BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington	Docket TG-120033 PROTESTANTS RUBATINO REFUSE REMOVAL, INC.; CONSOLIDATED DISPOSAL SERVICES, INC.; MURREY'S DISPOSAL, INC.; AND PULLMAN DISPOSAL SERVICE, INC.'s OBJECTION TO APPLICANT'S DATA REQUESTS AND MOTION FOR DISCOVERY CONFERENCE

COME NOW Protestants Rubatino Refuse Removal, Inc.; Consolidated Disposal Services, Inc; Murrey's Disposal, Inc.; and Pullman Disposal Service, Inc. and respectfully move the Commission as follows:

**I. FOR AN ORDER APPROVING PROTESTANTS' OBJECTION
TO ALL DATA REQUESTS SERVED UPON PROTESTANTS BY APPLICANT
and**

**II. FOR THE SCHEDULING OF A DISCOVERY CONFERENCE
WITH THE ASSIGNED ADMINISTRATIVE LAW JUDGE OR
A "DESIGNATED PERSON" TO ASSIST IN RESOLVING
DISCOVERY DISPUTES IN THIS DOCKET**

(1)   **OBJECTION TO DATA REQUESTS:** Protestants have been served with identical data requests which would seem to be appropriate for an Applicant, not a Protestant. That is because at this point in the proceeding

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under RCW 81.77.040, the Applicant has the entire burden of proof, and the Protestants have no such burden. Although this is a "medical waste" application, the law and Commission precedent remain applicable. Simply put, the statute always has placed upon the Applicant the burden of establishing it is fit, willing and able to provide the requested service and also has the burden of proving the existing carrier is not providing service to the satisfaction of the Commission. *See Order M.V.G. No. 1639*, **In re Superior Refuse Removal Corporation**, App. GA-896 (June 1993) and **Superior Refuse Removal v. UTC**, 86 Wn. App. 1020 (1997);[1] (1997 Lexis 787; Wa. Court of Appeals May 22, 1997). Conversely, the current certificated entity has no corresponding evidentiary burden at this stage of the proceeding. Indeed, it does not have to prove the negative inference that it is not providing service to the satisfaction of the Commission; rather the Applicant has to prove that it is not. There is a big difference here. If there is a credible showing at hearing of unsatisfactory service then, obviously, the Protestant/existing carrier will attempt to come forth with evidence that contradicts that showing. Historically, the Applicant would proffer testimony from dissatisfied customers and/or adverse enforcement actions by the Commission itself. It is not up to a certificated Protestant whose fitness to operate is not presently at issue to make an Applicant's case.

(2)   The point here is that Applicant's Data Requests may be appropriate if Applicant were a Protestant and the Protestants were Applicants, but inappropriate the other way around. Data Requests must be reasonably calculated to lead to discovery of admissible evidence. **WAC 480-07-400(4)**. For example, a request for Protestants' "general ledger" for several years is meaningless and is simply a device to obtain private, protected information about a company's entire operations, not even separating out medical waste operations. Similarly, a request for "customer complaints" handled by the company (with no complaint to the WUTC) is simply a fishing

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[1] This is an unpublished opinion and is cited only for the purpose of reinforcing established Commission precedent.

expedition in hopes of finding a complaining witness. Bona fide customer complaints are on file with the WUTC and are readily available to the public. Again, it is not Protestants' job to make Applicant's case, it is Applicant's burden and obligation.

(3) At this stage of this action, Protestants do not have to prove a thing, other than that they hold WUTC authority to provide solid waste service within their G-permitted territory and have the requisite experience, tariffs and operations in compliance with WAC 480-70-436 *et seq*. Beyond that (which is of public record), at this point, they have no burden of proof whatsoever; and unless testimony from Applicant witnesses establishes otherwise, they will never have the burden of proof in addressing satisfactory service.

(4) As Protestants have argued in previous filings in this Docket, the Applicant, not the Protestants, must put forward its evidence that it has the ability to perform the service, without subsidization by other ratepayers and that the current providers are not providing service to the satisfaction of the Commission. This burden does not allow an Applicant to, by use of Data Requests, probe into the proprietary business records of a Protestant in the guise of identifying discoverable evidence while asking overbroad and/or irrelevant inquiries.

(5) Judge Kopta recognizes this in Orders (1) and (3) in this proceeding. He has made it abundantly clear that his discovery pronouncements about the boundaries and limitation of same apply to all parties and that abuses of the discovery process will not be tolerated. *See,* Order 01, para. (8) and (9). Protestants view Applicant's Data Requests as just the sort of abuse of the discovery process addressed by the Judge in previous orders.

(6) **DISCOVERY CONFERENCE**: Without in any manner conceding that Protestants have a duty to respond to these Data Requests, it is nevertheless clear that all parties are seemingly involved in one discovery dispute or another. It would make a great deal of sense, and save substantial

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time and resources, if all these current disputes could be addressed at a "Discovery Conference" as contemplated by **WAC 480-07-425.** Protestants believe the assigned Judge should conduct such a conference in an informal manner, preferably in person. We are of the notion that such a procedure should, and would, serve to avoid multiple motions and additional costs in time and resources as this matter progresses.

(7)   The requested conference could address such issues as:

a)   Are Protestants required to respond to any Data Requests at this stage of the proceeding;

b)   If so, should Protestants have to, at their own expense, produce documents which are of public record and obtainable through a public records request;

c)   Is any discovery of a party's non-medical waste business appropriate and, if so, on what basis;

and many more.

(8)   **WAC 480-07-425(2)** provides for serious sanctions for failure to comply with discovery orders. Protestants are willing to stipulate that the Judge could (and should) issue either oral or written orders at or following a discovery conference; although we believe most, if not all, disputes could be resolved by agreement if the Judge were to share with the parties his inclinations regarding both specific and general discovery issues.

Respectfully submitted this 5th day of June 2012.

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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.

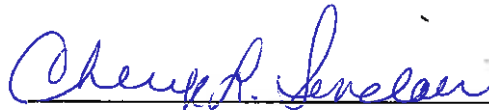|	
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DATED at Silverdale, Washington, this 5ᵗʰ day of June 2012.

Cheryl R. Sinclair
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