BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

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| In the Matter of the Petition of  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 waste management of washington, inc. in Response to the Commission’s Notice of opportunity to comment |

1. In response to the Notice of Opportunity to Comment issued by the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) that solicits input on the Petition of Stericycle of Washington, Inc. (the “Petition”), Waste Management of Washington, Inc. (“Waste Management”) respectfully submits the following.

# background and parties

1. Waste Management operates solid waste collection services in various territories within the State of Washington under authority of Certificate of Convenience and Necessity No. G-237. Waste Management or its predecessor companies have performed solid waste collection in its territories since before 1961, when the statutory scheme established under Ch. 81.77 RCW was first created. Certificate rights previously operated under various trade names and subsidiaries were consolidated into Certificate No. G-237 in the late 1990’s. Waste Management’s original territories have since been expanded through acquisitions of control and transfers, as appropriately reviewed and approved by the Commission.
2. Stericycle of Washington, Inc. (“Stericycle”) is a wholly-owned subsidiary of Stericycle, Inc., and it operates biomedical waste collection services in Washington under authority of Certificate of Convenience and Necessity No. G-244. Stericycle applied for and was granted state-wide authority to perform biomedical waste collection in 1995. 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 (consolidated) (Aug. 1995), following four years of administrative litigation to obtain that certificate right. Since obtaining its own authority, Stericycle has acquired control of all other certificates specifically authorizing biomedical waste. It bought the rights of BFI Medical Waste Systems of Washington in or around 2000; and that company had previously acquired the rights of the other two solid waste collection companies holding certificates specifically for biomedical waste collection, American Environmental Management Corporation and Sureway. *See*, Order M.V.G. No. 1761 at 20.

# comments

1. The Notice of Opportunity to Comment observes that the Petition lacks any allegations that Waste Management has “filed tariffs or otherwise sought authority from the Commission to enter into the business of collecting and transporting biomedical waste for disposal in Washington….” Because Waste Management has not filed a tariff rate for collecting biomedical waste, there is presently no case or controversy before the Commission.
2. Waste Management already holds authority to perform biomedical waste collection. Certificate No. G-237 broadly authorizes solid waste collection, and the Commission has long held that traditional solid waste certificates subsume the right to perform biomedical waste collection and disposal. Order M.V.G. No. 1452, *In the Matter of American Environmental Management Corp.*, App. No. GA-874 (Nov. 1990), at 7 (“the permanent authority of existing G-certificate holders includes the authority to collect infectious waste”). The only further Commission “authorization” that Waste Management needs to commence biomedical waste collection services is to have a rate stated in its tariffs.[[1]](#footnote-1)
3. However, as the Notice of Opportunity to Comment notes, Waste Management has not yet filed a tariff rate for collection of biomedical waste. There is nothing before the Commission from a regulated entity seeking agency action. Under Commission rules and judicial decisions, Waste Management is not involved in an actual case or controversy that would make the matters raised in the Petition subject to the Commission’s jurisdiction. WAC 480-07-305(2). Deciding whether a case presents a cause of action ripe for judicial determination requires an evaluation of “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *First Covenant Church v. Seattle*, 114 Wn.2d 392, 400, 787 P.2d 1352 (1990) (*citing* *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681 (1967)); *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624, 627 (9th Cir.1989). “A claim is fit for [judicial] decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final.” 874 F.2d at 627.
4. Stericycle’s Petition presents a purely academic issue. The parties do not have a disputed issue, and therefore “an administrative hearing would be pointless within the APA context.” *Lawrence v. Department of Health*, 133 Wn. App. 665, 678, 138 P.3d 124 (2006). Thus, Stericycle’s Petition should be dismissed as premature.
5. With candor to the Commission, however, Waste Management acknowledges that it does intend to file a tariff and take steps necessary to collect and transport biomedical waste in Washington at some point in time. The Company is indeed planning to enter the market. Unless and until that rate is filed, however, there is nothing to review and no dispute to resolve. Many of the allegations in the Petition apply to the rate-setting process and the amounts, and presents arguments which Waste Management believes are specious but which nonetheless are not ripe for review.
6. Waste Management can only provide collection within the territory authorized by Certificate G-237. On the other hand, Stericycle sought and obtained authority to provide universal service throughout the state. It is required to perform service throughout the territory, just as it requested and battled in hearings to obtain. Petitioner seems disgruntled with its service obligations, but if Stericycle wishes for relief from its conditions of operations in Washington, it should utilize statutory provisions and request that its certificated territory be amended.

# CONCLUSION

1. The Petition must be dismissed due to the absence of jurisdictional grounds. The Petition should be dismissed because Waste Management would be operating within the clear parameters of the law if it were to commence biomedical waste collection services by filing a tariff.

DATED this \_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2011.

By

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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 Seattle, Washington, this 4th day of March, 2011.

Kathy Moll

1. There are regulatory requirements for performing biomedical waste collection under the Commission’s rules, and Waste Management would also need to satisfy those operational conditions before it could commence biomedical waste collection services. *See*, *e.g.*, WAC 480-70-436 (requiring a biomedical waste operating plan to be prepared and maintained). [↑](#footnote-ref-1)