Solutions, Inc.”) in the Waste Management family of companies that is not certificated in Washington.

<sup>2</sup> Among the Stericycle customers solicited by Waste Management are Providence Health Services (Spokane), Providence Sacred Heart Medical Center in Spokane, Valley Hospital, Deaconess Hospital, Northwest Hospital, Legacy Health Systems and PeaceHealth.

Convenience and Necessity. By soliciting customers for its proposed biomedical waste collection and transportation service, Waste Management has engaged in biomedical waste collection and transportation services subject to the Commission's jurisdiction. Waste Management's solicitation and the resulting harm to Stericycle also create a live controversy between Stericycle and Waste Management over which the Commission has jurisdiction.

4. As stated in Stericycle's Petition, Waste Management has abandoned its authority under G-237 to collect and transport biomedical waste. Waste Management voluntarily ceased biomedical waste services in 1996 through a sale of assets and this business to Stericycle. Since that time it has been unable and unwilling to provide those services to customers within its certificated area. Under RCW 81.77.030(6), the Commission is authorized to restrict Waste Management's certificate to reflect the abandonment of the business of collection and transportation of biomedical waste. Order M. V. G. No. 1403, *Mason County Garbage Co., v. Harold LeMay Enterprises*, Cause No. TG-2163 (August 1989) (reversed on other grounds by *Harold LeMay Enterprises v. UTC*, 67 Wn. App 878 (1992)). With this authority, the Commission has jurisdiction to and should limit Waste Management's certificate G-237 to reflect the abandonment of its biomedical waste authority and require Waste Management to apply to regain this abandoned authority, making all necessary showings under the standards of RCW 81.77.040.

5. For the reasons presented in Stericycle's Petition, the entry of Waste Management into the business of collecting and transporting biomedical waste in the

limited territories covered by G-237 will give Waste Management an unfair competitive advantage over Stericycle, resulting in additional harm to Stericycle and potentially adverse consequences for biomedical waste generators in rural areas of the state. Waste Management has not demonstrated that its proposed service in the territories covered by G-237 is needed or in the public interest.

6. As the Commission has recognized, biomedical waste collection involves unique risks and requirements. Waste Management has not established its fitness to provide biomedical waste collection and transportation services in compliance with applicable law and regulation. A general solid waste collection company such as Waste Management that abandoned biomedical waste collection many years ago and now seeks to initiate a new biomedical waste collection service should be required to demonstrate its fitness to perform the new service. *See* RCW 81.77.030(6) (permitting the Commission to limit authority due to abandonment); Order M. V. G. No. 1403, *Mason County Garbage Co., v. Harold LeMay Enterprises*, Cause No. TG-2163 (August 1989) (finding abandonment of a portion of certificated authority).

7. The potential harms to the public interest identified in Stericycle's Petition can only be meaningfully addressed by the Commission before the damage is done.

8. For the reasons stated herein and in the Petition, the Commission has jurisdiction to initiate an adjudication of the issues presented by Stericycle's Petition and those issues arise from an active "case or controversy." The Commission should exercise its authority to supervise and regulate the business of solid waste collection by initiating

proceedings now to determine whether Waste Management is fit to provide the proposed services and whether those services are in the public interest.

**B. The Commission has Jurisdiction to Regulate Biomedical Waste Collection Services Offered by Existing Certificate Holders**

9. As the Commission noted in its Notice of Opportunity to Comment, it “may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority.” WAC 480-07-305(1); RCW 34.05.413(1). The Commission has jurisdiction and authority to regulate solid waste collection companies. RCW 81.77.030; WAC 480-70-006. Indeed, under RCW 81.77.030, the Commission is directed to “supervise and regulate every solid waste collection company in this state.”

10. The Commission’s authority includes fixing rates, regulating services and the safety of operations, and regulating any related matter the Commission deems to be in the public interest. RCW 81.77.030; *WUTC v. Harold Lemay Enterprises, Inc.*, 2010 WL 5483966 (Wash.U.T.C. 2010) (finding that the Commission is “vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts and affiliated interests of public service companies, including solid waste companies.”).

11. The collection and transportation of biomedical waste is within the Commission’s regulatory jurisdiction. The Commission has historically “recognized the specialized nature of biomedical waste collection in granting authority to provide such service” and has interpreted statutory requirements “consistently with the unique requirements and attributes of the service.” *See, e.g.*, Order M. V. G. No. 1633, *In re*

*Medical Resource Recycling System, Inc.*, App. No. GA-76819 (May 1993). For example, it is within the Commission's authority to ensure operational safety of all biomedical waste transporters by requiring compliance with specific federal and state biomedical waste safety and operational requirements. See RCW 81.77.030; WAC 480-70 *et seq.*

12. It is also within the Commission's authority to determine whether and on what conditions the public interest will be served by authorizing additional and overlapping biomedical waste collection services. The Commission has acknowledged that the public interest will not be served if new services "will result in damage to carriers that causes a reduction to unacceptable levels of available reasonably priced service to customers." Order M. V. G. No. 1761, *In re Ryder Distribution Resources, Inc.*, App. No. GA-75154; *In re Stericycle of Washington, Inc.*, App. No. GA-77539 (August 1995).

13. As a certificate holder, Waste Management is subject to the jurisdiction and authority of the Commission to regulate its services and operations. Waste Management's biomedical waste collection and transportation services are within the scope of the Commission's authority to ensure that (1) the public interest is served by the new biomedical waste collection service for which Waste Management is already actively soliciting customers, (2) the new Waste Management service does not result in harm to existing carriers with adverse effects on biomedical waste generators and the public, (3) Waste Management is fit, willing, and able to provide biomedical waste collection and transportation services in compliance with applicable law, and (4) the rates already being promoted by Waste Management to biomedical waste generators are fair and reasonable.

14. Consistent with its historical practice, the Commission is entitled to assert its authority in a manner consistent with the unique needs of biomedical waste collection. The Commission's authority includes initiating an adjudicative proceeding to determine whether an existing certificate holder that previously abandoned biomedical waste operations in the state is fit, willing and able to provide biomedical waste collection and transportation services and whether the proposed service is in the public interest.

**C. The Commission has Jurisdiction to Regulate Entities Soliciting Customers for Biomedical Waste Collection Services**

15. The Commission's plenary authority to regulate Waste Management as an existing certificate holder, and to initiate an adjudicative proceeding to ensure regulatory compliance and protect the public interest, is not diminished by the apparent fact that Waste Management has not yet initiated physical biomedical waste collection activities. RCW 81.77.040 makes clear that "[o]perating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service." RCW 81.77.040 (emphasis added). Thus, by actively soliciting biomedical waste generators as customers and proposing and advertising rates, Waste Management is currently operating as a biomedical waste collection company. This activity brings Waste Management's biomedical waste collection services within the jurisdiction of the Commission independent of the Commission's existing plenary authority over Waste Management as an existing certificate holder.

16. The jurisdictional trigger is not the filing of a tariff or a request by Waste Management for authority to enter the biomedical waste collection business. In its Notice



of Opportunity to Comment, the Commission indicated that the lack of such a request (as well as the lack of physical waste collection activities) might raise a question concerning the Commission's jurisdiction. Failure to file a proposed tariff or an application for authority is not determinative of the Commission's jurisdiction. Otherwise, unauthorized solid waste collection services would not be subject to Commission jurisdiction and that is obviously not the case. The question is whether Waste Management's current activities are subject to the Commission's jurisdiction. The answer to that question is clearly "yes" because (a) Waste Management is a certificated solid waste collection company, actively engaged in the solicitation of business for a new biomedical waste collection service, and (b) Waste Management's solicitation activities have harmed and continue to harm Stericycle.

**D. The Commission has Jurisdiction to Restrict G-237 and to Require Waste Management to Apply for Authority**

17. The Commission may, on its own authority or by complaint, alter or amend a certificate when it is shown that the certificate holder has "failed to operate as a solid waste collection company for a period of at least one year . . . ." RCW 81.77.030(6). A certificate holder may fail to operate and, hence, abandon a portion of its certificated authority: "When a certificate holder fails to operate a portion of its authority during the test year, the certificate may be altered or amended to reflect that fact and a portion of the authority may be deleted." Order M. V. G. No. 1403, *Mason County Garbage Co., v. Harold LeMay Enterprises*, Cause No. TG-2163 (August 1989) (stating Commission conclusions of law) (reversed in part as to factual conclusions by *Harold LeMay*

*Enterprises v. UTC*, 67 Wn. App 878 (1992)). Indeed, “[t]he very existence of statutory authority to ‘amend or alter’ certificates contemplates less-than-total geographic or commodity abandonment. Amendment recognizing major service types is appropriate.” *Id.*

18. Stericycle’s Petition states a claim that Waste Management has abandoned its authority under G-237 to collect and transport biomedical waste. Waste Management ceased biomedical waste services in 1996 through a sale of assets and its biomedical waste business to Stericycle. Since that time, consistent with its determination to exit the biomedical waste business, Waste Management has been unable and unwilling to provide those services to customers within its certificated area. The Commission has jurisdiction to decide this question and to limit Waste Management’s certificate to reflect its abandonment of biomedical waste authority. Following a finding of abandonment, the Commission clearly has jurisdiction to require Waste Management to apply for new certificate authority for any new biomedical waste service and make all necessary showings under RCW 81.77.040 required by such an application. Waste Management has neither requested nor received authority from the Commission to re-enter the business of collecting and transporting biomedical waste.

**E. Stericycle Presents an Actual Case or Controversy subject to Commission Jurisdiction**

19. Waste Management is actively soliciting Stericycle customers for its services. As previously noted, Stericycle customers have declined or postponed renewal of

service agreements with Stericycle as a result of Waste Management's solicitations. Thus, Waste Management's current activities have directly and concretely harmed Stericycle.

20. Waste Management's activities pose an imminent threat of further harm to Stericycle and to biomedical waste generators throughout the state that depend on Stericycle for service, particularly those generators in the more rural areas of the state beyond the service territories included in Waste Management's G-237. As discussed in Stericycle's Petition, the service that Waste Management proposes to offer will be limited, by virtue of Waste Management's limited area of certificated authority, to relatively high-density and profitable urban areas and transportation corridors. Waste Management's certificate covers portions of only 16 of Washington's 39 counties but includes over 80% of the biomedical waste generated in the state. With this market structure, Waste Management will immediately realize an unfair competitive advantage over Stericycle, threatening the viability of Stericycle's statewide services.

21. The Commission has asked for comment concerning whether Stericycle has raised an actual case or controversy under WAC 480-07-305(2). First, this rule does not limit the Commission's jurisdiction to initiate an adjudicative proceeding "at any time and with respect to any matter within its jurisdiction and within the scope of its authority" under WAC 480-07-305(1); RCW 35.05.423(1). Regardless, an actual case or controversy clearly exists. Courts define a justiciable case or controversy as "an actual, present, and existing dispute, or the mature seeds of one, which is distinguishable from a possible, dormant, hypothetical, speculative, or moot disagreement." *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001); *Walker v. Munro*, 124 Wn.2d 402, 411, 879

P.2d 920, 926 (1994); *Superior Asphalt and Concrete Co. Inc. v. Washington Dept. of Labor and Industries*, 121 Wn.App. 601, 607, 89 P.3d 316, 319 (2004). Additionally, the dispute must be “between parties that have genuine and opposing interests,” which are “direct and substantial, rather than merely potential, theoretical, abstract, or academic,” and a determination of the dispute must be “final and conclusive.” *Id.*

22. Stericycle’s Petition raises issues that satisfy all the elements of a justiciable case or controversy. There is an actual and present dispute based on Waste Management’s active solicitation of Stericycle customers for an imminent new service at supposedly lower advertised rates that has resulted in customers declining or postponing renewal of services. See Order M. V. G. No. 1403, *Mason County Garbage Co., v. Harold LeMay Enterprises*, Cause No. TG-2163 (August 1989) (finding abandonment of authority based on “imminent” new residential service by a party). Waste Management’s current activities have caused “actual, concrete harm” to Stericycle. *Walker*, 124 Wn.2d at 411. The issues identified also constitute the “mature seeds” of a broader dispute with respect to the public interest and the terms and conditions on which Waste Management should be allowed to initiate biomedical waste collection services, if at all. Waste Management’s continued solicitation of customers and imminent operation of a biomedical waste service will cause further direct harm to Stericycle’s business and will also threaten Stericycle’s continuing ability to provide statewide services. Stericycle and Waste Management clearly have real and substantial opposing interests. The Commission’s interests in enforcing its regulations, ensuring public safety, and regulating existing certificate holders in the public interest are likewise real and substantial. The Commission has the authority to resolve the

issues raised in Stericycle's Petition through an adjudicative proceeding. In short, Stericycle's Petition presents "an existing dispute, which involves a present and direct interest" in the enforcement of applicable law. *Superior Asphalt and Concrete*, 121 Wn.App. at 607.

**F. Conclusion**

23. On the basis of the facts and authority discussed above, the Commission has jurisdiction and should initiate an adjudicative proceeding to restrict Waste Management's G-237 due to abandonment, to ensure that Waste Management meets the requirements of RCW 81.77.040 to obtain specific authority to provide biomedical waste collection services, and to ensure that any authority is given and exercised in the public interest. In the interim, any tariff rates proposed by Waste Management should be suspended until that adjudication has been completed.

Dated this 4<sup>th</sup> day of March, 2011.

Respectfully submitted,

GARVEY SCHUBERT BARER

By 

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Donald B. Scaramastra

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Washington, Inc.