

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

STERICYCLE OF WASHINGTON,	)	DOCKET TG-110553
INC.,	)	
	)	
Complainant,	)	ORDER 02
	)	
v.	)	
	)	FINAL ORDER ON CROSS-
WASTE MANAGEMENT OF	)	MOTIONS FOR DISMISSAL AND
WASHINGTON, INC.,	)	SUMMARY DETERMINATION
	)	
Respondent.	)	
	)	
.....	)	

*SYNOPSIS: The Commission, finding there are no material facts in dispute concerning the issues raised by Stericycle of Washington, Inc.'s Complaint and Petition, and determining on the basis of undisputed facts that Waste Management of Washington, Inc., has not abandoned its authority under certificate G-237 to collect and transport biomedical waste, grants summary determination in favor of Waste Management of Washington, Inc., and dismisses the complaint.*

**SUMMARY**

1 **PROCEEDING.** On March 21, 2011, Stericycle of Washington, Inc. (Stericycle), filed a complaint and petition (complaint), with the Washington Utilities and Transportation Commission (Commission) against Waste Management of Washington, Inc. (Waste Management). The complaint challenges Waste Management's authority to engage in biomedical waste collection and transportation for compensation under its Certificate G-237 without a specific grant of authority by the Commission. Stericycle alleges, among other things, that Waste Management has abandoned any authority once provided by Certificate G-237 for such services and argues that the initiation of such services by Waste Management is therefore

unauthorized and unlawful. Stericycle requests the Commission to issue an order amending and restricting Certificate G-237 to expressly exclude biomedical waste collection and transportation services. The Commission set the matter for hearing.

- 2 Waste Management filed a Motion to Dismiss Stericycle's complaint on April 12, 2011, and separately answered the complaint on April 21, 2011. Waste Management generally and specifically denies the essential allegations in Stericycle's complaint and asserts affirmative defenses.
- 3 The Commission convened a prehearing conference before an Administrative Law Judge on April 29, 2011. Based on discussions among the parties, the presiding officer established a process and schedule for filing and consideration of dispositive motions. Consistent with the process thus established, the following set of documents is presently before the Commission for determination:
  - Stericycle's Complaint (filed March 21, 2011)
  - Waste Management's Motion to Dismiss (filed April 12, 2011)
  - Waste Management's Answer to Stericycle's Complaint (filed April 21, 2011)
  - WRRRA Response supporting Waste Management's Motion to Dismiss (filed May 5, 2011)
  - Staff Response opposing Waste Management's Motion to Dismiss (filed May 6, 2011)
  - Stericycle's Response opposing Waste Management's Motion to Dismiss and Motion for Summary Determination (filed May 6, 2011)
  - WRRRA Response opposing Stericycle's Motion for Summary Determination (filed May 25, 2011)
  - Staff Response opposing Stericycle's Motion for Summary Determination (filed May 26, 2011)
  - Waste Management's Response to Stericycle's Motion for Summary Determination (filed May 26, 2011)

4 In addition, late on June 1, 2011, Stericycle filed a request for leave to file a reply to the other parties' responses opposing Stericycle's motion for summary determination, accompanied by the proposed reply. Staff answered on June 3, 2011, supporting Stericycle's request for leave to file. Waste Management answered on June 7, 2011, opposing Stericycle's request. The Commission, in this Order, grants leave to file and accepts for filing Stericycle's reply.

5 Finally, Stericycle, Waste Management and WRRRA all ask the Commission to provide an opportunity for oral argument. The Commission denies this request.

6 **PARTY REPRESENTATIVES.** Stephen B. Johnson, Garvey, Schubert & Barer, Seattle, Washington, represents Stericycle. Polly L. McNeill and Jessica L. Goldman, Summit Law Group, Seattle, Washington, represent Waste Management. James K. Sells, Ryan, Uptegraft & Montgomery, Inc., P.S., Silverdale, Washington, represents the Washington Refuse and Recycling Association (WRRRA). Fronda Woods, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).<sup>1</sup>

7 **COMMISSION DETERMINATIONS.** The Commission determines that it will grant leave to Stericycle to file, and will consider, its reply along with the other pleadings.

8 Finding that the extensive pleadings described above have provided the parties adequate opportunities to present their respective cases, the Commission denies the request by certain parties for oral argument.

9 Insofar as the dispositive motions are concerned, the Commission determines that:

- Waste Management's Motion to Dismiss should be denied.
- Stericycle's Motion for Summary Determination should be denied.

---

<sup>1</sup> 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.

- Waste Management’s Response to Stericycle’s Motion for Summary Determination should be liberally construed as including a cross-motion for summary determination.<sup>2</sup>
- Waste Management’s cross-motion for summary determination should be granted.

## MEMORANDUM

### **I. Background and Procedural History**

10 A developing business dispute between Stericycle and Waste Management in connection with the collection and transportation of biomedical waste in Washington became formally apparent on February 10, 2011. On that date, the Commission received a petition from Stericycle requesting that the Commission initiate an adjudicatory proceeding to consider imposing certain conditions and restrictions on Waste Management in anticipation that the company intended to re-enter the business of collecting and transporting biomedical waste for disposal in Washington.<sup>3</sup> Stericycle alleged, among other things, that Waste Management was engaged in marketing efforts, including solicitation of Stericycle biomedical waste service customers, without appropriate authority from the Commission. Stericycle claimed that these efforts were adversely impacting Stericycle’s business.<sup>4</sup> Stericycle’s

---

<sup>2</sup> Albeit styled only as a “Response,” Waste Management’s express requests in the body of its pleading that it be granted summary determination are sufficient under WAC 480-07-395(4) to support this treatment of the filing. *See* Waste Management Response to Stericycle Motion for Summary Determination ¶¶1, 46. In addition, it is accepted practice in Washington to grant summary determination to a nonmoving party on an adequate record. *See State Health Insurance Pool v. Health Care Authority*, 129 Wn.2d 504 (1996); 4 Wash. Practice Series, Rules Practice CR 56 § 17 (5th ed. 2006) (The courts “have long held that summary judgment may be granted in favor of the nonmoving party if it becomes clear that he or she is entitled thereto.”) (citations omitted).

<sup>3</sup> Waste Management provided such services until 1996, when it sold its biomedical waste operation to Stericycle’s parent corporation on a nationwide basis.

<sup>4</sup> Stericycle Petition, Docket TG-110287 ¶ 5. *See also* Stericycle Petition, Docket TG-110553 ¶ 6.

petition did not allege that Waste Management had filed tariffs for biomedical waste collection and transportation.

- 11 The Commission recognized in its internal review of Stericycle's petition in Docket TG-110287 that filing a tariff including rates, terms and conditions of biomedical waste services would be a necessary step for Waste Management to take before it could actually conduct such operations. Considering this, and comments received from various interested persons, the Commission exercised its discretion not to conduct an adjudicative proceeding in response to Stericycle's petition.<sup>5</sup> The Commission determined that unless and until Waste Management sought all necessary authority to actually initiate biomedical waste service, the issues raised by Stericycle's petition were purely academic and, thus, did not present an actual case or controversy suitable for resolution via the Commission's adjudicative process.<sup>6</sup>
- 12 In its notice declining to conduct an adjudicative proceeding in response to Stericycle's petition, the Commission noted that Waste Management stated in its comments on the matter that it did "intend to file a tariff and take steps necessary to collect and transport biomedical waste in Washington at some point in time."<sup>7</sup> The Commission observed in this connection that Stericycle retained "the same rights as any other interested party to protest, oppose, or otherwise comment on whatever such filing Waste Management [might make]."<sup>8</sup>
- 13 On March 18, 2011, Waste Management filed in Docket TG-110506 a proposed tariff for biomedical waste collection and transportation services. Waste Management presented its filing as an initial tariff and requested Commission approval to begin operations on one-day notice. The Commission rejected this filing on March 30, 2011, because Waste Management did not demonstrate that it met the requirements of

---

<sup>5</sup> *In the Matter of the Petition of Stericycle of Washington, Inc.*, Docket TG-110287, Decision Not to Initiate Adjudicative Proceeding (March 10, 2011).

<sup>6</sup> *Id.*

<sup>7</sup> *In the Matter of the Petition of Stericycle of Washington, Inc.*, Docket TG-110287, Waste Management Comments ¶ 8 (March 4, 2011).

<sup>8</sup> *Id.* Decision Not to Initiate Adjudicative Proceeding ¶ 10.

the one-day notice rule, WAC 480-70-261.<sup>9</sup> Waste Management, on the same day, filed in Docket TG-110552 a second proposed tariff governing biomedical waste services, this time on seven-day notice under WAC 480-70-262.<sup>10</sup>

14 In the interim, on March 21, 2011, Stericycle filed a complaint and petition (complaint) against Waste Management in Docket TG-110553, restating in large part the allegations in its earlier petition in Docket TG-110287. The complaint challenges the authority of Waste Management to engage in biomedical waste collection and transportation for compensation under Certificate G-237 without a specific grant of authority by the Commission. Stericycle alleges, among other things, that Waste Management has abandoned any authority once provided by Certificate G-237 for such services and that the initiation of such services by Waste Management is therefore unauthorized and unlawful. Stericycle requests the Commission issue an order amending and restricting Certificate G-237 to expressly exclude biomedical waste collection and transportation services.

---

<sup>9</sup> WAC 480-70-261 provides that:

The commission may approve on one-day notice:

- (1) Initial tariff filings that accompany applications for certificated authority;
- (2) Tariff adoptions filed under the provisions of WAC 480-70-321; and
- (3) Tariff filings whose only purpose is to add a new service option or a service level which has not been previously included in the company's tariff, if that service option or service level is requested by a customer.

Waste Management's March 18, 2011, tariff filing was rejected by letter from the Commission's Executive Director and Secretary, dated March 30, 2011. Although Waste Management presented its proposed tariff as one adding "a new service option or a service level . . . not . . . previously included in the company's tariff" the Commission stated it rejected Waste Management's filing because it failed "to identify the customer(s) requesting service."

<sup>10</sup> WAC 480-70-262 provides that:

A company must provide at least seven calendar-days' notice to the commission on filings whose only purpose is:

- (1) To implement decreases in rates or charges; or
- (2) To add a new service option or service level that has not been previously included in the company's tariff.

15 Waste Management's March 30, 2011, tariff filing was designated as Docket TG-110552 and appeared on the Commission's "No Action" agenda for its regularly scheduled open meeting on April 14, 2011. Stericycle requested that the Commission pull the matter from the No Action agenda and "reject or suspend the biomedical waste tariff proposed by Waste Management pending resolution of Stericycle's Complaint" in Docket TG-110553. The Commission allowed for discussion of the matter at the April 14, 2011 open meeting. Staff made a brief presentation and the Commission heard from Stericycle and Waste Management regarding their respective views of the essential issues raised by Stericycle's complaint. Following additional colloquy with Staff, including affirmation from the Director of the Commission's Administrative Law Division that the complaint already had been set for hearing, the Commission elected to take no action. Thus, Waste Management's tariff became effective as filed, by operation of law.

16 As previously summarized, the Commission has now heard extensive argument from Stericycle, Waste Management, the WRRRA and Staff on the pending dispositive motions filed by the principle parties. Finding the issues fully developed on the pleadings, the Commission turns below to its discussion and determination of this matter.

## II. Discussion and Determinations

### Motion to Dismiss.

17 The statutory foundation of Stericycle's Complaint is found in RCW 81.77.030 (6), which provides (*emphasis added*):

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the holder of any certificate with notice and an opportunity for a hearing at which it shall be proven that the holder has . . . failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, *may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter.*

18 In terms of precedent, the case most squarely on point is *Mason County Garbage Co. v. Harold LeMay Enterprises*.<sup>11</sup> The Commission determined in its final order that:

The provisions of RCW 81.77.030 allow the Commission to suspend, revoke, amend, or alter a certificate if the certificate holder has failed to operate as a garbage and refuse collection company for a period of at least one year preceding the filing of the complaint. 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.<sup>12</sup>

The Commission, in the body of its order, stated: “The very existence of statutory authority to ‘amend or alter’ certificates contemplates less-than-total geographic or commodity abandonment.”<sup>13</sup> The Commission concluded that an “[a]mendment recognizing major service types is appropriate.”<sup>14</sup> In *LeMay*, the Commission exercised its discretion to amend LeMay’s certificate, restricting it exclusively to “garbage and refuse collection in drop box containers.”<sup>15</sup>

19 In reversing the Commission, the Court of Appeals said:

The Commission found only that LeMay did not actually serve residential customers and did not hold itself out as providing that service during the pertinent time period. *We believe that a certificate holder can be deemed to have abandoned a portion of its “business of transporting garbage and/or refuse for collection” only if the certificate holder either is unavailable to serve customers or refuses to*

---

<sup>11</sup> *Mason County Garbage Co. v. Harold LeMay Enterprises*, Cause No. TG-2163 (August 1989) (amending G-certificate to exclude residential solid waste collection services), *rev’d sub nom*, *Harold LeMay Enterprises v. UTC*, 67 Wn. App. 878 (1992).

<sup>12</sup> *Id.* at 8 (Conclusion of Law 2).

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 7; *see also id.* at 9 (Conclusion of Law 6).

*serve potential customers.* The Commission, as we have noted, made no such finding.<sup>16</sup>

20 Thus, while the Court disagreed with the bases stated for the Commission's decision to amend LeMay's certificate, it recognized the Commission's authority to do so upon a sufficient finding.

21 Stericycle contends that Waste Management's sale of its biomedical waste business to Stericycle in 1996, its voluntary relinquishment of its tariff covering such services, and its failure to reenter the business for 15 years adequately support a determination that Waste Management abandoned its biomedical waste collection and transportation authority under its certificate G-237. Stericycle urges the Commission to exercise its discretion to amend the certificate by eliminating Waste Management's authority to conduct such operations.

22 We discuss below that the facts Stericycle alleges in its complaint are insufficient in themselves to support a determination of abandonment. Insofar as Waste Management's Motion to Dismiss is concerned, however, unless we determine there is no set of facts that would support a finding of abandonment, including facts that show unavailability or refusal to serve, it appears Stericycle has stated a claim as to which the Commission has discretion to grant relief. Waste Management's Motion to Dismiss accordingly should be denied.

**Cross-Motions for Summary Determination**

23 The facts that inform our decision in this matter are undisputed and all facts material to our decision are before us. Considering the *LeMay* case, and the discussion above, our analysis of Stericycle's motion for summary determination thus begins with the question whether these facts, viewed in the light most favorable to Waste Management, show that Waste Management has been unavailable to serve customers or refused to serve existing or potential customers. If either is found, this arguably

---

<sup>16</sup> *Lemay*, 67 Wn. App. at 883 (emphasis added). Indeed, the Commission found and concluded to the contrary that "while [LeMay] did not refuse service to any potential or existing customer, it also did not hold itself out to provide that service." Commission Order at 9 (Conclusion of Law 5); *see also id.* at 8 (Finding of Fact 10).

provides a basis upon which we could determine abandonment and exercise our discretion under the permissive language of RCW 81.77.030 (6) to amend Waste Management's certificate. If neither is found, this time viewing the facts in the light most favorable to Stericycle, it is appropriate for the Commission to grant summary determination in favor of Waste Management.

24 Taking the second criterion first, there is no evidence that Waste Management has actually refused to serve any potential customers.<sup>17</sup> Quite to the contrary, there is undisputed evidence that Waste Management not only has not refused to provide biomedical waste service, it has actively solicited such business in its service territory, at least since January of this year.<sup>18</sup>

25 Turning to the first criterion, the essential facts upon which Stericycle bases its contention that Waste Management has been unavailable (*i.e.*, unable) to serve are:

- Waste Management sold its nationwide biomedical waste collection business assets and customer accounts to Stericycle's parent company, Stericycle, Inc., in 1996 and entered into a non-compete agreement for five years.
- Waste Management canceled its only biomedical waste tariff following the sale of its Washington customer accounts and assets.
- Waste Management remained out of the business for the next 15 years, including the so-called test year (*i.e.*, the 12 months preceding the filing of Stericycle's complaint).

---

<sup>17</sup> Waste Management relates in response to Stericycle's motion that: "Stericycle has failed to produce *any* evidence that Waste Management has refused to serve customers. Tellingly, it has produced *no* affidavits from customers who were turned down by Waste Management." Waste Management Response to Stericycle's Motion for Summary Determination ¶ 23.

<sup>18</sup> "Waste Management employees have been soliciting customers and negotiating contracts. ([Norton Decl. ¶ 3])" Waste Management Response to Stericycle Motion for Summary Determination ¶ 27. Stericycle does not dispute this and, indeed, alleges such activities in its complaint (*see, e.g.*, ¶ 6). *See also* Revised Norton Decl., *passim*.

- 26 Stericycle argues that these underlying facts, one of which implicates a disputed question of law,<sup>19</sup> are sufficient to support an ultimate finding of fact that Waste Management has not been willing or able to provide biomedical waste collection in its service territory under certificate G-237 since 1996. Stericycle contends that Waste Management should be determined on this basis to have abandoned its certificate authority to transport biomedical wastes.
- 27 With respect to its sale of assets in 1996, it is undisputed that Waste Management did not seek authority to transfer any of its rights under Certificate G-237 in connection with the sale. The record discloses that Waste Management entered into a five-year non-compete agreement with Stericycle with respect to certain Waste Management territories. This implies that neither party regarded the sale as an abandonment of certificate authority at the time of the sale. Such an agreement would have been unnecessary if Waste Management abandoned its certificate authority as a result of the sale of its assets. Thus, there is nothing inherent in the asset sale itself that supports a finding of abandonment.
- 28 Under what appears to be the only precedent directly on point, the fact that Waste Management did not physically collect or transport biomedical wastes for the next 15 years also does not support a claim of abandonment.<sup>20</sup> As held in *LeMay*, evidence that a company having a G certificate “did not actually serve residential customers

---

<sup>19</sup> The disputed point is whether, under RCW 81.77.040, Waste Management operated “for the hauling of solid waste for compensation” in Washington during the year prior to Stericycle’s complaint. The facts underlying our determination of this question are not disputed on the record in this docket and lead us to determine as a matter of law that Waste management has conducted such operations during the relevant period. This mixed finding and conclusion, which we discuss below (¶¶ 31-32), is not essential to our determination of the motions for summary determination. Hence, we do not consider it to be a material fact in dispute precluding summary determination.

<sup>20</sup> See *LeMay*, 67 Wn. App. at 883. We note Stericycle’s arguments based on contrary precedent in common carrier cases other than solid waste. These cases, however, were decided under a different statutory scheme and implicate fundamentally different policies than those extant here. *In re Ryder Distrib. Res., Inc.* Order M.V.G. No. 1596 (Wash. Utils. & Transp. Comm’n, Jan. 25, 1996) (“Not only do the [motor carrier and solid waste] laws or regulations differ, but the underlying purposes for the laws and regulations differ.”) These common carrier cases largely, if not exclusively, involve proposed sales and transfers of certificate authority by certificate holders who have not conducted the authorized transportation for significant periods of time. Allowing such transfers to new entrants would effectively undermine the Commission’s authority to grant or deny such authority in the first instance.

and did not hold itself out as providing that service” is insufficient to show abandonment of the right to serve those customers.<sup>21</sup>

29 Stericycle’s facially stronger argument is that Waste Management’s voluntary cancellation of its tariff providing rates, terms and conditions for medical waste collection and transportation anywhere in its service territory was an objective manifestation of the company’s intent in 1996 to abandon biomedical waste service. As Stericycle argues, after cancelling its tariff, Waste Management could not thereafter legally collect and transport such wastes.<sup>22</sup> According to Stericycle, Waste Management thus made itself unavailable to provide such services anywhere in Washington, regardless of what certificate authority it formally retained.

30 The Commission, however, has long recognized that the holders of G certificates have the necessary authority to conduct the full range of solid waste collection services, including biomedical waste collection and transportation, whether or not they actually have a tariff and provide such service.<sup>23</sup> Thus, it does not appear that Waste Management’s lack of a tariff to provide biomedical waste services can be considered dispositive of the scope of its authority under certificate G-237.

31 The agreement by Waste Management not to compete for a period of time following the transfer of equipment was simply that – it was not, by its terms, a sale of a portion of Waste Management’s certificate. What Waste Management retained was the general authority under its G certificate, which, as discussed above, included the authority to transport medical waste. In other words, after the termination of the five year non-compete period Waste Management was in the same position as any other holder of a G certificate. To accept Stericycle’s argument that Waste Management abandoned that authority would necessarily mean that any G certificate holder not

---

<sup>21</sup> *Id.*

<sup>22</sup> Stericycle Motion for Summary Determination ¶ 55.

<sup>23</sup> *In re Am. Envtl. Mgmt. Corp.*, Order M. V. G. No. 1452 at 7 (Wash. Utils. & Transp. Comm’n, Nov. 30, 1990); *see In re Sureway Med. Servs.*, Order M. V. G. No. 1663 at 5 (Wash. Utils. & Transp. Comm’n, Nov. 19, 1993) (“G-12 is a general solid waste permit, and therefore includes authority to collect and transport biomedical and biohazardous waste”). *See also* WAC 480-70-041, which says: “Unless the company’s certificate is restricted against doing so, a traditional solid waste collection company may also perform specialized solid waste collection service.”

currently transporting medical waste could not commence such service by filing a tariff, but rather would have to seek new authority. We decline to so administratively erode the general solid waste authority conferred by such a certificate.

32 We determine on the basis of the discussion above that Waste Management has not abandoned any part of its general authority under certificate G-237 to operate for the hauling of solid waste, including biomedical waste, for compensation in Washington.

33 Our conclusion is supported by 2010 amendments to the solid waste laws. RCW 81.77.040 provides (*emphasis added*):

A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. *Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.*

As Waste Management argued, the company actively solicited and began negotiating contracts with potential customers for biomedical waste collection services, beginning in January 2011.<sup>24</sup> Waste Management argues that such activities, without more, satisfy the current statutory definition of “operating for the hauling of solid waste.”

Well-established and familiar principles of statutory interpretation provide that the plain language of a statute controls its interpretation.<sup>25</sup> It follows on the basis of the undisputed facts in the record of this proceeding that Waste Management was

---

<sup>24</sup> See ¶¶ 9, 23.

<sup>25</sup> *Bowie v. Washington Dept. of Revenue*, 171 Wash.2d 1, 248 P.3d 504(2011), *citing* *State v. Thornton*, 119 Wn.2d 578, 580, 835 P.2d 216 (1992) (“If the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction.”).

available to, and did during 2011, “operate for the hauling of solid waste for compensation” even without a tariff.<sup>26</sup>

34 Finally, we consider Stericycle’s complaint in light of the understanding that the Commission’s ultimate exercise of authority in ordering an amendment to, or alteration of, a certificate is an act of discretion under RCW 81.77.030. That is, even if the Commission found facts that would support a determination of abandonment, which we emphasize is not the case, there is nothing in the law that compels such a determination or requires us to amend Waste Management’s certificate. Further, it would be inappropriate to do so given that there are policy reasons militating against such a result.

35 The parties identify two important policy considerations: competition and public health and safety. Stericycle argues the second is paramount and trumps the first. Waste Management and Staff argue the opposite.

36 Waste Management and Staff cite to various authorities that show the Commission recognizes a need for competitive opportunities in this segment of the industry, which is considered a specialized service, in significant part *because of* its public health and safety implications. That is, the Commission has historically found that promoting competition in this segment of the industry is in the public interest because, among

---

<sup>26</sup> When Stericycle filed its first complaint earlier this year, in Docket TG-110287, objecting to Waste Management’s plans to initiate biomedical waste services, the Commission called for comments. Stericycle argued that “[b]y 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.” Stericycle Comments ¶ 3. A Commission ALJ issued a Decision Not to Initiate Adjudicative Proceeding in Docket TG-110287 on March 10, 2011. The ALJ determined that Waste Management’s marketing of biomedical collection services and registration of a new trade name did not “rise to the level” of operating as a solid waste collection company in the context of determining whether an actual case or controversy was present. While this became a subject for discussion in the current docket (*see, e.g.*, Stericycle Motion for Summary Determination ¶¶ 8, 17 (footnote 5), 57; Waste Management Response to Stericycle Motion for Summary Determination ¶ 26), we note that the ALJ’s statement was made in a different docket, for a different reason and on a less developed record than that before us here. In any event, initial orders are not in any sense precedential and, even when they become final by operation of law, the Commission’s standard Notice of Finality states that the “Commission does not endorse the order’s reasoning and conclusions.”

other things, it promotes higher quality of service in terms of protecting the public health and safety.

- 37 The Commission ruled as early as 1990 that “the permanent authority of existing G-certificate holders includes the authority to collect infectious waste,” even though some certificate holders had never provided this service.<sup>27</sup> The Commission also recognized that its regulation of this specialized service is underpinned by different policies than the ones applicable to traditional solid waste collection:

[T]he Commission believes that in the context of neighborhood solid waste collection, the statute contemplates an exclusive grant of authority as the best and most efficient way of serving all customers in a given territory. In this general context, it is assumed that all or most people and businesses in a given territory are also customers needing garbage service. Under these circumstances, an exclusive grant of authority in a given territory promotes service, efficiency, consistency and is generally in the public interest. The collection of medical waste is quite a different situation. Customers are only a small percentage of the total business in any given territory. The applicants for medical waste authority wish to serve the entire state or large portions of the state. The entire operation more closely resembles that of a motor freight common carrier with statewide authority than that of a typical garbage company. The Commission is at this point unconvinced that any single carrier presently authorized to serve in the state of Washington could provide a level of service, on its own, which would satisfy the Commission and meet the needs of the waste generators.<sup>28</sup>

More recently, the Commission has observed again that while the solid waste industry in general is characterized by monopoly service providers in given territories, the

---

<sup>27</sup> *In re Am. Env'tl. Mgmt. Corp.*, Order M. V. G. No. 1452 at 7 (Wash. Utils. & Transp. Comm'n, Nov. 30, 1990); see *In re Sureway Med. Servs.*, Order M. V. G. No. 1663 at 5 (Wash. Utils. & Transp. Comm'n, Nov. 19, 1993) (“G-12 is a general solid waste permit, and therefore includes authority to collect and transport biomedical and biohazardous waste”).

<sup>28</sup> Order M. V. G. No. 1451, *In re Sure-Way Incineration, Inc.*, Hearing No. GA-868 (Nov. 1990) at 16-17; see also Order M. V. G. No. 1452, *In re Am. Env'tl. Mgmt. Corp.*, Hearing No. GA-874 (Nov. 1990).

Commission has granted overlapping authority for the provision of biomedical waste services, including at one time statewide authority to two companies.<sup>29</sup> Thus, Commission policy has historically encouraged competition in the provision of biomedical waste services.<sup>30</sup>

38 The Commission adopted WAC 480-70-041 in 2001, which says in part that: “[u]nless the company’s certificate is restricted against doing so, a traditional solid waste collection company may also perform specialized solid waste collection service.” This rule, established in the context of circumstances including Stericycle having statewide authority for such services, reaffirms the Commission’s determination that opportunities for traditional solid waste collection companies to enter the field of biomedical waste collection and transportation should be readily available. Thus, while Stericycle argues at length concerning the health and safety implications of biomedical waste services, it fails to recognize that this simply underscores the importance of competition in this line of business, as consistently recognized by the Commission since the inception of such specialized services more than two decades ago.

39 Stericycle’s policy arguments are misplaced in that it is the specialized nature and risk inherent in biomedical waste disposal services that underlies the Commission’s recognition that this is “a highly competitive industry.”<sup>31</sup> Imposing on Waste Management, or any other holder of an unrestricted G certificate, the sorts of requirements Stericycle advocates here would raise significant barriers to entry to this particular part of the industry. Stericycle’s dominance in providing this specialized service statewide adds to the inappropriateness of its position.<sup>32</sup>

---

<sup>29</sup> See *In re Biomedical Waste Carriers*, Docket TG-970532, [Declaratory Order](#) at 10 (Wash. Utils. & Transp. Comm’n, Aug. 14, 1998). It appears that Stericycle is, today, the only company with such authority. Complaint ¶ 7.

<sup>30</sup> See *Id.* at 10 – 11.

<sup>31</sup> *Id.* (“The specialized service of collection and transportation of biomedical waste has come into being within this decade. [I]t has evolved into a highly competitive industry as a result of the Commission interpreting RCW 81.77.040 consistently with the unique requirements and attributes of the service.”)

<sup>32</sup> Motion to Dismiss ¶ 5 (“Stericycle applied for and was granted state-wide authority to perform biomedical waste collection in 1995 following four years of administrative litigation to obtain that certificate right Since then, Stericycle has acquired control of all other certificates

40 Finally, the Commission has ample authority to regulate by means other than review under the public convenience and necessity standards the conduct of existing G certificate holders who file a tariff and enter into biomedical waste collection and transportation services on a prospective basis. The Commission has the power to regulate rates, terms and conditions of service, to prevent discrimination, and otherwise to regulate in the public interest the provision of such services in Washington.<sup>33</sup>

---

specifically authorizing specialized biomedical waste collection”), *citing* Order M.V.G. No. 1761, *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154; *In re Stericycle of Wash., Inc.*, App. No. GA-77539 (consolidated) (Aug. 1995)); *citing Id.* at 20

<sup>33</sup> RCW 81.77.030 provides:

The commission shall supervise and regulate every solid waste collection company in this state,

- (1) By fixing and altering its rates, charges, classifications, rules and regulations;
- (2) By regulating the accounts, service, and safety of operations;
- (3) By requiring the filing of annual and other reports and data;
- (4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;
- (5) By requiring compliance with local solid waste management plans and related implementation ordinances;

(6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans. The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the holder of any certificate with notice and an opportunity for a hearing at which it shall be proven that the holder has willfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter.

**FINDINGS OF FACT**

41 Having discussed above all matters material to this decision, and having stated  
detailed findings, conclusions, and the reasons therefore, the Commission now makes  
the following summary findings of fact, incorporating by reference pertinent portions  
of the preceding detailed findings:

42 (1) The Washington Utilities and Transportation Commission is an agency of the  
State of Washington, vested by statute with authority to regulate rates, rules,  
regulations, practices, and accounts of public service companies, including  
solid waste collection companies.

43 (2) Waste Management has not refused to provide biomedical waste service to any  
customer requesting such service and has actively solicited customers during  
the 12 month period preceding the filing of Stericycle's complaint.

44 (3) Waste Management was available to provide biomedical waste service under  
its certificate G-237 on one-day notice if requested by a customer, or on seven-  
day notice if initiating new biomedical waste service on its own initiative at  
any time during the 12 month period preceding the filing of Stericycle's  
complaint.

45 (4) Waste Management has not abandoned any part of its authority to conduct the  
full range of solid waste collection services allowed for under its certificate,  
including biomedical waste collection and transportation.

**CONCLUSIONS OF LAW**

46 Having discussed above all matters material to this decision, and having stated  
detailed findings, conclusions, and the reasons therefore, the Commission now makes  
the following summary conclusions of law, incorporating by reference pertinent  
portions of the preceding detailed conclusions:

- 47 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 48 (2) Stericycle states in its complaint a claim as to which the Commission has authority to grant relief upon a showing that during the 12 months preceding its filing, Waste Management has been unavailable to serve biomedical waste customers or has refused to serve potential customers and hence may be deemed, in the Commission's discretion, to have abandoned its authority to provide such services. The Commission accordingly should deny Waste Management's Motion to Dismiss Stericycle's Complaint and Petition.
- 49 (3) There being no material facts in dispute and the facts failing to establish that Waste Management has been unavailable to serve biomedical waste customers or has refused to serve potential customers during the 12 month period preceding the filing of Stericycle's complaint, Stericycle's Motion for Summary Determination should be denied, Waste Management's cross-motion for summary determination should be granted. Stericycle's Complaint and Petition accordingly should be dismissed.

**ORDER**

THE COMMISSION ORDERS THAT:

- 50 (1) Waste Management's Motion to Dismiss Stericycle's Complaint and Petition is denied.
- 51 (2) Stericycle's Motion for Summary Determination is denied.
- 52 (3) Waste Management's cross-motion for summary determination is granted.

53 (4) Stericycle's Complaint and Petition is dismissed.

Dated at Olympia, Washington, and effective July 13, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**