In Re Application of Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington

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Docket TG-120033

INITIAL BRIEF ON PRELIMINARY ISSUES OF WASHINGTON REFUSE & RECYCLING ASSOCIATION; RUBATINO REFUSE REMOVAL, INC.; CONSOLIDATED DISPOSAL SERVICES, INC.; MURREY'S DISPOSAL, INC.; AND PULLMAN DISPOSAL SERVICE, INC.

COME NOW the above-referenced Protestants Washington Refuse and Recycling Association; Rubatino Refuse Removal, Inc.; Consolidated Disposal Services, Inc; Murrey's Disposal, Inc.; and Pullman Disposal Service, Inc. (collectively "the WRRA Companies") and respectfully submit the following:

I. ISSUES

1) The overriding issue here is simple; i.e. should Applicant be granted additional authority for collection of solid waste, which authority would be statewide and restricted to medical waste. Of course, there are subissues of substantial import which makes this Docket somewhat unique, while leaving in place literally decades of Commission precedent which should, in fact must, be followed, no matter what the composition of the waste stream at issue may be.

Initial Brief on Preliminary Issues of WRRA; Rubatino; Consolidated Disposal; Murrey's; and Pullman Disposal - 1 JAMES K. SELLS

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2) As has been said in previous filings, but bears repeating here, the initial issue in a medical waste application is the same as in any other solid waste application. The Commission made itself very clear in *In re***Application of *Medical Resource Recycling Systems, Inc., Order M.V.G. 1707, Hearing GA-76820 (May 1994). Conclusion of Law (3), (pg. 7) leaves no room for confusion on this issue:

(3) When an applicant has applied for a Certificate of Public Convenience and Necessity to operate as a solid waste collection company, and the territory is already served by another certificate holder, the Commission may grant the application only when the existing certificate holder will not provide service to the satisfaction of the Commission. Here BFI has failed to provide service to the satisfaction of the Commission.

In other words, the primary issue in a solid waste application has not changed simply because the application is limited to medical waste.

- 3) Of equal importance, any applicant must prove it is fit, willing and able to provide the proposed service. It is not enough to make a bare allegation that it is doing so in one or more parts of the state, it must demonstrate its fitness to provide service in those areas where it does not presently do so.
- 4) Perhaps the issue which will be most contentious in this proceeding is that of service currently provided by existing medical waste carriers. The Commission has made it absolutely clear that:

Biohazardous waste is solid waste and its transportation is governed by Chapter 81.77 RCW and by RCW 81.77.040. That section bars the Commission from granting authority in a territory served by an existing carrier unless the Commission finds that the existing carrier will not provide service to the satisfaction of the Commission. If it makes that finding under the same law, it must also find that the proposed service is required by the public convenience and necessity before it can grant the application. **Order 1707**, at pg. 2.

Note that the finding of fitness must come <u>before</u> the Commission can address the need for the service.

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- 3) Thus, there would seem to be an issue/burden of "how many are too many" when it comes to medical waste. If this application is granted, all of the state will have two competing carriers, and much of the state will have three. It would seem that the burden is upon the Applicant to clearly prove that "three is not too many," while we can be certain that Protestants will present testimony and evidence that three (or even two in some areas) is too much. That, of course, will be decided at hearing but, at any stage, the burden of proof lies squarely with the Applicant; and each element must be proven to the satisfaction of the Commission.
- 4) In short, the Protestants do not have to prove they are providing satisfactory service; the Applicant must prove they are not.

III. COMPETITION

- as for "regular" solid waste, there is, of course, one difference. The Commission has indicated by virtually every medical waste application it has considered that the traditional "regulated monopoly" system which has worked so well here in Washington may not be entirely appropriate for medical waste. In fact, as noted, there already is competition for the medical waste customer. Stericycle competes with Applicant in Applicant's existing territory, and with at least four local haulers elsewhere.
- 6) However, with this in mind, the Commission clearly has not embraced competition as a "stand alone" concept. There still must be a clear showing that the existing carrier's service is unsatisfactory and the proposed service is required by the public convenience and necessity. *In the Matter of Application of Medical Resources Recycling Systems, Inc.*, Order M.V.G. 1707, Hearing GA-76820 (May, 1994). That part of this process has never changed, and hopefully never will. The issue here is not whether there should be competition, there already is, but how much competition there should be.

IV. DISPOSAL

7) WUTC is not in the business of regulating disposal. "Disposal is not an issue in universal service." *In re Ryder Distribution Resources, Inc.*, Initial Brief on Preliminary Issues

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Order M.V.G. 1761, Hearing GA-75154, consolidated with In re Stericycle of Washington, Inc., Hearing GA-77539 (one order, August 1995). Having said that, the Commission, in Ryder/Stericycle, went on to note that generators of medical waste have concerns about disposal that are legitimate and should be heard. **Ryder**, at 12.

8) Although in the years since Ryder it appears that significant progress has been made in medical waste disposal methods, one can assume it will be an issue here; or at least the subject of testimony by all parties. It may or may not be outcome determinative, but it is still important.

V. CONCLUSION

91 The primary conclusion the undersigned has reached here is that this hearing is going to take longer than perhaps any of us anticipated. (I hope I'm wrong, but don't think so). The issues noted here are broad and, for the most part, traditional to a solid waste application hearing. However, we can, and should, expect that many, many more issues will arise as we go along, and that these issues will be thoroughly and competently addressed by counsel for all parties. This is a major and important matter, not just for medical waste, but for the regulated solid waste industry as a whole.

Respectfully submitted this 12 day of June 2012.

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Attorney for Protestants WRRA,

Rubatino, Consolidated, Murrey's and

Pullman

record in this proceeding, by the method as indicated below, pursuant to WAC 480-

I hereby certify that I have this day served this document upon all parties of

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DATED at Silverdale, Washington, this /361 day of June 2012.

Cheryl V. Sinclair

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