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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of:

WASTE MANAGEMENT OF WASHINGTON,  
INC. D/B/A WM HEALTHCARE SOLUTIONS  
OF WASHINGTON

For an Extension of Certificate G-237 for a  
Certificate of Public Convenience and Necessity  
to Operate Motor Vehicles in Furnishing Solid  
Waste Collection Service

Docket No. TG-120033

**WASTE MANAGEMENT'S  
OPPOSITION TO STERICYCLE'S  
MOTION FOR CONTINUANCE**

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## I. RELIEF REQUESTED

1. Pursuant to WAC 480-07-385(3)(a), Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington (“Waste Management”) requests that the Commission deny Stericycle of Washington, Inc.’s (“Stericycle”) Motion for Continuance.<sup>1</sup>

## II. STATEMENT OF FACTS

2. On April 16, 2012, the Commission ruled that the protesting parties do not have a significant interest in, and may not conduct discovery on, issues related to Waste Management’s financial or operational fitness to provide service under the extended authority for which it has applied. Such issues include, but are not necessarily limited to, the statutory factors of an estimate of the costs of facilities to be used to provide the proposed service, the Company’s assets, or Waste Management’s prior experience in the field.<sup>2</sup>

3. Following written opposition to the discovery limitation by all Protestants, the Commission overruled the objections on May 14, 2012. The Commission noted that “[n]o party, including protestants, has a right to discovery at all in this docket, much less on any specific issues.”<sup>3</sup> Moreover, the Commission recognized that the RCW 81.77.040 inquiry into an applicant’s cost of facilities, assets on hand, and prior experience is to be conducted **by the Commission or its staff** based on the applicant’s “affidavit or declaration.”<sup>4</sup>

4. The Commission rejected Protestants’ argument that they had any “legitimate interest” in determining “whether Waste Management is fit to provide the requested service.”<sup>5</sup> Rather, the Commission held that examination of the applicant’s fitness “is the responsibility of the Commission,

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<sup>1</sup> Separately, Waste Management will be seeking leave from the Commission to file a brief in reply to the various briefs in opposition to Waste Management’s Motion for Summary Determination, but granting that request is discretionary and thus this Opposition is strictly responsive to Stericycle’s Motion for Continuance.

<sup>2</sup> *In re Waste Mngt of WA, Inc.*, Docket TG-120033, Prehearing Conference Order ¶ 8 (Wash. Utils. & Transp. Comm’n, Apr. 16, 2012).

<sup>3</sup> *In re Waste Mngt of WA, Inc.*, Docket TG-120033, Order Overruling Objections to Prehearing Conference Order ¶ 15 (Wash. Utils. & Transp. Comm’n, May 14, 2012) (“Order 03”).

<sup>4</sup> *Id.* ¶ 16 (quoting RCW 81.77.040).

<sup>5</sup> *Id.* ¶ 17.

1 not private parties, particularly when those private parties are competing service providers.”<sup>6</sup> Waste  
2 Management’s financial and operational fitness are “issues that do not affect” Protestants.<sup>7</sup>

3 5. Now, as though this issue had not been fully briefed and ruled on, Stericycle “moves the  
4 Commission for an Order continuing” Waste Management’s Motion for Summary Determination as to  
5 Financial and Operational Fitness “to permit Stericycle a reasonable opportunity to conduct discovery”  
6 as to Waste Management’s financial and operational fitness or to cross-examine Waste Management’s  
7 witnesses at the hearing regarding these two subjects.<sup>8</sup>

### 8 III. STATEMENT OF ISSUES

9 6. Should Stericycle’s baseless continuance motion be rejected?

### 10 IV. EVIDENCE RELIED UPON

11 7. Waste Management relies upon the records and filed herein.

### 12 V. ARGUMENT

13 8. Evidently, Stericycle cannot take “no” for an answer. Twice now the Commission has  
14 ruled that Protestants **are not entitled to conduct discovery** regarding Waste Management’s financial  
15 and operational fitness. Stericycle previously filed an 11-page brief opposing this restriction, requesting  
16 that the restriction be withdrawn and that the Commission accept interlocutory review of the restriction.<sup>9</sup>  
17 The Commission rejected Stericycle’s objections and denied its request for withdrawal and interlocutory  
18 review. The present request for a continuance to conduct precisely the discovery which twice has been  
19 prohibited is amazingly bold – and it is also baseless, improper, and frivolous. It should be denied.

20 9. Similarly, the request for a continuance to cross-examine Waste Management’s witnesses  
21 at the hearing regarding Waste Management’s financial and operational fitness disregards the  
22 Commission’s Order. The Commission has authority to permit cross-examination, but in light of its  
23 holding that Protestants lack any legitimate interest to protect in the RCW 81.77.040 inquiry into  
24 operational and financial fitness, and that it is a determination capable of being made by the  
25 Commission or its staff based on the applicant’s affidavits or declarations, it is hard to fathom why

26  
27 <sup>6</sup> *Id.*

28 <sup>7</sup> *Id.*

<sup>8</sup> Mot. for Continuance ¶ 1.

1 cross-examination would ever be “necessary for full disclosure of all relevant facts and issues”<sup>10</sup> related  
2 to operational and financial fitness.


3 10. Furthermore, the bizarre request to postpone consideration of Waste Management’s  
4 Motion for Summary Determination until after the hearing eviscerates the very purpose of Waste  
5 Management’s motion. A continuance until after hearing would be in effect a denial of Waste  
6 Management’s Motion for Summary Determination since the whole point of the motion is to avoid a  
7 hearing on the very issue. It is tautological for a party to argue against a summary judgment motion by  
8 asking for a continuance to decide the summary judgment motion only after hearing.<sup>11</sup>

9 **VI. CONCLUSION**

10 11. Waste Management respectfully requests that the Commission deny the improper  
11 continuance motion.

12 DATED this 31st day of May, 2012.

13 SUMMIT LAW GROUP PLLC

14 By 

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26 <sup>9</sup> Objection to Prehearing Conference Order & Request for Clarification (Apr. 26, 2012).

27 <sup>10</sup> RCW 34.05.449.

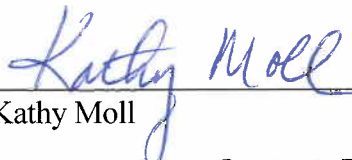
28 <sup>11</sup> Waste Management will address the absence of any genuine issue as to any material fact in the proposed reply brief which will follow.

**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 indicated below, pursuant to WAC 480-07-150.

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DATED at Seattle, Washington, this 31st day of May, 2012.

  
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 Kathy Moll