

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 TG-120033

ORDERS CITED IN COMMISSION
STAFF'S INITIAL BRIEF ON
PRELIMINARY LEGAL ISSUE

I Attached are copies of the following orders cited in Commission Staff's Initial Brief on Preliminary Legal Issue:


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DATED this 14th day of June, 2012.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General


FRONDA WOODS, WSBA #18728
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

NOV 30 1990

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of application)	
GA-868 of	)	ORDER M. V. G. NO. 1451
)	
SURE-WAY INCINERATION, INC.,	)	HEARING NO. GA-868
)	
for a certificate of public	)	COMMISSION DECISION AND
convenience and necessity to	)	ORDER DENYING PETITIONS FOR
operate motor vehicles in	)	ADMINISTRATIVE REVIEW;
furnishing garbage and for	)	MODIFYING INITIAL ORDER;
refuse collection service.	)	DENYING APPLICATION
.)	

NATURE OF PROCEEDING: This is an application for authority to provide refuse collection service consisting of medical and infectious waste in the state of Washington.

INITIAL ORDER: Administrative Law Judge Steven E. Lundstrom entered an initial order on August 2, 1989, which would deny the application on the basis that the applicant has not established its financial fitness to conduct operations.

ADMINISTRATIVE REVIEW: The applicant and several protestants petitioned for administrative review. The applicant argues that it is financially fit and requests reopening of the record to submit a revised tariff. The protestants argue that the applicant is not only financially unfit, but that it is also unfit from a regulatory standpoint. Protestants contend that the application does not request enough authority to allow the applicant to conduct the operations it proposes.

COMMISSION: The Commission modifies the initial order. The applicant has presented sufficient evidence to establish its financial fitness, the cost of service and the feasibility of the operations. The evidence establishes that the applicant is likely unwilling or unable to comply with regulatory requirements and is therefore unfit to receive authority. The application would require amendment and republication before it accurately reflects the authority the applicant actually wants. The application is denied.

[1]* Amendments to pleadings may be allowed at any time, provided that the amendment does not adversely affect the interest of persons who are not parties to the proceeding. An amendment which substantially expands the scope of the application requires republication in the Commission docket.

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

[2] When an applicant specifically limits its application to disposal sites in-state, that language can only be interpreted as a restriction on the authority sought.

[3] The Commission requires financial information from an applicant because it is concerned with whether an applicant has enough money to start and maintain operations, to operate through the start up phase of business, and to provide service to its customers and continue to meet those customers' needs by acquiring additional equipment and personnel if necessary.

[4] An applicant may present evidence of its operating expenses and its general and administrative expenses, shown on a monthly basis, in order to establish cost of service and operations.

[5] An operating witness who is unfamiliar with Commission regulatory requirements or who is familiar with the requirements but chooses not to comply with them, has not established an applicant's fitness to operate.

[6] The Commission will give due consideration to the conclusions of the administrative law judge regarding the credibility of a witness. However, where the applicant's testimony and the actions of the company are inconsistent and there is substantial objective evidence showing an unwillingness or inability of the applicant to comply with regulatory requirements, the Commission will not affirm those conclusions.

[7] An applicant requesting authority to collect and dispose of medical waste must show that it has a suitable disposal site available to it in order to establish ability to provide proposed service.

[8] The existing certificate holders who protest an application should be holding themselves out to provide the service propose in the application. Where protestants do not have equipment, personnel, or a disposal plan which would enable them to offer or provide the service, they should not be found to be providing service to the satisfaction of the Commission. Under these circumstances, the protestants' argument that they never refused service does not persuade the Commission that they will provide satisfactory service.

[9] The issues of a comparative analysis of competing applications or an exclusive grant of authority only arise if there are two or more otherwise qualified applicants seeking the same authority.

[10] While sound policy and economic reasons exist in favor of exclusive authority for typical residential or

commercial collection in a specific territory, those reasons are less compelling in the new, specialized area of medical waste collection. The Commission will not say that a grant of one application for statewide authority would preclude a grant of others, and will consider this element in future proceedings.

APPEARANCES: The applicant, Sure-Way Incineration Services, Inc., is represented by Boyd Hartman, attorney, Bellevue, Washington. Protestants are represented as follows: Bayside Waste Hauling and Transfer, Inc., et al. by Jack R. Davis, attorney, Seattle; American Environmental Management Corp. by David W. Wiley, attorney, Bellevue; Resource Recovery by Polly Lord, attorney, Seattle; Washington Waste Management Association by James Sells, attorney, Bremerton, Washington. The Washington Utilities and Transportation Commission is represented by Steven W. Smith, assistant attorney General, Olympia, Washington.

MEMORANDUM

This is an application by Sure-Way Incineration Services, Inc., (Sure-Way) for authority to provide refuse collection service in the state of Washington. The applicant specifically requests authority to provide collection and disposal service of infectious, contaminated, and pathological waste, bio-medical waste and other related infectious medical waste to various waste generators, including hospitals, doctors' offices, veterinary offices, etc. The application was originally filed as one for contract carrier authority and later amended to request common carrier authority. The amended application was republished in the Commission docket and protested by certificated garbage and refuse collection companies from throughout the state. Other applications for the same or similar authority have also been filed and are at various stages in the hearing process. American Environmental Management Corp., (AEMC), a protestant in this case, has such an application pending before the Commission.

Hearings were held on the application during fourteen days in 1988 and 1989. All parties filed post-hearing briefs. Administrative Law Judge Steven E. Lundstrom entered an initial order on August 2, 1989, proposing that the application be denied.

The issues in this case are straightforward and can be summarized as follows: 1) should the applicant be allowed to amend its application to add "garbage" to its request for authority, with or without redocketing, or, does the applicants' failure to include "garbage" in its request for authority require denial of the application? 2) Has the applicant established its financial fitness, the cost of service, and the feasibility of its operations? 3) Is the applicant otherwise fit, willing, and

able to conduct the proposed operations? 4) Is there an unmet public need for the proposed service? 5) Will the existing collection companies provide service to the satisfaction of the Commission? 6) Is a comparative analysis of the application with others still pending necessary?

These issues were developed at the hearing and on brief. The initial order discusses and decides each issue except the last. Because all the pending applications were not consolidated, the initial order specifically states that it does not evaluate the relative qualifications of the various applicants. The initial order would hold that the applicant has failed to establish the cost of service and the feasibility of its operations and that the application should be denied. The initial order would decide the balance of the issues in favor of applicant, holding that the application should be amended, without republication to include "garbage"; that the applicant established its regulatory fitness to receive authority; that a grant of authority is required by the public convenience and necessity; and, that existing certificate holders will not serve to the satisfaction of the Commission.

Neither the applicant nor the protestants entirely agree with the initial order, and all parties requested review of one or more issues. All parties do agree that the protestants are existing certificate holders and that there is some level of public need for the type of specialized collection and disposal service proposed by the applicant.

BACKGROUND

The applicant proposes to offer a specialized collection and disposal service for medical wastes generated by health care facilities and others. The service will be offered state-wide and consists of collection and disposal of those medical wastes which the generator believes should be segregated from the normal waste stream. The applicant provides boxes and bags to the generator for disposal of the waste and picks up according to the volume generated. Sure-Way then transports the waste to an incinerator where it is burned. Sure-Way represents to its customers that it takes title to the waste at the time of collection.

The parties agreed that untreated medical waste should not be disposed of in the normal waste stream. There are now local regulations in effect in portions of the state which require treatment of the waste before disposal, but even absent those regulations, safety and health concerns make disposal of untreated medical waste in a landfill an unacceptable practice. Incineration is the method of disposal preferred by both the generators and the collection companies. Steam sterilization in

an autoclave may also be acceptable, but does not have the advantage of reducing the overall volume of the waste as incineration does.

Sure-Way has been operating in Washington since 1987. It was granted a temporary certificate to provide the proposed service in January, 1988. Sure-Way has grown considerably since 1987 and was serving accounts throughout the state at the close of the record. In the course of its operations the applicant has transported waste to various points for incineration, including incinerators in Oregon and California.

SCOPE OF THE APPLICATION

A. Commodity

The applicant requested authority to transport refuse. The precise language of the application is as follows:

Refuse Collection service consisting of infectious, contaminated and pathological waste, bio-medical waste, and other related infectious medical waste from hospitals, medical clinics or laboratories, nursing homes, medical or dental offices or clinics, health care centers, blood banks, pharmaceutical establishments, veterinary offices or clinics, funeral parlors, crematories, psychiatric care centers or offices, biological products industries and other biomedical institutions to incineration plants or other licensed disposal sites in the state of Washington.

At the hearing it became apparent that much of what the applicant proposes to collect under this authority (e.g. human tissue, blood, animal carcasses) is better defined as garbage rather than refuse under the Commission rules.¹ The initial order concludes that the language of the application as a whole sufficiently describes the "commodity" for which authority is sought. Absent any showing of confusion on the part of the protestants about the nature of the application, the order would allow the applicant to amend its application to include the word "garbage". The protestants argue that the applicant's failure to specifically identify "garbage" in the language of the application renders the application too narrow to permit the proposed service and the application should therefore be denied.

¹ See, WAC 480-70-050(5) and (6), attached as appendix A.

The Commission believes that the correct result is between these two extremes. The application must be amended to include "garbage" to the request for authority because the applicant wants authority to collect both garbage and refuse. The amendment requires redocketing.

[1] In accordance with WAC 480-08-050, the rule in effect at the time of the initial order, amendments to pleadings may be allowed at any time, provided that the amendment does not adversely affect the interest of persons who are not parties to the proceeding. Additionally, the Commission has held that an application must be interpreted as docketed. Order M. V. No. 136052 In re Cartin Delivery Service, Inc., App. No. E-19099 (June, 1987). The initial order acknowledges that the language of the application did not specifically include "garbage" but would hold that the application includes garbage by implication because of the detailed description of the wastes included in the published language of the application.

[2] The Commission does not agree that the application clearly includes garbage as docketed. On its face it is an application for authority to collect refuse and no more. The application as it now stands, limited to refuse, limits the requested service to collection of metals, plastics, glass, and other "refuse" type wastes produced by hospitals, medical centers, etc. Persons, not parties to the proceeding because they did not protest, might well have interests adversely affected by the proposed amendment. The amendment substantially expands the scope of the application and therefore requires republication in the Commission docket.

An applicant is presumed to know what it wants to haul and is presumed to know what it has requested authority to haul. If the two do not match, it is the applicant who, in fairness, must accept the inconvenience of correcting the language. In general, there need not be a specific showing that any person was confused about or misunderstood the application. Instead, the burden is on the applicant to show that no one could have reasonably misunderstood the application. That has not been done here. The published language is easily susceptible to more than one interpretation. Our system requires notice to those persons not parties to this matter which dictates that the amended application be republished.

The failure to include "garbage" does not itself call for denial of the application, because the application correctly describes a commodity class which will be collected under the authority. It simply does not describe all that the applicant wishes to do. In this case, republication will not be ordered because the application will be denied on other grounds.

B. Disposal Site

Another issue raised by protestants concerning the scope of the application is that of disposal sites. The application states that the material collected will be taken to incineration or other licensed disposal sites in the state of Washington. The applicant originally used an incinerator in Ferndale, Washington but then began transporting most of the waste to incinerators in Oregon and California because the Ferndale incinerator was unable to consistently accept the waste. At the close of the record the applicant had arranged to transport most of the waste to an incinerator in Klamath Falls, Oregon.

The protestants argue that the applicant is exceeding its temporary authority, and would be exceeding its permanent authority, by taking the waste across state lines for disposal. The applicant argues that the Commission cannot regulate the interstate portions of the transportation and that the disposal sites designation cannot limit its transportation of the waste.

The initial order held that the Commission does not have the authority to regulate the interstate commerce portions of the applicant's operations. It concluded that the application does not limit the carrier to Washington disposal sites, but simply requests all the authority the Commission is empowered to grant, i.e., disposal at sites in the state.

The Commission does not agree with the initial order's analysis of this issue. As stated in Cause NO. TG-1859, In re All County Disposal Services, (August, 1985); "The Commission does not bar any regulated carrier from disposing of garbage or refuse in another state. . . ." It is not necessary to request authority from the Commission to transport the waste across state lines and in fact the Commission has no power to grant authority of that nature. However, that is not precisely the issue in this case.

[3] In general, applications for garbage or refuse authority do not even mention disposal sites. But, when an applicant specifically limits its application to disposal sites in-state, that language can only be interpreted as a restriction on the authority sought. The transportation is thus only authorized so long as the waste is destined for a disposal site in the state. If the applicant did not want this limitation in its authority, it need not have requested it. Removal of the limitation would be an amendment which requires republication of the application.

APPLICANT'S FINANCIAL FITNESS

An applicant for authority under chapter 81.77 RCW is required to establish the cost of service for the present service in the area to be served, and an estimate of the cost of the facilities to be used in the plant for solid waste collection and disposal. The Commission has held that the applicant must establish "its costs of operation and facilities and demonstrate the financial feasibility of the operation." Order M. V. G. No. 1367 In re Northwest Unitech, Inc., GA-864 (Jan., 1989)

The initial order concluded that the applicant had failed to establish the financial feasibility of its operations and that the application should be denied. The order also concluded that the applicant was operating at a loss and that there was no evidence of when a break-even point or profitability might be reached. Finally, the order found internal inconsistencies between the evidence of costs and the revenue estimates and held that the applicant had failed to establish its cost of service.

The applicant petitioned for administrative review of the initial order and for reopening of the record to submit its revised tariff. The applicant argues that it did submit adequate financial information to establish its cost of service, its fitness and the financial feasibility of the operations. Applicant suggests that unprofitability of an operation should not be controlling and proposes that its new tariff addresses and cures any possible problems with profitability.

The protestants are united in arguing that the applicant has not established its financial fitness. AEMC argues that the initial order reaches the right result for the wrong reasons. AEMC states that lack of profitability or uncertain costs should not be grounds for denial of an application, but that Sure-Way has failed to present sufficient evidence of the ability to sustain continued losses and has presented no evidence of its parent company's finances to establish sufficient financial backing to sustain the operations.

Protestants Bayside, et al., argue that the applicant had numerous opportunities to present evidence about the cost of operations in providing the proposed service, either per hour or per mile, but failed to do so. Bayside also argues that applicant's failure to present evidence of whether its supporting shippers would continue to use the service at increased rates is fatal to establishing feasibility of the operations. Finally, Bayside states that the applicant deliberately failed to provide cost information and a pro forma income statement. Both Bayside and the Washington Waste Management Association argue that Sure-Way structured its presentation to avoid having its supporting

shippers questioned about whether they would continue to use the service at higher rates.

This proceeding is not a rate case. The type of detailed financial information necessary in a rate case is not required in an application for authority. The statute does require certain financial information to assist the Commission in evaluating the application as a whole; the information may be somewhat more general than the specific numbers required in a rate proceeding.

[4] The Commission here is trying to determine whether an applicant has enough money to start and maintain operations, whether it has a source of funds to allow it to operate through the start up phase of business (when it most likely will not be profitable), whether it can provide consistent service to its customers and can continue to meet those customers' needs by acquiring additional equipment and personnel if necessary. An applicant for solid waste collection authority must provide more financial information than an applicant for motor carrier authority because the statutory scheme is different and entry to the solid waste market is more strictly controlled. The Commission needs enough information to be reasonably certain that the company will not go out of business, leaving its customers stranded. Finally, the Commission does need information about an applicant's cost of providing the proposed service in order to determine, especially as between competing applicants, whether the applicant's finances will allow it to provide the proposed service.

Sure-Way's financial evidence, while not abundant, is sufficient. Sure-Way submitted an income statement for the 10 months ending July 31, 1988. It submitted one balance sheet dated March 31, 1988 and another dated July 31, 1988. There is, as protestants note, a retained earnings deficit. Protestants argue that the insurance expense on the income statement is significantly understated and they take issue with certain items listed as assets on the July 31 balance sheet.

The financial evidence presented is consistent with a young company getting started. There is a retained earnings deficit which probably represents start-up costs. However, the company has a positive net worth and shows a profit for the 10 months ending July 31, 1988. There is no persuasive evidence that any of the numbers on the balance sheet or income statement are wrong. The insurance expense was accurately stated for the period in question, although it was admitted that the figure would have to be adjusted upward to obtain accurate pro forma results if future expenses were to be projected from these figures. Even if the insurance figure is adjusted there would have been only a slight net loss for the 10 months shown.

The applicant admitted that it was losing money on some of its Eastern Washington routes, but expects this to be a temporary situation, with profitability occurring when additional accounts in Eastern Washington are acquired. This seems to be a reasonable projection based on the company's past growth.

[5] The applicant established the costs of running its operation on a monthly basis. It presented evidence of its operating expenses and its general and administrative expenses. There is no reason why expenses shown on a monthly basis cannot be used to establish the cost of operations. Cost of service per mile or per gallon or per hour was shown to be difficult to calculate, as some costs are linked to distance, others to volume, and still others to time.

The applicant has grown considerably since the application was first filed. It has acquired additional equipment and personnel, it has added a substantial number of accounts. The applicant has demonstrated an ability to expand its business in response to increased market demands.

The initial order bases much of its analysis on pro forma results of operations calculated from records of 2 days of operations in December, 1988. These results as set forth in the initial order show a net loss of almost \$10,000 per month. Unfortunately, the figures do not really tell us much. The operations in December, 1988 included the applicant's Eastern Washington territory. The applicant admitted it was not making any money in that territory yet. The revenue per gallon shown may or may not be representative of revenue per gallon of waste for a whole month. The same is true for the expenses calculated as average collection and disposal cost per gallon of waste -- this figure may or may not represent an accurate average for the month. In addition, monthly revenues calculated at \$51,200 do not seem to be accurate in light of the applicant's unrefuted testimony that its revenues were \$66,00 - \$71,000 per month during August - December, 1988.

Finally, the applicant is expanding its operation, as shown by the growth during the months of hearings. In a growth situation, revenues will increase, certain costs will increase in proportion to the revenues, and other costs, such as general and administrative costs may not increase at all. The Commission believes that the proposed operations are sufficiently demonstrated to be feasible as established by the record evidence of monthly costs and revenues.

The applicant did not establish with sufficient certainty its costs of disposal, because it did not establish the existence or availability of a stable, long-term disposal site.

The Commission will consider this factor as it pertains to the applicant's ability to provide service, below. With that exception, the financial information provided by the applicant is sufficient to establish applicant's financial fitness and fulfills the statutory requirements to show costs of service and facilities.

APPLICANT'S FITNESS AND ABILITY

An applicant for authority under chapter 81.77 RCW must establish its regulatory fitness to receive authority. WAC 480-70-160. This means that the applicant must show a willingness and ability to comply with the rules and laws present in a regulated environment.

The initial order would resolve this issue in favor of the applicant, with a specific finding that Stan Robinson, Sure-Way's operating witness, testified credibly of his intent to operate in compliance with Commission rules and laws. The order concludes that the applicant began unpermitted operations in good faith and that service and need factors should be considered in determining the applicant's fitness. See, Order M. V. G. No. 1183, In re Amalgamated Services, App. No. GA-767 (Oct., 1984). The initial order does note specific violations of Commission rules or law, but in each case concludes that the applicant's fitness is unaffected by the violations.

Protestants AEMC and Washington Waste Management Association challenge the initial order's findings and conclusions on the issue of fitness. Both argue that the applicant's conduct evidences wilful and repeated violations of the law and demonstrates it to be unwilling and unable to comply with the law and rules. The applicant replies that any violations involved activity of a limited nature and that none evidences an unwillingness or inability to comply in the future.

The applicant contacted the Commission in June, 1987, to request an opinion on whether it needed a certificate to conduct the proposed operations. The Commission staff responded with an informal opinion letter that the operations did not appear to require a certificate. The staff later reversed its opinion and recommended that Sure-Way apply for authority to operate. Sure-Way emphasizes that its unpermitted operations were in good faith and implies that staff's change of opinion was unjustified. In this regard it is fair to note that the applicant's initial letter to the Commission describing its operations is misleading at best and does not fairly and accurately describe its operations. The letter unduly emphasizes the applicant's non-transportation services when in fact the primary feature of the business is the collection and disposal of waste.

Since the time it started operations, Sure-Way has offered a trial period of free service to selected customers. Provision of free service has never been included in Sure-Way's tariff. The applicant stopped this practice only 6 days before the last hearing session, when it was served with penalty assessments based on the free service. Mr. Robinson testified that even though the issue came up earlier, he did not get the impression that the company could not continue this practice.

Because the issues of free service and of charges not in accordance with the tariff rate were brought up earlier, it is not objectively credible that the applicant did not know it must charge only in accordance with its tariff. In addition to free service, the applicant repeatedly failed to impose surcharges in accordance with its tariff for transportation of material out of state rather than to an in-state incinerator. Finally, the applicant paid a rebate to a customer in violation of law.

[6] It is simply incredible that a witness profess familiarity with the law and a willingness to comply on the one hand, and claim ignorance of the law's requirements on the other hand. Either Mr. Robinson is in fact unfamiliar with the regulatory requirements or he is familiar with the requirements but chooses not to comply with them. Neither posture should be successful in a regulated environment. Evidence of record (see above) demonstrates that the applicant was familiar with at least some of the requirements it chose to disregard.

Finally, the protestants argue that Sure-Way misleads its customers with claims of taking title to the waste. Though the Commission is not convinced that the generators of these wastes have a "cradle-to-grave" liability imposed by federal law, we are also not convinced that the applicant's representations about "taking title" to the waste are not in violation of RCW 36.58.060.² The applicant could not offer any analysis or explanation why RCW 36.58.060 does not apply to its operations or how it is able to take title to the waste when the statute clearly states that title remains with the waste generator.

[7] The applicant's testimony and the actions of the company are inconsistent. The Commission in this case has given due consideration to the conclusions of the administrative law judge regarding the credibility of Mr. Robinson, but is unable to affirm those conclusions in light of the substantial objective

² RCW 36.58.060 provides that . . . "the original owner retains ownership of the solid wastes until they arrive at the disposal site. . ."

evidence showing an unwillingness or inability of the applicant to comply with regulatory requirements.

Overall, the applicant's behavior shows a pattern of disregard for voluntary compliance with law. The applicant chooses to remain uninformed about regulatory requirements, preferring to wait until enforcement action is taken to begin compliance. The applicant's past conduct shows it to be unwilling or unable to comply with Commission rules and laws. As such, the applicant is not fit to receive authority to operate as a solid waste collection company. See, Order M. V. G. No. 1402, In re R. S. T. Disposal Company and Seattle Disposal Company, App. Nos. GA-845 and GA-851 (July, 1989).

ABILITY TO SERVE

[8] The applicant's ability to provide the proposed service is also an issue in evaluating an application. Generally, a showing of adequate equipment and personnel is sufficient to show that an applicant is able to provide the service; the applicant has made that showing here. However, the Commission notes that the applicant has been unable to show that it has a disposal site available on a consistent, reliable basis. The applicant has transported the waste to Ferndale, Washington, but the incinerator there has not always been able to accept the waste. The applicant has used incineration facilities in California; in Marion County, Oregon; and in Klamath Falls, Oregon. At the close of the record, the applicant had a commitment on the availability of its most recent site which could be cancelled on 90 days' notice.

Although disposal sites are not always an issue in an application for authority, the Commission believes that this element is properly considered in a case such as this one, where proper disposal of the waste and its unsuitability for disposal in a landfill are some of the primary factors behind the need for the service. The Commission must conclude that the applicant has not established its ability to provide the proposed service.

PUBLIC NEED FOR THE PROPOSED SERVICE

The evidence of public need is overwhelming. All parties agree that there is a public need for the proposed service. In addition, the Commission has recently adopted rules on the transportation of medical waste. See, WAC 480-70-500 et seq. These rules require any hauler handling biohazardous, infectious, or medical waste to follow certain procedures and to comply with training requirements, packaging and handling requirements, record-keeping, insurance and other requirements.

The Commission adopts the finding of the initial order

regarding public need for the proposed service. Those findings are set forth in Appendix B and incorporated herein by reference. The Commission notes that the finding regarding the testimony of Susan Peton has been modified to more accurately reflect the record.

ABILITY OF THE PROTESTANTS TO SERVE

The initial order would hold that the protestants are existing certificate holders authorized to provide medical waste collection and disposal service as part of their general garbage and refuse authority. The order would further hold that none of the protestants will serve to the satisfaction of the Commission in the transportation of medical waste.

Protestants Washington Waste Management Association, et al., argue that all its member haulers stand ready to provide the service and that none has ever refused service. The association argues that unless customers have requested service for medical waste from their existing garbage collection companies and been refused that service, the Commission cannot conclude that the existing companies will not provide satisfactory service. The protestants argue that they stand ready, willing, and able to adapt to technological or regulatory changes regarding medical waste and would purchase additional equipment if necessary to meet customers' needs.

The Commission has previously held that neighborhood garbage collection service is contemplated by statute (RCW 81.77.040) to be a monopoly. Overlapping authorities are not favored in this context and the Commission has required a showing of service failures by the existing carrier before granting overlapping authority. Order M. V. G. No. 1335, In re Superior Refuse Removal Corporation, App. No. GA-849 (June, 1988).

This case is somewhat different from the typical garbage and refuse collection case in that the applicant seeks statewide authority for a specific category of garbage and refuse. The services offered are specialized, the material requires special handling and special treatment before disposal. At the time of application and hearing there were few specific rules and regulations in place about collection, treatment, and disposal of medical waste. The protestants argue that because they did not violate any rules, they must be found to be serving to the satisfaction of the Commission. The protestants also point out that most of the supporting shippers did not even ask their regular garbage companies to provide the service before accepting service from Sure-Way.

The service provided by the protestants prior to and at the time of filing of Sure-Way's application is the proper basis

on which to judge whether existing companies will serve to the satisfaction of the Commission. Order M. V. G. No. 795, In re Ditomasso, App. No. GA-508 (Nov., 1975). The service offered by the applicant is specialized and different from ordinary residential garbage collection. The test is not necessarily whether the protestants have refused service to specific customers. Rather, the Commission should ask what service would have been available to the customers if they had asked their regular haulers. Another way of looking at the question is to ask whether the protestants were holding themselves out to provide the service and whether the type of service provided reasonably serves the market. Order M. V. C. No. 1809, In re Shuttle Express, App. No. D-2566 (April, 1989).

[9] The existing certificate holders who protested this application were clearly not holding out to provide specialized service. They did not have equipment, personnel, or a disposal plan which would have enabled them to offer or provide the service. They did not advertise the availability of any specialized collection or disposal service for medical waste. There is simply no way a customer could have or would have known to inquire of its existing hauler for this service. Nor is there any indication whatsoever that the service required by these customers would have been available from the protestants. Under these circumstances, the protestants' arguments that they never refused service do not persuade the Commission that they will provide satisfactory service. The protestant's services did not reasonably serve the market for medical waste collection and disposal.

COMPARATIVE ANALYSIS

The application in this case is denied on the basis of lack of regulatory fitness and the applicant's inability to assure a consistent disposal site. The issues of a comparative analysis of competing applications or an exclusive grant of authority only arise if there are two or more otherwise qualified applicants seeking the same authority. Because that is not the situation here, there is no need for a comparative evaluation of Sure-Way and any other applicant. The initial order briefly compares the applicant with AEMC and AEMC objects to that discussion. However, the initial order recognized that a comparative analysis would be unnecessary until the applications were reviewed by the Commission and specifically stated that it would not make that kind of comparative analysis. The initial order correctly stated that it "does not evaluate the relative qualifications of the various applicants to provide the services for which authority is requested. . . ."

As discussed above, the 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.

[10] 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. Therefore, while sound policy and economic reasons exist in favor of exclusive authority for typical residential or commercial collection in a specific territory, those reasons are less compelling in this new, specialized area. The Commission is not ready to say that a grant of one application for statewide authority would preclude a grant of others, and will consider this element in future proceedings.

FINDINGS OF FACT

1. The applicant filed an application on December 7, 1987, requesting authority to provide the following service:

Refuse Collection Service consisting of infectious, contaminated and pathological waste, biomedical waste, and other related infectious medical waste from hospitals, medical clinics or laboratories, nursing homes, medical or dental offices or clinics, health care centers, blood banks, pharmaceutical establishments, veterinary offices or clinics, funeral parlors, crematories, psychiatric care centers or offices, biological products industries and other biomedical institutions to incineration plants or other licensed disposal sites in the State of Washington, pursuant to contracts entered into or to be entered into with shippers served or to be served by this carrier.

2. In June, 1988, the application was amended to request common rather than contract carrier authority. The amended application was republished in the Commission docket on June 20, 1988.

3. The application, and the published notice of authority requested, failed to designate infectious waste as "garbage". That error may have affected the rights of persons not parties to these proceedings. The application requests "refuse" and "garbage" cannot be added to the request for authority without republishing the application.

4. Stan Robinson, general manager of Sure-Way Incineration, testified in support of the application. Based on his testimony, the applicant is willing to provide the services for which it requests authority. It maintains suitable equipment and appropriately trained personnel to provide those services.

The applicant does not have a disposal site available to it on a reliable, stable, long-term basis. The applicant incurred violations of laws and regulations affecting the common carrier operations, including violations of tariff provisions. The testimony of Mr. Robinson concerning his willingness and ability to comply with regulatory requirements was not consistent with the balance of evidence presented. The applicant's assurances of its willingness and ability to operate in accordance with the laws, rules and regulations governing garbage and refuse collection companies in the state of Washington are not credible in light of the violations of law and the disregard of regulatory requirements shown on the record.

5. The applicant has performed infectious waste collection and disposal services since February, 1987. It was granted temporary authority pursuant to an application filed on December 7, 1987. Its temporary authority is identical with the authority requested in the application in this proceeding.

6. The applicant provides infectious waste packaging materials to its customers, which are health care facilities and other infectious waste generators in the state of Washington. Infectious waste generally includes biological and pathological substances and materials which come in contact with the human bodily fluids. These materials are packaged by the shipper, collected by Sure-Way in boxes, stored in Sure-Way's warehouse for aggregation into shipment quantities, and shipped in trucks to the selected disposal site.

7. The applicant has actively held itself out to provide the service for which it has authority. It has promptly and efficiently provided the services that it has offered to its clients.

8. In order for health care providers and other infectious waste generators to comply with the public and local government regulatory requirements, they must either treat the infectious waste themselves or have access to a service substantially similar to that of Sure-Way. Sure-Way's customers find its service satisfactory.

9. The type of service provided by Sure-Way is reasonably necessary to meet public health needs related to the disposal of infectious waste in such a way as to protect members of the public from infection.

10. Protests were filed on behalf of a group of protestants known collectively as the Bayside Companies. These companies are wholly-owned subsidiaries of Waste Management in North America. Bayside Waste Hauling & Transfer, Inc., under its Certificate No. G-140, serves the city of Seattle, White Center

and Sky Way areas, Kittitas County, part of Grant County from George to the Mattawa, Benton County (except for the city of Richland and the Richland area), and the city of Kennewick. Washington Disposal Company, under Certificate No. G-67, serves a small area of unincorporated King County northeast of Renton. Northwest Garbage Company under its Certificate No. G-43 serves Bothell and all of Snohomish County except for the city of Everett and a small area near Monroe. Northwest also serves the northwest corner of King County north of Seattle. Sno-King Garbage Company, under Certificate No. G-126, serves Redmond, Northeast King County and a small part of Snohomish County near Monroe. Metropolitan Service Corporation, Certificate No. G-39, serves a Spokane County area north of Spokane and serves under contract with the City of Spokane in certain areas which have recently been annexed to the city. Rainier Disposal Company, under its Certificate No. G-63 serves Renton, Southeast King County, and an area east and west of Issaquah extending down to Black Diamond and Enumclaw area. Rainier Disposal also serves the City of Renton. Dependable Disposal, under its Certificate No. G-80, and Hi-Valley Disposal, under its Certificate No. G-117, serve an area from Wenatchee west and south and also most of Douglas County. Benco Disposal, Inc., under its Certificate No. G-81 serves a small portion of Benton County. The Bayside Companies have demonstrated that they have sufficient resources and technical expertise to handle infectious waste should they ever hold themselves out and equip themselves to do so. Currently they do not hold themselves out to dispose of infectious waste and are awaiting the availability of an incinerator or similar appropriate facility before they will do so.

11. Yakima Valley Disposal under its Certificate No. G-89, provides garbage and refuse disposal service in Yakima County with commercial garbage and refuse service in the City of Yakima. Although its management is aware of disposal requirements for infectious waste which protect the public health, the company has not actively solicit the disposal of infectious waste. The current disposal method for that waste would be landfill disposal without treatment.

12. Evidence was presented on behalf of protestant Rubatino Refuse Disposal by its proprietor Ed Rubatino. Rubatino Refuse Removal provides garbage and refuse collection service in the City of Everett and specified adjacent areas, all in Snohomish County, under its Certificate of Public Convenience and Necessity No. G-58. Mr. Rubatino's testimony establishes that he is willing to comply with regulations governing transport and storage of infectious waste. Rubatino Refuse does not currently or actively solicit infectious waste disposal business. Mr. Rubatino believes that he has the authority to do so.

13. Brian Lawson, proprietor of Lawson Disposal, Inc., presented testimony in support of its protest. Lawson Disposal, Inc., provides garbage and refuse collection services in North Bend, Issaquah, and various portions of East King County specifically described by metes and bounds, generally east of Lake Sammamish under its Certificate of Public Convenience and Necessity No. G-41. Lawson Disposal alleges that it is ready, willing and able to conform to any public regulations which are enacted to control the disposal of infectious waste. It does not actively hold itself out to dispose of that waste. It has no current plans for, and has not obtained, treatment capacity.

14. Alexander H. Koch presented testimony on behalf of Resource Recovery Corporation. Resource Recovery Corporation provides refuse collection service, under Certificate No. G-176, which provides authority as follows:

Refuse Collection Service, consisting of industrial waste, unsuitable for ordinary landfill disposal, excluding waste petroleum products, in the State of Washington, for garbage and/or refuse collection companies operating under certificates of public convenience and necessity issued by the Washington Utilities and Transportation Commission.

Refuse Collection and Disposal Service restricted to the hazardous or chemical waste not suitable for disposal at ordinary landfill sites in the State of Washington.

Resource Recovery alleges that its authority includes infectious waste under the definition of hazardous waste in Chapter 173-301 WAC. Resource Recovery alleges that it is ready, willing and able to carry and dispose of infectious waste, although it has no present plans to hold itself out to serve the infectious waste disposal market. Resource Recovery does not have current ability to treat or incinerate infectious waste, however it is currently negotiating with American Environmental Management to arrange for disposal in the AEMC California infectious waste incinerator.

15. Washington Waste Management Association offered the testimony of its president Mr. George Cvitanich. Mr. Cvitanich established that the Waste Management Association believes that authority to carry and dispose of infectious waste is contained in current garbage and refuse authorities possessed by its members. The association opposes the grant of the authority requested in this proceeding.

16. Mr. Don Hawkins, proprietor of Murray's Disposal and American Disposal, providing service to areas in Pierce

County under Certificate No. G-87 and G-9 respectively, testified in support of the Waste Management Association protest. Murray's and American allege that they are prepared to comply with any future infectious waste regulations that may be enacted. They do not currently hold themselves out to carry this traffic but they believe it is within their existing authority and believe that incineration capacity may be found within their disposal areas.

17. Mr. Donald Lindgren testified in support of the Waste Management Association protest. He is president of Brem-Aire Disposal, which serves all areas of Kitsap County except for Bainbridge Island under Certificate No. G-68. He believes that infectious waste disposal authority is within his garbage and refuse collection authority. He currently serves hospitals although he does not knowingly handle infectious waste in contravention of any existing regulations. Brem-Aire is making preliminary preparations to carry infectious waste if needed, although it does not hold itself out to do so.

18. Mr. John Katos, infectious waste coordinator for Harold LeMay Enterprises, Inc., appeared in support of the Waste Management Association protest. LeMay Enterprises serves areas of Pierce, Lewis, Mason and Grays Harbor Counties under its Certificate of Public Convenience and Necessity No. G-98. LeMay Enterprises has obtained van equipment and has trained one solid waste collector to collect segregated infectious waste. The company currently holds itself out to carry infectious waste, although it carries very little currently. It has available capacity to carry segregated infectious waste although it does not have separate incineration or treatment capacity.

19. Dan Dietrich, owner of Consolidated Disposal Services, Inc., testified in support of the Waste Management Association protest. Under its Certificate No. G-190, Consolidated provides garbage and refuse collection and disposal service to 50 percent of Adams County and 80 percent of Grant County. Consolidated does not actively hold itself out to provide special disposal treatment for infectious waste. Mr. Dietrich alleged that the authority held by Consolidated includes the authority to dispose of infectious waste and alleged that Consolidated is ready, willing and able to provide any special handling which may in the future become necessary in the certificate area.

20. Mr. Jerry L. Graham, general manager of Nick Raffo Garbage Company, Certificate No. G-16, Federal Way Disposal Company, Certificate No. G-35, R. S. T. Disposal Company, Inc., under Certificate No. G-185, and R. S. T. Disposal, Inc., d/b/a Tri-Star Disposal, Certificate No. TG-64, testified in support of the Washington Waste Management Association protest. These companies serve areas of south King County, Pierce County and the

City of Kent. The companies adopt the position that their current garbage authority includes the authority to transport and dispose of infectious waste. The companies have demonstrated no current ability to treat or transport infectious waste, although they allege that they will be ready, willing and able to do so if necessary.

21. Ms. Charlene Ramsey testified in support of the protest of American Environmental Management Corporation. AEMC performs garbage and refuse collection services under temporary certificate No. TG-72 which provides authority as follows:

Garbage and Refuse Collection Service consisting of biohazardous, infectious, contaminated or other related infectious medical waste, in specialized containers, for the permit and disposition of such products, from points in Washington to incineration sites owned or operated by American Environmental Management Corporation.

AEMC began operations on April 26, 1988, in the state of Washington. AEMC provides services which are similar to Sure-Way's, except that it transports the infectious waste which it collects to its own incinerator in California for disposal. AEMC has provided thorough and satisfactory service except that it has incurred violations of Commission regulations for aggregating pickup charges for boxes of waste from several pickups contrary to its tariff. American Environmental Management appears to be ready, willing and able to meet the current needs of the infectious waste collection market within the state of Washington, but holds only temporary operating authority.

22. The applicant has made an adequate presentation of financial projections for cost of service. The financial evidence presented establishes the cost of the service and that the services are financially feasible. The applicant has demonstrated that it is financially fit it and willing to serve. It has not demonstrated its regulatory fitness or its ability to serve.

23. The public health and public convenience and necessity require that infectious waste be collected, treated and disposed of in a way which will comply with emerging and existing local regulations. Such collection should include segregation of infectious waste from the general solid waste stream. Treatment and disposal capacity should include heat sterilization or incineration ability, including ash disposal, or the ability to dispose of otherwise treated infectious waste in a suitable landfill. Such collection, treatment and disposal capacities are necessary components of service to the satisfaction of the

Commission in the collection and disposal of infectious waste. While current local regulations make infectious waste generators responsible for treatment, the evidence shows that in general they must rely on the disposal carrier for treatment as well as disposal.

24. Except for AEMC, none of the protestants has shown that it has arranged for infectious waste treatment capacity. Except for AEMC, no protestant has established that it can provide economically feasible infectious waste disposal service within its service area. The protestants, except for AEMC, have failed to show that they can collect and dispose of infectious waste in a way which will protect the public health and comply with existing and emerging local regulations.

25. On December 8, 1988, the City of Spokane filed its Notice of Protest with the Commission. No representative appeared at any hearing session in this proceeding to offer a presentation in support of the protest of, in the alternative, a petition for intervention. No action was taken concerning the protest, except that the City of Spokane was placed on the master service list. No further communication was received from the City of Spokane. The petition failed to allege good cause for failure to petition for intervention at the commencement of the hearing.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the persons and subject matter herein.
2. The Notice of Protest and Petition for Intervention of the City of Spokane is denied. It was not received within the time prescribed by WAC 480-70-150 or WAC 480-08-070.
3. The applicant is willing and financially fit, but has not established its regulatory fitness or ability to provide service as required by WAC 480-70-160.
4. The application is denied.
5. The protestants will not serve to the satisfaction of the Commission, considering the special requirements of the infectious waste disposal market. Need exists for the authority applied for by the applicant.

O R D E R

IT IS HEREBY ORDERED That Application No. GA-868 of

Sure-Way Incineration, Inc., denied.

DATED at Olympia, Washington, and effective this *30th*
day of November, 1990.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

Appendix A

Definitions of "garbage" and "refuse" are set forth in WAC 480-70-050 as follows:

(5) "Garbage" includes but shall not be limited to offal or animal and vegetable wastes which may be mixed with refuse. Garbage includes scrap, waste materials, dead animals, discarded articles, garbage disposal, and swill. The term does not include sewage disposal or cesspool wastes which are hauled in special equipment as an incidental part of a septic tank or cesspool cleaning service.

(6) "Refuse" includes all commercially worthless, useless, discarded, rejected or refused material, except offal and animal and vegetable waste materials; also it includes scrap, waste materials, rubbish, noncommercial lamp black, waste acid, sludge, broken building and fire bricks, discarded rubber tires, noncommercial sawdust, debris, trade waste, discarded articles and industrial waste. The term does include earth or dirt mixed with refuse but not commercially salable earth which is used as fill, road ballast, aggregate, etc. NOTE: The incidental hauling of pure refuse as herein defined may be a part of a regular garbage collection and disposal service.

Appendix B

PUBLIC NEED AND SENTIMENT IN THE COMMUNITY SERVED

1. Vincent Fay, director of plant operations at Auburn General Hospital, testified in support of the application. Auburn General provides hospital care including chemotherapy and treatment for infectious diseases. Auburn General generates approximately 2,000 gallons of waste, which it classifies as infectious, each week. It used to treat the waste by autoclave, and place the waste in the solid waste stream, until its regular garbage company objected. Since early 1987, Auburn General has been using Sure-Way services. Mr. Fay is satisfied with Sure-Way's service and supports the application for permanent authority. He finds it very important that Sure-Way accepts responsibility for material once it is picked up, but he recognizes that if there is a problem resulting from disposal Auburn General would be involved in some way.

2. Steven L. Madsen testified in support of the application. Mr. Madsen is employed at Western State Hospital, where he is responsible for controlling and handling infectious material. At Western State, anything coming from a patient room is classified as infectious, but infectious waste basically consists of blood and body waste. Western State used to grind up its sharps, but the Center for Disease Control advised against such processing. As a result, Western State now disposes of its sharps through Sure-Way. In Mr. Madsen's view, Sure-Way has provided excellent service. Housekeeping and ward service staff have been trained by Sure-Way. Sure-Way picks up 1,100 to 1,500 gallons on each of three pickups each week. To justify a change of service, any competitor would have to provide containers, training, and convenience of pickup at a reasonable cost. Incineration is a preferred means of disposal of infectious waste for Mr. Madsen.

3. Fred Kuester is engineering supervisor at Northwest Hospital in Seattle. Northwest Hospital is a 194-bed hospital. It has operated its own incinerator for six years. It incinerates infectious waste generated in surgery, birthing suites and labs. Northwest uses Sure-Way to transport infectious waste to its incinerator from independent doctor's clinics throughout Seattle for incineration. Items transported include chemotherapy and infectious sharps. Mr. Kuester regards Sure-Way's services as essential. He would continue to use Sure-Way if permanent authority is granted. Northwest has used Sure-Way since February 1988. Northwest cannot incinerate its sharps, so it tenders sharps to Sure-Way for a transport to outside incineration.

4. Calvin MacLean is plant operations manager for the Fifth Avenue Medical Center in Seattle. He testified in support of the application. Fifth Avenue Medical Center is an osteopathic hospital. Services provided include surgery, ambulatory surgery, critical care, emergency room services and podiatry. Mr. MacLean supervises infectious waste handling. The Fifth Avenue Medical Center generates 800 gallons of waste each month. Mr. MacLean considers Sure-Way a specialist in transport of infectious waste, and would like to have the services continued. He did not indicate whether Fifth Avenue Medical Center has any type of facility for infectious waste treatment.

5. Susan Gosnell, director of environmental services for Children's Hospital and Medical Center in Seattle, oversees management of solid waste, including infectious waste. Children's Hospital generates 14,000 gallons of infectious waste each month. Sure-Way picks up this waste twice each week. The infectious waste includes surgical and lab waste. Children's Hospital has a very small incinerator and a very small autoclave in which some waste is treated. However, these items of equipment are too small to handle the total infectious waste load. Ms. Gosnell supports continuation of service by Sure-Way because it is an important service that has been handled well. Children's Hospital sharps are disposed of through Seattle Disposal, which is its regular solid waste carrier. Under current King County regulations, sharps in containers may be placed in the Cedar Hills Landfill. Ms. Gosnell prefers incineration as a method of disposal for infectious waste.

6. Frank Strycharski, chief engineer of Whidbey General Hospital, testified in support of the application. Whidbey General is a 51-bed hospital which generates infectious waste including laboratory, radiology care, acute care, intensive care and surgical waste. Its regular solid waste carrier, Island Disposal, has refused to accept surgical waste. Whidbey currently incinerates anything it defines as infectious waste. Sure-Way is a backup infectious waste transporter in case of incinerator failure. Whidbey General supports the application.

7. Carmen Manapis is a contract specialist and negotiator for Intermountain Health Care, a purchasing group which represents 155 affiliated health-care facilities in the Washington and Oregon area. Ms. Manapis is employed by Virginia Mason, which is an investor with a proprietary interest in Intermountain Health Care. Ms. Manapis surveyed the need for infectious waste disposal among IHC members. She received 60 responses out of 125 Washington members polled. Sure-Way received the largest number of positive responses. The choices were American Environmental Management and Sure-Way. Sure-Way has contracted with IHC to provide infectious waste disposal services for IHC members. In return, Sure-Way has agreed to pay

IHC two percent of its revenues from IHC business.

8. James C. Carl, assistant manager for environmental services with Group Health of Puget Sound, testified in support of the application. Mr. Carl's duties include disposal of infectious waste for two major hospitals and fifteen to eighteen clinics and other facilities around Puget Sound and in the Spokane area. Facilities are located in King, Pierce, Snohomish, Kitsap, and Spokane Counties.

The Group Health Seattle hospital has 350 beds. The Redmond facility has 300 to 325. Between its Seattle, Redmond and Renton operations, Group Health generates about 3,050 gallons of infectious waste each week. Until about 6 months before the hearing, Group Health incinerated this waste in its own incinerator. That incinerator was shut down because regulatory agencies indicated that it would no longer meet environmental standards. Infectious waste includes sharps, chemotherapy waste, liquid drainage from patients, renal dialysis, and other general infectious waste and AIDS waste. Group Health supports the Sure-Way application because it is an efficient, desirable, and timely package service. The evidence does not show that Group Health has any autoclave capacity. Sharps are disposed of through Rabanco, which transports them to a King County landfill.

9. Gerard Fischer is the administrator of the Columbia Basin Hospital in Ephrata. Columbia Basin Hospital has 17 hospital and 29 nursing care beds. Columbia Basin Hospital generates about 160 gallons of infectious waste each month. Mr. Fischer supports the Sure-Way application. If Sure-Way service is terminated the only alternative for Columbia Basin Hospital would be to join with other area hospitals in funding an incinerator. He has noticed some reluctance to receive infectious waste at the local landfill.

10. Edmond J. Held testified on behalf of Mercer Island Care Center in support of the application. Mercer Island is a 106-bed nursing home. Infectious waste generated by the facility varies from none in a month up to 40 gallons a week, depending on patient needs. The facility is diligent about classification of infectious waste. In the past, it double red-bagged the waste and threw it in the dumpster for lack of a better disposal method. It is satisfied with Sure-Way's prompt and efficient service, and is anxious to continue to meet public regulatory requirements as well as joint commission accreditation requirements. It has no current alternative other than Sure-Way for disposal of infectious waste. Both AEMC and Sure-Way were asked to provide service proposals. Sure-Way was found more convenient.

11. Bonnie Batt is special projects coordinator for

Forest Glen Nursing Center. Forest Glen is located in south Seattle, Washington. During the past year, Forest Glen has housed up to 165 skilled nursing care patients. The facility practices "moist body secretions precautions", which requires deposit in separate receptacles of materials that have contacted moist body secretions. Forest Glen has used Sure-Way since March 1988 and is satisfied with the service. It generates 60 gallons of infectious waste each week. Forest Glen management is currently not aware of any alternative to Sure-Way service if infectious waste is to be segregated from the regular solid waste stream. It will continue to use Sure-Way if the application is granted. Ms. Batt considers incineration to be a proper method of disposal.

12. Daniel M. Chapman, Jr., is the assistant administrator of the Masonic Home in Des Moines, Washington. The Masonic Home is a retirement and nursing facility with a capacity of 192 residents. The Masonic Home defines infectious waste as any waste which contains pathogens or other biological materials that create a significant risk of disease to persons to whom the substances are exposed. This waste includes catheters, nasal-gastric tubes, blood products, disposable undergarments and disposable sharps. Mr. Chapman considers the Sure-Way service necessary to the Masonic Home. The only alternative for infectious waste disposal has been the normal solid waste stream. He believes that it is important that a vendor like Sure-Way be able to assure the Masonic Home that the home will be absolved from liability resulting from infectious waste. The facility is served by Sea-Tac Disposal, which is one of the Rabanco companies.

13. Jane Whittaker is the administrator of the Edmonds Care Center in Edmonds, Washington. The center contains 93 skilled nursing beds and 5 out-patient renal dialysis beds. Ninety-five percent of the waste from the center is dialysis waste. The center generates about 150 gallons of infectious waste each week. Ms. Whittaker supports the application. She finds Sure-Way service preferable to forms of self-disposal partly because of the packaging of the waste in boxes instead of unprotected bags. The only alternative disposal method to the normal waste stream for the center has been an arrangement for incineration with the Stevens Memorial Hospital in Snohomish County. Ms. Whittaker has changed to Sure-Way because of new Snohomish County infectious waste regulations. Under these regulations, the generator is responsible for treatment by incineration or other approved means before infectious waste is placed in the general solid waste stream.

14. Gayle Monk is assistant director of nursing for Benson Heights Rehabilitation Center in Kent, Washington. The center is an adult residential treatment facility for psychiatric

patients who have medical problems requiring support services independent of psychiatric treatment. Benson Heights generates less than 800 gallons of infectious waste each month. All moist body secretions, and materials which the secretions contact, are considered infectious waste. The only alternative to Sure-Way's services previously known to Ms. Monk would be disposal directly into the ordinary solid waste stream.

In addition to ordinary environmental dangers, Ms. Monk has noted that in the past persons have rummaged through waste in the dumpster. She considers this a very serious threat to health if infectious waste is not segregated from the regular solid waste stream. The center has a 91 bed capacity. She supports the secure segregation and handling of infectious waste and supports the Sure-Way application. Her uncontradicted testimony establishes that in excess of 300 health care workers each year die from exposure to hepatitis B in the course of their work in the United States. Benson Heights has had one AIDS patient, but Ms. Monk is unable to predict the possible incidence of such patients in the future. Incineration is the facility's preferred method of disposal for any waste that is not biodegradable and disposable through the sewer system.

15. Susan Peton is the administrator of the First Hill Care Center in Seattle. It is a 187 bed long term skilled nursing care facility with an average patient census of 160 to 170. The center segregates as infectious waste any materials which have contact with body fluids inside or outside of the body. The center, which is located in downtown Seattle, has dumpster rummaging problems similar to the Benson Heights Center. Narcotics addicts are a major waste foraging group. The center generates 30 gallons of waste each week. Ms. Peton originally sought service from American Environmental Management, although she felt that the size of the containers provided by American Environmental was not convenient. AEMC provided service until early 1988. The reasons why AEMC stopped providing service are not clear from the record. Ms. Peton characterized the discontinuance of service as a "mutual thing" and it appears to have resulted, at least in part, from a change in personnel and some missed communications between the center and AEMC. She prefers Sure-Way's service and supports the application. Sure-Way or American Environmental service are the only choices for the center if segregation of infectious waste from the regular solid waste stream is to continue. Wastes are generated from tube feeding patients, intravenous materials, and wound dressings. Incineration is the preferred method of disposing of infectious waste.

16. Catherine Allen appeared on behalf of Wesley Homes, Des Moines, Washington. Wesley Homes is a retirement facility which offers several levels of living, including skilled

nursing care. Ms. Allen supervises a unit with over 90 skilled nursing care beds. Infectious waste at the facility includes wound dressings, catheters, other tubing or sharps. The units that she supervises generate about 20 gallons of infectious waste each week. Before the services of Sure-Way were utilized, the waste was placed in the regular solid waste stream. Sure-Way has been utilized because Wesley Homes felt that segregation of infectious waste and secure disposal would become a government regulatory requirement in time.

Sure-Way or a similar service is the only current alternative to disposal in the general waste stream that Wesley Homes has for infectious waste disposal. Ms. Allen finds the service appropriate and satisfactory. Sure-Way provides proper storage containers which are sturdy and leak proof. It provides needed pickup service, access to the company representative and quick response, and competitive prices.

17. Doris Barret is the administrator of the Burien Nursing Center, Burien, Washington. The center is a 140 bed skilled nursing facility. Any material contaminated with body fluids or secretions, together with sharps, is considered infectious waste. Sure-Way has served the facility for about one year. The only alternative disposal for infectious waste has been disposal in the normal solid waste stream except for sharps. The facility currently generates one 10-gallon container each month. To Ms. Barret's knowledge, the center has not treated aids or hepatitis patients.

18. Gregory K. Jarvis is the administrator of the Care Plus Medical Center in Federal Way, Washington. The center is a primary acute care outpatient facility where the ambulatory ill are treated. The center has used Sure-Way's services for about a year because of the understanding of management that infectious waste must be treated by incineration. Weekly pickup is utilized. Mr. Jarvis finds the Sure-Way service desirable because of the price, convenience and service. If all factors were similar with another vendor except price, he would consider competitors. Competitors in his view would have to accept liability for the waste and assure that the waste was being incinerated. Infectious waste generated includes bodily substances, materials that have come in contact with those substances and sharps.

19. George Stuts is the manager of the Seahurst Medical Center in King County, Washington. The center is an outpatient clinic, where eight physicians practice. X-ray and lab services are offered. Thirty-two to thirty-four persons are employed there. Materials which come in contact with body fluids, and minor surgical procedures that are performed at the center generate 160 to 170 gallons of infectious waste each week.

Sure-Way's services are utilized because the center wants to meet health department requirements and also wants to protect employees from health dangers. There is no evidence that the center has any alternative to Sure-Way's services but disposal of untreated infectious waste in the ordinary solid waste stream.

20. Richard Molitor, currently an employee of Kimberly-Ross Infusion Services, was recently pharmacy supervisor for Home Nutritional Support of Redmond, Washington. At Home Nutritional Support, he prepared intravenous solutions, including mutigens and carcinogens, for home use by patients. The company collected sharps and body fluid contact items from the customers for disposition. The customers had been placing those items in the normal solid waste stream. The company felt a moral obligation to improve disposal. Mr. Molitor contacted twelve hospitals to find out how they disposed of infectious waste. He learned that six burned in incinerators and six placed the waste in the trash. The waste he handled included waste from hepatitis and AIDS patients. He supports Sure-Way. It provides appropriate packaging materials and picks up each month. He favors segregation of infectious waste and secure disposal to avoid health hazards.

21. George Brown is the director of the Meridian Valley Clinical Laboratory in Kent, Washington. The laboratory performs clinical tests including allergy testing and hormone and specialized chemistry testing. A 14-person technical staff is employed. Bodily secretions are the subject of tests. Specimens must be disposed of. The lab disposes of 60 gallons of infectious waste each week. Mr. Brown supports the application and will continue to use Sure-Way. He specified no alternative but Sure-Way for disposal of infectious waste.

22. David Orme is the night manager of the Smith-Cline Bioscience Laboratory in Seattle, Washington. He supervises hematology, body chemistry and urinalysis testing. The laboratory treats as infectious waste any materials which come in contact with body fluids, products or tissues. The policy is that all such materials are to be incinerated. Before they utilized Sure-Way for twice weekly pickups, infectious waste went into the normal solid waste stream. Transients used to rummage through the laboratory garbage with significant exposure to infectious waste. Bayside Disposal, which is the company's usual garbage company, provided a padlocked dumpster, but padlocking was discontinued because of inconvenience to employees.

23. George Ross Cane is the grounds and maintenance engineer for Western Clinic. Western Clinic operates three acute primary care outpatient facilities in Pierce County. These facilities are located in Gig Harbor, downtown Tacoma, and the Tacoma tideflats industrial area. With the increase of public

concern for the transmission of the AIDS virus, Western Clinic surveyed Pierce County hospitals to find that these hospitals incinerated infectious waste. In order to dispose of infectious waste safely and with minimum liability, Western Clinic began disposing of that waste first with Brown and Ferris Industries and then with Sure-Way. The clinics generate 80 gallons of infectious waste each week. They dispose of any pathological or chemotherapy wastes through the Tacoma General Hospital. Western Clinic supports the Sure-Way application.

24. Barbara Ashley appeared on behalf of the Everett Hematology-Oncology Associates. She is the business manager for the three physician office located in Everett. Ninety-five to ninety-eight percent of the patients of the associates are cancer patients. Infectious waste generated by the practice includes sharps, chemotherapy drugs and blood. There are very few dressings. The practice generates ten gallons of infectious waste each week which has been picked up by Sure-Way since May 1988. If Sure-Way were granted permanent authority, the practice would continue to use it because incineration is the preferred disposal method. They have been segregating infectious waste for four and a half years. Rubatino Refuse has collected the garbage previously, but the associates now want to be assured that the infectious waste is disposed of lawfully. They find that Sure-Way provides good and unobtrusive service.

25. Richard Laphorn is a medical lab technician employed in Moses Lake, Washington. He works at the community health center, which provides outpatient services. As a result of the 25 to 60 lab tests he performs each day, he generates 3 1/2 to 5 gallons each week of medical wastes associated with body fluid and biological materials. Out of a concern for public health, he has in the past taken his infectious waste to Good Samaritan Hospital in Moses Lake for incineration. When that incinerator shut down, he began combining his wastes with that generated by Good Samaritan to be taken away by Sure-Way. He intends to comply with the Center for Disease Control and Infectious Waste Disposal Guidelines when he learns what they are.

26. Joe May testified on behalf of the Federal Way Athletic Club. The club does strength and endurance tests and cholesterol screening. These services are available to the 1,700 club members. The cholesterol screening consists of taking a sample of a drop of blood for testing. The facility generates approximately 1/2 gallon of what it feels is infectious bodily fluid contaminated waste each month. Because of concern for disposal, they will continue to use Sure-Way's services if permanent authority is granted.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Application	)	ORDER M. V. G. NO. 1452
GA-874 of)	
	)	HEARING NO. GA-874
AMERICAN ENVIRONMENTAL)	
MANAGEMENT CORP.	)	COMMISSION DECISION AND
	)	ORDER DENYING PETITIONS
for a Certificate to operate	)	FOR ADMINISTRATIVE
motor vehicles in furnishing	)	REVIEW; AFFIRMING INITIAL
Garbage and/or Refuse Collection	)	ORDER; GRANTING
Service.	)	APPLICATION
.)	

NATURE OF PROCEEDING: This is an application for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and refuse collection service consisting of biohazardous, infectious, contaminated, and other related medical waste in the state of Washington.

INITIAL ORDER: The Administrative Law Judge proposes that the Commission enter an order granting the application, as amended, for infectious waste authority. The applicant has demonstrated its fitness, willingness and ability to provide the proposed service; public convenience and necessity require such operation; and although the certificates of existing solid waste collection companies serving territories in the state are interpreted to include authority to collect infectious waste, it is determined that those companies will not provide such service to the satisfaction of the Commission.

ADMINISTRATIVE REVIEW: Protestants petitioned for administrative review, arguing that the applicant is not financially fit, is unable to serve Eastern Washington and that the protestant carriers will provide service to the satisfaction of the Commission. Applicant replied that the initial order is correct and should be affirmed. The applicant emphasized that the existing certificate holders would not and had not provided service to the satisfaction of the Commission.

COMMISSION: The Commission denies the petitions for administrative review, the initial order is correct in all respects and is affirmed. The application is granted.

[1]* An applicant may present evidence of its own financial picture and that of its parent corporation in order to

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

establish its financial fitness, so long as there is a commitment from the parent to support the applicant if necessary.

[2] Where an applicant has taken prompt steps to remedy incorrect applications of its tariff and demonstrated a willingness to make regulatory compliance a high priority, the applicant is not precluded from establishing its fitness.

[3] A comparative analysis of competing applications for a grant of authority is only necessary if there are two or more otherwise qualified applicants seeking the same authority.

[4] If the service proposed by the applicant is necessary and is not available from any of the protestants because they lack the equipment, personnel, and disposal site, the protestants are not serving to the satisfaction of the Commission.

APPEARANCES: The applicant was represented by David W. Wiley, attorney, Bellevue. The Commission Staff was represented by Robert C. Hargreaves, assistant attorney general, Olympia. Protestants and intervenors were represented as follows: Sure-Way Incineration, Inc. by Boyd Hartman and George Kargianis, attorneys, Bellevue and Seattle; Resource Recovery Corp., Gasoline Tank Service Co., Inc. and United Drain Oil Service, Inc. by Polly A. Lord and Bruce A. Wolf, attorneys, Seattle; Washington Waste Management Association, Rubatino Refuse Removal, Inc., and Lawson Disposal, Inc. by James K. Sells and Gordon Walgren, attorneys, Bremerton; Northwest Unitech, Inc. by Dorina Borracchini, Kenmore; Bayside Waste Hauling & Transfer, Inc., et al., by Jack R. Davis, attorney, Seattle; Rabanco Companies by Brian E. Lawler and George Kargianis, attorneys, Seattle; and Harold LeMay Enterprises, Inc. by Tom Farrow, attorney, Tacoma, Washington.

MEMORANDUM

This is an application for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and refuse collection service consisting of biohazardous, infectious, contaminated, and other related medical wastes in specialized containers from points in the state of Washington to incineration sites owned and/or operated by the applicant, American Environmental Management Corporation (AEMC).

On March 27, 1990, Administrative Law Judge Elmer E. Canfield entered an initial order proposing that the Commission grant the application, as amended, for infectious waste authority. The order concludes that the applicant has demonstrated its fitness, willingness and ability to provide the proposed service and that public convenience and necessity

require such operation. The order further holds that although the certificates of existing solid waste collection companies serving territories in the state include authority to collect infectious waste, those companies will not provide that service to the satisfaction of the Commission.

Protestants Washington Waste Management Association and Sure-Way petitioned for administrative review, arguing that the applicant is not financially fit, is unable to serve Eastern Washington and that the protestant carriers will provide service to the satisfaction of the Commission. Applicant replied that the initial order is correct and should be affirmed. The applicant emphasized that the existing certificate holders would not and had not provided service to the satisfaction of the Commission.

Protestant Harold LeMay Enterprises, Inc., also petitioned for administrative review, with a petition filed on May 11, 1990. AEMC moved to strike the petition on the basis that it was untimely filed. Petitions were due on or before April 23, 1990. There is no evidence that this protestant either sought or was granted an extension of time in which to file. Lateness is not a mere technical defect which can be cured. Order M. V. No. 139291, In re Larry Trapp Trucking, Inc., App. No. E-19700 (March, 1989). The Commission will not consider LeMay's untimely filed petition and grants AEMC's motion to strike.

BACKGROUND

The applicant currently operates a permitted biohazardous incinerator in Rancho Cordova, California to which it transports the infectious waste collected in the state of Washington. For convenience, the terms "infectious" and "biohazardous" will be used interchangeably in this order.

The applicant suggested the following definition for infectious waste, drawn from an Environmental Protection Agency guide:

. . .[I]nfectious waste is defined as waste capable of producing an infectious disease. This definition requires a consideration of certain factors necessary for induction of disease. These factors include: a) presence of a pathogen of sufficient virulence; b) dose; c) portal of entry; d) resistance of host.

Therefore, for a waste to be infectious it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious disease. The six categories

listed below are recommended EPA infectious waste categories:

- * isolation wastes
- * cultures and stocks of infectious agents and associated biologicals
- * human blood and blood products
- * pathological wastes
- * contaminated sharps
- * contaminated animal carcasses, body parts, and bedding

The EPA document goes on to state that there may be other materials which pose a health hazard because of potential infectiousness. These include, but are not limited to, contaminated equipment, wastes from surgery and autopsy, miscellaneous laboratory wastes, and dialysis unit wastes. It is recommended that individual facilities evaluate these wastes to determine which should be managed as infectious waste.

King, Pierce and Snohomish Counties have adopted infectious waste regulations. In addition, the Commission recently adopted rules governing the collection and transportation of medical waste. WAC 480-70-500 et seq., adopted June 20, 1990. The applicant has applied for permits as required by all such regulations and has demonstrated its compliance with all applicable solid waste management plans, as required by law.

The evidence demonstrated that a potential threat to the public health and safety is posed by infectious wastes and that there is a need for specialized garbage and refuse collection service of infectious waste in the state of Washington. The public convenience and necessity require such operation. The potential for spread of disease, such as AIDS and hepatitis is of obvious concern to the generators, to the people who transport such wastes, to personnel at the disposal facility and to the public at large. The landfilling of untreated infectious waste has been taking place in this state and this practice should not be allowed to continue. Infectious waste should be segregated from mainstream garbage, separately handled by qualified personnel and transported in specialized containers and properly disposed of. Incineration was shown to be the most effective method of disposal of infectious waste, although autoclave sterilization can also be effective if done properly.

The applicant is a waste management company with approximately 15 years of experience. It proposes to transport the infectious waste collected in the state of Washington to its incinerator in California for ultimate destruction and disposal. It has adequate facilities, suitable, specialized equipment and supplies and qualified, trained personnel to conduct the proposed

operations. It is able and willing to provide the proposed service throughout the state of Washington. It has been providing service in Washington under a temporary certificate.

FITNESS

The initial order concluded that the applicant had established its financial and regulatory fitness to conduct operations. Sure-Way argues that the cost evidence presented by AEMC is totally deficient and does not satisfy the requirement of RCW 81.77.040 that the applicant provide a statement of the assets on hand of the of the firm or corporation which will be expended on the proposed plant. Sure-Way also argues that AEMC's tariff violations should prevent it from establishing its regulatory fitness. AEMC answers that the financial information it presented was more than adequate and that its tariff violations were minor and promptly corrected.

[1] The Commission concludes that the applicant's financial showing is sufficient to establish its financial fitness. The information is complete and establishes the financial wherewithal of both AEMC and its parent company. The administrative law judge noted the commitment of the parent company to continued operations in the state. There is no reason to doubt the credibility of the witnesses who testified that C R & R, applicant's parent, would continue to provide financial support to the applicant if necessary. The applicant's parent company is quite large and its financial statements show retained earnings of \$9 million. In this case there is also a staff audit showing profitable operations under the applicant's most recent tariff, so the necessity of financial support from other sources seems minimal. There is no reason to believe that the applicant's operations in the state would fail because of inadequate financial resources.

The applicant's regulatory fitness was, at least initially, called into question due to some questionable tariff application practices. However, the initial order concluded that the applicant satisfactorily resolved the questions and demonstrated its fitness to conduct the proposed operations. The order held that the applicant provided credible assurance that it intends to comply with all applicable laws and Commission rules.

[2] The Commission concludes that the initial order should be affirmed on this point. The applicant did take prompt steps to remedy incorrect applications of its tariff and demonstrated a willingness to make regulatory compliance a high priority. Violations of the law or Commission rules do not foreclose the applicant from establishing its fitness, especially where the applicant has discontinued unauthorized practices and has come into compliance. Order M. V. No. 140097, In re T & T

Milk Transport, Inc., App. No. E-19755 (Sept. 1989). Here, there is no reason to disturb the conclusion of the administrative law judge that the applicant is fit to receive authority.

COMPARISON WITH SURE-WAY

The initial order noted Sure-Way's status as a temporary certificate holder and competing applicant for permanent authority. However, the order does not include any detailed comparative analysis of Sure-Way and AEMC.

Sure-Way argues that the initial order failed to adequately analyze the evidence as it pertains to Sure-Way's service and capability in general and specifically as to service in Eastern Washington. Sure-Way also argues that it entered the market first, applied for authority first and thus has a superior claim to a grant of authority in a comparative analysis of these two applicants. AEMC responds that a detailed comparative analysis is not warranted at this point. AEMC argues that Sure-Way has no claim as an existing certificate holder and that the initial order properly analyzed the record.

[3] A comparative analysis of competing applications for a grant of authority is only necessary if there are two or more otherwise qualified applicants seeking the same authority. Here, the initial order concluded that AEMC is qualified, but did not bring Sure-Way into the discussion because the cases were not consolidated for purposes of the initial orders. Sure-Way recognizes that it is not an existing certificate holder within the meaning of RCW 81.77.040. In this context, and for purposes of making a decision on AEMC's application, no comparative analysis is necessary or proper in the initial order. Because Sure-Way's application is denied by order M. V. G. No. 1451, entered today, there is no need for a comparative evaluation of Sure-Way and AEMC. Sure-Way did not establish that it is fit or able to provide the proposed service, so its application is denied before reaching the point where a comparative analysis becomes necessary.

Nor does the Commission believe that the timing of the applications is of particular significance in this case. While it is true that Sure-Way applied for authority before AEMC did, AEMC points out that Sure-Way first applied for contract carrier authority. Sure-Way did not amend its application to seek common carrier authority until after AEMC had filed its application for common carrier authority. AEMC argues that the prior application should not necessarily be given preference, but that its application should be considered to be the earlier in any event.

Timing of the filing of the applications may be relevant, as noted in Order M. V. G. No. 1402, In re R. S. T.

Disposal Company and Seattle Disposal Company, App. Nos. GA-845 and GA-851 (July, 1989). However, this issue only arises when comparing two otherwise qualified applicants. That is not the case here, so whether Sure-Way or AEMC filed first is unimportant.

SERVICE PROVIDED BY THE PROTESTANTS

The protesting certificate holders took the position that their existing authority covered infectious waste and that the application should be denied. The Commission agrees that the permanent authority of existing G-certificate holders includes the authority to collect infectious waste. In this case, the applicant's request for statewide authority includes many areas which were not protested. Concerning those areas which were protested, the question becomes whether the existing solid waste collection companies will provide such service to the satisfaction of the Commission. The initial order concluded that they would not and proposed that the application be granted.

Protestants Washington Waste Management Association, Rubatino Refuse Removal, Inc., and Lawson Disposal, Inc., petitioned for administrative review of that portion of the initial order which concludes that existing certificate holders will not serve to the satisfaction of the Commission. These protestants request review of a number of findings of fact and suggest modifications which they argue more accurately reflect the record and which establish that they will serve to the satisfaction of the Commission.

All the contested findings concern testimony of either supporting shippers or the protestants themselves. Generally, the protestants wish to emphasize the failure of certain shippers to contact their regular garbage companies to ask about service for medical waste before accepting service from AEMC. The protestants also wish to have included in the findings some mention that each of the protestants would provide service if asked and that all are in compliance with existing regulations.

AEMC argues that no specialized medical waste service was ever available from the protestants and that it is thus irrelevant whether the shippers asked about it, as none could have been provided in any event. AEMC also points out that some shippers did specifically request specialized service for medical waste but found none available. Finally, AEMC urges that protestants should not be allowed to defeat an application such as this one by simply professing a willingness to serve without having taken any tangible steps toward meeting the well established public need.

The appropriate time period to examine in evaluating

the service provided by the protestants is the period prior to the filing of this application on February 25, 1988. The kind of service provided by an existing certificate holder after a person files a competing application cannot be used to defeat an application -- that is, the service being provided by an existing certificate holder prior to the time a competing application is filed is the service that will be examined to evaluate the need for applicant's service. Order M. V. G. No. 795, In re Anthony J. DiTommaso, d/b/a DiTommaso Bros. Garbage Service, App. No. GA-508 (Nov. 1975); Order M. V. G. No. 1335, In re Superior Refuse Removal Corporation, App. No. GA-849 (June 1988).

On review, the Commission concludes that the disputed findings of fact, as set forth in the initial order, give a fair and accurate summary of the testimony of each of the witnesses. In some instances the modifications suggested by the protestants are simply inaccurate. In other cases, such as the addition of a finding about the protestants compliance with existing regulation, they do not add anything which would change the outcome of the order. The protestants' compliance with applicable rules and laws is an element of providing service to the satisfaction of the Commission, but it is not the only element.

[4] The situation as evidenced by the record in this case is that the service proposed by the applicant was not available, in any way, shape, or form, from any of these protestants during the relevant time. The protestants did not have the equipment, personnel, or necessary disposal site available to provide service if requested. On these facts it is irrelevant that some shippers did not contact their existing garbage company, as it is evident that they would not have found service to be available if they had. The protestants would not have provided service if asked because they could not. In addition, the record does show that some of the witnesses sought service from their existing G-certificate holder and found that no specialized service was available.

Based on the evidence of record as set forth in the findings below, it must be concluded that the existing holders of permanent, G-authority will not provide such service to the satisfaction of the Commission. Even assuming that satisfactory service is being provided by such solid waste collection companies in their collection activities of traditional solid waste, it was not shown that those companies were specially equipped and trained to meet the demonstrated need for specialized, infectious waste collection service, nor were they in fact meeting the real public need for that service. This specialized service involves distinct and different operational requirements. The certificate holders were not serving to the full extent of their authorities, which left this public need

unserved. The public interest requires appropriate service be provided in this unique and emerging market. Public needs have changed regarding infectious waste and such needs were not being satisfactorily served during the period prior to the filing of this application by AEMC.

CONCLUSION

The applicant has demonstrated that it meets the requirements of Chapter 81.77 RCW and Chapter 480-70 WAC. It has adequate prior experience in the infectious waste field and has shown that it is fit, willing and able to provide the proposed service as required by WAC 480-70-160. It is complying with local, state and federal regulations. It has demonstrated its costs of operation and facilities and the financial feasibility of its proposed operations. The sentiment in the communities to be served demonstrate a need for the proposed service. Many areas of the state were not protested, and even in those that were, the existing solid waste collection companies will not provide service to the satisfaction of the Commission. This result is based on the evidence of record notwithstanding the Legislature's reluctance to permit overlapping authorities in the garbage and refuse industry. There was a demonstrated need for a specialized, containerized infectious waste collection service, which was not being met by the holders of existing permanent authority during the evaluation period. Accordingly, the service that was being performed by the existing solid waste collection companies is not being duplicated by this grant of a new, specialized infectious waste service.

Having discussed the evidence and having stated findings and conclusions the Commission makes the following findings of fact and conclusions of law. Portions of the preceding findings pertaining to the ultimate facts are incorporated herein by this reference.

FINDINGS OF FACT

1. On February 25, 1988, the applicant filed an application with the Commission for a certificate of public convenience and necessity to operate motor vehicles in furnishing refuse collection service consisting of biohazardous, infectious, contaminated and pathological waste and other related infectious medical wastes in specialized containers to incineration plants or other licensed disposal sites or facilities for the permanent disposition of such products in the state of Washington.

2. In a letter to the Commission dated March 8, 1988, applicant's counsel requested that the commodity description be amended to also include "garbage". The matter was thereupon republished in the Commission's March 21, 1988 weekly docket of

pending applications.

3. During the course of the hearings, the applicant moved to further amend the application for a certificate of public convenience and necessity to operate motor vehicles such that the applicant requested authority to furnish:

Garbage and Refuse Collection Service consisting of biohazardous, infectious, contaminated and pathological waste and other related infectious medical wastes in specialized containers from points in the state of Washington to incineration sites owned and/or operated by American Environmental Management Corporation.

4. Timely protests were filed by Jack R. Davis, attorney, on behalf of Bayside Waste Hauling & Transfer, Inc., Metropolitan Services Corp., Northwest Garbage Co., Inc., Washington Disposal Co., Inc., Rainier Disposal Co., Inc., Snoking Garbage Co., Inc., Benco Disposal, Inc., Dependable Disposal, Inc., Hi-Valley Disposal, Inc. and Yakima Valley Disposal, Inc. By letters to the Commission dated April 19 and June 12, 1989, Mr. Davis withdrew all of these protests, leaving the areas served by these companies unprotested in this proceeding.

5. Timely protests were filed by Bruce A. Wolf, attorney, on behalf of Resource Recovery Corp., United Drain Oil Service, Inc. and Gasoline Tank Service Co., Inc.

6. A timely protest was filed by the Washington Waste Management Association on behalf of its members.

7. A timely protest was filed by Brian C. Lawson, vice-president, on behalf of Lawson Disposal, Inc.

8. A timely protest was filed by Brian E. Lawler, attorney, on behalf of Rabanco Companies.

9. An individual protest was filed by Dan Leidecker, president, on behalf of Nooksack Valley Disposal, Inc. This protestant did not appear when the hearing was commenced and the motion to dismiss the protest was granted. Nooksack Valley Disposal nevertheless was represented and participated in the proceeding as a member of the Washington Waste Management Association.

10. At the commencement of the hearing, intervention status was granted to the following parties: Sure-way Incineration, Inc., Rubatino Refuse Removal, Inc., Northwest Unitech, Inc. and Harold LeMay Enterprises, Inc.

11. During the course of the hearing, the applicant moved to dismiss the intervention of LeMay Enterprises for failure to comply with Commission rules. LeMay had initially sent a letter to the Commission (but not to the applicant), stating that it opposes the granting of the application and that it would be filing a protest. For some reason, a protest did not get filed. LeMay was allowed to participate as an intervenor. The motion to dismiss the intervention was denied.

12. A petition to intervene was filed by BFI Medical Waste Systems of Washington, Inc. This petition was withdrawn prior to commencement of the hearing.

13. American Environmental Management Corporation is a waste management corporation with approximately 15 years of experience. It specializes in hazardous waste management, but has several other divisions, including a biohazardous/infectious waste division. It operates in several different states. It operates a fully permitted incineration service for biohazardous (infectious) waste at Rancho Cordova, California. AEMC is owned by the CR&R Corporation (90%) and Bruce Risley (10%). CR&R Corp. is a privately-held corporation owned by Clifford and Sandra Ronnenburg and is headquartered in Stanton, California. Under corporate policy, CR&R makes the asset purchases for its subsidiaries, which are then charged to the subsidiary. The consolidated balance sheets of CR&R and its subsidiaries reflect annual net sales of over \$56 million and retained earnings of over \$9 million, see Exhibit No. 24. Dan Cashier, the chief financial officer for CR&R and for AEMC, testified that CR&R is committed to ensure that AEMC remains in Washington on a long-term basis.

14. Charleen Ramsey, AEMC biohazardous waste division manager, has ten years of experience in the infectious waste field. She has been employed by AEMC for over 6 years. She has a BA degree with honors from the University of California-Davis and two years of law school. She teaches biohazardous waste management courses at the University of California-Davis and has prepared papers on the subject. She belongs to numerous hospital associations. Her prior experience was in the pharmaceutical business, with extensive experience in antibiotics.

15. American Environmental provides to its customers in the state of Washington (Western, as well as Eastern Washington) a complete infectious waste service, which includes assistance in identification and proper handling of the infectious waste, segregation of the infectious waste from the solid waste stream, containerization of the infectious waste, and transportation and disposal by incineration of the infectious waste. It carries insurance coverage and pollution liability

insurance of not less than one million dollars. Ms. Ramsey pointed out that when there is a lack of segregation of infectious waste, there are increased risks of injury from such things as needle sticks and risks of the spread of disease such as hepatitis, typhoid, tuberculosis, AIDS and other communicable diseases.

16. The applicant provides to its customers, rigid-walled, cardboard boxes with lids and double, red-bag lining and has available for sale, rigid, plastic containers for sharps. Training and instruction on infectious waste matters are also provided to the customers. The generator is instructed on such matters as the separate tying of each heavy duty 2 mil plastic bag before the lid to the box is sealed by tape.

17. The vehicles used by AEMC are suitable for the transportation of infectious waste. They are specially designed to transport biohazardous waste. AEMC does not use compactor equipment for infectious waste. Appropriate safety equipment is carried on all vehicles. Its 1985 GMC van, used for pick ups, has been retrofitted to include a lining of aluminum and lipped edge to prevent spillage. It is equipped with load locks. Mr. VanValkenburgh explained that AEMC has added another van for its route service. AEMC also uses outside storage lockers for infectious waste. It has larger vehicles which have been used to transport the infectious waste, but, as Mr. VanValkenburgh explained, AEMC since started using special trailers suitable for transporting infectious waste. The applicant is able and willing to obtain additional equipment as needed to serve the needs in the State of Washington. AEMC has backup vehicles available in case of equipment breakdown. It may also use independent carriers on the transports to Rancho Cordova. AEMC provides its employees with proper clothing and protective wear. AEMC has a complete procedures manual on the handling of biohazardous waste. Its employees are trained in the proper handling of infectious waste and how to handle emergency situations, such as spills and clean-ups. It prepares a monthly health and safety newsletter to keep its employees informed and updated on recent developments.

18. The local office of AEMC (sales/service) is located in Kirkland, where its vice-president of Washington operations oversees AEMC's Washington activities. It also has drivers, an office person and sales personnel at its Kirkland facility. It has a yard for parking vehicles and a supply warehouse in Woodinville. AEMC is currently operating in Washington under temporary WUTC Certificate No. TG-72 which authorizes:

Garbage and Refuse Collection Service consisting of biohazardous, infectious, contaminated and other related infectious medical wastes, in specialized

containers, for the permanent disposition of such products, from points in Washington State to incineration sites owned and/or operated by American Environmental Management Corp.

It is ready, able and willing to serve customers throughout the state of Washington and actively solicits such business. It is in compliance with local regulations and has permits as required (Seattle-King County; Tacoma-Pierce County; and City of Spokane). The Snohomish County Health District Board of Health has also adopted regulations governing infectious waste, but upon inquiring, the applicant was advised that the county does not currently have a permit requirement.

19. Effective January, 1989, AEMC began transporting all of the infectious waste picked up in the state of Washington to its permitted biohazardous incinerator site in Rancho Cordova. It took some infectious waste to California previously after discussing the matter with WUTC representatives, but this was when the total change over took place. AEMC had earlier been authorized to transport biohazardous waste to incineration sites in Whatcom County (Thermal Reduction facility, TRC), but it discontinued this practice in or about December, 1988. This decision was made in November, 1988. According to Mr. VanValkenburgh's understanding, the King County Health Department decided that it did not want King County-generated infectious waste being taken to the Thermal Reduction facility; however, Mr. VanValkenburgh, AEMC's vice-president in charge of Washington operations, testified that the main reason for the change to its own incinerator was AEMC's concern about potential liability in using the TRC facility. He pointed to TRC's lack of scrubbers on their incinerator. The Boeing Company had indicated to AEMC that it would not do business with AEMC if it transported Boeing's infectious waste to TRC in Bellingham. Mr. VanValkenburgh further pointed out that TRC's burning capacity for medical waste had been reduced due to air pollution concerns. Due to the above and in view of the lack of alternative biohazardous waste incinerators in Washington, AEMC decided that the use of its incinerator in Rancho Cordova would best serve the needs of AEMC and its customers in the long run.

20. According to Ms. Ramsey, incineration is the best known method available for the complete destruction of all component parts of infectious waste. She referred to AEMC's cradle-to-grave approach, wherein AEMC deals with the infectious waste from the point of generation to the final disposal at its Rancho Cordova incineration site. Upon picking up biohazardous waste, AEMC completes a service order which includes information on the generator and the waste being picked up for transport. Both the AEMC representative and the generator sign this document. In describing AEMC's tracking capability, Ms. Ramsey

explained that the boxes picked up for incineration are marked with a serial number and are coded, which are recorded at the time of incineration, thus enabling AEMC to issue a document certifying incineration.

21. The applicant began its intrastate Washington service in May, 1987, then learned in late September or early October, 1987 that operating authority was needed; it thereupon obtained emergency temporary authority. The applicant erroneously assumed the emergency authority would be good for a year, but upon being advised that it had expired after 30 days, it applied for and received two additional emergency authorities prior to the issuance of the temporary certificate in April, 1988. Upon being advised that the initial emergency authority had expired by law, the applicant discontinued its Washington operations until it received additional authority. It holds the required local permits, such as Seattle-King County, Tacoma-Pierce County and City of Spokane. Consistent with its practice in California, the applicant provided for an hourly charge in its initial Washington tariff, which rates were changed in the face of competition during the early months when the applicant was not totally familiar with the Washington regulatory requirements. After experiencing difficulty using the hourly rate structure, the applicant changed to a "per-box" charge in subsequent tariffs. AEMC has not been cited by the Commission for violation of laws or rules, although it was cautioned by the Commission about weekly pick-ups being aggregated for a period of a month, thereby resulting in a lower charge to the customer. The applicant thereupon remedied the matter. Ms. Ramsey and Mr. VanValkenburgh each provided credible assurance that AEMC intends to comply with all applicable laws, rules and regulations.

22. The applicant demonstrated its costs of operation and facilities and the financial feasibility of its operation. Its initial financial evidence was incomplete, but adequate financial information was later submitted by the applicant. AEMC's most recent tariff (Tariff No. 005) reflects accurate cost of service. Although losses were experienced under prior tariffs, rates under Tariff No. 005 were shown to be compensatory. The books and records of the applicant were audited by Layne Demas, WUTC Revenue Requirements Specialist, who calculated an operating ratio of 99.15% under Tariff No. 005 rates, see results of staff investigation, Exhibit No. 71. Mr. Demas pointed out that a normal operating ratio for a company like the applicant without specific plant investment would typically run at 99%.

23. John Parker, plant engineer, Ballard Convalescent Center, Seattle, testified in support of the application. Ballard Convalescent is a 24 hour skilled nursing facility containing 210 beds. Included in the waste it generates are

syringes, needles, body tissue samples/culture scrapings, blood samples, contaminated bandages and other material that has come into contact with human bodily fluids. In the past, the facility took this contaminated waste to be incinerated at a cemetery and also at the Bellevue Humane Society. After boxing the material, Mr. Parker loaded the box onto his pick-up truck and delivered it to the incinerator. This took time away from his other duties and in view of the fact that some boxes were lost en route and leakage was experienced on other occasions, the facility sought out other methods of handling such waste. It had no success in its attempts to have the infectious waste picked up by its solid waste company or any others of the 6 to 12 companies it called. The facility was then approached by Sure-Way and American Environmental. It chose to use the services of the applicant and began receiving service in or about July, 1987. On the average, it generates two to three boxes of infectious waste per week. AEMC's boxes are double lined. Mr. Parker is not specifically aware of what disposal method AEMC uses, but he considers incineration to be the best method of disposal. Conventional garbage handling of infectious waste is not acceptable to the facility; Mr. Parker pointed out the risks and dangers involved. As to whether Ballard Convalescent will continue using the services of the applicant, Mr. Parker indicated the matter may again be put up for bids depending on what action the Commission takes.

24. George Heiskell, environmental service supervisor at Valley Health Care Center, Renton, testified in support of the application. Valley Health Care is a 166-bed long-term nursing care facility. It generates infectious medical waste, such as colostomy bags, contaminated bandages and bedding and cancerous drainage. It also uses quite a few sharps, stemming in large part from its numerous diabetic patients. The facility generates approximately two-and-a-half to five gallons of infectious medical waste per week, which is one to two boxes. When Mr. Heiskell started this job in January, 1986, the practice of the facility was to dispose of its infectious waste along with its other garbage in the dumpster to be picked up by the disposal company and taken to the landfill. Mr. Heiskell was aware of one incident where a needle punctured the plastic container previously used for sharps. Out of concern of safety for its employees and others, a new policy was then instituted whereby the infectious waste was segregated for proper handling and disposal. Merely disposing of the infectious waste in landfills is not considered safe or acceptable to Mr. Heiskell; in his opinion, incineration is the best method of disposal. After analyzing the service offerings of Sure-Way, American Environmental, and another company offering infectious waste services, Valley Health Care elected to have the applicant provide such services. It purchases sharps containers and American Environmental provides the boxes used for infectious

waste. The applicant also provided some training and instruction to Valley Health Care personnel on the proper handling of infectious waste material. Although its regular garbage service with Rainier Disposal had been satisfactory, Mr. Heiskell did not request either Rainier Disposal or any other disposal company to provide this specialized service; he did not believe a regular garbage hauler could provide this service. He does not know what companies, other than the applicant and Sure-Way, have Commission authority to transport medical waste. Mr. Heiskell is satisfied with the services of AEMC.

25. Dr. Mark Sebastian, a self-employed dentist in Federal Way, testified in support of the application. Some of the types of waste generated in his dental practice include tissue samples, blood, saliva, gauze, dressings and sharps, such as scalpel blades and needles. For seven years, this medical waste has been discarded along with other trash into the regular waste stream. Upon considering the requirements of the new King County regulations and due to his own concerns for safety, Dr. Sebastian decided to institute new procedures of segregating such waste for incineration, rather than allowing it to be taken to a landfill with the rest of the garbage. He pointed to the concern over AIDS. He also referred to OSHA regulations which require masks and gloves be worn by personnel treating patients. On referral from another dentist, he thereupon contacted American Environmental and arranged for service. Dr. Sebastian generates one large, plastic-lined box of infectious waste per week and fills up a sharps container every four to six weeks. AEMC has provided good service in a timely and efficient manner. He has not contacted other companies for service; Dr. Sebastian is satisfied with AEMC and plans to continue using their service.

26. John Schenck, of Harsch Investment, Seattle, testified in support of the application. Harsch Investment is a real estate company that owns and manages properties. Specifically, it owns the Medical Dental Building in Seattle, in which it rents space to doctors, dentists, laboratories and a hospital. Its janitorial service does not handle the contaminated medical waste generated by these tenants, so Mr. Schenck has made other arrangements. For a number of years, he had an employee transport the infectious waste in his private vehicle to the Evergreen Hospital, where it was incinerated. This employee got into an accident and totaled his vehicle one day when he happened not to be transporting the waste, which prompted Mr. Schenck to consider the time this was taking, as well as the question of transport liability. Thereafter, Mr. Schenck arranged for American Environmental to remove and dispose of said medical waste. AEMC picks up 20 to 30 boxes per week and it was anticipated that this number could grow to 50 boxes per week when the hospital reopened for business in September, 1988. It will be up to the hospital to arrange for the disposition of

its medical waste. Harsch Investment has provided this service as a courtesy to its tenants and has advised them to make individual arrangements for the disposition of their medical waste. Mr. Schenck has been very satisfied with the services of the applicant. He did not make service inquiries of the regular garbage hauler or any other company prior to making arrangements with the applicant. He feels strongly that this medical waste needs to be separated from the normal waste stream and properly disposed.

27. Rosa Glass, manager of Miles, Inc., d/b/a Cutter Biological, Seattle, testified in support of this application. Cutter Biological collects plasma at its Seattle site and manufactures it into other biological products, such as intravenous fluids and clotting factors. It also conducts various types of blood tests, such as testing for syphilis, liver enzymes and hepatitis. At another facility, it also conducts tests for AIDS. It produces infectious wastes, consisting of plasma, whole blood, sharps, syringes, needles, tubing, samples of body fluids, such as urine, and medical dressings which are contaminated with blood or bodily fluids. This infectious waste was disposed of along with other garbage into its regular solid waste stream into the landfill, until Spring, 1987. At that time, out of concern for the safety of everyone involved and the community as a whole, the company decided to have its infectious waste separately disposed of and incinerated. Ms. Glass contacted its solid waste hauler, Bayside Disposal, inquiring about infectious waste pick up and disposal and was advised that it did not provide such service. Wayne Turnberg of the Public Health Department supplied the names of American Environmental, Sure-Way and Bingham BFI, three specialized carriers of infectious waste. Bingham's services were used until approximately April, 1988, at which time it discontinued service. Since then it has used the services of American Environmental, which makes weekly pick ups of the four to ten extra-large boxes of infectious waste it generates per week. It has not had any problems or complaints with the service provided by American Environmental.

28. Gary Berman, physician's assistant/lead clinician with Planned Parenthood of Snohomish County, testified in support of this application. Mr. Berman works at the Planned Parenthood clinics in Everett and Lynnwood and appeared on behalf of both facilities. Planned Parenthood, a nonprofit entity, is a family planning agency that engages in well health care, contraceptive care and abortions. It also runs various medical and laboratory tests in its clinics. Its operations generate infectious waste, which involves tests for AIDS, gonorrhea, chlamydia and hepatitis, blood samples, fetal parts, human papilloma virus and contaminated syringes, needles, Q-tips, gloves, etc. Mr. Berman added that a considerable percent of the samples involve active

communicable bacteria pathogens. Its clinic does serve AIDS patients. It currently uses American Environmental for the segregated hauling, incineration and disposal of its infectious waste. It generates a minimum of four boxes of infectious waste per week at its two facilities. Previously, this infectious waste was being discarded into the trash and picked up by the regular waste hauler, Rubatino Refuse, and disposed of in the local landfill. Mr. Berman made inquiries of Rubatino concerning segregated medical waste handling and disposal, but was advised that this service was not available. Since using AEMC, the number of needle sticks by employees has been reduced considerably, which is of great concern to the clinic. It is the policy of Planned Parenthood that its infectious waste be segregated into medical waste containers, incinerated and disposed of in an approved site. According to Mr. Berman, Planned Parenthood has received great service from AEMC.

29. Judy Jackson, director of environmental services at Riverton General Hospital, King County, testified in support of the application. Ms. Jackson is also on the Seattle Area Hospital Council Hazardous Waste Committee and is very concerned and involved with the proper handling and disposal of infectious waste. The hospital used to incinerate its infectious waste, but discontinued this practice due to new air control regulations. Upon shutting down its incinerator, it contacted its solid waste hauler, Nick Raffo, to haul its infectious waste, but was unsuccessful. It currently uses American Environmental to haul its infectious waste, which consists of approximately forty boxes per week. Prior to using AEMC, the hospital used BFI until BFI discontinued service in Washington. It then used Sure-Way until it lost confidence in Sure-Way's ability to do a quality job. Ms. Jackson indicated that the hospital had serious concerns about the quality and safety of the Thermal Reduction facility that was being used for disposal in Washington state. She is aware of the various types of dangers and risks posed by infectious waste. Another important consideration was the fact that AEMC had its own incinerator and that it disposed of the waste in a medical waste landfill. Ms. Jackson has questions about the effectiveness of autoclaving and prefers the incineration method. The hospital has not been solicited by any other company about the provision of segregated medical waste hauling. Ms. Jackson has been satisfied with the services provided by American Environmental under its temporary permit and supports this application for permanent authority.

30. Douglas L. Rosser, owner of Cascade Pharmacy, Renton, testified in support of the application. This is a retail clinic pharmacy, that also does oncology mixing. Its Renton location is currently its only operation, but Mr. Rosser has future plans to expand into Snohomish and Pierce Counties. It produces sharps and other medical wastes that need to be

disposed of. Such medical wastes were taken to the Valley Medical Center for incineration, but when the hospital discontinued such service, it had to make other arrangements. In conversations with his building managers and personnel at the hospital, Mr. Rosser was told that his solid waste hauler did not provide this type of service; he did not personally contact his solid waste hauler. Environmental services personnel at the hospital gave Mr. Rosser the name of the applicant. American Environmental commenced providing specialized medical waste hauling service for Cascade Pharmacy around the end of 1988 or beginning of 1989. The pharmacy produces on the average of six to seven boxes of medical waste per month. It is important to Mr. Rosser that AEMC operates its own incinerator. No other companies have contacted him about providing segregated infectious medical waste transportation and disposal service. Mr. Rosser feels that a denial of this application would adversely impact him in that he is not aware of alternatives for the handling and disposition of his medical waste.

31. Karen Orvold, manager of Dennis Orvold Building Maintenance, Tacoma, testified in support of the application. The company provides building maintenance and janitorial services. It serves three facilities that produce infectious medical waste that its housekeepers have had to handle. The City of Tacoma picks up garbage at two of the facilities (Cedar Medical Center and Conne Mara) and Lakewood Refuse serves the other medical facility (Bridgeport Professional). It has served these facilities for eight years. The solid waste haulers did not make the availability of any such service known to Ms. Orvold. In fact, on one occasion Lakewood Disposal complained to her about a plastic bagful of needles being found in the garbage. One of its employees received a big slash on her leg from a lancet that had been discarded into the trash and two others needed medical attention for needle pokes. Ms. Orvold decided to use a segregated medical waste hauler due to concerns of safety. A specialized medical waste hauler (Bingham BFI) started providing such services in the fall of 1987. When BFI discontinued its Washington operations in the spring of 1988, Ms. Orvold arranged for American Environmental to take over the segregated medical waste hauling. She is satisfied with AEMC's services, including their incineration and disposal methods. AEMC picks up the 14 to 15 large boxes of infectious waste every two weeks. It has not had any L & I claims resulting from cuts or pokes since using a specialized medical waste hauler in the above facilities, but has experienced one poke and L & I violations in another building that does not use a specialized hauler.

32. Dr. James S. Peterson, technical director of National Health Laboratories, Seattle region, testified in support of the application. National Health Labs. is the second

largest laboratory chain in the country; it has 16 regional labs, including Seattle and a stat lab in Spokane. It is in the business of testing patient specimens it obtains primarily from physicians' offices. Specimens are sent to it for testing and it also picks up specimens from doctors' offices in the state. In addition to specimens, it is being called upon by its clients to also transport and ultimately dispose of used sharps and tubes. It performs testing for such things as hepatitis and AIDS and also deals with lancets, needles, specimen tubes, biopsy tissues, human body parts and microbiology culture specimens for a variety of bacteria. As an example of the volume of testing, it conducts at least 1,500 tests per month for AIDS alone. Its policy is that its employees are to treat each of the 6,000 specimens it handles per night as potentially hazardous. Precautions, such as gloves, goggles, lab coats and shields, are used by its personnel. The facility autoclaved its infectious waste until its machine broke approximately two years ago. Replacement costs were prohibitive and it then arranged for Bingham BFI to haul its infectious medical waste. When Bingham stopped its service, National Health had to make other arrangements; it briefly used Sure-Way, then switched to American Environmental. It produces from 40 to 50 boxes of infectious medical waste per week. AEMC currently picks up such medical waste from the Seattle facility, but Dr. Peterson supports AEMC's application for statewide authority in that it is being asked to pick up medical waste from various areas of the state, such as Wenatchee, Yakima, Tri-Cities, Walla Walla, Spokane, Pullman and Republic; Dr. Peterson believes AEMC could provide these needed services. National Health is currently picking up specimens in the Puget Sound area. Dr. Peterson is aware of the new King County regulations of infectious waste. As for the applicant's operations, he is impressed by the fact that AEMC incinerates the infectious waste in an EPA licensed incinerator and disposes of the residual ash in an EPA approved disposal site. Dr. Peterson does not find the incinerator near Bellingham to be acceptable, especially its ash disposal methods. On cross-examination, Dr. Peterson answered that he would be willing to consider other companies for the hauling and disposition of its infectious waste if it could be shown that their disposal practices were equal to those of AEMC.

33. Theresa Trask, quality assurance and infection control coordinator for Greenery Rehabilitation Center, Seattle, testified in support of the application. Greenery is a 150-bed, long-term care facility specializing in acute head injury rehabilitation. It generates approximately one box of infectious medical waste per month. It previously used a medical facility to incinerate its sharps, but out of concern for liability and questions regarding record maintenance, it chose to change to a specialized medical waste hauler. The center is currently using the services of American Environmental to transport and dispose

of its medical waste. Incineration is the preferred disposal method at Greenery and the fact that AEMC operates its own incinerator is important to Ms. Trask; she knows of no other such companies. She has been pleased with the services provided by the applicant and has not inquired elsewhere for service. She hopes to continue using the services of AEMC and supports the application for permanent authority.

34. Jeannine Burger, product manager and component supervisor of the Sno-Isle Community Blood Bank, Everett, testified in support of this application. Sno-Isle collects blood for testing (hepatitis, AIDS, syphilis, etc.) from eight hospitals in Snohomish, Island and Whatcom Counties. Approximately ten percent of the samples test positive for disease. It occasionally serves King and Pierce Counties too. Its medical waste includes the blood products, gauze and sharps (needles and lancets). Providence Hospital previously took in such waste for incineration, but discontinued this practice since it no longer wanted to be responsible for other facilities' waste. Sno-Isle is now using American Environmental for the transport and disposal of its infectious waste, which averages about four to five boxes per week. Out of concern for safety, its policy is to autoclave the blood waste before it is picked up by AEMC. The sharps are not autoclaved, but are put into puncture-proof containers, which are placed into AEMC's infectious waste boxes. Ms. Burger is satisfied with the service AEMC provides, which includes the use of its biohazardous waste incinerator located in California. She believes the environment should be protected and does not want this medical waste dumped in landfills. She does not have experience with any other medical waste hauler and did not ask her regular solid waste hauler to transport the infectious waste. Ms. Burger believes there is a need for the service of AEMC and supports the grant of such authority on a permanent basis.

35. Denise Bender, hazardous materials coordinator at Fred Hutchinson Cancer Research Center, Seattle, testified in support of this application. It generates both infectious and hazardous wastes. A company called Tec-Rep transports its hazardous waste for disposal to various sites, including American Environmental's incinerator in California. The infectious waste generated at Fred Hutchinson has historically been handled in various ways; some has been autoclaved, some has been incinerated at Swedish Hospital, and some has been put into the solid waste stream. In or around March, 1989, American Environmental began picking up and transporting infectious waste to be incinerated and disposed of by it in California. Fred Hutchinson currently uses the services of AEMC in its outpatient clinics in the Nordstrom Building and the Metropolitan II Building. This involves approximately 10 boxes of infectious waste per week. Ms. Bender has been satisfied with the services provided by AEMC;

it is especially important to the center that AEMC is EPA permitted and properly incinerates and disposes of the waste. She had considered using Sure-Way and Bingham, but decided that American was a more professional company. She did not contact Seattle Disposal, its solid waste hauler, regarding the handling of its infectious waste. The possibility that some of its hazardous waste, such as chemotherapy drugs and formaldehyde, might get commingled with the infectious waste from time to time was also a factor supporting the use of AEMC in that the center had already been using American for the incineration and disposal of its hazardous waste. At the time in question, Sure-Way was transporting waste to the Thermal Reduction facility in Whatcom County, which was not appropriate for hazardous waste. This incinerator located in Washington is not acceptable to Fred Hutchinson, nor does it qualify with federal regulations to receive the type of medical waste generated by the facility. She also noted that AEMC promptly returns the appropriate paperwork concerning the waste, which is of concern to the facility. The center has not experienced any problems with AEMC and plans to continue using such service, assuming authority is granted. With their move to a new location and the opening of their AIDS research center, it is anticipated that the volume of infectious waste generated will increase, which will make the need for infectious waste disposal even greater.

36. Phillis Wallace, administrator of Highlands Convalescent Center, Renton, testified in support of the application. This facility generates infectious waste which historically was discarded into the trash; some of it was autoclaved at one time. In July, 1987, it began using the services of American Environmental. Ms. Wallace does not want its infectious waste being disposed of in a landfill without first having been incinerated. She was not aware of any other company providing infectious waste hauling service. The facility generates approximately one, 16 gallon box of infectious waste per week. Ms. Wallace is familiar with the new King County regulations on infectious waste and is complying by using AEMC. She approves of AEMC's incineration and disposal methods and has been very satisfied with its service. She hopes to be able to continue using the services of American and feels a denial of this application would be detrimental to her operations.

37. John Skidmore, assistant director of Alpha Therapeutic Corporation, Tacoma, testified in support of the application. As a plasma collection center, Alpha Therapeutic generates infectious medical waste, such as needles, syringes, lancets, blood bags, cotton balls, etc., which needs to be disposed of. Mr. Skidmore supported this application on behalf of all of its Washington locations (Tacoma, Everett, Yakima, Seattle and Vancouver). In the past, its infectious waste was thrown into the garbage dumpsters and taken to the landfill.

Upon becoming increasingly concerned about this practice, the company decided to arrange for segregated handling of its infectious waste. Such a service was not offered in Tacoma to Alpha by the City of Tacoma Municipal Service. Alpha used Sure-Way for a period of time, but for at least the last year, it has used American Environmental, which service was described by Mr. Skidmore as "very professional". This has reduced its employees' exposure to possible injury and infection from the infectious waste. During the month prior to the hearing, Alpha Therapeutic generated at its various facilities, and AEMC transported, incinerated, and disposed of infectious waste in the following quantities: 28 extra large boxes, 52 large boxes and 307 small boxes. The fact that AEMC incinerates the infectious waste prior to ultimate disposal is deemed very important to the center due to the possible spread of disease, such as AIDS and hepatitis.

38. Stephanie Tilland, surgical assistant, facial infectious waste control instructor and infection control coordinator for Oral and Maxillary Surgery Associates, Inc., testified in support of this application. This company performs various types of oral surgery. It has locations in Bellevue, Renton and Issaquah. It generates medical waste, such as teeth, tissues, bone, suture material, saliva and sharps. In the past, the company disposed of its infectious waste by putting it in with the regular garbage. Ms. Tilland discussed the growing concern for employees' safety. She also referred to steps being taken in this area by OSHA. Ms. Tilland pointed out that its employees were reluctant to handle the garbage due to fear of possible injury and infection. Ms. Tilland then learned of the new King County regulations and took steps to comply. Eastside Disposal is the solid waste hauler at its Bellevue facility and Rainier Disposal serves the Renton facility; she did not know the name of the company serving its Issaquah office. Ms. Tilland contacted both Eastside Disposal and Rainier Disposal, but was unable to obtain service for its infectious waste. She then became aware of the existence of American Environmental and started using such services shortly after the beginning of 1989. All infectious waste is segregated and placed into rigid boxes with liners provided by AEMC; it produces approximately four small boxes of infectious waste per month. The infectious waste is then transported to California for incineration and disposal in an EPA-approved landfill. Ms. Tilland was not favorably impressed with Sure-Way; she was suspicious of Sure-Way's claim to take title to the waste. She did not like the fact that Sure-Way's representative "knocked down" AEMC's service in a sales pitch. She has received "tremendous" service from AEMC and would like to continue using them. Ms. Tilland felt that a denial of this application would mean her company would have to settle for a lesser service. She also heard of another service involving a person picking up sharps at no charge and taking them "somewhere in Tukwila". She is aware of the dangers posed by the organisms

at large in the medical and dental waste and would prefer having a knowledgeable, safe and reliable specialized medical waste hauler like American Environmental.

39. Brien Stafford, a member of the board on various committees and past chairman of the board at Overlake Hospital, was called by the applicant to testify as a public witness on infectious waste policy issues. Mr. Stafford pointed out that the handling of infectious waste is an ever-increasing concern, not only in terms of inherent risks, but also in terms of costs. He went on to explain that his is a busy hospital in an extremely competitive environment and that in order to do the best possible job it has to use the best vendor services available. He maintained that competition should exist and that there should be more than one licensed infectious waste hauler in the state. In choosing an infectious medical waste hauler, he emphasized the risks faced in the field and suggested that consideration be given to: quality and timeliness of service; professionalism; insurance, including general liability, as well as pollution coverage; and licensing. Sure-Way currently provides infectious waste service to the hospital. Mr. Stafford argued for the ability to choose among competing vendors, on a level playing field, to obtain the best possible service.

40. H. Dinah Day, solid waste truck driver for King County, testified on behalf of the applicant as an expert witness. She has been employed in the above capacity for eight years. She studied the handling of infectious medical waste from a solid waste worker's point of view and prepared a paper on the subject as part of her entrance into the Master's program at The Evergreen State College. She described the situation as it existed during the time before the King County regulations took effect; solid waste workers were being exposed to untreated infectious waste and risked contracting diseases, such as hepatitis or AIDS. Her experience is confined to the King County landfill. She was aware that one shop person was sprayed with blood while performing his duties and knew of several other workers who were stuck by sharps. She described the trauma of the situation of a worker with a wife and two children being stuck by a sharp and having to be tested for AIDS. There were also numerous close calls. She has observed such things as needles hanging out of doors on equipment and blood bags breaking and splattering in the work area. Ms. Day's recommendations included separate handling, transport and treatment of infectious waste from mainstream garbage. The vehicles and drivers should be properly equipped. In pointing out that autoclaving is not always an effective method of sterilizing waste, she recommended testing and training programs to ensure autoclaving effectiveness. She had not conducted any studies herself on the effectiveness of autoclaving. It was her opinion that incineration is the best disposal methodology currently

available. She termed the landfilling of untreated medical waste "irresponsible" even with liners.

41. Stan Robinson, general manager of Sure-Way Incineration, Inc., testified in opposition to the application. Sure-Way currently holds temporary authority from the Washington Utilities and Transportation Commission as follows:

REFUSE COLLECTION SERVICE consisting of Infectious, contaminated and pathological waste, bio medical wastes, and other related infectious medical waste from hospitals, medical clinics or laboratories, nursing homes, medical or dental offices or clinics, health care centers, blood banks, pharmaceutical establishments, veterinary offices or clinics, funeral parlors, crematories, psychiatric care centers or offices, biological products industries and other bio medical institutions to

incineration plants or other licensed disposal sites in the State of Washington.

This certificate shall automatically terminate upon either the entry of a Commission order granting or approving withdrawal of Application GA-868 or, in case Application GA-868 is denied, dismissed, or the relief sought under Application GA-868 is limited in any way by Commission order, upon the expiration of the last day for seeking review of the Commission order or a later date fixed by order of a reviewing court.

Order M. V. G. NO. 1356, GA-884, Ex. 59.

Sure-Way started operations in January, 1987. In February, 1988, Sure-Way was acquired by Rabanco Companies. It currently has an application for permanent authority pending before the Commission. Mr. Robinson does not believe that Sure-Way has pollution liability insurance, excluding the typical sudden and accidental coverage. Sure-Way's office and facilities are located in Seattle. It trains its employees in the handling of medical waste; it currently has ten employees. Its equipment consists of three 28 foot semi-trailers, two 45 foot trailers, two 14 foot truck vans, one 24 foot van, one 22 foot van, three semi tractors, two 3/4 ton vans and two El Caminos. Sure-Way provides containers (10, 20 or 35 gallon sizes) and polyurethane bags to its customers. When Sure-Way picks up the medical waste, it claims to take title to the waste. It advertises by direct mailings to medical facilities in the state, which are followed up by contacts from its staff of three salesmen. It serves approximately 500 customers in Washington, which are primarily located in Western Washington; he describes Eastern Washington as a "tough sale". In Mr. Robinson's opinion, there is room for two

or more infectious waste haulers in Western Washington, but he was not sure about Eastern Washington. Sure-Way initially disposed of the waste at the Thermal Reduction facility near Bellingham, but has since started taking it to a biomedical waste incinerator in Klamath Falls, Oregon. It plans to locate its own incinerator somewhere in Washington, but no such site has yet been approved. Sure-Way has been cited and monetary penalties have been assessed by the Commission for violations of laws and rules.

42. John Paul Jones, III, executive assistant for the Washington Waste Management Association (WWMA or Association), Olympia, testified in opposition to the application. The Association is a non-profit trade organization composed, in part, of many of the G-certificated haulers in the state; it does not hold any WUTC operating authority or provide service, but protested on behalf of its members (it does not speak for non-member G-certificate holders, that happen to serve significant areas in the state). It is the position of WWMA that the G-authority issued by the WUTC includes the right to pick up medical waste. Mr. Jones does see a permanent role for specialty waste hauling service being provided, with its differing equipment, training of personnel and disposal methodology as compared to the normal garbage and refuse solid waste stream. Although Mr. Jones alleged that its members are ready, willing and able to provide medical waste hauling service, he did not know of any members offering segregated medical waste hauling and incineration service. He felt its members in King County were complying with the new King County regulation, but he did not have specific knowledge on this.

43. Edward C. Rubatino, president and co-owner of Rubatino Refuse Removal, Inc. (Rubatino), Everett, testified in opposition to the application. Rubatino holds WUTC Certificate No. G-58, which, as described by Mr. Rubatino, basically authorizes garbage and refuse collection service in the City of Everett, a portion of the City of Mukilteo and a portion of Snohomish County east of Everett. He added that neither his company, nor any other Association member serves the City of Lynnwood. Mr. Rubatino acknowledged that there are infectious waste generators in Snohomish County and he feels that his G-authority includes infectious waste. Rubatino does not have pollution insurance. His testimony made reference to the Snohomish County regulations adopted in October, 1987, which require special handling and treatment of infectious wastes. The Snohomish Health District infectious waste guide for medical waste generators in Snohomish County refers generators to American Environmental or Sure-Way for more information concerning private arrangements for the handling, treatment and/or disposal of infectious waste. Although his company does not currently offer or provide a segregated, infectious waste

service, Mr. Rubatino said he would be willing to make arrangements to do so. He acknowledged that he believes his company is currently handling medical waste within the general waste stream. In responding to the provision in the infectious waste guide that sharps are to be disposed of by incineration or, following treatment, by direct non-compacted haul to the landfill, Mr. Rubatino said that his company would be willing to provide such direct hauls, although he has not provided such service to date. He has not received any requests to handle infectious waste, except for one request to haul such waste which had already been treated. He added that he would get involved in infectious waste when he arranges for an off-site incinerator.

44. Brian Lawson, president and owner of Lawson Disposal, Inc. (Lawson), Issaquah, testified in opposition to the application. Lawson is the holder of WUTC Certificate No. G-41 which, according to Mr. Lawson, basically authorizes garbage and refuse collection service in the central part of King county on the east of Lake Sammamish and between the north side of Issaquah and the south side of Redmond. Protestant's counsel conceded that Lawson does not have pollution insurance. Mr. Lawson is not familiar with the EPA Guidelines on infectious waste, but is familiar with the new King County regulations which require specialized handling of medical waste. It is his position that medical or biohazardous waste is covered within Lawson's G-Certificate. Although he did not know of specific companies, he was sure that there are generators of infectious or biomedical waste in his territory, such as health care facilities. He has no idea whether any of these facilities segregate their medical waste. Mr. Lawson is aware that infectious waste is being generated on a daily basis, yet he has not chosen to obtain the necessary permit, equipment and personnel to properly handle this type of waste. He explained that his company has not had any requests to handle segregated medical waste and, further, that the burden is on the generators of the infectious waste. Mr. Lawson stated that his company is waiting until it receives such requests and that it could then "gear up" within 30 to 60 days to meet the need; in the meantime, he acknowledged the possibility of referring the generators to American Environmental or Sure-Way. Mr. Lawson admitted that his company is currently picking up infectious waste commingled along with other waste, and that it could exceed the 100 pound threshold set forth in the King County regulations; he thus acknowledged that his company could be in violation in that it is not permitted by the King County Board of Health. Lawson has not applied for any such permit.

45. Dan Dietrich, president and owner of Consolidated Disposal Service, Inc., Ephrata (WWMA member), testified in opposition to the application. Consolidated holds WUTC Certificate No. G-190 which, as described by Mr. Dietrich, covers a geographic area of roughly 100 miles long and 50 miles wide,

and essentially authorizes garbage and refuse collection service in the panhandle portion of Adams County; primarily the largest population area in Adams County, Othello; extending northerly through Grant County to an area just south of the Grand Coulee Dam area. Mr. Dietrich acknowledged that his company services facilities that generate medical waste and added that, although regulations may be forthcoming, there are currently no local or county regulations which require different treatment for medical waste as opposed to the normal solid waste stream. Mr. Dietrich has not reviewed the EPA Guidelines or the WUTC draft regulations on infectious waste. The commingled medical waste it picks up is transported to the landfill along with the rest of the garbage. When asked if he intends to continue transporting untreated infectious waste to landfills in his service area until such practice might be disallowed, Mr. Dietrich responded that he has no other means available. Although admitting that his customers may have need for specialized transportation and disposal of infectious waste, Mr. Dietrich testified that they have not made him aware of them. Two hospitals in the area use the services of a specialized medical waste hauler for their infectious waste, according to Mr. Dietrich. Consolidated does not currently offer a segregated, containerized infectious waste hauling service, although it recently (March, 1989) purchased a Frito-Lay tractor and trailer with a sealed aluminum interior that could be used for this purpose; this vehicle is not currently being used.

46. Donald J. Hawkins, vice-president of Murrey's Disposal Company and American Disposal Company, Puyallup (WWMA members), testified in opposition to the application. American Disposal is the holder of WUTC Certificate No. G-87, which authorizes garbage and refuse collection service in a portion of Pierce County in the Gig Harbor area, essentially west of the Narrows Bridge to the Kitsap County line. Murrey's Disposal is the holder of WUTC Certificate No. G-9, which authorizes garbage and refuse collection service essentially in eastern Pierce County, serving Puyallup, Sumner, Bonney Lake and Buckley; a small portion of its service area runs into King County. According to Mr. Hawkins, there are medical waste generators in these service territories, although he has not been requested to provide any specialized handling of such waste. As of the date of his testimony, Mr. Hawkins' companies had not offered a segregated infectious waste hauling service. He acknowledged that untreated medical waste is currently being taken to landfills by his companies; he has not taken steps to stop this practice even though he did not feel it was good for the environment. He plans to continue this practice until regulations prohibit it. His company does not carry general pollution liability insurance. He is not familiar with the EPA Guidelines on infectious waste, but is familiar with the Pierce County regulations that will call for the segregated hauling of medical waste. He will need to get a permit, which he has not

yet applied for and will also need to obtain appropriate equipment and adequately train drivers. Neither of these disposal companies have written procedures for handling medical waste. Inquiries have been made with a hospital in Puyallup about incinerator availability, but Mr. Hawkins was not sure of any Pierce County site that could accept off-site-generated medical waste for incineration.

47. Daniel Leidecker, owner of Nooksack Valley Disposal, Inc., Lynden (WWMA member), testified in opposition to the application. Nooksack is the holder of WUTC Certificate No. G-166, which, as described by Mr. Leidecker, authorizes garbage and refuse collection service in a 300 square mile area in Whatcom County, including the cities of Lynden, Nooksack, Sumas and Everson. There are no hospitals in this service area, but there is a rest home, some small medical clinics and veterinary clinics that generate medical waste. Mr. Leidecker is not familiar with EPA Guidelines on infectious waste. He added that, currently, there are no county regulations on medical waste. The rest home segregates its untreated medical waste into a designated container, but when Nooksack picks up, it compacts this medical waste in its truck along with the rest of the garbage and hauls it to the county landfill. Mr. Leidecker acknowledged that there are risks involved in the compacting and landfilling of untreated medical waste. His company has not been requested to provide a segregated, medical waste hauling service or for the incineration of such waste. According to Mr. Leidecker, Nooksack will provide such service if and when regulations require it. It does not currently possess suitable van equipment for transporting boxed medical waste, nor are its employees trained in the handling and transportation and off-site disposal of segregated medical waste. If he were to receive a request for containerized, infectious waste service, including off-site incineration, Mr. Leidecker would refer the generator to a specialized infectious waste company, such as Sure-Way or American Environmental.

48. Jerry L. Graham, general manager for RST Disposal Co., Inc., Federal Way Disposal Co., Inc., Nick Raffo Garbage Co., Inc., and Tri-Star Disposal, Seattle (WWMA members), testified in opposition to the application. RST Disposal is the holder of WUTC Certificate No. G-185, which, according to Mr. Graham, authorizes garbage collection service essentially in south King County, with some meandering through the county. RST Disposal Co., Inc., d/b/a Tri-Star Disposal, holds temporary Certificate No. TG-64 authorizing garbage and refuse collection service within the City of Kent. Federal Way Disposal is the holder of Certificate No. G-35, which authorizes garbage collection service in portions of south King County to the Pierce County line. Nick Raffo Garbage is the holder of Certificate No. G-16, which authorizes garbage collection service essentially in

south King County from 192nd Street North to the Seattle city limits and from Highway 99 west to Puget Sound. The above service areas include generators of medical and biomedical waste, such as hospitals, medical and dental facilities, veterinary clinics and senior care facilities. To his knowledge, his companies have not had any requests for specialized medical waste hauling, but he did acknowledge the possibility that such could have been requested and not brought to his attention. He acknowledged that generators in his service areas are possibly violating King County regulations on infectious waste. He is somewhat familiar with the new King County regulations that went into effect in January, 1989 and testified that his companies intend to comply therewith. At some point in the future when proper permits and equipment are obtained, he intends to send his customers a letter advising them of the need to comply with the King County regulations. In response to a hypothetical question wherein a generator requested immediate infectious waste service to be in compliance with the King County regulations and Mr. Graham's companies had not initiated such a service, Mr. Graham indicated that he might refer the generator to the applicant. Although not yet completed, there are discussions taking place concerning the acquisition of van equipment for transporting medical waste and concerning the use of an out-of-state incinerator. According to Mr. Graham, they don't feel comfortable with the incinerator located near Bellingham; he did acknowledge that the applicant has good disposal facilities.

49. Ron Norton, environmental health specialist and infectious waste project coordinator with the Tacoma-Pierce County Health Department, was called as a witness by counsel for LeMay Enterprises. Mr. Norton identified the Tacoma-Pierce County Health Department Infectious Waste Rules and Regulations approved by the Board of Health in 1989. Special handling, transporting and disposal procedures are set forth in these regulations. Annual permits are required. At the time of his testimony, applications were currently pending from the applicant, LeMay Enterprises and Sure-Way and, in Mr. Norton's opinion, there was no reason to believe that any of the applications would be denied. In pointing out that the regulations prescribe treatment methods, which include incineration and steam sterilization, Mr. Norton acknowledged that an added benefit of incineration is its reduction of the waste stream. He also acknowledged that incineration is the only approved treatment method for pathological wastes at this time. He added that sharps can be either steam sterilized or incinerated under the Pierce County regulations and that non-treated infectious waste is not allowed to be compacted. After identifying the four hospitals in Pierce County that have biohazardous incinerators, Mr. Norton indicated that, consistent with a trend in the industry, they are no longer open for incineration of infectious waste from the general public. He

felt that it was a good idea to have specialized medical waste hauling and off-site disposal services available to the public.

50. Norman LeMay, refuse manager of LeMay Enterprises, Inc., d/b/a Pierce County Refuse Co., testified in opposition to the application. LeMay Enterprises is holder of WUTC Certificate No. G-98, and, as described by Mr. LeMay, primarily serves portions of western Pierce County to the west of Meridian Street (the certificate also includes areas in Mason, Lewis and Thurston Counties). As further clarification of its Pierce County territory, LeMay Enterprises does not serve Lakewood, the Puyallup area or areas west of the Narrows Bridge. The City of Tacoma has its own municipal solid waste service. Mr. LeMay indicated that infectious waste is included within the company's G-Certificate authority. LeMay Enterprises recently created an infectious waste division and, effective February, 1989, pursuant to rates filed with the Commission, started serving customers; thus far, its infectious waste division has not been making a profit. These losses are currently being absorbed by LeMay Enterprises and Mr. LeMay stated that it will be requesting a rate increase for its infectious waste operations. It also intends to obtain a permit authorizing the use of an autoclave in the near future. In the past, LeMay Enterprises took infectious waste to a Pierce County hospital for incineration, but the hospital did not want to continue this practice; hospitals in Pierce County are not available for incineration of medical waste according to Mr. LeMay. It currently transports its infectious waste to the Thermal Reduction facility near Bellingham. Though this facility has received much criticism concerning its practices and safety, Mr. LeMay has not investigated into the matter and answers that it is a permitted incinerator site.

51. Terry Adkins, testified on behalf of LeMay Enterprises as its infectious waste coordinator. He has held this position for six months and his previous experience was in appliance and furniture sales. Mr. Adkins is familiar with the Pierce County regulations. He described the infectious waste equipment, which includes a van, a truck (needs to be upgraded - not currently being used), boxes with double bag liners, chemicals for spills, disinfectants and various items of protective clothing. He also pointed out that LeMay has an infectious waste procedures manual. In March, 1989, he sent out 150 to 175 letters to various types of medical facilities advising them of the Pierce County regulations and of LeMay Enterprise's availability to provide infectious waste service. According to Mr. Adkins, LeMay Enterprises currently provides segregated, medical waste service to approximately 25 to 30 customers in Pierce County (it has no customers using its infectious waste services in Thurston, Mason or Lewis Counties). Mr. Adkins makes two trips per month to the Thermal Reduction site; in the meantime, the infectious waste is stored in the van.

Mr. Adkins is aware that the Thermal Reduction facility stores the ash on site under tarps and that TRC has been the subject of ongoing investigations concerning its compliance with environmental regulations.

52. Dennis D. Westerlin, operations manager for Resource Recovery, Tacoma, testified in opposition to the application. This protestant is a transporter of hazardous and chemical waste in the State of Washington under WUTC Certificate No. G-176. It is a subsidiary of Chemical Processors, Inc., which is a hazardous waste company. It has trained drivers and equipment suitable for transporting commodities within its WUTC authority. It uses a manifest system which enables it to track the hazardous waste from the point of generation to the point of disposal. Mr. Westerlin explained that, to the extent that infectious waste is also hazardous, his company has authority to transport it, but acknowledged that it cannot transport infectious waste that is not also deemed hazardous. It transports the hazardous waste to out-of-state disposal sites. Resource Recovery does not have a permit to operate as an infectious waste transporter in King County.

53. By stipulation of the parties, an affidavit of Alexander H. Koch, manager of field services for Chemical Processors, Inc., was entered into the record. In his affidavit, Mr. Koch pointed out that he had testified in the Sure-Way hearing (GA-868) that customer inquiries regarding transportation of infectious waste had, in the past, been referred to American Environmental by the sales personnel employed by Chemical Processors, Inc., which was also working on arrangements to tender to American Environmental infectious waste for transportation to California. (See Exhibit No. 69).

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter herein.
2. The applicant's proposed amendment, set forth in Finding of Fact No. 3, should be accepted.
3. The following protests should be dismissed: Bayside Waste Hauling & Transfer, Inc., Metropolitan Services Corp., Northwest Garbage Co., Inc., Washington Disposal Co., Inc., Rainier Disposal Co., Inc., Snoking Garbage Co., Inc., Benco Disposal, Inc., Dependable Disposal, Inc., Hi-Valley Disposal, Inc., Yakima Valley Disposal, Inc., and Nooksack Valley Disposal, Inc.
4. The applicant is fit, willing and able to provide

the service herein requested under the provisions of Chapter 81.77 RCW and under Chapter 480-70 WAC.

5. The protestants will not provide service to the satisfaction of the Commission. It has been established that public need exists for the amended authority applied for by the applicant.

6. It is in the public interest and required by the public convenience and necessity, pursuant to the provisions of RCW 81.77.040, that the applicant be issued a certificate authorizing it to operate in garbage and refuse collection service as follows:

Garbage and Refuse Collection Service consisting of biohazardous, infectious, contaminated and pathological waste and other related infectious medical wastes in specialized containers from points in the State of Washington to incineration sites owned and/or operated by American Environmental Management Corporation.

7. All motions made in the course of this proceeding which are consistent with the findings, conclusions and decision herein are granted, and those inconsistent therewith are denied.

Based upon the above findings of fact and conclusions of law, the Commission enters the following order.

ORDER

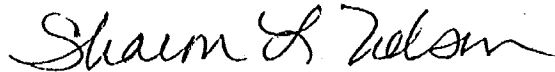
WHEREFORE, IT IS HEREBY ORDERED That Application No. GA-874, as amended, of American Environmental Management Corp. for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and refuse collection service as set forth herein is granted. Upon compliance by the applicant with all applicable laws and Commission rules, a Certificate of Public Convenience and Necessity shall be issued as set forth in Appendix A, attached hereto and by this reference made a part hereof; and

IT IS FURTHER ORDERED That the following protests are dismissed: Bayside Waste Hauling & Transfer, Inc., Metropolitan Services Corp., Northwest Garbage Co., Inc., Washington Disposal Co., Inc., Rainier Disposal Co., Inc., Snoking Garbage Co., Inc., Benco Disposal, Inc., Dependable Disposal, Inc., Hi-Valley

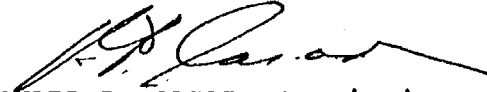
Disposal, Inc., Yakima Valley Disposal, Inc. and Nooksack Valley Disposal, Inc.; and

DATED at Olympia, Washington, and effective this *30th* day of November, 1990.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820 (1).

APPENDIX A

GARBAGE AND REFUSE COLLECTION SERVICE consisting of biohazardous, infectious, contaminated and pathological waste and other related infectious medical wastes in specialized containers from points in the State of Washington to incineration sites owned and/or operated by American Environmental Management Corporation.

M. V. G. NO. 1452

SERVICE DATE

JAN 25 1993

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application GA-75154 of	)	ORDER M. V. G. NO. 1596
RYDER DISTRIBUTION RESOURCES, INC.	)	HEARING NO. GA-75154
for a Certificate of Public	)	COMMISSION DECISION AND
Convenience and Necessity to	)	ORDER GRANTING REVIEW;
operate motor vehicles in	)	MODIFYING INITIAL ORDER;
furnishing GARBAGE AND/OR REFUSE	)	AUTHORIZING REDOCKETING
COLLECTION SERVICE.)	
.....))	

NATURE OF PROCEEDING: This is an application for contract carrier authority to operate as a carrier engaged in the transportation of solid waste consisting of biohazardous wastes in specified counties under contract with Stericycle, Inc.

INITIAL ORDER: Administrative Law Judge Heather Ballash entered an initial order on November 18, 1992, proposing that the application be granted.

PETITIONS FOR ADMINISTRATIVE REVIEW: Protestants and Commission Staff petition for administrative review, challenging many of the decisions in the initial order. Applicant answers, supporting the initial order.

COMMISSION: The Commission grants the petitions for review, in part, ruling that the service sought by the application is not appropriate for contract carriage and is not required by the public convenience and necessity because it consists of performing the transportation function for an unlicensed common carrier. The Commission stays the effect of its order for ninety days or for such further time as may be required for regulatory action.

[1] The transportation of solid waste for collection and disposal for compensation requires a certificate to operate as a solid waste collection company. RCW 81.77.010.

[2] A person who arranges the collection of generators' solid waste, having accepted responsibility for doing so in conjunction with another purpose, does not act as a transportation broker.

[3] "Cream skimming", selective service to the most lucrative accounts and avoidance of less lucrative or more

Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

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expensive accounts to serve, is forbidden to regulated solid waste carriers. RCW 81.28.010.

[4] Persons who have the lawful authority to do so, other than generators, may be responsible for ordering collection of solid waste. RCW 81.77.040.

[5] The satisfactory nature of existing carriers' service and the public's need for an additional carrier are judged as of the time an application is filed. RCW 81.77.040.

[6] The satisfactory nature of service by providers of specialized solid waste collection services is measured according to the specialized needs of clients and may include the technology of disposal, ability to coordinate disposal, the nature of protection afforded collected waste, and protections against potential statutory and civil liability. RCW 81.77.040.

[7] The finding of failure of satisfactory service does not necessarily involve a moral judgment. A carrier may be found unsatisfactory despite providing excellent service to the public within the terms of its certificate if the service does not meet the reasonable requirements of shippers. The carrier's remedy is to be observant about customers' needs and to seek authority that will permit it to meet those needs. RCW 81.77.040.

[8] The Commission will look to the nature of a proposed operation rather than the label applicants apply to it. RCW 81.77.040.

[9] A firm that controls or manages vehicles engaged in the transportation of solid waste for collection and disposal for compensation is operating as a solid waste collection company and requires authority from the Commission for that activity, even though it attempts to use another carrier to accomplish the physical collection service. RCW 81.77.010; RCW 81.77.040.

[10] A proposed contract carrier service is not required by the public convenience and necessity when its function would further the unlicensed conduct of a regulated activity. RCW 81.77.040.

[11] The issue of need for an additional solid waste carrier to provide specialized collection service involves an evaluation of customers' reasonable need for additional or different service as well as all of the consequences of a grant of authority. RCW 81.77.040.

[12] The Commission may stay the effect of an order to avoid disruptions to customers and to allow time to prepare additional procedures. RCW 34.05.467, WAC 480-09-800.

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[13] Amendment and redocketing an application is appropriate to allow correction of a flaw in an application and to avoid the need to repeat long and expensive process. WAC 480-70-150.

[14] An affiliated interest transaction that could affect the lawful level of rates does not affect contract carrier entry unless it affects the viability of the operation, the identity of responsible control, or some other element bearing on entry. RCW 81.77.040.

[15] Payments for asserted marketing services based on a percentage of business revenues do not constitute an unlawful rebate when paid by a shipper. RCW 81.28.210.

[16] Authority to collect biohazardous waste is a subset of both garbage and refuse collection and is not a category of solid waste impermissible under RCW 81.77.040.

APPEARANCES: Boyd Hartman, attorney, Bellevue, and Warren Goff, attorney, Memphis, Tennessee, represent the applicant, Ryder Distribution Systems, Inc. Anne Egeler and Robert Simpson, assistant attorneys general, represent the Commission Staff. Jack Davis, attorney, Seattle, represents Waste Management of Seattle, Inc., et al. Richard A. Finnigan, attorney, Tacoma, represents Seattle Disposal Co., Rabanco Ltd., et al. James Sells, attorney, Bremerton, represents Washington Waste Management Association. David W. Wiley, attorney, Bellevue, represents American Environmental Management Co.

MEMORANDUM

This is an amended contract carrier application for a certificate of public convenience and necessity to furnish biohazardous¹ waste collection service between the facilities of Stericycle, Inc. in Morton, Washington, and points in seventeen counties, under contract with Stericycle.

Stericycle provides what it describes as an integrated system of monitoring, processing, and treating infectious medical waste. Stericycle treats biomedical waste in a dielectric oven utilizing low frequency radio waves to generate a high strength electrical field. Biomedical waste passes through the field, absorbing the energy and heating internally so that it is decontaminated. The waste can then be disposed in a landfill or, as Stericycle eventually intends, recycled. Stericycle developed the process as an alternative to incineration. It opened its Morton, Washington, facility on January 17, 1992. The applicant

¹ For purposes of this order, the terms "biohazardous", "biomedical" and "infectious" are used interchangeably.

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is serving Stericycle under temporary authority that this Commission granted.

An initial order would grant the application, ruling that Stericycle is a proper shipper to support a contract carrier application, that existing carriers will not serve to the satisfaction of the Commission and therefore additional authority may be granted, and that the public convenience and necessity require the proposed service.

The Commission rules that the application as now constituted may not be granted, but stays operation of this order for ninety days with leave for the applicant or its successor in interest to redocket the application as one for common carrier service, or for other action as provided in the body of the order.

The Proposed Service.

Stericycle, Inc. has developed a process to sterilize and recycle materials used in the medical field that come into contact with contamination such as tissue, body fluids, or medical sera or chemicals.² It has invested some \$5 million in a plant to accomplish those purposes, located in Morton, Washington.

To begin the service, Stericycle targeted large generators of biohazardous waste in some seventeen western Washington counties, principally hospitals near Interstate Highway No. 5 (the "I-5 corridor"). Most, if not all, generate more than 400 gallons of biohazardous waste per month. Stericycle undertakes to provide a complete service to the generators of waste. As the initial order notes:

Stericycle offers generators of waste what it calls a "total service approach" to medical waste management. Under contract with generators, Stericycle provides an audit of the waste stream at the generator's facility, training and education programs for generator staff, packaging, transportation, deactivation, recycling and disposal.

To provide the physical collection service to its customers, Stericycle has contracted with Ryder Distribution Systems, Inc. (Ryder), the applicant. Stericycle requires generators to place substances for disposal in containers it

²Although it accepts biological substances or "pathological wastes" for disposal, it transships them to another facility for incineration. It does not intend to offer its own disposal service for those substances.

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provides, called "steritubs." It uses bar coding to identify and track shipments, for which it has accepted liability. It has outfitted Ryder's vehicles with bar code readers to maintain control over shipments from the time of collection. Staricycle controls Ryder's activities, and contends that its direct and complete control of Ryder's transportation activities support a grant of contract carrier authority.

The Commission granted Ryder's application and affirmed the grant on brief adjudication. It ruled that under proper tests for grants of temporary authority, the service appeared to be consistent with the public interest. The Commission emphasized that its decision applied only to the grant of temporary authority, under standards for grants of temporary authority,³ and on the basis of the evidence presented in that proceeding.⁴ Orders on temporary authority constitute no precedent for the treatment of any parallel application for "permanent" authority. See, Order M.V. No. 141271, In re Becker Trucking, Inc., App. No. P-19787 (April 1990).

Now Ryder has presented its case for "permanent" authority. An administrative law judge heard the case and has entered an initial order, proposing that the application be granted. Parties challenge most of the rulings of the initial order; applicant answers.

Regulatory Background.

The law regulating the transportation of solid waste for collection and for disposal in Washington, Chapter 81.77 RCW, was adopted in 1961. The law follows the pattern of utility regulation, in that it treats solid waste collection as a natural monopoly with efficiencies and public benefit gained through exclusive service. The law provides for service territories in

³Temporary authorities are used to meet immediate needs and are granted pursuant to statutory authority to do so with or without hearing, emphasizing that they are discretionary acts. In order to meet emergent needs, the Commission must make temporary authority decisions quickly.

⁴The Superior Court has reversed the grant of temporary authority, without prejudice to the Commission's resolution of the issues in this application. Operations continue under the court's stay of the decision.

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which a carrier may be the sole provider, but must in return offer nondiscriminatory service at regulated rates.⁵

Overlapping authority may be granted only if the existing carrier in the territory will not perform to the satisfaction of the Commission, and then only if the new service is required by the public convenience and necessity. RCW 81.77.040. The Commission applies objective tests for performance to its satisfaction and for public convenience and necessity, based upon the service of existing carriers and upon public needs at the time the application is filed.

Only after two decades of operation under the law did the first questions arise about the usefulness of universal collection in specified service territories for the collection of wastes requiring specialized services. In the 1980's, the Commission first considered specialized applications for authority to collect only hazardous wastes.⁶ The toxic nature of the substances, and required specialized collection and disposal, are such that the tests developed for grants of universal service may not be directly relevant to needs for collection of certain kinds of waste. Among the factors bearing on grants of specialized authority is the possibility of a generator's continuing liability for damage caused by a substance after collection or disposal.⁷

It is against that regulatory backdrop that we view this application.

Is Motor Carriage Appropriate?

After Stericycle completes its process, it disposes of most non-pathological⁸ substances in a landfill. Stericycle

⁵A statute providing for exclusive certificates for the use of highways for transportation by motor vehicle does not violate Art. III, Sec. 22 of the Washington State Constitution. State ex rel. Dept. of Public Works v. Inland Forwarding Corp., 164 Wash. 412, 2 P.2d 888 (1931); Order M.V.G. No. 504, In re DiTommaso, App. Nos. GA-734 and GA-736 (August 1971).

⁶See, Order M.V.G. No. 647, United Drain Oil Co., App. No. GA-465 (1982); Order M.V.G. No. 1183, Amalgamated Services, Inc., App. No. GA-767 (Nov., 1984); Order M.V.G. No. 1452, American Environmental Management Corp., App. No. GA-874 (1990).

⁷See discussion, below.

⁸"Pathological" material includes tissue, blood, body parts, and cultures. See Finding of Fact No. 13.

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disposes of all pathological material that it collects, untreated, at an incineration facility. The initial order ruled that this application was properly filed for the transportation of solid waste and that the service is not, under the evidence, a motor carrier operation.

The Waste Management companies (WMI)⁹ and Rabanco¹⁰ challenge the ruling, contending that because Stericycle represents to potential customers that its process is for the purpose of recycling, the application should be for motor carrier authority.

[1] The application seeks authority to transport pathological substances for disposal, and those substances are disposed of. Stericycle also disposes of the non-pathogenic substances after treatment, despite its recycling goals and representations to potential customers. Under those facts, the Commission requires solid waste authority. The Commission does not rule that all of the future activity as represented on this record would be proper under a solid waste certificate, only that a solid waste certificate under chapter 81.77 RCW is required to conduct the transportation for collection and disposal described on the record. Transportation for recycling, under present law, requires motor common carrier authority issued under chapter 81.80 RCW. The Commission affirms the initial order's ruling that solid waste collection authority is required for the proposed operation.

Is Stericycle a Broker?

The initial order rejected arguments that Stericycle is a transportation broker, relying on its proposal that the proposed service is not motor carriage and upon Commission Staff's argument that there is no provision for brokerage in the solid waste law or rules.¹¹ The Washington Waste Management

⁹We will refer to the intervening Waste Management companies collectively as WMI for administrative convenience.

¹⁰Similarly, we will for convenience refer to Seattle Disposal, Rabanco Ltd., et al., collectively as Rabanco.

¹¹Many of the issues raised and the arguments presented are based on analogy with motor carrier law and regulation for the transportation of property with value. In some instances, not only do specific laws or regulations differ, but the underlying purposes for the laws and regulations differ. The focus of the solid waste law, chapter 81.77, is universal collection and disposal, and transportation is regulated because it accomplishes those and other objectives. The focus of the motor carrier law, chapter 81.80 RCW,

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Association (WWMA) and Rabanco contend that Stericycle is not the true shipper but, as the arranger of transportation for the substances it commits to collect, it is a broker.

The Commission rejects the challenges. Whether or not an individual is operating as a broker or forwarder does not depend on whether the term or the function is provided for in law or regulation.¹² Here, however, Stericycle is not operating as a broker or forwarder. It has not held itself out as an agent who will find or consolidate transportation, for a fee, for persons needing it. It is conducting a comprehensive collection and disposal activity.¹³

[2] Stericycle operates as a provider of consulting, collection, recycling and disposal services. Its transportation functions under its present operation are not brokerage but are accomplished under its authority from the generator to provide a collection and disposal service.

Cream Skimming.

The initial order rejected contentions that Stericycle is engaging in "cream skimming" by seeking only to serve the largest and most profitable accounts. It found that, while Stericycle had initially served and solicited the largest customers, its efforts to expand its operations to smaller customers showed its intention to provide universal service.

WMI and Rabanco challenge the initial order's finding. They contend that Stericycle's cream skimming has caused their revenues to drop from the loss of the largest customers and their expenses to rise.¹⁴ This may cause performing regulated services

is transportation which is regulated because it is an essential underpinning of commerce in modern society. Many principles, policies, and terms are transferable. The transfer is not automatic, however, and should be undertaken with care after examining underlying policies.

¹²Law or regulation may determine whether the activity may be done lawfully, not whether it exists in fact.

¹³See, Order M. V. No. 115329, In re Better Home Deliveries, Inc., App. No. P-69864 (February 1987). There, applicant's request for brokerage authority was denied when the Commission determined that the proposed operation constituted contract carriage.

¹⁴The experiences in Evergreen Waste Systems, Cause No. TG-1911 (May 1986) and All County Disposal, Cause No. TG-1859 (August 1985), tend to support this contention.

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to become so expensive that generators may dump illegally,¹⁵ that other customers subsidize them, or that the local carrier abandons the specialized service entirely. Ryder responds that Stericycle is expanding its operation to smaller generators, and is not cream skimming, but in any event it is unregulated and has no obligation to serve all customers. It is free as a competitor in an open market, argues Ryder, to pick and choose its customers and to offer services at any rate it chooses, above or below its cost.

[3] Regulated solid waste collection companies must provide universal waste collection without discrimination. RCW 81.28.010, 81.28.180, and 81.28.190. They must operate under rates that are just, fair and reasonable and that do not discriminate or provide unreasonable preferences. *Id.* It is irrelevant whether Stericycle is or is not cream skimming. The issue is whether Stericycle is or is not subject to regulation as a solid waste collection company. If it is not subject to regulation, it may serve anyone it chooses at any rate it chooses. If it is subject to regulation, it must operate under pertinent law.

May a non-generator be a "shipper"?

Protestants and Commission Staff dispute the initial order's conclusion that a non-generator may be a shipper -- i.e., lawfully arrange and pay for collection, and support an application for solid waste collection authority. Accepting their argument would resolve this application. It could have adverse consequences in other settings, however, and does not answer the issue that actually determines the application under the facts of record.

[4] We reject the concept that only a generator may lawfully accept responsibility for arranging collection. No statutory language limits collection to generators and no statutory language prevents nongenerators from arranging collection.

If the argument prevailed, the owner of property on which material is illegally dumped could not order its collection. A landlord could not order collection for a tenant. The operator of an independent and specialized site treatment operation could be barred from securing necessary collection. The better rule, needed for a comprehensive waste collection system, is that a person who has authority to arrange collection

¹⁵See, Evergreen Waste Systems, Inc., Cause No. TG-1911 (May 1986).

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for legitimate reasons other than transportation, may support an application for collection authority.

We recognize that the parties and the initial order wrestled with this issue. We believe that the initial order is correct on the narrow question. The concerns of the protestants and Commission Staff that the proposed operation is flawed are accurate, but are more properly directed to the nature of the operation rather than to the question of who may arrange collection. The issue is not whether any nongenerator may be a shipper, but whether Stericycle may properly arrange for collection and disposal of wastes in the manner proposed.

Timing for Review of Existing Services.

[5] The tests for granting an application must be met as of the time it is filed.¹⁶ The Commission will examine objective evidence of existing carriers' service and need for an additional carrier as of that time. The initial order ruled that Brem-Air, AEMC, and WMI were not providing an affected service at the time the application was filed, and that their testimony about services they offer should be disregarded. WWMA, Rabanco, and WMI ask review of those rulings.

The Commission rejects the challenges; the initial order is correct. Brem-Air and WMI did not provide specialized biohazardous waste collection services when the application was filed, and AEMC's certificate restriction precluded service to Stericycle. Subsequent ability to provide the service does not demonstrate satisfactory service, nor does it demonstrate lack of need for the offered services as of the filing of the application.

Satisfactory Service.

The Commission Staff, WWMA, WMI, and Rabanco all challenge the order's finding that existing carriers will not serve to the Commission's satisfaction. Ryder presented the testimony of several shippers to demonstrate sentiment in the community about its application. Protestants stress the initial order's findings that the witnesses find their existing physical collection service satisfactory. Protestants argue, if that is the case, then all existing carriers are serving to the Commission's satisfaction and no need can be shown for an additional carrier.

¹⁶See, Order M.V.G. No. 795, In re DiTommaso, d/b/a DiTommaso Bros. Garbage Service, App. No. GA-508 (November 1975); Order M.V.G. No. 1335, In re Superior Refuse Removal Corporation, App. No. GA-849 (June, 1988).

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Although there was no service failure of a sort usually significant to issues of universal service, such as missed pickups or garbage strewn about, the witnesses identified flaws in the existing disposal options. The Commission affirms and adopts the initial order's ruling on satisfactory service.

Generators are primarily responsible parties under RCW 70.105B.040(1)(b) and under 42 USC §9607(a).¹⁷ As such, they may have continuing liability for damage caused by hazardous waste after the waste has left the generator's premises. The generator thus has a heightened responsibility to determine the method of disposal, and its needs for collection and disposal are of a different character than its needs for universal waste collection. If one carrier's method of disposal is not satisfactory, and another is reasonably needed, the Commission will consider that need carefully. Stericycle is providing a service that in total helps the generators to assure themselves that they do not incur federal, state, or civil liability. The existing carriers do not provide an equivalent service.

Even in the absence of statutory continuing liability there is possible continuing civil liability. The wastes in question include highly toxic substances that could spread dread diseases. The public health consequences of releases can be severe. Because the generators are professionally involved in health care, they are in a unique position to evaluate the risks and benefits of collection and disposal services from their own professional training and experience. The Commission will give considerable weight to such testimony of service requirements.

[6] The satisfactory nature of service by providers of specialized solid waste collection services is measured according to the specialized needs of customers. It may include the technology of disposal, ability to coordinate disposal, the nature of protection afforded collected waste, and protections against potential statutory and civil liability. Here, the

¹⁷There may be some question about the applicability of the Washington state definition of hazardous waste to many of the substances transported under the proposed authority. The Commission's pertinent safety rules (WAC sections 480-70-500 through 570) include a record keeping requirement so that liability may be tracked, if needed. Until it is clearly resolved that no federal, state, or civil liability follows collection, sound transportation regulatory policy should assume that it may. Although an indemnification agreement may offer some protection to a potentially responsible party such as a generator, See, Scott Galvanizing, Inc. v. Northwest EnviroServices, Inc., 63 Wn.App. 802 (1992), that protection is only as good as the future of the indemnifier.

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Commission accepts the initial order's finding that existing carriers' service does not meet the test of satisfaction.

The initial order also found that single carrier service is a reasonable shipper need, and that existing carriers failed to operate to the Commission's satisfaction because, with limited local territories, they could not provide that service. The Commission Staff argues that we cannot find that a carrier will not serve to the Commission's satisfaction when the carrier's permit is limited against the service in question. Staff argues that such a finding would imply that the carrier must operate illegally in order to satisfy the Commission. We reject that interpretation.

[7] Operation to the Commission's satisfaction does not necessarily involve a moral element. If limitations in the carrier's permit preclude it from meeting public needs, the Commission cannot find service satisfactory. Finding lack of satisfaction does not cast the existing carrier as "bad". The carrier's remedy is to stay abreast of its customers' requirements and to seek authority to meet them. If the reverse were true, the Commission would have to deny applications for needed service that no existing carrier can provide -- a result that is inconsistent with the laws we are charged with implementing.

Nature of the Services

The challenge to the result of the initial order that we find most insightful, and that we find persuasive, is raised by Waste Management, Inc., and by Rabanco. They contend that, when the operation is viewed correctly, it is Stericycle who advertises itself to the public to provide transportation for collection and disposal, who undertakes to accomplish that service when Stericycle is hired, who arranges the means to accomplish it, who controls the collection, transportation, and disposal, who is compensated for it by generators, and who is thus operating as a common carrier. The Commission agrees.

Stericycle's contract for the physical performance of the transportation function (to its strict specifications) shifts the focus of inquiry to the asserted contract carrier nature of the transportation for disposal and away from the common carrier nature of the offered transportation for collection.

RCW 81.77.010(7) provides,

Solid waste collection company means every person . . . owning, controlling, operating or managing vehicles used in the business of transporting solid waste for collection and/or disposal for compensation . . . over

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any public highway in this state, whether as a common carrier thereof or as a contract carrier thereof.

The initial order found that Stericycle offers a service including transportation for collection and disposal. Ryder argues that it operates as a classic contract motor carrier, offering a specialized service to its shipper, uniquely tailored to the shipper's needs and subject to the shipper's tight controls, that common carriers cannot provide. Traditional contract motor carriage involves service as the contractor's transportation department.¹⁸ Here, Stericycle does control and manage the transportation of wastes for collection and disposal from the general public of biohazardous waste generators, through its control of Ryder's operations. Ryder's arguments are correct, but they prove that Stericycle is undertaking to provide a service defined by statute as common carrier solid waste collection.

[8] The Commission will look to the nature of a proposed operation rather than the label applicants apply to it.¹⁹ RCW 81.77.040. We quoted above the initial order's description of the nature of the complete service Stericycle offers. Except for the audit of a generator's waste stream and perhaps the training of generator personnel, all of the functions offered are regularly provided by solid waste collection company common carriers in the ordinary and necessary course of their business. They are free as well to provide the audit and training functions.

The only significant distinction between Stericycle's operation of transportation for collection and disposal and that of existing carriers is that Stericycle proposes to use another certificated carrier to perform the actual physical collection service. The supporting witnesses stressed Stericycle's need to control the collection of wastes to conform with its scheduling, tracking, and handling requirements, its representations to county government about the frequency of deliveries, and its representations to shippers that transportation would be performed to its strict requirements.

¹⁸See, Order M.V.G. No. 1536, In re Ryder Distribution Systems, Inc., App. No. GA-75563 (brief adjudication, January 1992). See, also, footnote 11, above, regarding solid waste and motor carriage.

¹⁹See, Order M. V. No. 115329, In re Better Home Deliveries, Inc., App. No. P-69864 (February 1987). There, applicants' request for brokerage authority was denied when the Commission determined that the proposed operation constituted contract carriage.

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[9,10] An entity providing a complete solid waste collection and disposal service including transportation for collection and disposal, and which controls or manages vehicles engaged in the collection and disposal, whether it personally provides the transportation or accomplishes it by contract, is operating as a common carrier solid waste collection company. The provider cannot avoid its responsibility under Washington law by subcontracting with another entity to physically perform the transportation services.²⁰ Granting the application would be contrary to the public interest and contrary to the statutory plan for solid waste collection. Because Stericycle has no certificate to authorize its activity, Ryder's proposed service cannot be found required by the public convenience and necessity and the application may not be granted as presented to us.

We find no evidence of bad faith or intention to violate the law by either Ryder or Stericycle. Indeed, the activity was sanctioned by Commission order in an expedited proceeding. Upon a full record and through a thorough analysis, we identify the nature of the service under current law and rule.

Public need for Service.

The initial order found need for Ryder's services as a contract carrier. The finding was developed on a record that included five generator witnesses and a hospital association witness. Their evidence was aimed at proving need for a carrier to serve Stericycle by showing a need for Stericycle's services. The evidence of need is related to the evidence about satisfaction with existing carriers' service.

Among the very narrow selection of witnesses, there are expressions of need to avoid adverse health effects of incineration, to provide better control because of liability questions, and to provide impervious containers that neither leak nor are subject to puncture. Need was expressed for a single carrier to serve a generator's multiple locations. We have noted above that professional knowledge and experience with biohazardous wastes should be given considerable weight. The evidence proved that generator need exists for the service, including collection, that Stericycle offers. We do not rule that the evidence proved that the public convenience and necessity require an additional common carrier in any territory because that issue is not directly presented.

²⁰The collection service is similar to that performed by AEMC, except for that AEMC incinerated its collections and did not attempt to use contract carriage. See, Order M.V.G. No. 1452, In re American Environmental Management Corp., App. No. GA-874 (1990).

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In determining whether the public convenience and necessity require an additional carrier, the Commission must balance needs of existing carriers for a customer base that is large enough for economic viability, considering their obligation to provide satisfactory service, with the public's need for responsive service. Although the existing carriers cited reductions in service and in revenues from the onset of competition, none indicated that its ability to provide the collection of biohazardous wastes, or the public's ability to receive that service, is seriously endangered.

[11] The issue of public convenience and necessity involves evidence about the needs of the public for responsive service as well as all of the consequences, positive and negative, of a grant of authority. The Commission may find the issue of public convenience and necessity for the proposed service more clearly posed by a different or a modified application.

Staying the Effect of this Order.

Ryder and Stericycle are now providing service pursuant to temporary authority. The service is used and needed by a number of generators. Requiring an immediate termination of that service could adversely affect generators.²¹

[12] This record focuses on the asserted contract carrier aspect of the transportation, rather than its common carrier nature and the direct service to generators of the specialized waste stream. The parties should have the opportunity, if they desire, to supplement the evidence on that aspect of their proposal. Therefore, the Commission will stay the effect of its order of denial for ninety days. During that time, Stericycle and Ryder may determine how they will proceed.²²

* Ryder can accept the result of this order as final. The Commission will lift the stay upon such notification and the order will become final. Stericycle can reevaluate whether existing solid waste carriers can provide satisfactory

²¹As noted above, service continues to be conducted under temporary authority.

²²The Commission lists some options here to indicate the breadth of choice available. It does not prejudge the result of its deliberations on any legal or factual issue or the result of the proceeding, should the applicant elect one or another option.

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service.²³ The carriers' relationship will be with the generators and their rates paid by the generators. Stericycle's disposal charge would be made to and collected by the carrier, without regard to the identity of the generator. Generators will have the right to designate the disposal facility, paying the regulated charge, and carriers would provide delivery of wastes to meet Stericycle's schedule.

[13] Stericycle might also apply on its own behalf, encourage an application by an existing solid waste carrier, or encourage Ryder's redocketing of this application²⁴ to seek common carrier solid waste collection service. Doing so would require some rearrangement of the relationship between Ryder and Stericycle, but might be accomplished in a way consistent with Washington law yet preserving the principal interests of both parties. Any arrangement involving an applicant other than Stericycle must be structured so that Stericycle is not operating as a carrier.

* Stericycle and Ryder could make arrangements for Stericycle to join or succeed to Ryder's interest in the application, and request that it be redocketed as a common carrier solid waste application with Stericycle as a principal. A successor in interest can receive authority sought in its predecessor's application.²⁵ Rearrangement of the relationship between Ryder and Stericycle might allow Ryder to provide vehicles and services lawfully. The issues on any subsequent hearing would be greatly reduced, as many have already been heard. The nature of the proposed service is thoroughly

²³Although Stericycle's witness testified that it would terminate operations and leave the state if the application were denied, it may reevaluate that intention and determine that arrangements satisfactory to its continued operation may be made in cooperation with existing carriers. Commission Staff represents in its brief that Stericycle has indicated in another state that common carriers can satisfactorily serve its operation.

²⁴The Commission has allowed redocketing when doing so corrects a flaw in the application and when it is in the public interest. This application has already consumed a year and a half and a considerable investment in resources by all parties and by the Commission. We see no advantage to a decision that could require every issue and every fact to be re-litigated. Redocketing will facilitate a complete and timely examination of the issues and is therefore an option that is in the public interest. The original filing date would appear to govern for relevant tests.

²⁵Similarly, Sureway, a separate corporation, has succeeded to Rabanco's interest as protestant in this proceeding.

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explored. The issue of other carriers' satisfactory service is thoroughly explored. There is evidence of record on the issue of public need and sentiment in the community. Because it may not cover all of the territory or all sorts of shippers, the applicant could choose to present additional evidence. The applicant's ability to serve and the costs of the proposed operation would be subject to hearing, as would changes in the relationship between Stericycle and Ryder.

* Other options or variations on these options may exist, as well.

The Commission will stay the effect of its order. Ryder will have 90 days to consult with Stericycle and to notify the Commission of its intentions. If it notifies the Commission that it will take no further action, the Commission will enter an order lifting the stay and the order will become final. If it amends its application, that application will be docketed for protest and further action as required. This order will not become final until a decision is made on the additional issues presented in the amended application. In any event, applicant and shipper must review their need for temporary authority and, if appropriate, file an application for temporary authority based upon the organization elected.

Miscellaneous issues.

Stericycle as competitor. The initial order found that the existing carriers are not Stericycle's competitors. The Commission finds that Stericycle's operations are those of a common carrier and that it is a competitor of the existing carriers.

[14] Affiliated interest. The initial order found that Ryder appears to be an affiliate of Ryder Truck Rental (RTR) and that its purchase of management services from RTR for payroll constitutes an affiliated interest. Protestants WMI and Rabanco challenged the order's conclusion that the arrangement does not affect the application for authority.

The Commission agrees with the initial order. The arrangement may affect rates, but is not argued to result in carrier control by a party not subject to regulation. Rate consequences of an affiliated interest arrangement may be considered in conjunction with tariffs.²⁶ Approval of the

²⁶The parties do not appear to allege that the arrangement has an effect on the costs of the proposed operation, which is a proper and necessary element of evaluation of a proposed service. RCW 81.77.040.

application would not imply approval of the affiliated interest arrangement for ratemaking purposes.

AEMC/Stericycle settlement. The initial order rules that AEMC's withdrawal has no effect on Ryder's application. WMI challenges this. It contends that AEMC's arrangement with Ryder, by which AEMC agreed to restrict its permit so it could not serve Stericycle, is contrary to the public interest because it prevents Stericycle from receiving service by an statewide certificated hauler. The Commission affirms the initial order. The Commission permits such agreements between applicants and protestants within reasonable limits to facilitate the administrative process and to avoid the need to litigate every issue in every application even though the parties can resolve their differences. In most circumstances the Commission could not force a carrier to maintain and prosecute a protest. Stericycle's awareness and support of the arrangement could affect the extent and credibility of Stericycle's asserted need for service.

[15] Rebating of revenue. Stericycle has entered an agreement with the Washington Hospital Association and pays it a percentage of its gross revenue from Washington customers for marketing services. The initial order ruled that this is not an impermissible rebate under RCW 81.28.210. WWMA, WMI, and Rabanco challenge that determination.

The Commission affirms the initial order. The payment by a shipper bears no direct connection with Ryder's application.²⁷

[16] Category of service. Although no petition for administrative review raised this issue, Ryder's answer contends that RCW 81.77.040²⁸ does not bar the Commission from issuing authority for collection of biohazardous wastes. The Commission agrees.

²⁷In any ensuing application or redocketing, particularly if Stericycle is an applicant, a different result could be reached. The issue would appear to be whether the payment is proper for sales and marketing expenses or improper as a rebate.

²⁸RCW 81.77.040 reads in part as follows:

For purposes of issuing certificates under this chapter, the Commission may adopt categories of solid waste as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter.

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The statute creates four categories of solid waste, including garbage and refuse. In this case, it would not contravene the statute to grant authority to serve as a solid waste collection company for garbage and refuse consisting of biohazardous waste. This specialty waste stream is a subset of both categories. The statute does not forbid the Commission from granting applications to the reasonable extent of proof; as the applicant points out, the Commission had granted such authorities for a number of years before the 1989 amendment. Had the legislature desired to prohibit this practice, it could have clearly accomplished that result.

Conclusion.

The Commission rules that this application cannot be granted, as the shipper would use the contract carrier service in order to operate its own common carrier solid waste collection service without authority from the Commission. The Commission stays the effect of its order and directs the applicant and its supporting shipper to elect from among procedural options. In the absence of election within 90 days, or upon earlier notice by the applicant, the Commission will enter a further order lifting its stay and making this order final.

Having discussed the evidence and having stated findings and conclusions the Commission makes the following findings of fact and conclusions of law. Portions of the preceding findings pertaining to the ultimate facts are incorporated herein by this reference.

FINDINGS OF FACT

1. On June 21, 1991, Ryder Distribution Resources, Inc. ("Ryder") filed an application for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and/or refuse collection service. As amended, the application is as follows:

Biohazardous or biomedical waste between the facilities of Stericycle, Inc., located at or near Morton, Washington, on the one hand, and, on the other hand, Clark, Cowlitz, Thurston, Pierce, King, Snohomish, Skagit, Whatcom, Mason, Grays Harbor, Pacific, Yakima, Clallam, Jefferson, Lewis, Kitsap, and Spokane Counties under contract with Stericycle, Inc.

2. Timely protests were filed by Seattle Disposal, Rabanco, Ltd., et al, d/b/a Rabanco Companies; Resource Recovery Corporation; Washington Waste Management Association; Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse Company, et al.; and American Environmental Management Co. Waste Management

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of Seattle, Inc., Waste Management Northwest, Inc., Waste Management-Sno-King, Inc., and Waste Management of Spokane, Inc. filed late protests and intervened at the hearing. Waste Management Rainier, Inc. intervened at the hearing. Resource Recovery Corporation withdrew its protest by letter dated September 26, 1991.

3. During the hearing, American Environmental Management Corporation (AEMC) withdrew its protest. At the start of the hearing, AEMC held authority pursuant to Permit No. G-231 to collect biohazardous waste throughout the state only for disposal at its own incineration. AEMC was granted standing as a protestant on the basis of a then-pending petition, later application, to remove the permit restriction. Ryder protested AEMC's application. AEMC agreed to restrict its application to exclude service to or from Stericycle's Morton site and to withdraw its protest in this proceeding in exchange for Ryder's withdrawal of its protest to AEMC's application. The Commission approved AEMC's amended application on April 21, 1992.

4. Dale A. Tibbets, Ryder's Manager of Industry and Government Relations, and Ronald Lenz, Account Executive, Ryder Distribution Resources, Inc. testified on Ryder's behalf. The applicant is a wholly owned subsidiary of Ryder Truck Rental, Inc., which in turn is owned by Ryder Systems, Inc. The business headquarters of each company is Miami, Florida. The applicant will pay Ryder Truck Rental a management fee to perform the payroll function for the applicant's employees.

5. Applicant has the financial ability to conduct the proposed operations.

6. Applicant has contracted with Stericycle to collect biomedical waste from the facilities of generators and transport it to Stericycle at Morton, Washington. Ryder proposes to receive a fixed weekly rate from Stericycle regardless of whether any shipments occur, plus hourly and mileage charges. Ryder will dedicate two Ford tractors, ten trailers, and two converter dollies to Stericycle.

7. Applicant will obtain its vehicles from Ryder Truck Rental (RTR) under full service, long term leases. Applicant will use RTR's maintenance facilities in Yakima, Spokane, and Seattle. The rental fee includes a profit margin for RTR. The equipment will be used solely for service to Stericycle. Ryder's contract with Stericycle requires Stericycle to purchase the equipment if the contract does not complete its term. The equipment is in good condition, is regularly maintained, and is suitable for the proposed operations.

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8. The applicant's drivers will be dedicated to the exclusively to Stericycle. They will be trained with respect to the safe operation of the vehicles used to transport biomedical waste; proper handling techniques during the transportation; knowledge of packaging requirements; personal hygiene; protective clothing and equipment for drivers; contamination control procedures both personal and vehicle; proper procedures in case of spills and emergencies; and shipping documentation requirements.

9. Applicant currently operates as a motor contract carrier under contract with Kirk Paper Company in the state of Washington. Applicant has received no citations for violating the Commission's laws or rules. Mr. Tibbets gave credible assurance of the applicant's future compliance.

10. Ryder has obtained an Infectious Waste Activities Permit from Lewis County and an Infectious Waste Management Permit from the Tacoma-Pierce County Health Department. Applicant is currently providing biomedical waste collection and transportation service to Stericycle under temporary authority issued by the Commission on December 18, 1991. The validity of the orders issuing and affirming the grant of temporary authority are being litigated in the judicial system. Operations continue under a superior court's stay of its order reversing the grant.

11. Stericycle, Inc., is a Delaware corporation with headquarters in Rolling Meadows, Illinois. Richard Shea, vice president of western operations; Vernon Nagel, vice president of finance, chief financial officer, and corporate secretary; Linda Lee, director of environmental affairs and compliance; and Anthony Tomasello, operations manager, testified on behalf of Stericycle.

12. Stericycle is in the business of providing an integrated system of monitoring, collecting, processing, and disposing of infectious medical waste. Stericycle began operations at its Morton, Washington, facility on January 17, 1992.

13. For purposes of this order, biomedical or biohazardous wastes may be classified into two basic groups. "Pathology" consists of blood, tissue, and materials such as bandages which have absorbed tissue or blood. "Non-pathology" consists of nonabsorptive materials which have come into contact with substances such as tissue or blood. Nonabsorptive materials include sharps (items such as syringes for injections) and plastics.

14. Stericycle proposes to process all non-pathological waste at its facility. The company's goal is to

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recycle 100% of the waste it treats. However, it is currently disposing of the majority of this waste in a landfill. A small amount of the material has been shipped to potential customers for experimental use to determine if recycling is feasible. Stericycle accepts pathological waste but ships it all to an incinerator at Ferndale for disposal. The pathological waste is stored on site at the Morton facility until it can be shipped for disposal. Stericycle charges its customers an additional fee for pathological waste in excess of two percent of the customer's waste stream.

15. Stericycle offers generators of waste what it calls a "total service approach" to medical waste management. Under contract with generators, Stericycle audits the waste stream at the generator's facility and provides training for generator staff, packaging, collection, transportation, deactivation, recycling and disposal. All of these functions except auditing and training are regularly accomplished by existing solid waste collection companies transporting biohazardous solid waste in the ordinary course of their regulated activities. Once the waste is treated, it becomes Stericycle's property, subject to applicable laws, under Stericycle's most current contract with generators. Physical collection and transportation under the contract is performed by the applicant. Ryder collects biomedical waste from the generator's premises and transports it to Stericycle in "steritubs." Steritubs are hard plastic containers made in various sizes from recycled medical waste; they are cleaned and reused after the waste is treated or disposed. Ryder returns clean steritubs to the generators for reuse. Steritubs are superior to the cardboard boxes used for transportation and storage by existing carriers at the time the application was filed, in that they are leak proof and puncture proof.

16. Stericycle's service to generators is organized to use a single dedicated contract carrier that can serve the entire proposed territory. Stericycle controls all aspects of carrier operation. Ryder dedicates equipment and drivers to Stericycle, hauls all of the waste to Stericycle in steritubs, transports empty steritubs to generators, uses a scanner and computer system to track the steritubs, and handles all scheduling for pick up and delivery 24 hours per day on a "just-in-time" schedule to arrive immediately before processing is to begin. Stericycle is not permitted by ordinance and has no ability to store waste except for pathological waste destined for incineration in Ferndale. Witnesses for Stericycle doubt that existing carriers can meet these requirements because no single carrier has authority to serve the entire territory requested under the application; they refused to consider carriers' inquiries and offers of service. Stericycle fears that it cannot coordinate scheduling of pick up and delivery to its facility by as many as

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36 carriers who currently serve the requested territory. Stericycle has represented to Lewis County that the number of shipments through the county will not exceed four per day. Stericycle prefers a single dedicated carrier because of the hazardous nature of the waste and the necessity to monitor its flow, destruction, and disposal.

17. Stericycle controls transportation of the waste because of the liability imposed on all who handle it. Stericycle chose the applicant to provide this service because of satisfactory service it has received in the past from Ryder for its Arkansas facility. Mr. Nagel testified that Stericycle would close its Morton facility and cease operations if the application were denied.

18. The applicant presented testimony from five generators of biohazardous wastes and a hospital association official.

a. Dan Johnson, Director of Environmental Services, Cascade Valley Hospital, Arlington, testified in support of the application. Cascade Valley Hospital has used AEMC and Sureway; it currently uses Stericycle. Cascade Valley switched to the Stericycle because incineration of its waste is not environmentally sound. Stericycle aided this generator to identify its infectious waste stream and improve its waste segregation system. A reduction in the overall waste stream and treatment costs resulted. Stericycle cooperated in contacting and serving some smaller generators associated with Cascade Valley.

AEMC provided a similar package of services including collection. Cascade Valley does not care who performs physical collection as long as long as Stericycle performs the processing and disposal services. A single dedicated carrier is an advantage because of the responsibility associated with disposal of infectious waste and Stericycle's willingness to control collection. AEMC provides similar collection service.

b. Donald Bear, director of environmental services, Virginia Mason Medical Center, Seattle, testified. This generator is a nonprofit corporation requiring the collection of 6,000 to 7,000 gallons of biohazardous waste weekly. Virginia Mason used Sureway until it changed to Stericycle. Sureway's collection services were excellent. Virginia Mason changed to the applicant and Stericycle for the availability of recycling and for lower rates.

This generator does not care who provides actual collection service for Stericycle, except Stericycle should not be forced to use its competitors such as Sureway or AEMC. The

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witness would accept service from any carrier acceptable to Stericycle, if his present service remained the same.

c. Kevin Franke, director of building services, Valley General Hospital, Monroe, testified. This generator requires collection of approximately 1,000 gallons of biohazardous waste monthly. Bill's Disposal Service provides its universal solid waste collection. Until 1990, Valley General operated its own on-site incinerator for disposal of medical waste. In 1990, environmental regulations for incinerators changed and the hospital found compliance too expensive. Sureway served it under temporary authority; when the Commission denied Sureway's "permanent" application, the hospital began using AEMC. Mr. Franke found Sureway and AEMC's collection service acceptable, but he found AEMC's disposal by incineration outside this state to be unacceptable. He asked the Washington Hospital Association to explore alternatives and selected Stericycle when the Association recommended it.

Mr. Franke chose Stericycle because Stericycle's process of killing pathogens is preferable to incineration, which in the witness' experience produces toxic air emissions and toxic residue. Mr. Franke believes that each state should treat and dispose of its own medical waste. He liked Stericycle's plan to recycle all of waste, but prefers landfill disposal to incineration. Cost was not a consideration in switching to Stericycle. The generator will support any carrier collecting waste under Stericycle's direction.

d. Anthony Hinds, assistant director of material, Group Health Cooperative, Seattle, testified. Group Health is a staff-modeled health maintenance organization serving Western Washington from Everett to Olympia and from Bellevue to Bremerton. It used Sureway for its medical waste stream until 1991, then changed to AEMC. In March, 1992, it signed a letter of intent to use Stericycle. This generator had no problems with Sureway's or AEMC's collection service. It decided to switch to Stericycle based upon its environmental concerns. This generator favors the recycling of wastes. Group Health wants the total service package Stericycle offers, including help with a cooperative-wide policy for waste management and recycling. There is an administrative advantage in having one carrier serve all of its locations. AEMC is the only carrier with current authority to serve all of its locations. AEMC did not offer services such as waste stream monitoring. Group Health does not care who performs the physical collection so long as Stericycle controls it. This generator understood that Stericycle was not recycling 100% of its waste at the time of the hearing and may not be able to for some time.

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e. Kenneth Whitney, director of environmental services for Swedish Hospital Medical Center, Seattle, testified. Swedish is a nonprofit corporation operating its own incinerator to burn most of its waste stream. It does not want to burn the five to six percent of its total waste stream consisting of biohazardous sharps and plastics because of high PVC (polyvinyl chloride) content and possible adverse public health consequences of incineration. The hospital does not want to tender the waste to other parties for incineration for the same reason. Swedish has invested considerable sums to meet air quality regulations, but must still close its incinerator when poor air quality requires it. Having infectious waste committed to a different disposal method allows the hospital to comply with pertinent regulations. For this reason and because it encourages recycling, this generator signed a letter of intent with Stericycle and planned to begin using Stericycle's services in April 1992. This generator preferred steritubs as safer and more suitable than cardboard containers and prefers the bar coding system of tracking the steritubs.

Stericycle's decision to use a single dedicated carrier for collections ensures Stericycle's control to avoid error and to delineate responsibility. The physical collection services Ryder proposes are no better than those now available from any other carrier. Swedish would not object to collection by Sureway for Stericycle. As of March 1992, Swedish used Sureway when it was unable to incinerate biomedical waste. Sureway's collection services are satisfactory.

f. Frank Baker, president, Washington Hospital Services (WHS), testified. WHS is a service corporation subsidiary of the Washington State Hospital Association (WSHA). WSHA is a nonprofit trade association consisting of hospitals and some other individuals. WHS was incorporated in 1988 to provide (1) services and products for the hospital and health care industry, and (2) program and product analysis, evaluation and acquisition arrangements to reduce costs for individual hospitals. These services are provided to all health care facilities in Washington, regardless of membership in WSHA.

Medical waste management has been a concern to hospitals for a number of years. In 1988 and 1989, because of landfill problems and closure of on-site incinerators, members asked WHS to study feasibility of a comprehensive medical waste management system. WHS first proposed joint ownership of a large regional incinerator. This was abandoned in 1990 due to siting problems. In August 1991, Stericycle and WHS entered an agreement for WHS to market Stericycle's services to hospitals in Washington in exchange for a percentage of Stericycle's revenues from all Washington customers. This agreement is similar to agreements WHS has with other vendors. All the generators

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represented in record testimony belong to WHS. Mr. Baker's supports Stericycle's program for its use of recycling. If the application is denied, Mr. Baker would prefer that Stericycle continue its operations rather than leave the state.

19. Robert Schille, marketing manager and special projects coordinator for Waste Management of North America, Kirkland, testified in opposition to this application. The witness' firm owns a number of subsidiaries in Washington State, including the Waste Management intervenors. Waste Management of Seattle, Certificate G-140, serves Seattle and Burien. Waste Management - Sno-King, Certificate G-126, serves the northeast corner of King County. Waste Management Rainier, Certificate G-63, serves central and eastern King County. Waste Management Northwest, Certificate G-43, serves the majority of Snohomish County, excluding Everett, and northwest King County. Waste Management of Spokane, Certificate G-39, serves Mead in Spokane County. Each of these companies has its own equipment and personnel. The companies do not currently have specialized equipment nor do they hold themselves out to collect biomedical waste in the territory of the application.

Mr. Schille asked to see Stericycle's operations and offered transportation service. Stericycle's representative told him that it was not in Stericycle's interest to show the facility or to accept waste from his companies because they were competitors. The Waste Management companies are capable of collecting biohazardous wastes within their authorized territories and transporting steritubs using Stericycle's bar coding procedures under a just-in-time schedule. WMI companies are willing to dedicate drivers to Stericycle 90 to 95% of the time. The Waste Management companies have no facility and have no intention of operating a facility for treating biomedical waste in the state of Washington. WMI has such facilities elsewhere in the country.

20. Pamela Gay Badger, supervising environmental specialist, Waste Management of North America, described the company's operating procedures for biomedical waste management. Employees in Western Washington have been trained to handle biomedical waste. The company has chosen not to collect or transport biomedical waste in Western Washington because it does not have economically feasible treatment facilities available to it. It would be willing to provide the collection service Stericycle requires after inspecting and approving Stericycle's facilities.

21. Stan Robinson, general manager of Sureway Medical Services, Inc., Seattle, testified in opposition to this application. Sureway succeeds to the protest of Seattle Disposal, Rabanco, Ltd., et al, d/b/a Rabanco Companies, holding

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certificate number G-12 because of corporate reorganization. Sureway Medical Services, Inc. is now performing medical waste service under G-12 as a subsidiary of Northwest Waste Industries, a wholly-owned company of Rabanco Ltd. Rabanco has applied for authority to separate the medical waste portion of its certificate for service by Sureway Medical Services, Inc. Sureway currently provides packaging materials, collection, transportation and disposal service in King, Snohomish and Pierce Counties under temporary authority pending the transfer.

After the application was filed, Sureway switched from cardboard containers to Rubbermaid drums for waste collection. The drums have handles, while steritubs do not. Sureway transports biomedical waste to Ferndale for incineration. The incinerator is installing a sanitation system so Sureway's containers may be reused. Sureway has an operations manual and provides employee training for the handling of biomedical waste. The company has suitable equipment that it is willing to dedicate to Stericycle. It is also willing to transport steritubs, use the scanner system, and provide just-in-time service as required by Stericycle. Stericycle refused Sureway's offer to serve Stericycle and its request to transport biomedical waste to Stericycle's facility.

As of June 1992, Sureway had lost eight large hospital accounts to Stericycle with a revenue loss of \$62,059 per month. This represents 60 to 65% of the overall volume of waste Sureway handles. Sureway has lost no small accounts to Stericycle. Sureway has an application pending for statewide authority to haul medical waste. Sureway can stay in business if it raises its rates or if its pending application for statewide authority is granted.

22. Mark Leichner, president of Clark County Disposal, Vancouver, Washington, testified in opposition to this application. Clark County Disposal provides biomedical waste collection and transportation service in all of Clark County and in portions of Cowlitz and Skamania Counties under certificates G-65 and G-79. The company has the specialized equipment and trained personnel necessary to provide medical waste services. Clark County has a flow control ordinance which requires all waste, including medical waste, to be delivered to an in-county transfer facility. AEMC picks up the medical waste at the transfer facility for disposal.

23. Thomas William Bray, biomedical waste specialist for Brem-Air Disposal, d/b/a Brem-Med, Bremerton, testified in opposition to this application. Mr. Bray is in charge of customer relations, regulation monitoring and is the sole driver for Brem-Med, the medical waste division of Brem-Air Disposal. This protestant serves central and southern Kitsap County,

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excluding Bainbridge Island, under certificates G-38 and G-39. Brem-Med was formed and the collection equipment purchased in 1991, before this protestant was aware of this application. It began providing medical waste service after this application was filed. Brem-Air would transport biomedical waste to the Stericycle facility if directed to do so by a customer. It would meet any scheduling requirements of Stericycle and would provide any required specialized equipment.

24. Edward Rubatino, president of Rubatino Refuse Removal, Everett, testified in opposition to this application. This protestant serves within the City of Everett, the City of Mukilteo, and eastern Snohomish County under certificate G-58. The company has the specialized equipment and trained personnel necessary to provide medical waste services in the area of its certificate. Rubatino has lost two accounts to Stericycle, Providence Hospital and General Hospital, which formerly provided approximately 50% of the company's medical waste revenues. The loss has caused the company to lose money on its biomedical waste service. Rubatino would transport biomedical waste to the Stericycle facility at Morton if directed to do so by a customer. It would meet Stericycle's scheduling and equipment requirements. Stericycle will not accept medical waste collected by Rubatino.

25. Donald Hawkins, vice president of Murray Disposal and American Disposal, testified in opposition to this application. These protestants serve portions of Pierce County under certificates G-9 and G-87. Murray Disposal has the specialized equipment and trained personnel necessary to provide biomedical waste collection services within its territory. Both companies are willing to transport biomedical waste to Stericycle's facility in Morton if directed to do so by a customer. They would meet Stericycle's scheduling and equipment requirements.

26. Norman LeMay, refuse manager of Harold LeMay Enterprises, Inc., testified in opposition to this application. The LeMay companies provide biomedical waste collection service in portions of Pierce and Thurston Counties and in all of Lewis County under certificates G-98, G-97, and G-47. The companies have the specialized equipment and trained personnel necessary to provide biomedical waste collection services. The LeMay companies would transport biomedical waste to Stericycle's facility in Morton if directed to do so by a customer. They would meet Stericycle's scheduling and equipment requirements.

27. Jeffrey Daub, sales manager, AEMC, testified under subpoena for Rabanco. AEMC is the only protestant holding authority to collect infectious waste material from all locations in Washington State under certificate G-231. AEMC withdrew its protest prior to the close of hearing. AEMC has lost large

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hospital accounts to Stericycle. As a result, it laid off one employee and has idle equipment. AEMC may have to raise rates for geographically remote generators. AEMC is very concerned about its ability to continue to serve the entire state of Washington in a competitive environment.

28. Karen A. O'Neill, sales representative for Stericycle, testified on rebuttal in support of the application. Ms. O'Neill joined Stericycle in April 1992 to develop a marketing strategy for the secondary market. Stericycle defines its "secondary market" as any non-hospital generator of biomedical waste, consisting of mostly smaller generators. Ms. O'Neill is developing a strategy for letting physicians and clinics know that Stericycle's service exists. At the time of the hearing, she had secured 20 smaller generator customers. As of June 17, 1992, Ms. O'Neill had contacted accounts close to the I-5 corridor. The actions and their timing do not clearly demonstrate a commitment to offer nondiscriminatory service in all parts of the territory sought.

29. Stericycle's service to generators includes the transportation for collection and disposal of biomedical solid wastes. Stericycle controls and manages the performance of that service to its strict requirements. Stericycle's operations have been conducted in a good faith belief that they were lawful, engendered in part by the Commission's orders on temporary authority.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties to this proceeding and the subject matter that it presents.
2. The applicant's proposed amendment to its application, resulting in the text set out in Finding of Fact No. 1, should be accepted as purposes of this proceeding. Solid waste collection applications should be phrased in terms of collection territory rather than point-to-point transportation.
3. The protests of Resource Recovery Corporation and American Environmental Management Corporation should be dismissed.
4. The applicant is fit, willing, and able to provide contract carrier solid waste transportation for collection and disposal under chapters 81.77 RCW and 480-70 WAC.
5. Stericycle, Inc. is the shipper supporting this application. The service Stericycle offers to generators of biomedical waste includes the transportation for collection and

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disposal of biohazardous wastes, which it would control and manage to its strict specifications by contract with the applicant. Stericycle is operating as a solid waste collection company under RCW 81.77.010 but has no authority under RCW 81.77.040 to perform that service in the state. Stericycle's operations have been conducted under a good faith belief that they are lawful.

6. This application seeks authority to perform the transportation function for an unlicensed solid waste collection company, which is an unlawful purpose. As such, it is not required by the public convenience and necessity and may not be lawfully granted.

7. Stericycle, Inc. is not a broker of solid waste transportation under Chapter 81.77 RCW.

8. The existing carriers providing service in the territory sought will not provide service to the satisfaction of the Commission.

9. It is not in the public interest and is not required by the public convenience and necessity, pursuant to the provisions of RCW 81.77.040, that the applicant be issued a certificate authorizing it to operate in garbage and refuse collection service as applied for.

10. Public need does exist for collection and disposal of biomedical waste using a process such as Stericycle's to meet generators' reasonable liability and environmental requirements.

11. The effect of this order should be stayed to allow applicant and its supporting shipper to elect whether to redocket the application. The stay will be lifted after 90 days in the absence of notification from the applicant that it wants to pursue an amended application, or upon earlier notification that it desires the order to become final.

12. All motions made in the course of this proceeding which are consistent with the findings, conclusions, and decision of this order are granted; those inconsistent with it are denied.

Based upon the above findings of fact and conclusions of law, the Commission makes and enters the following order.

ORDER

THE COMMISSION ORDERS That Application No. GA-75154, as amended, of Ryder Distribution Resources, Inc. for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and refuse collection service is denied.

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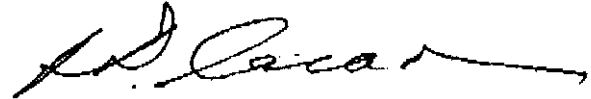
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THE COMMISSION FURTHER ORDERS That the protests of Resource Recovery Corporation and American Environmental Management Corporation are dismissed.

THE COMMISSION FURTHER ORDERS That the effect of this order is stayed. The applicant may determine whether it requests redocketing of the application. If it does request redocketing within 90 days, the stay shall continue during ensuing process until entry of a supplemental final order. If the applicant does not request redocketing within 90 days, or if it earlier requests that the stay be lifted, the Commission will order the stay lifted and the order will become final.

DATED at Olympia, Washington and effective this 25th day of January 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

Sharon L. Nelson (concurring in the result) -- I find the legal reasoning and statutory interpretation of the majority persuasive. If the Commission had more flexibility to authorize service consistent with the public interest, I would affirm the initial order. Nevertheless, the majority has correctly, I believe, worked through the legislative intent of our statutory structure.

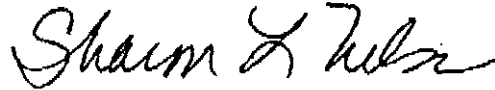
However, in my view, the result of this order is quite troubling. Ryder and Stericycle have provided an innovative service to the health care community, have invested in an economically depressed area in the state, and have continued operations for a year under a Commission ruling accepting their business arrangements. Now the result of this litigation forces them to restructure their operations and to pursue more litigation. I fear that this result may deter creativity and efficiency in both the solid waste and the health care industries.

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I hope the Legislature will revisit our statutory arrangements with a view to awarding more flexibility to the Commission or to reexamine its goals about meeting the public's needs, given today's market place.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-8920(1).

NOV 19 1993

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application GA-75968 of	)	ORDER M. V. G. NO. 1663
)	
SUREWAY MEDICAL SERVICES, INC.	)	HEARING NO. GA-75968
)	
for a Certificate of Public	)	COMMISSION DECISION AND ORDER
Convenience and Necessity to	)	GRANTING REVIEW; MODIFYING
operate motor vehicles in	)	INITIAL ORDER; GRANTING
furnishing SOLID WASTE	)	AMENDED APPLICATION, IN PART,
COLLECTION SERVICE.	)	ON CONDITION
.)	

NATURE OF PROCEEDINGS: This is an amended application for a certificate of public convenience and necessity to furnish biohazardous or biomedical (infectious) waste collection service in the State of Washington except Clark County; service also would be restricted in portions of Everett and Snohomish County.

INITIAL ORDER: An initial order entered on June 18, 1993, by Administrative Law Judge Heather L. Ballash would deny the application, concluding that the applicant has not demonstrated its financial or regulatory fitness, and concluding that the public convenience and necessity do not require the proposed service in that existing solid waste collection companies are providing service to the satisfaction of the Commission.

ADMINISTRATIVE REVIEW: Applicant petitions for administrative review. It excepts to virtually the entire initial order. Certain protestants answer in support of the initial order.

COMMISSION: The Commission grants review. It reverses the initial order's fitness findings and conclusions. It modifies the initial order's findings and conclusions regarding satisfactory service and public convenience and necessity, concluding that the applicant demonstrated that existing companies will not provide service to the satisfaction of the Commission and demonstrated a public need for the proposed services in a portion of the territory sought. It grants the amended application, in part, on condition.

[1] The Commission will apply provisions of Chapter 81.77 RCW to applications for specialized waste collection and disposal authority consistently with the unique requirements and attributes of the specialized service. RCW 81.77.040.

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

[2] In evaluating whether existing specialized biohazardous waste service will be to the Commission's satisfaction, the Commission does not limit its consideration to specific service failures of the sort that usually are significant in neighborhood garbage collection service, such as missed pickups. Its evaluation includes need-related sufficiency of service considerations -- whether the existing service reasonably serves the needs of the specialized market. RCW 81.77.040.

[3] The issue of need for an additional solid waste carrier to provide specialized collection service involves an evaluation of customers' reasonable need for additional or different service as well as the effect of a grant of competing authority on the viability of existing service. RCW 81.77.040.

[4] The Commission will not grant an applicant statewide authority when it demonstrates public need for additional specialized service in only a narrow geographical area. RCW 81.77.040.

[5] Generally, an applicant is not required to demonstrate that its proposed operations are certain to be profitable, only that it can finance the proposed operations for a reasonable period, until they either become profitable or demonstrate that they lack feasibility. RCW 81.77.040.

[6] The Commission does not grant voluntary dismissal of a proceeding as a matter of right after entry of an initial order, but will consider whether dismissal is consistent with the public interest. RCW 34.05.464; WAC 480-09-780.

APPEARANCES: Richard A. Finnigan, attorney, Tacoma, represents the applicant, Sureway Medical Services, Inc. Jack Davis, attorney, Seattle, represents protestant Washington Waste Hauling and Recycling, Inc.¹ (formerly Waste Management of Seattle, Inc.; Waste Management Rainier, Inc.; Waste Management Sno-King, Inc.; Waste Management Northwest, Inc.; Waste Management of Greater Wenatchee, Inc.; Waste Management of Ellensburg, Inc.; Waste Management of Spokane, Inc.; Waste Management of Kennewick, Inc.; and Washington Disposal Co., Inc.). David W. Wiley, attorney, Bellevue, represents protestant BFI Medical Waste Systems of Washington, Inc. (formerly American Environmental Management Corporation). Boyd Hartman, attorney, Bellevue, represented protestant Ryder Distribution Resources, Inc., at hearing. Protestants Brem-Air Disposal, Inc., and North

¹ Referred to as "Waste Management" in this decision.

Sound Sanitation, Inc., were represented at hearing by Thomas W. Bray, Medical Waste Specialist, Bremerton. Protestant Murrey's Disposal Co., Inc., was represented at hearing by Fred Masella, Medical Waste Division Manager, Puyallup. Anne Egeler and Robert Simpson, Assistant Attorneys General, Olympia, represented Commission Staff at hearing.

MEMORANDUM

This is an amended application for a certificate of public convenience and necessity to furnish biohazardous² waste collection service in the state of Washington except Clark County; service also would be restricted in portions of Everett and Snohomish County.

The applicant ("Sureway") is a Washington corporation. It is wholly owned by Northwest Waste Industries, Inc. ("Northwest Waste" or "Northwest"). When this application was filed, Sureway was a wholly-owned subsidiary of Rabanco Ltd., which was a partner in and doing business as Rabanco Companies.

The applicant proposes to provide specialized collection service for biohazardous waste generated by health care facilities and others. The proposed service will be offered statewide (with the exception of Clark County and certain portions of Everett and Snohomish County). The applicant would provide a variety of medical waste containers, including various sizes of rubberized tubs and cardboard containers. The applicant would do some in-house training of generator employees on the handling and packaging of biohazardous waste. Applicant would provide 24-hour and emergency service. Applicant would transport biohazardous waste to an incinerator in Ferndale, Washington, for disposal.

The applicant has been providing such specialized biohazardous waste collection service in parts of King County since late 1991. It is currently operating under Certificate No. G-236, which authorizes it to operate authority leased from Seattle Disposal Company, Rabanco, Ltd., et al., d/b/a Rabanco Companies ("Rabanco") in specified portions of King and Pierce Counties; and temporary authority which authorizes it to operate authority leased from Northwest Waste in portions of Seattle and in portions of King and Snohomish Counties.³ The applicant indicated that it would not need any of its current authority if this application were granted.

² For purposes of this order, the terms "biohazardous", "biomedical" and "hazardous" are used interchangeably.

³ Both leases are for a term of 99 years.

An initial order would deny the application. It would conclude that the applicant failed to demonstrate the financial feasibility of the proposed operations; that the applicant is not fit to conduct the proposed operations because it conducted operations without authority from the Commission; and that the services the applicant proposes are not required by the public convenience and necessity because existing solid waste collection companies are providing service in the territory to the Commission's satisfaction.

The applicant petitions for administrative review. It takes exception to essentially the entire initial order. It contends that it demonstrated its operational and financial fitness, that the protestants are not providing service to the satisfaction of the Commission, and that there is an unmet public need for the service it proposes. Several protestants answer in support of the initial order. Commission Staff did not file an answer.

The Commission grants review. It reverses the initial order's fitness findings and conclusions, concluding that the applicant demonstrated its financial and regulatory fitness to perform the operations it proposes. It modifies the initial order's findings and conclusions regarding satisfactory service and public convenience and necessity, concluding that the applicant demonstrated that existing companies will not provide service to the satisfaction of the Commission and demonstrated a public need for the proposed services in a portion of the territory sought. It grants the applicant authority coextensive with its existing operations, plus other territory in King and Snohomish Counties for which the applicant has applied, on condition that the applicant surrender its leased authority.

OPERATIONAL FITNESS

An applicant for authority under chapter 81.77 RCW must establish its regulatory fitness to receive authority. WAC 480-70-160. This means that an applicant must show a willingness and ability to comply with the rules and laws present in a regulated environment.

The initial order would find that the applicant is not fit to conduct the proposed operations because it knowingly and intentionally conducted operations without authority from the Commission.

The operational fitness issue concerns Sureway's operations during a period when its then-parent company, Rabanco, was engaged in an extensive business reorganization. To provide a context for the discussion that follows, and to correct certain

factual inaccuracies in the initial order, the Commission will briefly summarize the relationships among the companies involved⁴ and the relevant application and certificate history.

Rabanco has long conducted garbage and refuse operations under Certificate No. G-12. G-12 is a general solid waste permit, and therefore includes authority to collect and transport biomedical and biohazardous waste.

In December 1987, Sure-Way Incineration, Inc., applied for statewide authority to provide medical and infectious waste collection service, in Application No. GA-868. In January 1988, the Commission granted Sure-Way Incineration temporary authority to provide the service statewide. In February 1988, a Rabanco partner, Rabanco Ltd., purchased the stock of Sure-Way Incineration, Inc., and the stock of Northwest Incineration, Inc. from Stan Robinson. The two corporations were merged under the name Sure-Way Incineration, Inc., which Rabanco maintained as a separate wholly-owned corporation. In November 1990, the Commission denied application No. GA-868, in Order M. V. G. No. 1451. Sure-Way Incineration's temporary statewide authority ceased on entry of that order. RCW 34.05.473.

After the Commission denied Application No. GA-868, Sure-Way Incineration, Inc., was dissolved, and part of its operations were taken over by a division of Rabanco, d/b/a Rabanco Medical Waste Systems. The Rabanco division continued to serve former Sure-Way Incineration biomedical waste customers who resided within the territory of Rabanco's G-12 certificate.

During 1991, the Rabanco partnerships began a process of reorganization, which was not concluded until the end of 1992. The reorganization was designed to split the Rabanco operations between the Razore and Banhero families, with the neighborhood garbage operations to be split along geographical lines and the medical waste operations to be handled by a single company.

As part of the reorganization, a new Rabanco-owned corporation, Sureway Medical Services, Inc. (the applicant), was formed to perform the biomedical waste services that Rabanco Medical Waste Systems was performing, and assets related to the biomedical waste operation were separately identified for transfer to the new entity. The incorporation of Sureway was completed in December 1991. The assets that had been used in the operation of Rabanco Medical Waste Systems were contributed to

⁴ According to the testimony of Sureway's president, Richard Ramsey.

Sureway. Sureway continued the operations of Rabanco Medical Waste Systems, without authority from the Commission. It could not conduct operations under Rabanco's G-12 certificate because it was a separate corporation rather than a division of Rabanco.

In 1992, as part of the continuing Rabanco reorganization, Sureway became a wholly-owned part of another Rabanco subsidiary, Northwest Waste. Rabanco then sought to spin off to Northwest Waste the northern part of the G-12 territory, restricted against biomedical waste. It sought to spin off to Sureway authority to collect and transport biomedical waste in all of the G-12 territory. In March 1992, Rabanco filed a joint application with Northwest Waste and a separate joint application with Sureway to accomplish the proposed division of the G-12 authority, by transfers of authority out of G-12. Neither application was protested.

The Commission eventually approved a division of the G-12 authority, but not as proposed in the March 1992 applications. In October 1992, the Commission issued to Northwest Waste Certificate No. G-235, which gave Northwest Waste all (i.e., not restricted against biomedical waste) of the G-12 authority in the territory sought in Northwest's application. In December 1992, the Commission issued to Sureway Certificate No. G-236, which authorized it to operate Rabanco's remaining authority, restricted to biohazardous or biomedical waste, under a lease from Rabanco.⁵ In early January 1993, the Commission granted Sureway temporary authority to provide biomedical or biohazardous waste collection service in areas covered by Northwest's G-236, under lease from Northwest.⁶

The applicant concedes that it conducted medical waste operations in the G-12 territory without Commission authority before the Commission granted it the permits under which it currently operates. It contends that there are mitigating circumstances, and that it conducted the operations in good faith. It emphasizes that Rabanco was engaged in a lengthy and extensive business reorganization at the time, and contends that it did everything possible to obtain the necessary certificates while engaging in extensive discussions with Commission Staff concerning the proper form of the reorganization. It contends that the business reorganization was discussed with the Commission, Commission Staff, and the Attorney General's office. It contends that there were medical waste customers whose

⁵ The initial order incorrectly states that G-236 was a result of a lease between Northwest and Sureway.

⁶ The initial order incorrectly states that no temporary authority to operate such leased rights has been issued.

requirements needed to be served while Sureway was getting authority. It contends that in light of these events, its good faith behavior, and the fact that the Commission eventually issued it Certificate No. G-236 and temporary authority without finding it unfit,⁷ the initial order's proposed fitness conclusion must be reversed.

The protestants point to evidence that Sureway conducted operations without authority from the Commission before Sureway filed any application for authority, and contend that there is no evidence that Sureway requested Commission approval of it conducting operations prior to transfer and/or without temporary authority. Protestant BFI contends that a "good faith operations" rationale is inapplicable, because Sureway did not begin operations without knowledge of Commission regulations. BFI suggests that Sureway should be deemed to have made a conscious "assumption-of-the-risk" choice to continue on-going operations without authority. BFI argues that the Commission's granting of temporary authority to Sureway carries no weight in the Commission's appraisal of fitness in an application for continuing authority, and that the Commission's granting of G-236 is not precedent in this proceeding because there is no showing that fitness was raised as an issue in the G-236 proceeding.

Sureway's principals should have known that they required their own authority to operate in their parent's territory. They have considerable experience with Commission regulation. That Sureway's parent could have continued conducting its own operations under Certificate G-12, and Sureway apparently did not conduct any operations that its parent could not have conducted, does not legitimize the unauthorized operations. Sureway could at any time have sought temporary authority to perform the services.

However, past illegal conduct per se is not a bar to granting an application. Sun Transportation Co. v. Utilities and Transportation Commission, noted at 54 Wn. App. 1018 (1989). Upon reviewing fitness to acquire authority, the issue is whether the applicant has demonstrated its ability and its motivation to comply with the law. The Commission attempts to determine if the applicant is likely to comply in the future. An applicant's assurances of future compliance, when combined with objective

⁷ This argument is without merit. See, Order M. V. No. 140431, In re Ell Transport, Inc., App. No. E-19683 (October 1989); Order M. V. No. 127318, In re Amalgamated Services, Inc., App. No. P-66973 (April 1983); Order M. V. No. 135041, In re Sun Transportation Company, Inc., App. No. P-68362 (November 1986).

manifestations of intent to comply, may establish an applicant's fitness notwithstanding past violations. Order M. V. No. 141581, In re Gary Merlino Construction Co., Inc., App. No. E-19841 (June 1990); Order M. V. G. No. 1452, In re American Environmental Management Corp., App. No. GA-874 (November 1990).

The Commission believes that the objective circumstances are consistent with a finding that Sureway is willing and able to comply with law and Commission rules in the future. Sure-Way Incineration did cease providing service outside the territory of its parent when the Commission denied its application GA-868,⁸ and no operations have been conducted since then that the parent could not have legally conducted. Rabanco/Sureway initiated discussions with the Commission regarding the Rabanco reorganization and Rabanco's desire to spin off portions of Certificate G-12; the Commissioners directed the companies to work with Commission Staff; and Rabanco/Sureway sought guidance from Commission Staff as to the proper means to achieve its desired division of G-12, and followed Commission Staff's recommendations.

That arrangements for temporary authority were deferred until questions regarding an appropriate final solution were resolved was inappropriate in retrospect and will not be condoned in the future. The Commission is satisfied, however, that Rabanco and Sureway cooperated fully with the Commission and its Staff in trying to develop an acceptable operating structure in the context of a complex business reorganization. Their attitude and actions during this period do not indicate a disdain for, or inability of future compliance with, requirements that are central to the Commission's regulatory role.

PUBLIC CONVENIENCE AND NECESSITY

The law regulating the transportation of solid waste for collection and disposal in Washington, Chapter 81.77 RCW, follows the pattern of utility regulation, in that it treats solid waste collection as a natural monopoly with efficiencies and public benefit gained through exclusive service in a territory. The law provides for service territories in which a carrier may be the sole provider, but must in return offer nondiscriminatory service at regulated rates.

⁸ Several of Sureway's witnesses are former Sure-Way Incineration customers whose service was discontinued when Sure-Way Incineration lost its temporary statewide authority.

Overlapping authority may be granted only if the existing carrier in the territory will not provide service to the satisfaction of the Commission, and then only if the new service is required by the public convenience and necessity. RCW 81.77.040. The Commission applies objective tests 1) for performance to its satisfaction and 2) for public convenience and necessity, based upon the service of existing carriers and upon public needs at the time the application is filed.

The Commission has consistently applied a stringent test for an overlapping grant of neighborhood garbage collection service, in light of the statutory statements of policy in Chapter 81.77. See, Order M. V. G. No. 1526, In re Superior Refuse Removal Corporation, App. No. GA-849 (November 1991), and cases cited therein.

The Commission views specialized hazardous waste collection service as different from traditional neighborhood collection service. Beginning in the 1970s, the Commission recognized a public need for specialized carriers who will provide universal collection of wastes requiring specialized services, such as hazardous waste, in specified service territories.⁹ In subsequent adjudicative decisions, the Commission recognized that the objectives of Chapter 81.77 RCW are not necessarily best achieved by strict adherence to the same tests applied to grants of typical residential or commercial collection service. It has applied standards for grants of overlapping specialized biohazardous waste collection and disposal that are consistent with the nature of the service.

In Order M. V. G. No. 1451, In re Sure-Way Incineration, Inc., App. No. GA-868 (November 1990), the Commission observed that specialized biohazardous waste collection service differs in many ways from traditional neighborhood solid waste collection service, and that the entire operation more closely resembles that of a motor freight carrier with statewide authority than that of a typical garbage company.¹⁰ The Commission concluded that the policy and economic

⁹ See, Order M. V. G. No. 647, United Drain Oil Service, Inc., App. No. GA-465 (November 1973); Order M. V. G. No. 1183, Amalgamated Services, Inc., App. No. GA-767 (November 1984); Order M. V. G. No. 1452, American Environmental Management Corp., App. No. GA-874 (November 1990).

¹⁰ The services offered by biohazardous operators are specialized. The material requires special handling and treatment before disposal. Applicants for service usually wish to serve the entire state or large portions of the state. The needs of specialized market segments are an important factor in evaluating the adequacy of existing service.

reasons favoring exclusive authority for typical residential or commercial collection in a specific territory are less pertinent in this new, specialized area. It expressed doubt that any single biohazardous waste carrier could provide a level of statewide service, on its own, which would satisfy the Commission and meet the needs of the waste generators. The Commission suggested that a grant of one application for statewide biohazardous waste authority might not preclude a grant of others.

In Order M. V. G. No. 1596, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (January 1993), the Commission further developed the framework for evaluating applications for overlapping biohazardous waste authority. It concluded that the satisfactory nature of service by existing providers of specialized solid waste collection services should be measured according to the specialized needs of customers. The Commission also set out additional factors to be considered in determining the public convenience and necessity in such applications, particularly the need to balance the needs of existing carriers for a customer base that is large enough for economic viability, considering their obligation to provide satisfactory service, with the public's need for responsive service.

[1] The Commission continues to believe that the objectives of RCW 81.77.040 are not necessarily best achieved for specialized services by the tests applied to determine grants of neighborhood garbage collection service, particularly when the service territory is large or is the entire state. In evaluating applications for overlapping specialized biomedical waste authority, the Commission will continue to follow the approach set out in Sure-Way Incineration and Ryder.¹¹ It will apply provisions of Chapter 81.77 RCW consistently with the unique requirements and attributes of the specialized service.

[2] In evaluating whether existing companies will provide service to the satisfaction of the Commission, the Commission will not limit its consideration to evidence of service failures of the sort that usually are significant in neighborhood garbage collection service, such as service refusals, missed pickups or garbage strewn about. Rather, it will broaden the satisfactory service inquiry to include need-related sufficiency of service considerations -- whether the

¹¹ The Commission took this approach in Order M. V. G. No. 1633, In re Medical Resource Recycling System, Inc., App. No. GA-76819 (May 1993).

existing service reasonably serves the needs of the specialized market. See, Black Ball Freight Service, Inc. v. WUTC, 74 Wn.2d 871, 447 P.2d 597 (1968); Order M. V. C. No. 1978, In re Sharyn Pearson and Linda Zepp, d/b/a Centralia/Sea-Tac Airporter Express, App. No. D-75018 (September 1992).

[3] Consistent with the state's strong health and safety interest in assuring universal collection and secure service at fair rates, the Commission will consider whether a grant of competing authority would be detrimental to the public because it would jeopardize the viability of existing service. See, Enoch Rowland, d/b/a Kleenwell Biohazard and General Ecology Consultants, Docket No. TG-920304, pp. 20-23; Order M. V. C. No. 1909, In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No. D-2589 (May 1991); Pearson and Zepp, supra.

The applicant's position, both at hearing and on review, is that existing service is not satisfactory, and that there is a need for the services it proposes, for several reasons: there have been specific service failures by existing companies; numerous waste generators are not being served by any transporter; more than one carrier must be available in order for generators to comply with some county and city ordinances governing the storage, collection, transportation and disposal of medical waste; and there is an unmet need for another carrier to provide service options.

The initial order would find that the applicant did not claim that the protestants are not serving to the Commission's satisfaction in the areas where they offer service, and does not further consider the issue of whether existing service is satisfactory. It would conclude that the evidence does not support the applicant's contentions regarding public need. The applicant excepts to all of the initial order's satisfactory service and public need findings and the conclusion.

The Commission does not completely agree with the initial order's evaluation of the evidence on these issues. It concludes that the evidence supports a finding of insufficiency and a grant of authority in a portion of the territory sought.

a. Satisfactory Service

The initial order is in error in finding that the applicant did not claim that the protestants are not serving to the Commission's satisfaction. The applicant has alleged specific service failures as well as need-related service insufficiency.

The Commission has reviewed the evidence relating to alleged specific service failures. Only two witnesses related specific service failures by existing companies. Neither of the failures establishes that existing service is insufficient or otherwise unsatisfactory. Carol Davis of Lynnwood was unable to get service from BFI started as quickly as she wanted. BFI began service within a week after she requested service, and she finds its service satisfactory. The delay in starting service does not constitute a serious service failure. Dana Watts of Kennewick testified that Waste Management had provided satisfactory service until about a month before the hearing, when it required her firm to sign a contract which specified that Waste Management would not handle chemotherapy waste. She has not personally discussed the problem with Waste Management. A Waste Management witness later testified that the company would handle the waste described by Ms. Watts. The service failure apparently was due to confusion about the nature of the waste generated.

Sureway's need-related satisfactory service arguments are analyzed in the discussion of public need that follows. Sureway argues that the Commission cannot find existing service satisfactory because it is not meeting the needs of the relevant public in three respects: it is leaving a large body of generators unserved; it is not meeting generators' need to have a secure backup carrier in order to comply with local medical waste ordinances; and it is not meeting the public's need for more service options. Sureway did demonstrate that existing service is not satisfactory in a portion of the territory sought, in that existing service does not reasonably satisfy the needs of the market in that portion.

b. Public Need

An applicant for solid waste authority has the burden of demonstrating that the services it proposes are required by the public convenience and necessity. An applicant must demonstrate public need through the testimony of waste generators who require the proposed service.

Sureway presented the testimony of twelve biomedical waste generators to demonstrate sentiment in the community about this application. Nine of the witnesses reside in King County or in Snohomish County. Eight of those nine are present or recent BFI customers. Five of the eight BFI customers were customers of Sure-Way Incineration who switched to BFI's predecessor, American Environmental Management Corporation ("AEMC"), after Sure-Way Incineration lost its temporary authority. The ninth witness is a current Sureway customer in Seattle who desires Sureway's service at a facility in Redmond.

Only three of the waste generators who testified in support of the application reside outside of the Puget Sound area. Rand Masteller, Spokane, uses Medical Resource Recycling. Dana Watts, Kennewick, used Waste Management at the time of the application, and was unserved at the time of hearing. Cheryl Romple, Yakima, used to receive service from Sure-Way Incineration, but has not been receiving service from any biomedical waste transporter recently.

The testimony of the Puget Sound area witnesses who are presently served by BFI was to the effect that their present service options are too limited to satisfactorily meet their needs. Five BFI customers who support Sureway's application previously had service from the applicant's predecessor, Sure-Way Incineration, and seek additional service options because of that experience. Clearly some BFI customers have concluded that its service is not optimal for their needs. Several BFI customers also expressed a need for an assured backup carrier in the event BFI discontinues service or its service becomes unsatisfactory. These witnesses' support is not a mere preference for competition, but a dissatisfaction with the service options presently available based on their experience in seeking solutions to their waste removal requirements. See, Order M. V. No. 146148, In re Saber Azizi, d/b/a Fast Courier & Assoc., App. No. E-76066 (February 1993).

Consistent with the view it took in Ryder, the Commission gives considerable weight to the judgment of the biohazardous waste generators regarding the sufficiency of existing service and their need for service alternatives. The Commission finds that the testimony establishes that existing companies will not provide service to the satisfaction of the Commission, and that the public convenience and necessity require the services the applicant proposes in King and Snohomish Counties.

There is no similar evidence of need in any other part of the state. None of the three witnesses from outside the Puget Sound area has had personal experience with more than one biohazardous waste collection company. None has investigated the services available from other existing companies. Their support does not demonstrate that existing service in their areas fails to reasonably serve the market for medical waste collection and disposal.

Nor did the applicant prove the other bases for statewide need that it advanced in this proceeding -- that generators are unable to comply with locally mandated requirements for a backup carrier, or that there is an unserved need.

The applicant's local ordinance argument, if proven, could establish that there is a public need for an additional provider of statewide service. There are areas of the state where the traditional solid waste companies do not offer specialized biohazardous waste service, and BFI is the only possible provider.¹² However, the Commission agrees with the initial order's finding that the applicant did not establish that any generator is unable to comply with a local ordinance requiring a backup transporter. None of the ordinances introduced into evidence mention contingency plans for transportation of hazardous waste. The one witness who testified about his experience working with county officials in developing county waste management plans could not recall any county that required generators to identify a backup transporter where there were not already at least two licensed transporters available.

Sureway did not prove its unserved generators proposition. BFI admits that there are many generators who are not taking service from anyone, particularly in rural areas, but does not concede that it is unable or unwilling to serve them. Sureway's market analysis and other evidence fails to show why the unserved generators are not receiving service. Only three of Sureway's witnesses were unserved at the time of hearing, and none has made a reasonable effort to determine whether the service it requires is available from existing companies.¹³ None of Sureway's witnesses resides in a rural area where BFI's service is the only service available. As BFI persuasively argues, the existence of an unserved market does not by itself

¹² Ryder withdrew its protest to this application, and the extent of its service under temporary authority is not in the record. Ryder amended its application for permanent authority to serve only 17 counties. The Commission denied Ryder's application for permanent authority in Order M. V. G. No. 1596, supra, and its temporary authority is continuing only because of a stay of that order. See, Order M. V. G. No. 1654, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (August 1993). Waste Management provides a comprehensive medical waste service in the Kennewick area, but provides only limited service or no service in its other territories.

¹³ Dana Watts, Kennewick, has not tried to determine whether any existing company besides Waste Management can provide the service she requires. Cheryl Romple, Yakima, has not searched for service since Sure-Way Incineration stopped serving her. Kimberly Ball's Seattle employer has made no effort to obtain service for his new Redmond location.

demonstrate that the existing carriers are unable or unwilling to serve that market or that generators who want service would be unable to obtain the service they need. Sureway simply failed to provide evidence from unserved shippers that they needed service.

[4] The only public need for additional authority demonstrated on this record is in King and Snohomish Counties. The Commission will not grant an applicant statewide authority when it demonstrates public need for additional service in only a narrow geographic area. Order M. V. No. 129469, In re Thomas R. Abbott, App. No. E-18899 (April 1984); Order M. V. No. 129470, In re The Nestaval Corporation, App. No. P-67706 (April 1984).

That is not to say that the Commission is persuaded that existing carriers are providing a level of service that meets the needs of waste generators statewide. There are large areas of the state where specialized biomedical waste service is not available unless BFI is able and willing to provide it. BFI has only two terminals and eight drivers. BFI admits that its operations have been hurt by competition from Ryder/Stericycle in portions of the state. It has had to lay off employees and is re-evaluating service because of that competition. It is difficult to see how BFI can reasonably serve the requirements of the thousands of medical and dental facilities statewide. However, the Commission cannot assume evidence not in the record. There is no evidence that any waste generator who desires service cannot obtain service from an existing company.

It appears that BFI is not making sufficient efforts to make its services known or to provide a complete service throughout the state. The inference that may be drawn from the evidence of unserved generators and the small and declining size of BFI's operations is bolstered by the testimony of Sureway's three Eastern Washington witnesses and Sureway's marketing experiences. Not one of the three Eastern Washington witnesses had heard of BFI before this proceeding. The applicant has found interest in its services expressed at trade shows by waste generators from outside its current service area who are not being served by any company. Sureway has obtained new customers who were previously unserved even in its competitive existing service area, through making itself known.

BFI did little to respond to the specifics of the applicant's case or to inferences from the case as a whole. A BFI sales representative claimed that there are no points in the state where the company has not solicited, and named some remote towns that he has visited, but described the company's marketing efforts in very general terms. He provided no numbers and insufficient detail for the Commission to determine, e.g., how many potential generators the company solicits in various markets

in a given period, how frequently it solicits in the smaller markets, or how extensive its advertising is. See, Order M. V. No. 140879, In re Jim Canaday, d/b/a Canaday Farms, App. No. E-19829 (February 1990); Order M. V. No. 135702, In re Cartin Delivery Service, Inc., App. No. E-19099 (April 1987).

Because of the strong public health and safety interest in the proper collection and disposal of biomedical waste, the Commission cannot consider existing statewide service to be satisfactory if the only holder of statewide specialized authority is not making reasonable efforts to make its services known and to attract business throughout the territory.

In Sure-Way Incineration, the Commission stated that it was unconvinced that any single statewide biohazardous waste company could, on its own, provide a level of service that would satisfy the Commission and meet the needs of the state's waste generators. It remains unconvinced. It cannot, however, grant additional statewide authority on this record.¹⁴

c. Effect of Grant on Viability of Existing Operations

As the Commission noted in Ryder, in balancing the public's need for responsive service and the existing carriers' need for a customer base that is large enough for economic viability, the Commission may deny an application for overlapping authority even if existing carriers are unable to provide the service the public desires, when the existing service is satisfactory to the extent provided and the customer base cannot support another carrier. The Commission recognizes that competition in the collection and disposal of biohazardous waste may not necessarily benefit the public.

Protestant BFI addressed this issue at hearing, and on review suggests that dilution of the market would result from a grant of authority which would drastically increase all existing providers' costs of service. Its witness testified that granting the application would "probably cripple us." He testified that

¹⁴ The Commission would find it much easier to make sound decisions on the issues of satisfactory service and public necessity if the parties had presented more detailed evidence. The applicant's case depends too much on inference and has too little of the sort of detailed generator testimony that the Commission found persuasive in Ryder, supra. Protestant BFI provided too little evidence for the Commission to find that it is providing a complete service throughout the state.

BFI already has far too many competitors in many of its service areas, and that in rural areas where it is the only current service provider, BFI would have to either cut back on its service or raise prices so tremendously that generators would probably opt to throw waste into sanitary land fills.

The Commission is not persuaded by BFI's argument. BFI has been competing with Sureway and its predecessors in the Seattle area since the Commission granted BFI's predecessor, American Environmental, authority in 1990. Granting this application should have little effect on the viability of BFI's operations in that portion of the state. BFI's only showing of harm resulting from competition relates to competition from Ryder/Stericycle in the Seattle area. BFI has not shown that the rural areas where it presently is the only service provider cannot support more than one specialized biohazardous waste collector. Its admission that many generators in the rural areas presently are unserved casts doubt on its argument. The Commission is not persuaded that BFI's ability to provide the collection of biohazardous waste in the state, or the public's ability to receive that service, would be seriously endangered by a grant of statewide authority to Sureway.

FINANCIAL FITNESS/FEASIBILITY

The applicant's financial ability to provide the proposed service also is an issue in evaluating an application. The applicant must state its assets and establish its costs of operation and facilities and demonstrate the financial feasibility of the operation. RCW 81.77.040; Order M. V. G. No. 1367, In re Northwest Unitech, Inc., App. No. GA-864 (January 1989).

Sureway has shown that it has adequate equipment and personnel to provide the service and has a disposal site available on a consistent, reliable basis.

The initial order would find that Sureway has not established its financial fitness, the cost of service, and the feasibility of its operations. It would base its findings on the testimony of Sureway's president, Richard Ramsey. Mr. Ramsey testified that Sureway has been operating at a loss since Stericycle began operations in 1992. He stated that Sureway lost all of its major hospital accounts to Ryder Distribution Resources, Inc., which provides contract services to Stericycle under temporary authority from the Commission. He stated that Sureway proposes to ensure its financial survival by serving small waste generators statewide.

The initial order would find that Sureway failed to provide sufficient evidence of projected costs to show that it will be able to turn the business around and make a profit by operating statewide, especially with the number of carriers currently providing service.

On review, Sureway contends that it made a sufficient showing of financial fitness and the financial viability of statewide operations. It points to evidence that prior to Ryder/Stericycle's entry into the Seattle-area market, it operated profitably in competition with BFI, Waste Management, and other carriers; evidence that its recent more aggressive marketing efforts have attracted new customers in its present territory despite competition from Ryder/Stericycle and others; evidence that it has sufficient resources at this time to serve throughout the state, and has access to additional funding from banks and from its parent; and Mr. Ramsey's analysis of the cost of statewide service and the return made from the service, based on Sureway's experience in serving the market in western Idaho. It complains that the initial order failed to identify the deficiencies in its presentation.

The protestants contend that Sureway's projections, which estimate a 35% increase in revenue and a 19.5% increase in costs, are unrealistic given the characteristics of a statewide market. They contend that Sureway provides no foundation for its projection that it would obtain 15% of currently unserved generators. They contend that the applicant has not met the burden of proof under chapter 81.77 RCW of financial fitness because the pro forma statement does not state the incremental costs of doing business on a statewide basis. Protestant BFI argues that Sureway failed to provide a sufficient breakdown of its cost projections to enable the parties to test its projected total costs for statewide service, and failed to make any sample route presentation where it could show what costs of service to specified distant, less populated, and/or rural parts of the state might entail. BFI argues that Sureway's analysis fails to consider the possible market dilution that statewide overlap might have, and the incremental cost of service increases for all carriers that might follow.

The Commission concludes that the applicant's financial showing is sufficient to establish its financial fitness and the financial feasibility of statewide operations. The Commission rejected arguments similar to those the protestants make here when Sure-Way Incineration made them in the application for statewide authority of BFI's predecessor. Order M. V. G. No. 1452, In re American Environmental Management Corp., supra. The information concerning Sureway's assets is complete and

establishes that it presently has the financial and organizational ability to conduct statewide operations. The applicant has substantial assets of its own and has access to additional funding, if needed, from banks and its parent.

Sureway has provided an estimate of the cost of the proposed service. Its projections of future market share and the cost of providing service in areas outside its existing territory are necessarily estimates but are not purely speculative. Sureway's principals have experience conducting a statewide operation. They have attended trade shows and conventions around the state and have lined up future customers. They have demonstrated that they can attract new customers even in a competitive environment.

[5] The initial order places too great a burden on the applicant to demonstrate the likelihood of success of the proposed operations. Neither the initial order nor the protestants cite any case in which the Commission has required that an applicant demonstrate that its proposed operations are certain to be profitable.

The Commission is satisfied that Sureway has sufficiently demonstrated that it could finance statewide operations for a reasonable period, until they either become profitable or demonstrate that they lack feasibility. The factual presentation differs substantially from that in Northwest Unitech, where the applicant had only \$1500 in assets, had no existing access to other financing, possessed no contract to provide the service, had no experience in providing service, and presented no supporting witnesses with a present need for service.

However, this order would not grant the applicant statewide authority. The Commission must, therefore, consider whether the applicant has demonstrated financial fitness to perform the services it proposes in the territory that this order would grant it.

The authority that this order would grant would considerably expand the applicant's authorized territory. The applicant indicated that it is already having considerable success in attracting new customers in its current service territory. It demonstrated that there are waste generators in the expanded territory who desire its services. The additional expense of extending service to territory that is adjacent to its present territory should be minimal. The Commission is satisfied that the applicant can finance operations in the additional territory that this order would grant it for a reasonable period, until its operations either become profitable or demonstrate that they lack feasibility.

CONDITIONAL GRANT

The Commission will grant Sureway authority coextensive with its existing operations, plus other territory in King and Snohomish Counties for which it has applied, on condition that Sureway surrender its leased authority, and further conditioned on Sureway obtaining the underlying certificate holders' relinquishment of the authority that is the subject of Sureway's leases.¹⁵ This will result in a permit that is consistent with the need shown, and is easier to understand and enforce.¹⁶

DISMISSAL

By letter filed with the Commission on November 9, 1993, Sureway has requested leave to withdraw its petition for administrative review of the initial order. It explains that it has applied to transfer its rights under Certificate No. G-236 to BFI Medical Services, and no longer has any desire to engage in regulated biomedical waste service.

[6] The Commission does not allow withdrawal as a matter of right after entry of an initial order. Instead, because it is charged with regulating in the public interest, it will consider public interest factors to determine whether to grant the dismissal. Everett Airporter Services Enterprises, Inc. v. San Juan Airlines, Inc., d/b/a Shuttle Express, Docket No. TC-910789 (January 1993); Order S. B. C. No. 490, Clipper Navigation, Inc. v. Puget Sound Express, Inc., Docket No. TS-900977 (February 1992). The Commission believes that the public interest requires us to deny the request for leave to withdraw.

Here, the issues are real issues and the controversy was and appears to be a real controversy. The application for transfer of Certificate No. G-236 has not been approved as of this date. This proceeding involves issues of significant interest to the public and the regulated industry. The

¹⁵ If this transaction is not consummated, the Commission will rule on Sureway's application to acquire leased authority from Northwest Waste.

¹⁶ Applicant's present operations under lease are authorized in territories that are defined by metes and bounds. This manner of allocating territory is appropriate to neighborhood garbage service, but is not necessary for grants of specialized authority, is difficult to understand and enforce, and does not represent the Commission's preferred practice in granting authority for specialized biomedical waste collection.

application has gone through all stages of a proceeding except entry of a final order: hearing, post-hearing memoranda, initial order, petition for administrative review and answer. It is ready for the Commission to decide.

CONCLUSION

The Commission concludes that the applicant has demonstrated its regulatory and financial fitness to conduct the specialized biomedical waste services that it proposes. It rejects the initial order's proposed fitness findings and conclusions, and makes its own.

The Commission concludes that the applicant has demonstrated that existing companies will not provide specialized biomedical waste service to the satisfaction of the Commission in King and Snohomish Counties, and has established public need for the proposed service in that territory. It concludes that the applicant failed to demonstrate that the public convenience and necessity require an additional carrier of biohazardous waste in the rest of the state. It modifies the initial order and grants the amended application in part, on condition

FINDINGS OF FACT

Having discussed the evidence and having stated findings and conclusions, the Commission makes the following findings of fact and conclusions of law. Portions of the preceding findings pertaining to the ultimate facts are incorporated herein by this reference.

1. On April 17, 1992, Sureway Medical Services, Inc. ("Sureway") filed an application for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and/or refuse collection service. The application originally sought authority to provide biohazardous waste service statewide. As amended, the application is as follows:

Garbage and refuse collection services consisting of biohazardous or biomedical (infectious) waste in the State of Washington except Clark County. Service is further not authorized in the following territory:

GARBAGE AND REFUSE COLLECTION SERVICE In the City of Everett and those portions of Snohomish County adjacent thereto, described as follows: (1) South of Everett: Beginning at the point where the Great Northern Railway right-of-way intersects

with the south city limits of Everett; thence southerly along said right-of-way to its intersection with 61st Street extended; thence west along 61st Street extended to its intersection with the new Alternate PSH-1 (U.S. 99 by-pass); thence southerly along said U.S. 99 by-pass to its intersection with 84th Street; thence west along 84th Street to the Upper Ridge Road; thence northerly along the Upper Ridge Road, including 78th Place S.W. and 76th Place S.W., to the Beverly Park-Maple Heights Road; thence northerly along the Beverly Park-Maple Heights Road to the 7th Standard Parallel North; thence west on said parallel to the east line of Section 3, T. 28 N., R. 4 E.W.M.; thence south on said line to the east-west centerline of said Section 3; thence west on said centerline to the east city limits of Mukilteo; thence northerly and westerly following the city limits of Mukilteo to the shore line of Possession Sound and/or Port Gardner Bay; thence easterly along said shoreline to the west city limits of Everett. Also in that portion of Snohomish County described as follows: Starting at the points where 40th Ave. W. extended intersects with the north boundary of Paine Field; thence east on said north boundary to the east boundary of Paine Field; thence south to a line to 100 feet north of 90th Street S.W.; thence east on this line to U.S. Highway 99 (no service to be rendered on Kelly-Corbin Road); thence north on a line one block west of U.S. Highway 99 to its intersection with 84th Street S.W.; thence west on the south side of 84th Street S.W. to Upper Ridge Road; thence north on Upper Ridge Road (with no service to be rendered on Upper Ridge Road) to Beverly Park-Maple Heights Road; thence following the west side of the Beverly Park-Maple Heights road to the 7th Standard Parallel North; thence west on said parallel to the east line of Section 3, T. 28 N., R. 4 E.W.M.; thence south on said line to the east-west centerline of said Section 3; thence west on said centerline to the east city limits of Mukilteo; thence southerly and easterly following said city limits to 40th Ave. W. extended; thence south on 40th Ave. W. extended to the north boundary of Paine Field, the place of beginning. (2) East of Everett: Beginning at the point where Hewitt Avenue (PSH-15) intersects with the city limits of Everett; thence east on Hewitt Avenue extended to the southeast corner of Section 21, T. 29 N., R. 6 E.W.M.; thence north on the east line of said Section 21 extended to the

northeast corner of Section 4, T. 29 N., R. 6 E.W.M.; thence west on the north line of said Section 4 extended to the point where it intersects with the southerly shore of Steamboat Slough; thence westerly along said shoreline to Port Gardner Bay; thence southerly along the shoreline of said bay to the north city limits of Everett.

The following authority was obtained by transfer from Basin:

GARBAGE AND WASTE MATERIALS COLLECTION SERVICE
From within that portion of Snohomish County described as follows: Bounded on the north by the south city limits line of the City of Everett extended east to its intersection with the New Broadway Cut-off (alternate PSH-1); thence south on the New Broadway Cut-off to its intersection with Pacific Northwest Traction Company Road; thence south on both sides of said road to its intersection with Stockshow Road; thence west along the north side of Stockshow Road to its intersection with 8th Ave. W. extended; thence north on 8th Ave. W. extended to the intersection of 9th Ave. W. and U.S. 99; thence westerly and northerly on 9th Ave. W. to its intersection with 100th St. S.W. and Holly Drive; thence west on 100th St. S.W. (but not including 100th St. S.W.) to 12th Ave. W. extended (West boundary of Sec. 13, TWP 28 N., Range 4 E.); thence north on 12th Ave. W. extended to a point 100 Ft. north of 90th St. S.W.; thence east on a line 100 Ft. north of 90th St. S.W. to U.S. 99 (service is authorized on both sides of the Kelly-Corbin Road for its entire extent); thence northeast along U.S. Highway 99 (both sides) to its intersection with 84th St. S.W.; thence west on the north side of 84th St. S.W. to its intersection with Upper Ridge Road; thence north on both sides of Upper Ridge Road to its intersection with the Beverly Park-Maple Heights Road to its intersection with the south city limits of Everett.

GARBAGE AND REFUSE COLLECTION SERVICE In that portion of Snohomish County described as follows: From the Snohomish County Airport for the account of Tye Aircraft, Inc., only, to the City of Everett dump.

The amendment is consistent with Commission policy, rule and statute and should be accepted.

2. Timely protests were filed by Waste Management of Seattle, Inc.; Waste Management Rainier, Inc.; Waste Management Sno-King, Inc.; Waste Management Northwest, Inc.; Waste Management of Greater Wenatchee, Inc.; Waste Management of Ellensburg, Inc.; Waste Management of Spokane, Inc.; Waste Management of Kennewick, Inc.; Washington Disposal Co., Inc.; American Environmental Management Corporation; Ryder Distribution Resources, Inc.; Brem-Air Disposal, Inc.; North Sound Sanitation, Inc.; Murrey's Disposal Co., Inc.; Clark County Disposal, Inc.; Buchmann Sanitary Service, Inc.; and Rubatino Refuse Removal, Inc.

3. Clark County Disposal, Inc. and Buchmann Sanitary Service, Inc. withdrew their protests by letter on October 2, 1992, subject to Commission approval of the proposed amendment to the application.

4. Protestant Rubatino Refuse Removal, Inc. failed to appear for the scheduled hearing. Applicant's motion to dismiss Rubatino Refuse Removal, Inc.'s protest was granted at hearing.

5. After the commencement of hearing, protestant Ryder Distribution Resources, Inc. withdrew its protest by letter dated March 5, 1993.

6. Richard A. Ramsey, president of Sureway Medical Services, Inc., testified in support of the application regarding the applicant's history and its general and financial fitness. Stan Robinson, general manager for Sureway Medical Services, Inc., testified in support of the application regarding the operations of the applicant. Jim Miller, sales manager for Sureway Medical Services, Inc. testified regarding the applicant's employee and customer training programs and marketing activities.

7. The applicant's operating personnel, Stan Robinson and Richard Ramsey, have been in the biohazardous waste collection business in the state since 1988, operating from 1988 until 1991 under temporary authority as Sure-Way Incineration, Inc., during most of 1991 as Rabanco Medical Waste Systems, and beginning in December 1991 as Sureway Medical Waste Systems, Inc.

8. Applicant was incorporated in December 1991, as a wholly owned subsidiary of Rabanco Ltd., which was a partner in and doing business as Rabanco Companies. Applicant was created during a reorganization of the Rabanco companies to take over the biohazardous waste service that was being performed under Certificate G-12 by a Rabanco division, Rabanco Medical Waste Systems [Tr. 327-330; 346-347]. In 1992, as part of the Rabanco reorganization, Sureway became a wholly-owned subsidiary of another wholly-owned Rabanco company, Northwest Waste Industries, Inc.

9. The applicant has performed biohazardous waste collection and disposal services since December 1991 in territory which was then covered by Rabanco's Certificate G-12. A portion of the G-12 territory was transferred to Northwest Waste Industries in October 1992. In December 1992, the Commission granted the applicant permanent authority, under Certificate No. G-236, to provide biohazardous waste service in the remaining G-12 territory pursuant to a lease agreement with Rabanco. In January 1993, the Commission granted the applicant temporary authority to provide biohazardous waste service in the area covered by Certificate G-235, which includes parts of Seattle and parts of King and Snohomish Counties, pursuant to a lease agreement with Northwest Waste Industries, Inc. The applicant is seeking permanent authority to provide the service, under lease, in the G-235 territory.

10. Applicant has idle equipment and resources necessary to provide the proposed service. Applicant has access to bank financing and capital infusion from its parent. Its operating personnel have prior experience providing statewide service in this state and ongoing experience providing service in rural areas of western Idaho. It presented a pro forma analysis of operations if statewide authority is granted which shows that the proposed service will be profitable, based on estimates of market share and costs. It has attended trade shows and conventions and has lined up future customers. It has shown an ability to attract new customers even in a competitive environment. Based on this testimony, the applicant has the financial ability to conduct the proposed operations for a reasonable period.

11. The applicant has not been cited by the Commission for violations of laws and regulations affecting common carrier operations. From December 1991 until the Commission granted it Certificate No. G-236 and the temporary authority referred to in paragraph 9, the applicant operated in the territory of its parent's permit without authority from the Commission. The applicant's operating personnel should have been aware that they could not conduct operations under their parent's permit because of applicant's status as a separate corporation. However, the operations occurred during a complex reorganization of the Rabanco companies, and the applicant cooperated with the Commission in working out an acceptable operating structure. Its actions do not indicate a disdain for, or inability of future compliance with Commission laws, rules, and regulations. The applicant gave reasonable assurances that it will operate according to the laws, rules, and regulations of the Commission.

12. The applicant maintains suitable equipment and appropriately trained personnel to provide the proposed services. The applicant has a disposal site available to it at the incinerator in Ferndale, Washington.

13. The applicant proposes to provide a service like the service it provides in its present territory. It provides biohazardous waste packaging materials to its customers, which are health care facilities and other biohazardous waste generators. Biohazardous waste, also referred to as biomedical, medical or infectious waste, generally includes biological and pathological substances, and materials which come in contact with human bodily fluids. These materials are packaged by the waste generator, collected by Sureway in cardboard containers or rubbermaid tubs, stored in Sureway's warehouse for aggregation into shipment quantities, and transported by Sureway in trucks to the Ferndale incinerator.

14. Terry Harris, owner and president of Harris Biomedical Compliance Services in Seattle, testified in support of the application. Harris Biomedical Compliance Services writes safety plans for medical and dental businesses that are required to have such plans by federal, state or local regulations. Mr. Harris has discussed county requirements with health officials in several of the state's eight counties that have adopted infectious waste regulations. Counties with infectious waste regulations generally require the generator to have a contingency plan for alternate handling of waste in situations such as an office equipment breakdown or incinerator breakdown. Based on his experience and his own interpretation of local regulations, he believes that counties require waste generators to have a back-up hauler as part of a contingency plan. He could not recall whether any generator for whom he has written a plan resides in a regulated county where only one transporter is available.

15. A review of various county and city regulations of biohazardous waste handling in the State of Washington reveals that King, Pierce, Snohomish, and Island Counties, and the Cities of Seattle and Tacoma require generators of biohazardous waste to have contingency plans for the treatment of biohazardous waste in the event of a breakdown at the primary treatment facility. There is no reference in these regulations to contingency plans for transportation of biohazardous waste.

16. Colleen Morr, an employee of Dr. Steve Risa in Renton¹⁷, testified in support of this application. Dr. Risa is an ear, nose and throat specialist and is a sole practitioner. He generates one pick-up of sharps and one of bloody tissues every six to eight weeks. When it first sought service, this

¹⁷ Dr. Risa's office and the offices of other witnesses testifying in support of this application who indicated they were located in Renton are all outside the current operating territory of the applicant.

generator asked labs and other doctor offices in the area, and was referred to American Environmental Management ("AEMC") and Rabanco. Rabanco was unable to provide service to the generator's location. This generator currently uses the services of AEMC's successor, BFI, and is satisfied with the service. This generator is supporting the application because he needs a contingency pick-up person in case BFI cannot pick up.

17. Don Robertson, administrator for Valley Internal Medicine in Renton, testified in support of this application. The facility has 16 physicians, generating ten to twelve boxes per month of sharps, paper and cloth goods with body fluids, and disposable medical items. This generator currently uses and is satisfied with the services of BFI. Mr. Robertson used the services of the applicant's predecessor, Sure-Way Incineration, from approximately 1988 to 1990 at his former employment in north Seattle and was pleased with its service. When he started with Valley Internal Medicine, he was told by other staff that BFI was the only service available. Mr. Robertson supports the application because he was pleased with Sure-Way Incineration's service and wants alternatives to choose from.

18. John Burgess, clinic administrator for Valley Orthopedic Associates in Renton, testified in support of the application. Valley Orthopedic has 10 orthopedic surgeons, generating one 18" x 18" x 24" box per month sharps, blood and body fluids, and post surgical bandages. This generator currently uses and is satisfied with the services of BFI. The generator used Sure-Way Incineration until approximately two years ago, and was satisfied with the service received. Mr. Burgess switched to AEMC (now BFI) when Sure-Way Incineration lost its permit. He understood at the time that there was no alternative to AEMC. He supports this application because he believes that alternatives and competition are needed so that he can be sure of getting the best service.

19. Kimberly Bozeman, office manager for Dr. Dennis Nordlund in Renton, testified in support of this application. Dr. Nordlund is a sole practitioner of dentistry, generating one box a month of sharps and bloody gauze. When the office was looking for an infectious waste collection service, Ms. Bozeman made several contacts, and another dentist referred her to Sureway. Sureway did not have a permit, and referred the generator to AEMC. The generator currently uses and is satisfied with the services of BFI. Ms. Bozeman supports the application because she would like to have a choice of carriers. She does not want to be stuck with just one choice if the office is not happy with the services. She would favor the office giving its business to Sureway because it was her first choice.

20. Kimberly Ball, dental assistant to Dr. Deborah Cederbaum in Seattle and Redmond, testified in support of this application. Dr. Cederbaum is a dentist generating two 20-gallon tubs of sharps, bloody gauze and surgical instruments a month. This generator currently uses the services of the applicant in its Seattle office and would like service to its newly-opened Redmond office. This generator has been satisfied with the applicant's services in Seattle and has not yet sought a carrier for Redmond, but will be needing one soon. Ms. Ball is aware that BFI can provide service in Redmond, but has not contacted it and knows nothing about the services it offers. This generator would like the applicant's service in Redmond because she likes the rubbermaid tubs and the friendly service she currently receives. If Sureway is not granted authority for Redmond, she probably will not contact any other company, and will transfer the Redmond facility's waste to Seattle for pickup by Sureway.

22. Debbie Krueger, office manager for Dr. Donald Ausink in Federal Way, testified in support of this application. Dr. Ausink is a dentist generating one medium and one small box of biohazardous waste two times a month. This generator has used the services of AEMC/BFI for the past two years. BFI is giving it good service. This generator received service from Sure-Way Incineration before it lost its permit, was satisfied with that service, and would like to have similar service available again. Ms. Krueger supports this application because she would like a choice so that she can choose the waste pickup service she likes best, and would like service alternatives in case something should go wrong with the service she was using.

23. Carol Davis, business manager for Dr. Jay Morrow in Lynnwood, testified in support of the application. Dr. Morrow is a dentist, generating 40 pounds per month of sharps, paper products and gauze. When this generator opened its office in August 1992, Ms. Davis contacted other dental offices about available service. This generator first used Kleenwell Biohazard and General Ecology Consultants, but Kleenwell's service was not satisfactory. Ms. Davis checked the telephone book and found Sureway, but it referred her to BFI because she was outside Sureway's service area. She called BFI and requested immediate pick up. BFI said it could not come out until the following week. BFI provided service the following week. Ms. Davis was satisfied with the physical service BFI provided. However, Dr. Morrow has not yet decided whether to become a scheduled BFI pickup customer because he wants to see whether Sureway is granted authority and what its services and rates are. Ms. Davis also supports the application because the generator cannot store waste for long and would need to have someone else available if something were to happen to its service provider.

24. Dr. Andrew Abolins, self-employed physician whose office is north of Seattle near the county line, testified in support of this application. Dr. Abolins is just outside the boundary of the Sureway service area and currently transports his waste to the Sureway service area for collection. Dr. Abolins generates less than 10 gallons of waste per year. He used Sure-Way Incineration before it lost its permit. Dr. Abolins also used the services of AEMC on one occasion at a former office location in Edmonds. He supports Sureway's application because he objected to liability provisions in a proposed service agreement that AEMC sent him when he was in Edmonds. He has not contacted BFI since it took over AEMC to see if BFI's service agreement is the same. He would prefer to have service from Sureway even if BFI's service agreement were satisfactory.

25. Connie Gleason, office manager for Dr. Jacka in Federal Way, testified in support of this application. Dr. Jacka is a sole dental practitioner generating one three-foot box of sharps and paper one time a month. Dr. Jacka used Sure-Way Incineration before it lost its permit, and Ms. Gleason found its service excellent. Dr. Jacka currently uses BFI and has received good service. Ms. Gleason supports the application principally because she would like to see price competition, but also because she does not like being "stuck" with one company's boxes, and would like to see more choices for the doctor's needs. She also desires a backup carrier. She discussed the office's needs with her local solid waste company, but it required that the office autoclave all its medical waste before pickup, and the office lacks the time or staff to do that.

26. Cheryl Romple, self-employed as Romple Examination Management Services in Yakima, testified in support of this application. Ms. Romple conducts insurance physicals which involve drawing blood and drug testing. She generates one ten to fifteen gallon container of vacuum containers and needles a month. When Sure-Way Incineration had authority, she used its services and was satisfied with them. After Sure-Way Incineration lost its permit, she shipped her containers to a national company for incineration. She is not using any collection service currently. She supports the application because she believes that there should be no barriers to competition. She also believes that there should be enough business out there for everyone because of new OSHA regulations on blood-borne pathogens. Ms. Romple has made no investigation of services available from other carriers. She had not heard of BFI before this proceeding.

27. Dana Watts, pharmacist for Option Care in Kennewick, testified in support of the application. Option Care provides home I-V infusion service, generating two thirty-gallon boxes a month of sharps, empty vials with trace chemotherapy, and

paper. Option Care used the services of Sure-Way Incineration during a period before Ms. Watts became an employee, until that company lost its permit. It then used the services of Waste Management until February 1993. Ms. Watts found Waste Management's service satisfactory. Option Care stopped using Waste management when that company sent it a contract to sign which stated that Waste Management would not transport chemotherapy waste. Option Care is now stock-piling its waste, but will need a pick-up within one to three months. Ms. Watts has not personally discussed the problem with Waste Management. Ms. Watts supports the application because other employees have told her that Sure-Way Incineration gave good service in the past, and Sureway has stated that it is willing to pick up chemotherapy waste. Ms. Watts has not tried to determine whether any other existing company can provide the service Option Care requires. Ms. Watts is not familiar with BFI, and has no objection to trying its services.

28. Rand Masteller, administrator for Inland Cardiology Associates in Spokane, testified in support of this application. Inland Cardiology Associates generates 10 to 15 pounds per month of sharps and tubing. This generator currently uses the services of Medical Resource Recycling Systems, Inc. (MR-2). Service by MR-2 was arranged by the generator's building maintenance until three weeks before the hearing in this proceeding. Mr. Masteller did not identify any deficiencies in the physical service provided by MR-2 under that arrangement. The generator has now contracted with MR-2 on its own, but has no experience yet under the new contract. He supports the application because he understands that MR-2's service is the only one available, and thinks there should be competition. Based on Sureway's presentations at his association's state meetings, Mr. Masteller has a favorable impression of Sureway and feels he knows it better than MR-2. He expressed the hope that Sureway could serve his facility's needs better, but did not explain what he meant by that. He has not investigated the availability of service from other existing companies. He has never heard of Ryder Distribution or BFI.

29. Thomas Bray, biomedical waste specialist and customer relations representative for Brem-Air and North Sound Sanitation, d/b/a Brem-Med, testified in opposition to this application. This protestant holds authority under Certificates G-38 and G-59 to provide solid waste collection service to Kitsap County. This protestant started providing biohazardous waste collection service in May 1992, after the date of this application.

30. Robert Schille, manager of marketing and special projects for Washington Waste Hauling and Recycling, Inc., testified in opposition to this application. This protestant holds temporary authority in Grant and Chelan Counties and

portions of Benton, King, Snohomish, Kittitas, and Spokane Counties. The temporary authorities were issued pending the recent consolidation of nine Waste Management corporations (as listed in the appearance above) and transfer to Washington Waste Hauling and Recycling, Inc. This protestant is ready and willing to provide biohazardous waste collection service in West Benton, and sharps collection service in Northeast and Southeast King, and North Spokane Counties. Those are the only territories in which it currently has specialized equipment and holds itself out to collect biohazardous waste. It has had no requests for service in other territories, and does not want to invest in the equipment when no service is requested. It is content to let the other carriers provide service.

Mr. Schille testified that there was a misunderstanding with Ms. Dana Watts of Option Care regarding the type of waste that Option Care was generating. This protestant thought it was being requested to transport hazardous chemotherapy waste. It is willing and able to transport trace chemotherapy waste in empty vials as needed by Option Care.

31. Pamela Gay Badger, manager of compliance services for Washington Waste Hauling and Recycling, Inc., testified as to the company's operating procedures for biomedical waste management. The company's employees have been trained to handle biomedical waste. The company has disposal sites for its biomedical collection service in Benton, King and Spokane Counties.

32. Roger Vanvalkenburg, district manager for BFI Medical Waste Systems of Washington, Inc., testified in opposition to this application. This protestant holds authority to provide biohazardous waste collection service in the state of Washington, excluding service to Stericycle in Morton. This protestant has specialized equipment and personnel trained in the handling of biohazardous waste. It has two terminals in the state, and eight drivers. This protestant is ready, willing and able to provide biohazardous waste collection and disposal service in the state of Washington.

BFI has lost accounts to Ryder/Stericycle since Ryder Distribution was granted authority, particularly in the Puget Sound area. It has had to lay off employees, and is re-evaluating service. BFI has competitors in some areas of the state. It is concerned that another statewide carrier would create an added burden on its ability to break even every month.

With respect to Dr. Abolins' complaint, BFI would be willing to make one pick up a year without a service agreement. In response to Carol Davis' testimony, Mr. Vanvalkenburg testified that BFI did not provide immediate service because the day she called was their pick up day for the area and the truck

had already passed her office. BFI went back and picked up the waste the following week without complaint from Ms. Davis. If there had been an emergency, BFI would have sent a truck out the day of the request.

33. Jeffrey Daub, sales representative for BFI, testified as to the company's current market share and marketing efforts in the state of Washington. BFI contacts prospective customers with cold calling, telemarketing, trade shows, mail solicitations, and word of mouth. BFI produces a publication for customers on the recent OSHA blood-borne pathogen regulations. Mr. Daub believes that there would not be enough business in the state for two carriers, even if Ryder/Stericycle were no longer providing service.

34. Fred Masella, manager of the medical waste division of Murrey's Disposal Company, Inc. and American Disposal Company, Inc. in Pierce County, testified in opposition to this application. These two companies hold authority for solid waste collection service under Certificates G-9 and G-87 in Pierce County, from Tacoma east to Eatonville, and west of the Narrows Bridge. These protestants have specialized equipment and personnel trained to handle biohazardous waste. They are ready, willing and able to provide the proposed service in Pierce County in the areas described above.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties to this proceeding and the subject matter it presents.
2. The applicant's proposed amendment to its application should be accepted as consistent with Commission law and rule.
3. The protests of Clark County Disposal, Inc., Buchmann Sanitary Service, Inc., Rubatino Refuse Removal, Inc., and Ryder Distribution Resources, Inc. should be dismissed.
4. The applicant is fit, willing and able to provide common carrier solid waste transportation for collection and disposal under chapters 81.77 RCW and 480-70 WAC.
5. The applicant has demonstrated that existing companies will not provide service to the satisfaction of the Commission in King and Snohomish Counties.

6. The applicant has demonstrated that there is a public need for the services it proposes in King and Snohomish Counties.

7. It is in the public interest and is required by the public convenience and necessity, pursuant to the provisions of RCW 81.77.040, that the applicant be issued a certificate authorizing it to provide specialized biomedical waste collection and disposal services in a territory coextensive with its existing operations plus other territory in King and Snohomish Counties for which it has applied.

8. It is in the public interest that the authority granted to the applicant in this proceeding be conditioned on the applicant surrendering its leased authority, Certificate No. G-236 and Permit No. TCG-00100, and that is further be conditioned on Sureway obtaining the underlying certificate holders' relinquishment of the specialized authority that is the subject of Sureway's leases.

9. It is not in the public interest or required by the present or future public convenience and necessity that the application be granted except as specified above.

Based upon the above findings of fact and conclusions of law, the Commission makes and enters the following order.

ORDER

WHEREFORE, THE COMMISSION ORDERS That Application No. GA-75968, as amended, of Sureway Medical Services, Inc. for a certificate of public convenience and necessity to operate motor vehicles in furnishing garbage and refuse collection service consisting of biohazardous or biomedical (infectious) waste is granted as amended, in part, conditioned on the applicant surrendering its leased authority, Certificate No. G-236 and Permit No. TCG-00100, and further conditioned on Sureway obtaining and submitting to the Commission the underlying certificate holders' relinquishment of the specialized authority that is the subject of Sureway's leases. Upon compliance by the applicant with all applicable laws and Commission rules and the above condition, a certificate of Public Convenience and Necessity shall be issued as set forth in Appendix A, attached hereto and by this reference made a part hereof; and

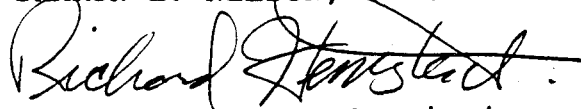
THE COMMISSION FURTHER ORDERS That the protests of Clark County Disposal, Inc., Buchmann Sanitary Service, Inc., Rubatino Refuse Removal, Inc., and Ryder Distribution Resources, Inc. are dismissed.

DATED at Olympia, Washington, and effective this 18th day of November 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

M. V. G. No. 1663

SOLID WASTE COLLECTION SERVICE consisting of Biohazardous or Biomedical Waste in King County;

SOLID WASTE COLLECTION SERVICE consisting of Biohazardous or Biomedical Waste in portions of Snohomish County excluding the territories as follows: In the City of Everett and those portions of Snohomish County adjacent thereto, described as follows: (1) South of Everett: Beginning at the point where the Great Northern Railway right-of-way intersects with the south city limits of Everett; thence southerly along said right-of-way to its intersection with 61st Street extended; thence west along 61st Street extended to its intersection with the new Alternate PSH-1 (U.S. 99 by-pass); thence southerly along said U.S. 99 by-pass to its intersection with 84th Street; thence west along 84th Street to the Upper Ridge Road; thence northerly along the Upper Ridge Road, including 78th Place S.W. and 76th Place S.W., to the Beverly Park-Maple Heights Road; thence northerly along the Beverly Park-Maple Heights Road to the 7th Standard Parallel North; thence west on said parallel to the east line of Section 3, T. 28 N., R. 4 E.W.M.; thence south on said line to the east-west centerline of said Section 3; thence west on said centerline to the east city limits of Mukilteo; thence northerly and westerly following the city limits of Mukilteo to the shoreline of Possession Sound and/or Port Gardner Bay; thence easterly along said shoreline to the west city limits of Everett. Also in that portion of Snohomish County described as follows: Starting at the points where 40th Ave. W. extended intersects with the north boundary of Paine Field; thence east on said north boundary to the east boundary of Paine Field; thence south to a line to 100 feet north of 90th Street S.W.; thence east on this line to U.S. Highway 99 (no service to be rendered on Kelly-Corbin Road); thence north on a line one block west of U.S. Highway 99 to its intersection with 84th Street S.W.; thence west on the south side of 84th Street S.W. to Upper Ridge Road; thence north on Upper Road (with no service to be rendered on Upper Ridge Road) to Beverly Park-Maple Heights Road; thence following the west side of the Beverly Park-Maple Heights road to the 7th Standard Parallel North; thence west on said parallel to east line of Section 3, T. 28 N., R. 4 E.W.M.; thence south on said line to the east-west centerline of said Section 3; thence west on said centerline to the east city limits of Mukilteo; thence southerly and easterly following said city limits to 40th Ave. W. extended; thence south on 40th Ave. W. extended to the north boundary of Paine Field, the place of beginning. (2) East of Everett: Beginning at the point where Hewitt Avenue (PHS-15) intersects with the city limits of Everett; thence east on Hewitt Avenue extended to the southeast corner of Section 21, T. 29 N., R. 6 E.W.M.; thence north on the east line of said Section 21 extended to the northeast corner of Section 4, T. 29 N., R. 6 E.W.M.; thence west on the north line of said Section 4 extended to the point

where it intersects with the southerly shore of Steamboat Slough; thence westerly along said shoreline to Port Gardner Bay; thence southerly along the shoreline of said bay to the north city limits of Everett. And futher excluding the following, Bounded on the north by the south city limits line of the City of Everett extended east to its intersection with the New Broadway cut-off (alternate PSH-1); thence south on the New Broadway Cut-off to its intersection with Pacific Northwest Traction Company Road; thence south on both sides of said road to its intersection with Stockshow Road; thence west along the north side of Stockshow Road to its intersection with 8th Ave. W. extended; thence north on 8th Ave. W. extended to the intersection of 9th Ave. W. and U.S. 99; thence westerly and northerly on 9th Ave. W. to its intersection with 100th St. S.W. and Holly Drive; thence west on 100th St. S.W. (but not including 100th St. S.W.) to 12th Ave. W. extended (West boundary of Section 13, T. 28 N., R. 4 E.); thence north on 12th Ave. W. extended to a point 100 FT. north of 90th St. S.W.; thence east on a line 100 FT. north of 90th St. S.W. to U.S. 99 (service is authorized on both sides of the Kelly-Corbin Road for its entire extent); thence northeast along U.S. Highway 99 (both sides) to its intersection with 84th St. S.W.; thence west on the north side of 84th St. S.W. to its intersection with Upper Ridge Road; thence north on both sides of Upper Ridge Road to its intersection with the Beverly Park-Maple Heights Road to its intersection with the south city limits of Everett. And futher excluding the following, from the Snohomish County Airport for the account of Tyee Aircraft, Inc., only, to the City of Everett dump;

SOLID WASTE COLLECTION SERVICE consisting of Biohazardous or Biomedical Waste in portions of Pierce County described as follows: Beginning at the point where 65th Ave. N.E. (Stewart Road) in Pierce County projected west intersects SR-99 (PSH-1); thence north along the centerline of SR-99 to the King and Pierce County Lines; thence easterly to the N.E. corner of Section 3, T. 20 N., R. 5 E.; thence south along the east line of said Section 3 to the S.E. corner of said Section 3; thence west along the south line of said Section 3 extended to the N.E. corner of Section 8, T. 20 N., R. 5 E.; thence south along the east line of said Section 8, to the S.E. corner of said Section 8; thence west along the south line of said Section 8 extended to SR-167 (PSH-5); thence north on SR-167 (PSH-5) to the intersection of 65th Ave. N.E. (Stewart Road) extended east; thence west along 65th Ave N.E. (Stewart Road) extended to the intersection with SR-99 (PSH-1), the point of beginning; and Biohazardous or Biomedical Waste for commercial accounts or establishments in portions of Pierce County described as follows: Starting at the S.E. corner of Section 24, T. 20 N., R. 5 E.; thence west on the south line of said section projected to the east limits of the City of Tacoma (as of Sept. 6, 1960); thence north to the Pierce and King Counties line; thence easterly and southerly along the Pierce and King Counties line to the S.E. corner of Section 24, T. 20 N., R. 5 E., the point of beginning.

M. V. G. No. 1663

SERVICE DATE
DEC 2 0 1993

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application GA-75968 of	)	ORDER M. V. G. NO. 1674
SUREWAY MEDICAL SERVICES, INC.	)	HEARING NO. GA-75968
for a Certificate of Public	)	COMMISSION DECISION AND ORDER
Convenience and Necessity to	)	DENYING RECONSIDERATION
operate motor vehicles in)	
furnishing SOLID WASTE)	
COLLECTION SERVICE.)	
.)	

NATURE OF PROCEEDING: This is an amended application for a certificate of public convenience and necessity to furnish biohazardous or biomedical waste collection service in most of the state. Several existing solid waste certificate holders protest the application.

PROCEDURAL STATUS: An initial order entered on June 18, 1993, proposed that the Commission deny the application. The Commission entered a final order on November 19, 1993, granting administrative review, modifying the initial order, and granting the amended application in part, on condition. Protestant BFI Medical Waste Systems of Washington, Inc., now petitions for reconsideration or, in the alternative, for clarification of the final order.

COMMISSION: The Commission denies the petition for reconsideration. The Commission finds no merit in any of the citations of error. The final order thoroughly considered the application pursuant to standards the Commission has developed for applications for specialized biohazardous waste authority. The Commission is satisfied that the final order correctly evaluates and properly applies the law. The Commission clarifies that the final order does not announce new principles or tests for determining applications for specialized biohazardous waste authority.

[1] Mere desire for a backup carrier in the event of possible discontinuance of, or deterioration in, existing service, or mere preference for competition, does not demonstrate a need for an additional carrier. RCW 81.77.040.

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

APPEARANCES: Richard A. Finnigan, attorney, Tacoma, represented the applicant, Sureway Medical Services, Inc., at hearing and on review. David W. Wiley, attorney, Bellevue, represents protestant BFI Medical Waste Systems of Washington, Inc. (formerly American Environmental Management Corporation). Jack Davis, attorney, Seattle, represented protestant Washington Waste Hauling and Recycling, Inc. (formerly Waste Management of Seattle, Inc.; Waste Management Rainier, Inc.; Waste Management Sno-King, Inc.; Waste Management Northwest, Inc.; Waste Management of Greater Wenatchee, Inc.; Waste Management of Ellensburg, Inc.; Waste Management of Spokane, Inc.; Waste Management of Kennewick, Inc.; and Washington Disposal Co., Inc.), at hearing and on review. Boyd Hartman, attorney, Bellevue, represented protestant Ryder Distribution Resources, Inc., at hearing. Protestants Brem-Air Disposal, Inc., and North Sound Sanitation, Inc., were represented at hearing by Thomas W. Bray, Medical Waste Specialist, Bremerton. Protestant Murrey's Disposal Co., Inc., was represented at hearing by Fred Masella, Medical Waste Division Manager, Puyallup. Anne Egeler and Robert Simpson, Assistant Attorneys General, Olympia, represented Commission Staff at hearing.

MEMORANDUM

This is an amended application by Sureway Medical Services, Inc., a wholly-owned subsidiary of Northwest Waste Industries, Inc., for a certificate of public convenience and necessity to furnish biohazardous¹ waste collection service.

The applicant proposes to provide specialized collection service for biohazardous waste generated by health care facilities and others. In its amended application, the applicant proposed to offer the service statewide with the exception of Clark County and certain portions of Everett and Snohomish County. The applicant has been providing the specialized service in parts of King County under permanent and temporary certificates which authorize it to operate authority leased from other solid waste collection companies.

An initial order proposed that the Commission deny the application, based on conclusions that the applicant was not financially and otherwise fit to conduct the proposed operations, and that the proposed operations were not required by the public convenience and necessity because existing solid waste collection companies were providing satisfactory service in the territory.

¹ For purposes of this order, the terms "biohazardous," "biomedical" and "infectious" are used interchangeably.

On administrative review, the Commission modified the initial order and granted the applicant authority to operate in a territory coextensive with its current operations plus other territory in King and Snohomish Counties for which it applied. The Commission concluded that the applicant demonstrated its financial and regulatory fitness; demonstrated that existing companies will not provide service to the satisfaction of the Commission in King and Snohomish Counties; and demonstrated that there is a need for the services it proposes in King and Snohomish Counties. The grant is conditioned on the applicant surrendering its leased authority and obtaining the underlying certificate holders' relinquishment of the specialized authority that is the subject of the applicant's leases.²

Protestant BFI Medical Waste Systems of Washington, Inc., petitions for reconsideration and/or clarification of the final order. It contends that the order's conclusions regarding satisfactory service and need in King and Snohomish Counties are not supported by the record. It contends that the order makes conclusions regarding BFI's service in eastern Washington which improperly apply the law, are unnecessary, and are unsupported by the record. It requests that the Commission delete any negative inference or adverse conclusion regarding the sufficiency of statewide service provided by BFI or its predecessor, American Environmental Management Corporation ("AEMC"). It contends that the order appears to announce new tests or principles concerning public need in specialized waste fields and existing companies' evidentiary burden, and requests that the Commission clarify the principles announced.

The Commission denies the petition. The final order does not announce new tests or principles. It applies those previously developed and articulated by the Commission. The Commission's satisfactory service and public need analysis and conclusions with regard to King and Snohomish Counties are based on the record and properly apply the law. The petition does not demonstrate errors of law, patent factual error, or facts reasonably unavailable to the petitioner at the time of hearing; it should be denied. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

² Sureway's leases accomplished a complex internal reorganization of the Rabanco companies. They necessitated prompt Commission action under circumstances which are unlikely ever to be replicated. While they may have been appropriate under the particular circumstances presented, including the continuance of the same level of service by the same principals, they do not represent the Commission's preferred practice.

The Commission's discussion about BFI's existing service in eastern Washington makes no conclusion with regard to that service. The discussion was intended to provide guidance to the industry as to the type and detail of evidence the Commission needs to evaluate properly the sufficiency of existing service.

The Commission will briefly address BFI's erroneous inferences concerning the standards the final order applied.

Satisfactory Service/Need Standards

BFI contends that it is apparent from the Commission's analysis that a perceived need for another carrier on the part of generators, either as a contingent carrier or just for the sake of competition, now constitutes need for additional authority under RCW 81.77.040. The final order does not announce or apply any such principle.

The satisfactory service/public need standards that the final order applied are those set out in Order M. V. G. No. 1596, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (January 1993). The satisfactory nature of service by existing providers of specialized solid waste collection services will be measured according to the specialized needs of customers. The Commission will give considerable weight to the judgment of biohazardous waste generators regarding the sufficiency of existing service, because they are professionally involved in health care, and are in a unique position to evaluate the risks and benefits of collection and disposal services based upon their professional training and experience, and are best able to evaluate what type of service will best limit their potential exposure to civil liability for improper transportation and disposal.

The applicant in Ryder made a very persuasive demonstration that existing companies, although providing "satisfactory" physical collection service, were not providing service that sufficiently met the specialized requirements of the customers. The Ryder decision is the best guide to the industry of the sorts of specialized needs the Commission will recognize and the sort of evidence the Commission will find particularly persuasive. The applicant's presentation in the present case did not rise to that level, but the Commission is satisfied that the applicant sufficiently demonstrated that existing service is insufficient in King and Snohomish Counties, under the standards set out in Ryder.

[1] The final order does not depart from the Commission's consistent view that mere desire for a backup carrier in the event of possible discontinuance of, or deterioration in, existing service, or mere preference for

competition, does not demonstrate a need for an additional carrier. That BFI reads a different meaning into the Commission's decision apparently reflects its own view of the evidence rather than a reasonable reading of the order.

Evidentiary Burdens

The final order discussed at some length the Commission's concern that BFI, which is the only specialized biohazardous waste company with statewide authority, may not be making sufficient efforts to make its services known, or to provide a complete service throughout the state. BFI infers from that discussion that the Commission has announced a new burden that existing companies must meet in an application for overlapping authority -- to demonstrate that they are making reasonable solicitation efforts and are providing a satisfactory level of service, even when the applicant has failed to make a prima facie demonstration of need for additional service. BFI again reads more into the decision than is there.

The applicant, Sureway, failed to make a prima facie demonstration of need for its services outside King and Snohomish Counties.³ To the extent Sureway failed to carry its burden, BFI was not required to go forward with evidence regarding service existing at the time of the application. The final order does not announce a different principle. It does not impose new burdens on existing companies to come forward with evidence. BFI could have presented no evidence concerning existing service outside King and Snohomish Counties, without affecting the outcome.

However, following Sureway's presentation, BFI came forward with evidence to rebut the specific generators' testimony, and evidence regarding its and its predecessor's statewide service. With regard to eastern Washington in particular, BFI's presentation was as inadequate as Sureway's. The Commission did not want its decision against Sureway to leave the impression that BFI's presentation would have been sufficient to overcome a prima facie demonstration of need in the territory, or that it had lessened the doubt the Commission has previously

³ Sureway attempted to demonstrate the insufficiency of existing service outside the Puget Sound area primarily through inferences from statistical evidence rather than through the testimony of actual waste generators. The Commission requires that need be shown through the testimony of persons who require the service. Sureway offered the testimony of only three supporting witnesses from outside King and Snohomish Counties. None of the witnesses demonstrated a need for additional service under the tests the Commission employs.

expressed that any single biohazardous waste carrier could provide a level of statewide service, on its own, which would satisfy the Commission and meet the needs of the state's waste generators.

On reconsideration, BFI suggests that its presentation was not intended to be anything more than a general description of BFI's present service. It contends that because it is merely the successor in interest of the company that existed at the time of the application, AEMC, it would have been inappropriate for it to present detailed evidence regarding its present service. It argues that evidence of post-application service is irrelevant, and would have been disregarded by the Commission, under the principle set out in Order M. V. G. No. 795, In re Anthony J. DiTommaso, d/b/a DiTommaso Bros. Garbage Service, App. No. GA-508 (November 1975). BFI further contends that it intentionally did not present evidence regarding AEMC's service because it realized that Sureway had completely failed to carry its burden. Referring to Sureway's eastern Washington evidence, BFI argues that had there been testimony from a generator witness conducting an unsuccessful search for service, it would have rebutted such testimony with specific solicitation evidence.

There is no indication in the record that BFI intended its presentation to be a limited demonstration of continuity of service, or that it decided not to demonstrate the sufficiency of existing service after hearing Sureway's case. BFI's presentation appeared to respond to Sureway's attempted demonstration of statewide need.⁴

Neither party's presentation with regard to service in Eastern Washington was restricted to the pre-application period. Neither were the Commission's comments on the presentations. That should not be taken as an indication that the Commission will not continue to adhere to the DiTommaso principle.

In any event, the final order's comments about BFI's solicitation efforts and its service in Eastern Washington do not constitute legal conclusions. Except with regard to King and Snohomish Counties, the final order reached no conclusion as to whether AEMC provided satisfactory service, whether BFI is providing satisfactory service, or whether a need exists for

⁴ It is the Commission, after all, that is the arbiter of whether an applicant has sustained its burden. Until the Commission's final order, there was no determination that Sureway's demonstration of need was insufficient with respect to most of the state. BFI had no reason to assume that the Commission would make that determination, and nothing in the record indicates that BFI did make such an assumption.

additional specialized service in the state. The final order's comments are intended only to provide guidance to BFI and other companies in this rapidly evolving industry as to the sort and detail of evidence the Commission needs to evaluate properly the sufficiency of existing service.

ORDER

WHEREFORE, THE COMMISSION ORDERS That the petition of BFI Medical Waste Systems of Washington, Inc., for reconsideration is denied.

DATED at Olympia, Washington, and effective this 17th day of December 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of Application	)	ORDER M. V. G. NO. 1707
GA-76820 of Medical Resource)	
Recycling System, Inc. for a	)	HEARING NO. GA-76820
certificate of public)	
convenience and necessity to	)	COMMISSION DECISION AND
operate motor vehicles in	)	ORDER REVERSING INITIAL
furnishing solid waste	)	ORDER; GRANTING APPLICATION
collection service.)	
)	
.)	

NATURE OF PROCEEDING: This is an application for authority to transport biohazardous wastes for collection in Spokane County.

INITIAL ORDER: Administrative Law Judge Elmer Canfield entered an initial order on November 24, 1993, that would deny the application under RCW 81.77.040 for applicant's failure to demonstrate that existing carriers will not serve to the satisfaction of the Commission or that the public convenience and necessity require an additional carrier.

PETITION FOR ADMINISTRATIVE REVIEW: The applicant petitions for administrative review, contending that the initial order erred in evaluating the evidence, and that the application should be granted. Protestants Refuse and Recycling Association and BFI Medical Waste Systems of Washington, Inc., answer in support of the initial order.

COMMISSION: The Commission grants the petition and reverses the initial order. The existing carrier's process for disposal is unsatisfactory for some waste generators; the Commission will weigh heavily the views of generators in a medical, technical, or scientific area related to their specialized waste needs; the existing carrier not reasonably meeting those needs will not operate to the Commission's satisfaction. The public convenience and necessity require an additional carrier.

Shopper Needs

APPEARANCES: Robert B. Crary, attorney, Spokane, represented applicant Medical Resource Recycling System, Inc. James K. Sells, attorney, Bremerton, represented protestants Washington Refuse and Recycling Association and BFI Medical Waste Systems of Washington, Inc. Gregory J. Trautman, assistant attorney general, Olympia, represented the Commission Staff.

MEMORANDUM

This is an application for authority to provide a solid waste collection service, limited to biohazardous wastes, in Spokane County. The applicant is Medical Resource Recycling Systems, Inc., or MRRSI. It operates a facility that renders such wastes harmless by a process called autoclaving, in which the wastes are heated to a high enough temperature and for a long enough period that all infection is killed. MRRSI then recycles about a fifth of material tendered to it, and disposes of the remainder. It wants authority to collect and transport wastes that generators wish it to treat and dispose of. It operates under contract with the city of Spokane inside the city, and in this application asks common carrier solid waste authority to conduct those operations in the remainder of Spokane County.

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 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 then also find that the proposed service is required by the public convenience and necessity before it can grant the application.

As the initial order notes, the Commission has recognized the differences in market and in operation between community universal solid waste collection, on the one hand, and specialized operations such as collection of hazardous and biohazardous wastes on the other. Because of differences between the services, the biohazardous waste collection service is evaluated differently when looking at performance to the Commission's satisfaction and at requirements of the public convenience and necessity.

Satisfactory service. Here, there is evidence that the existing carrier, BFI, transports all collected wastes to a holding facility. They are kept there for a period ranging up to about a week, unrefrigerated, and are then transported to an incinerator where they are burned.

MRRSI produced evidence that some shippers believe that both BFI's retention and transportation practices and the very process of incineration are inappropriate and create rather than resolve environmental hazards.

Specifically, there is record testimony that generators view the storage of wastes as a potential hazard; the lack of refrigeration as another potential hazard that could allow pathogens to become more toxic; and the transportation for long distances (to a western Washington incinerator) a third source of potential hazard. They are concerned that those hazards could lead to a serious health problem, and do not want their wastes to contribute to those potential problems.

There is also testimony of record that incineration may cause environmental problems as well as resolve them. The incinerated ash may be a source of concern, and the byproducts of incineration include toxic fumes.

As providers of professional services in the medical field, the shippers' perspectives on factual matters should be given considerable weight; as medical professionals, they have a professional and a financial stake in being associated with a service that they believe to be environmentally sound.

The Commission has considered specific service failures before in finding that existing biohazardous waste collection service failed to meet the Commission's satisfaction. It has also considered the failure of firms to offer or provide service at all, and in recognition of the nature of the service and potential liabilities and responsibilities of generators, it has considered the concerns of waste generators about the process used for disposal.

This is not the first time this concern has been voiced. In Order M. V. G. No. 1596, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (January 1993) the Commission found that an existing incineration service did not meet the needs of many waste generators, and used that as a basis for finding that existing service failed to meet the satisfaction of the Commission. According to the record, at the time this application was filed no available carrier offered generators in the territory sought an alternative to long-distance transportation for incineration.

We believe that the needs expressed by the supporting witnesses for service characteristics such as recycling, non-incinerative disposal, and environmentally protective storage reflect true shipper needs and that failure to provide them means that the service is unsatisfactory. We so find in this proceeding.

Public convenience and Necessity. The initial order found that the generators' failure to search for alternative service, and the satisfactory nature of the service provided by BFI, relegated support for the application to the status of mere preference. The Commission disagrees.

First, for purposes of the specialized service provided, the existing service is not satisfactory for the shippers' needs. See the discussion above. Second, the Commission has held in transportation matters that when a search for service would be fruitless, because the service is unavailable, shippers need not conduct a search. Here, the record indicates that no service of the sort the applicant is proposing was offered at the time the application was filed. No search would have disclosed such a service.

The existing carrier contends that, if asked, it would have offered transportation of biomedical wastes to applicant's facility. We find this contention unpersuasive. In solid waste collection there is no history of generators' ability to direct disposal of wastes. What the carrier proposes is an entirely new service that it did not advertise or disclose. There was no reason for generators to expect that it might be available.

Finally, the Commission has some reservations about the continuing viability of some of the traditional elements it has discussed under the element of public convenience and necessity. Particularly here, where disposal is related to dangers within the professional training of the waste generators, the Commission has reservations about substituting its judgment for that of the persons who have unique knowledge about the requirements of the service they need. It seems incongruous for this body to tell a professional in the body of knowledge at issue that a service does or does not meet her or his needs. Perhaps it is time for the Commission more generally to look at the meaning of public convenience and necessity in the cases that arise to determine whether the traditional analyses continue to be appropriate for the present and future needs of an integrated state/federal transportation system for the best service to the people of the state.

For the moment, it will suffice to find that the applicant has demonstrated both that the existing carrier's service is not satisfactory for the needs of many shippers, and that the proposed service is required by the public convenience and necessity.

FINDINGS OF FACT

1. On March 15, 1993, Medical Resource Recycling System, Inc. (MRRSI) applied for a certificate of public convenience and necessity to operate motor vehicles in furnishing solid waste collection service consisting of biohazardous or biomedical infectious waste in Spokane County.

2. The Washington Refuse and Recycling Association and BFI Medical Waste Systems of Washington, Inc. (BFI) protested the application. The Staff of the Commission appeared through counsel but did not take a position on whether the application should be granted or denied.

3. Rick Kartevold, applicant's president and sole shareholder, appeared as its operating witness. He is trained and experienced as a paramedic and is qualified in the proper treatment and handling of medical waste. He is a captain with Spokane County Fire District No. Nine and is in charge of the department's hazardous materials section.

4. Mr. Kartevold started MRRSI in July 1991 as a medical waste treatment facility. The company disinfects and disposes of medical waste from accounts in the Spokane area. These accounts deliver to MRRSI or, if they are within the city limits, have their waste collected through an arrangement between MRRSI and the City. The waste is disinfecting through a steam sterilization process known as autoclaving. The waste then goes through a fairly complicated process of washing, shredding and sorting to recover recyclable plastics. The company recycles about 20 percent of the waste that comes in -- the balance is disposed of, after sterilization, in MRRSI's dumpster. It is collected from there by a certificated hauler and is taken to a landfill.

5. Mr. Kartevold was the vice-president of Medical Waste Management Systems, a solid waste transportation company, from 1990 through June or July 1991. That company operated as a solid waste collection company without a certificate from the Commission authorizing that operation. Mr. Kartevold was not directly responsible for the management of that company and was not responsible for ensuring compliance with applicable law. Mr. Kartevold is no longer involved with that company or its operations. Mr. Kartevold has since become familiar with applicable laws and regulations and provided credible testimony of his willingness and ability to operate in compliance if this application is granted.

6. The applicant has a 14-foot truck which is suitable for the proposed operations. The unit is adequately and properly maintained. The applicant employs qualified personnel to drive the vehicle.

7. The applicant has adequate financial resources to begin regulated operations. If the application were granted, the applicant would purchase additional equipment. It is financially able to do so.

8. Marguerite Busch testified in support of this application. She is in charge of safety and quality assurance at Pathology Associates Medical Laboratories. She is responsible for seeing that the facilities comply with applicable laws in the handling of medical waste and she is the person who guides management in its decisions about treatment and disposal of that waste. Pathology Associates has approximately 12 facilities in Spokane County (three in the county, the others within the city limits). Each week, it generates 800 to 1000 gallons of medical waste consisting of test tubes, blood, and needles.

This generator presently transports most of its waste to MRRSI for treatment and disposal. This generator also contracts with the protestant BFI for collection and disposal of some of its other medical waste, including tissue and limbs. Ms. Busch has two objections to using BFI for all of the medical waste collection -- that BFI transports the waste to Bellingham for incineration and that there may be a lag of a week or more between collection and disposal. She believes there is too much potential liability in having the waste untreated for a time and then transported across the state.

Ms. Busch would prefer to have an autoclave on site and have her employer treat its own waste. However, she believes the cost of that option to be prohibitive. Ms. Busch would use the applicant to transport the medical waste if this application were granted. This would eliminate the need to use its own employee do the transportation.

9. Dr. Phillip L. Rudy testified in support of this application. Dr. Rudy, a dentist, practices in Spokane County. He generates approximately 16 gallons a year of biohazardous waste consisting of needles, glass tubules and bloody gauze. Dr. Rudy transports the waste himself to MRRSI. He would ask MRRSI to collect the waste if this application were granted; otherwise, he will continue to transport the material himself.

10. Cheri Didier testified in support of this application. She is the purchasing director of the Rockwood Clinic, Spokane. The clinic has five locations in and near Spokane. All locations combined produce 4,000 gallons of medical waste each month. MRRSI collects and transports some waste for this generator from sites within the city limits. The rest of the waste is transported by the generator to MRRSI three times a week. This generator prefers a local disposal site. It expressed concerns similar to those of Ms. Busch in terms of the distance the waste is transported by BFI and the length of time before it is treated.

11. All of the waste generators opposed incineration and supported autoclaving as a method of rendering wastes inert. They all testified that shredding and recycling the waste is preferable to incineration. They have not had problems of missed collections or other service failures with any certificated haulers in the collection of their medical waste.

12. Roger Van Valkenburgh testified in opposition to this application. Mr. Van Valkenburgh is the district manager of BFI Medical Waste Systems of Washington. BFI holds certificate G-231 which authorizes the transportation of medical waste in the state of Washington, and which authorizes the transportation which would be provided under this application. BFI also operates within the city of Spokane under the City's control. This carrier has equipment and personnel to provide service to the waste generators who support this application. BFI transports medical waste to a Whatcom County facility for incineration. This carrier would be willing to transport waste upon request to Medical Resource, but it has no tariff by which that service may be performed and has not held itself out to provide that service.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this application.

2. The applicant is fit, willing and able to provide the proposed services as required by WAC 480-70-160.

3. When an applicant has applied for a certificate of 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.

4. It is required by the public convenience and necessity, pursuant to RCW 81.77.040, that the applicant be granted authority to operate motor vehicles in furnishing solid waste collection service.

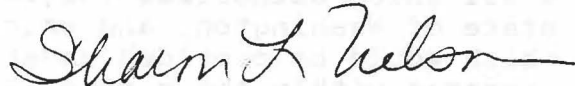
5. The application should be granted.

ORDER

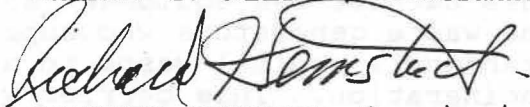
THE COMMISSION ORDERS That the initial order is reversed, and Application No. GA-76820 is granted, subject to the applicant's compliance with the requirements of law and rule relating to grants of such authority.

DATED at Olympia, Washington, and effective this 23^d day of May 1994.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

Solid Waste Collection Service consisting of Biohazardous or Biomedical Infectious Waste in Spokane County.

M. V. G. NO. 1707

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application GA-75154 of	)	ORDER M. V. G. NO. 1761
)	
RYDER DISTRIBUTION RESOURCES, INC.,	)	HEARING NO. GA-75154
)	
for a Certificate of Public)	
Convenience and Necessity to operate)	
motor vehicles in furnishing GARBAGE)	
AND/OR REFUSE COLLECTION SERVICE.)	
.....)	
)	
In re Application GA-77539 of)	
)	
STERICYCLE OF WASHINGTON, INC.,	)	HEARING NO. GA-77539
)	
for a Certificate of Public	)	FINAL ORDER MODIFYING
Convenience and Necessity to operate	)	INITIAL ORDER; GRANTING
motor vehicles in furnishing GARBAGE	)	APPLICATION, AS AMENDED
AND/OR REFUSE COLLECTION SERVICE.)	
.....)	

NATURE OF PROCEEDING: This is a pair of applications that together seek authority to collect biohazardous solid wastes for transportation in all of the State of Washington. The two applications are first, the completion on remand of Application No. GA-75154 for a number of Washington counties, principally in Western Washington (referred to as "Old Territory"), and second, Application No. GA-77539, seeking authority for the remainder of the State (referred to as "New Territory"). The Commission consolidated the two applications for hearing.

INITIAL ORDER: Administrative Law Judge Lisa Anderl¹ entered an order on January 24, 1995, proposing that the Commission grant both applications in full.²

¹Administrative Law Judge Heather Ballash presided over the hearing and entered several orders including an initial order in GA-75154, but left the Utilities and Transportation Subdivision of the Office of Administrative Hearings before preparing the initial order herein. The Chief Administrative Law Judge assigned Judge Anderl to prepare the order under RCW 34.12.060 and RCW 34.05.425(7).

²A prior initial order by Administrative Law Judge Heather Ballash resulted in a final order entered January 25, 1993, and led to amendments to Application No. GA-75154. The entire evidentiary record is before the Commission in this proceeding.

ADMINISTRATIVE REVIEW: Protestant WRRRA, Washington Refuse and Recycling Association, petitions for administrative review, contending that the initial order erred in making its findings of fact from the evidence of record and that it erred in making its conclusions of law. The applicant answers, supporting the initial order.

COMMISSION: The Commission affirms the result of the initial order, modifying the order's conclusions as to propriety of a "marketing arrangement."

APPEARANCES: Steven B. Johnson, Attorney, Seattle, represented applicant Stericycle of Washington, Inc., James Sells, attorney, Bremerton, represented the Washington Refuse and Recycling Association; Cynthia A. Horenstein, attorney, Vancouver, Washington, represented Protestants Disposal Group, Inc., and Buchmann Sanitary Service, Inc.; David W. Wiley, attorney, Bellevue, represented BFI Medical Waste Systems of Washington, Inc.; and Ann E. Rendahl, assistant attorney general, Olympia, represented the Washington Utilities and Transportation Commission Staff.

MEMORANDUM

I. PROCEDURAL HISTORY

A. GA-75154. (The "Old Territory")

The first of the two applications at issue here is GA-75154. It was originally filed by Ryder Distribution Resources, Inc. ("Ryder"), on June 21, 1991, for contract carrier authority to furnish biohazardous or biomedical waste collection service between the facilities of Stericycle, Inc., in Morton, Washington on the one hand, and, on the other hand, Clark, Cowlitz, Thurston, Pierce, King, Snohomish, Skagit, Whatcom, Mason, Grays Harbor, Pacific, Yakima, Clallam, Jefferson, Lewis, Kitsap, and Spokane Counties; and garbage and refuse from the facilities of Stericycle, Inc., for disposal under contract with Stericycle, Inc.

Hearings were held on Ryder's amended application and Administrative Law Judge Ballash entered an initial order recommending a grant of authority. The Commission entered an order on review denying the application. It ruled that the contract carrier arrangement allowed Stericycle, an unregulated entity, to conduct common carrier solid waste transportation operations. The Commission stayed the effect of its order to afford the applicant and the carrier the opportunity to alter their relationship to a form permissible under Washington law and amend the application accordingly, or to take such other steps as they deemed appropriate.

Stericycle, Inc., then submitted its own original application, referring to it as an amendment. A Commission order found that the application was not an amendment, but that it must be independently docketed, and terminated the stay. Ryder and Stericycle, Inc., offered a second proposal on reconsideration, asking for a continuation of the stay. Ryder asked leave to withdraw as the applicant and Stericycle, Inc., asked leave for substitution as

successor. The Commission granted the requests and entered an order allowing the substitution, accepting Stericycle, Inc.'s, filing for redocketing under GA-75154, and extending the stay pending resolution of all issues relating to the amended application.

Pursuant to that order, Stericycle of Washington, Inc., or SWI, a subsidiary of Stericycle, Inc., filed on October 14, 1993, an amended application for common carrier authority to transport biohazardous or biomedical waste between the facilities of Stericycle, Inc., located at or near Morton, Washington, on the one hand, and seventeen counties on the other hand; and garbage and refuse disposal from facilities of Stericycle, Inc., located at or near Morton, Washington, for disposal.³ The Commission accepted the amended application, redocketed it, and remanded it to the Office of Administrative Hearings for further hearing.

B. GA-77539 (The "New Territory")

On October 29, 1993, SWI filed Application No. GA-77539 to collect biohazardous or biomedical waste in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Kittitas, Klickitat, Lincoln, Okanogan; Pend Oreille, San Juan, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman Counties for disposal at Stericycle facilities at Morton, Washington. These counties comprise the remainder of the state not included in Application GA-75154.

The applicant sought consolidation of the applications for purposes of hearing and disposition. On January 25, 1994, the Commission granted consolidation without objection from any party.

The two applications taken together seek statewide authority to collect biohazardous wastes for processing at the Stericycle facility and to transport wastes from the facility for disposal.

II. FACTUAL SETTING

Under the original application, Ryder sought to perform contract carrier service for Stericycle, Inc., the processor, who contracted with generators to provide transportation and treatment of biohazardous wastes. The Commission order determined that the applicant had shown a need for the service, but found that Stericycle was the "real" carrier in the sense that it incurred the obligation to conduct the transportation and then met that obligation through a tightly controlled contract transportation service.

The order determined that a finding of unsatisfactory service by an existing carrier could be made upon the carrier's failure to seek additional authority to meet

³They are not applications for motor carrier authority, and the statement of authority in GA-75154 will be rephrased to be consistent with solid waste authorities.

customers' reasonable needs, and determined that the services Stericycle and Ryder provided were reasonable needs of supporting shippers that existing carriers did not provide. It determined that need for a service involves consideration of customers' reasonable needs for service. And it determined that an asserted "marketing fee" returned for the benefit of certain customers was not improper under the circumstances of record, where Stericycle, the payor, was the nominal shipper and not the carrier.

The issues that we decided in that order will not be relitigated. In the consolidated cases, however, some things have changed since January 1993. Major factual differences include the applicant's identity; it is now Stericycle of Washington, Inc. (SWI), a subsidiary of Stericycle, Inc., (Stericycle). Other aspects of the applications are essentially similar. SWI acquired the equipment and hired most of the drivers that Ryder had used under its temporary authority to perform the requested services, and now has its own temporary authority to conduct the operations.

SWI conducts in-service training for generators regarding proper identification and segregation of medical wastes and provides education regarding safety regulations. SWI performs waste audits for generators to ensure proper segregation and to help the generator reduce its volumes of medical waste. SWI generally collects and transports the medical waste in steritubs, which are owned by Stericycle. SWI no longer uses bar coding on the steritubs for tracking purposes. SWI pays Stericycle \$5.46 per container (steritub) for treatment and disposal of the waste.

Stericycle sends its pathological wastes⁴ to an incinerator. The medical community generally agrees that incineration is the only acceptable method for disposing of pathological waste. No participant in the proceeding contends that incineration of such substances is improper. Stericycle decontaminates and shreds the rest of the waste. Source-segregated sharps are sent to a company called Sage, Inc., for plastics recovery and recycling. The rest of the waste is landfilled.

With regard to the New Territory, as of the date of the application (October 29, 1993), existing carriers were providing service that was not considered in the original proceeding. BFI was offering statewide collection for disposal of medical waste as of that date, and other carriers were also providing service in limited territories.

III. THE INITIAL ORDER

Administrative Law Judge Lisa Anderl of the Office of Administrative Hearings entered an order proposing that the applications be granted. The order found that the proposed service was needed; that existing carriers were not serving to the Commission's

⁴Pathological wastes include body fluids and tissues, contaminated linen, etc., that cannot be recycled.

satisfaction; that the applicant has the financial and regulatory fitness needed for a grant of authority; and that payments from Stericycle to an association of hospitals as a percentage of solid waste collection charges paid by non-profit association members constituted a marketing fee and a reasonable cost of doing business, not an impermissible rebate.

IV. PETITION FOR ADMINISTRATIVE REVIEW

The Washington Refuse and Recycling Association challenges the initial order, contending through 17 citations of error that the order errs in finding and concluding that SWI has the financial ability to conduct the proposed operations; that it has regulatory fitness sufficient to allow a grant of authority; and that the evidence will support a grant of authority.⁵ The Association's petition and the argument that it contains are thoughtfully prepared and of high quality.

With regard to the Old Territory, the initial order ruled that issues of public need and existing service were decided in the applicant's favor in the Commission's January 1993 order; no party challenged that ruling.

A. The applicant's fitness

In accordance with WAC 480-70-160, an applicant must establish that it is fit, willing and able to provide the proposed service. No party challenges the initial order's finding and conclusion that SWI is willing and able to provide the proposed service throughout the territory requested. WRA, however, questions the applicant's regulatory and financial fitness.

1. Regulatory fitness

To establish regulatory fitness, an applicant must show that it is willing and able to operate in compliance with applicable law. Prior operations in compliance with the law, coupled with credible assurances of future compliance, will generally establish an applicant's regulatory fitness. Past and current operations are relevant to establish regulatory fitness. Past violations are not an absolute bar to a finding of fitness. The Commission will consider whether the violations are repeated or flagrant, whether corrective action was

⁵In accordance with RCW 81.77.040, the Commission may grant authority to operate only if the service is required by the public convenience and necessity. To grant authority in territory already served by a certificate holder, the Commission must find that existing certificate holder(s) will not provide service to the satisfaction of the Commission. The Commission is directed by that statute to consider the following factors: the present service and cost thereof; an estimate of the cost of the plant to be used in collection and disposal; a statement of the assets on hand to be expended on the plant; a statement of the applicant's prior experience in the field; and, sentiment in the community to be served.

promptly taken and whether the applicant can now provide credible assurances of future compliance. Order M. V. No. 146902, In re Don B. Hightower, d/b/a The Navajo Trucking, App. No. E-76397 (Sept. 1993).

a. Violations of permit authority. The initial order acknowledged that the applicant had provided service without authority, but ruled that the applicant had nonetheless demonstrated its regulatory fitness to conduct operations.

Protestant challenges that ruling, contending that the operations outside certificate authority demonstrate the applicant's unwillingness to comply with regulation. It cites to prior Commission orders requiring the company to comply and contends that the actions addressed in those orders illustrate the company's unwillingness to comply. The applicant argues that its unauthorized service was an isolated incident, an error made in good faith, and was discontinued per advice of counsel.

The Commission accepts the analysis of the initial order. In the context in which they occurred, involving a new service provider, changes in operations, and confusion regarding responsibilities, the reported incident does not show the serious, flagrant, repeated aspects necessary to indicate that the applicant is unfit, even when set against the backdrop of the matters dealt with in the prior orders. Recent operations appear to be in full compliance. The Commission believes that they are the more accurate representation of future behavior and will expect and demand full compliance from the applicant.

b. Misrepresentations about recycling. The initial order also acknowledges that Stericycle entered a consent agreement with the state Attorney General stating that it would not misrepresent the extent of recycling it conducted. Protestant challenges the initial order's conclusion that this does not render the applicant unfit to conduct operations.

The applicant argues that its representations regarding recycling were not misleading and that the assurance of voluntary compliance is not evidence of any wrongdoing.

The circumstances underlying the consent agreement are of concern. We are satisfied from evidence of record, however, that the applicant's customers were not misled by any representations as to the proportion of recycling accomplished and that the applicant is now more precise in its representations. We adopt the initial order's rulings as to these elements.

c. Rebating. Protestant contends error in the initial order's ruling that a "marketing agreement" between the applicant and a hospital association does not constitute illegal rebating in violation of RCW sections 81.28.190 and 210.

Stericycle, Inc., SWI's parent, has an agreement with Washington Hospital Services (WHS), a for-profit division of the Washington Hospital Association, to market

Stericycle, Inc.'s, overall treatment and disposal service, including the transportation element provided by SWI. As amended in early 1994, the agreement provides for a payment to WHS based on revenues generated by the nonprofit, charitable hospitals which use Stericycle's services.

Protestant contends that the arrangement is improper as a rebate, citing Order M.V.G. No. 1451, In re Sure-Way Incineration, Inc., App. No. GA-868 (Nov. 1990). Acknowledging some differences -- payment by the parent, rather than the carrier, made to a division of the association, rather than the association itself -- it contends that the agreement still constitutes a rebate and that it violates an important public policy in providing a discriminatory advantage to one transporter in a manner that stifles, rather than encourages, competition.

The applicant contends that the arrangement with WHS is proper as a "marketing arrangement." The applicant notes that it is Stericycle, Inc., and not the applicant, that pays the fee to WHS, that the fee is based on revenues from charitable customers, whom SWI contends are non-tariff, and that WHS provides valuable marketing services which are a reasonable and appropriate expense.

The Commission disagrees and reverses the initial order on this issue. While it notes confusion and disagreement among the analyses offered by the parties and the initial order, the Commission finds that the arrangement is improper. Stericycle, Inc., can hire virtually whomever it wishes to perform services on its behalf. A sales agent may be an appropriate part of a marketing strategy and necessary to build and maintain business. There are several aspects of this particular arrangement, however, that raise red flags of both public policy and legality.

In this arrangement, the relationships of the parties, the means of calculating payment, and the nature of the relevant customers all contribute to a conclusion that the payment is an indirect rebate and a means of granting an impermissible preference to certain customers -- focused on those to whom the law allows a reduction in rates, perceived by the parties as an element of competition.

The relationship of the parties -- owner of the carrier, generators, and an association of which the generators are members -- requires us to look carefully to determine whether the payment has aspects of an improper transaction. The carrier could not properly rebate to certain customers a portion of their transportation charges.⁶ Here the payment is from the carrier's owner to an association to which the customers belong, is not clearly based on the value of Association services rendered regarding only those customers, and is clearly

⁶While some latitude is afforded service to charitable institutions, there appears to be no exception for such institutions from the statutory ban against rebating. RCW 81.28.080, 81.28.180.

an inducement to association members to become and remain customers -- exactly the purpose of a rebate.

The transaction does not appear to be a true marketing arrangement. There is no apparent relationship between either the value or the cost of services performed and the "payment." There is no distinction between the performance of services regarding association members who are for-profit and those who are not-for-profit. Payment, however, is based only upon the amount of revenue generated by not-for-profit association members. It is based upon the transportation charges, rather than upon efforts, time, or resources assertedly used. If it were a true marketing arrangement, with compensation for services rendered, one would expect no distinction between services (or payment) with reference to for-profit institutions and those provided with reference to not-for-profit institutions. There is no indication of any association "services" that are provided with reference to one but not another class of customers.

We reject SWI's contention that the arrangement is permissible because Stericycle, Inc., pays the fee rather than SWI. It appears to be based on the costs of collection, including the costs of disposal. Stericycle, Inc., is sole owner of SWI. Its payment is clearly on behalf of its interests as collector and processor rather than any separate interests it may have as processor.

The effect of the transaction is that a portion of certain customers' fees is returned for the benefit of those customers to a for-profit activity in which they have an interest, providing an effective reduction in rates not available to others, without any relationship to the value of services rendered.

All considered, the arrangement is the rebate for the benefit of the customer of a portion of the collection fees paid, rather than the contended "marketing arrangement." It is anti-competitive. It is discriminatory in its application. It reflects a poor policy direction, and it does not appear to be lawful. See, RCW 81.28.080; 81.28.210; 81.28.190; and 81.28.180.

Nonetheless, there has been abundant uncertainty about the propriety of the practice. We therefore do not find it to be evidence of unfitness.⁷ We do expect that the practice will be stopped.

⁷We adopt the following comment from the initial order: "Even if the Commission were to decide that this agreement is improper, either for legal or policy reasons, this order would recommend that the past arrangement should not affect the applicant's fitness, so long as it is promptly discontinued if found to be unlawful. The applicant has been open about the arrangement and seems to have been engaged in a legitimate attempt to gain market share. Because the agreement has not previously been held to be improper, the applicant should be given a chance to comply if it is so determined."

2. Financial fitness

Protestants continue to challenge the applicant's financial fitness to conduct the proposed operations. An applicant must show that it has the financial ability to provide the proposed service. The applicant must also state its assets and establish its costs of operation and facilities. Finally, the applicant must demonstrate the financial feasibility of the operation. Order M.V.G. No 1663, In re Sureway Medical Services, Inc., App. No. GA-75968 (Nov. 1993). An applicant need not demonstrate profitability of proposed operations as a prerequisite to entry. Rather, applicants have been required to show that they have assets sufficient to begin and sustain operations for a reasonable period of time so that profitability can be determined. The questions of an applicant's financial fitness and the cost and feasibility of the proposed operations are separate, but they are so interrelated that they will be discussed together.

The initial order rejected challenges to the applicant's financial fitness and the feasibility of the operations. WRRRA contends on review that the applicant's financial information is not sufficiently specific and that it consists principally of testimony regarding its existing operations on temporary authority, serving "about 205 of the most profitable accounts . . . in the most densely populated corridor" of the state. Protestant contends that applicant's pro forma operating statement fails to consider declining revenues per account and customer attrition. It contends that the applicant's operating history in another territory, where it does serve customers in rural settings, cannot establish financial feasibility for a service based on different customer and regulatory requirements.

This is not a rate case, in which precise historical evidence is required and future projections must often be known and measurable to be considered. The test here for financial feasibility is whether the applicant has the financing to conduct the operations for a reasonable period; whether it has reasonably considered the costs of providing service; and whether those costs appear to be reasonable. The applicant has met each of those tests.

Protestant is correct in its contention that the applicant's historical results of operations are not an accurate representation of future operations because they do concentrate on larger customers who are less expensive to serve. The applicant's costs will likely rise, and its per-customer revenues will likely fall, as protestant contends, as it broadens its customer base. The Commission does not grant authority based on low rates because of that phenomenon.³ Its Oregon operations are relevant to demonstrate the viability of its operations while serving a territory and a customer base more closely resembling Washington statewide operations.

³See, Order M. V. No. 145268, in re Becker Trucking, Inc., App. No. E-74675 (July 1992); Order M. V. No. 138131, In re Punctual Transportation, Inc., App. No. P-71023 (August 1988).

The Commission affirms the relevant findings and conclusions of the initial order. The carrier appears to be preparing a marketing strategy, described during the hearing, aimed at securing business from all segments of the market. As a regulated common carrier, the applicant will have an obligation to serve the entire range of generators. It has been restricted from adding customers while this application has been pending.

The Commission finds that SWI has established that it is fit, willing and able to provide the proposed service and that it has sufficiently shown its costs of service, its assets, and the feasibility of the proposed operations.

B. Public need for the proposed service; service to the satisfaction of the Commission

An applicant must establish that a public need exists for a proposed service. To grant an application, the Commission must also find that existing carriers are not operating to the satisfaction of the Commission. Testimony from shippers (i.e., waste generators) is relevant both to the issue of public convenience and necessity and to sentiment in the community. The question of what service is required is related to what services are already being provided by existing carriers. Public need and satisfaction with existing service are related and may be considered together.

The initial order noted that the Commission had found need for the applicant's services and had found prior services, by failing to meet that need, not to the satisfaction of the Commission.

In general, the witnesses who testified in support of both the Old and the New Territory represented hospitals or clinics with a need for collection and disposal of medical waste, including sharps, softs and pathological waste. In general, the witnesses described five service requirements in the collection and disposal of their wastes: 1) A single entity responsible for the waste from the time of collection to the time the material is rendered inert; 2) Reusable, stackable plastic collection containers as opposed to lined cardboard; 3) Waste audits, education, and training to decrease their waste volumes and increase work place safety; 4) A disposal method which is an alternative to incineration because of liability concerns about emissions and ash; and, 5) A program that recycles a portion of the waste stream.

✓ The Commission's January 1993 order noted that a generator of medical waste, who may have continuing liability for any harm caused by that waste, has a heightened responsibility to determine the method of disposal, and its needs for collection and disposal are of a different character from needs for universal waste collection. As health care professionals, the generators are in a unique position to evaluate the risks and benefits of collection and disposal services from the perspective of their own professional training and experience. The Commission gives considerable weight to such testimony of service requirements. Specialized needs of generators may include the technology of disposal, ability to coordinate disposal, the nature of protection afforded collected waste, and protections

against potential statutory and civil liability. Single carrier service can be a reasonable shipper need.

The initial order summarized presentations from Consolidated Disposal Services, Inc., in Grant and Adams counties; Dahl-Smith, Inc., in Walla Walla and Columbia counties; Basin Disposal, in Walla Walla and Franklin counties, and BFI, who operates statewide but cannot provide service to Stericycle, Inc., because of a limitation in its permit.

BFI has authority and offers medical waste collection and disposal statewide, but has a restriction in its permit against service to the Stericycle facility at Morton. BFI collects and transports waste for disposal at the incinerator in Ferndale. BFI does not offer any recycling service as it believes that recycling is not feasible at this time. BFI provides a choice of cardboard disposal containers or plastic reusable tubs. BFI offers education and training to generators regarding safety issues. BFI uses a tracking system to address generators' concerns about liability and to assure generators that the waste is accounted for and disposed of.

This application does not seek "traditional" universal garbage service. The supporting shippers do have specialized needs not encountered by a typical residential customer. The existing service does not suffer from the usual failures and problems relevant to competing grants of universal service, such as missed pick ups or trash strewn about. WRRRA on review questions the direction the Commission has taken in recent medical waste orders.⁹ It urges the Commission to adhere to traditional, objective standards of need and satisfactory service.

The Commission is neither attempting to dismantle regulation nor to harm existing carriers. It is dealing with needs and services that were not contemplated at the time the solid waste statutes were enacted, in a manner that not only satisfies the statutory requirements but also satisfies public need and preserves the viability of universal service. Contrary to Protestant's contentions, the Commission is most assuredly neither attempting to regulate nor asserting any jurisdiction over disposal.

The Commission is, however, conscious of changes in the potential legal liability for wastes; it is conscious of health hazards such as AIDS that were undreamed of a generation ago; and it is conscious of changes in technology and scientific knowledge. Together, those changes require a different approach to the specialized waste services, hazardous and biohazardous wastes, than to universal service. We are not regulating disposal

⁹It contends that the Commission has not denied an application for medical waste service. The Commission has denied an application for temporary authority after brief adjudication, See, Order M.V.G. No. 1445, In re Rowland and Bloch, d/b/a Kleenwell, App. No. GA-906 (October 1990), and it has taken steps to terminate operations conducted without authority, In re Rowland, d/b/a Kleenwell, Docket No. TG-920304 (January 1993).

when we say that under current law the generator of hazardous and biohazardous wastes may properly have enough of a voice in where, when, and how its biohazardous wastes are disposed of to empower it to receive service from a carrier that has the ability to meet its specialized needs.

Disposal is not an issue in universal service. The residential and "ordinary" business customer have no legal or practical concerns about the disposition of their wastes, except that it be regularly collected. That is not true of the generator of hazardous wastes, and our analysis permits the reasonable disposal needs of generators of biohazardous waste streams to become one factor to be considered in need for additional service.

On this record, the biohazardous waste generators have demonstrated needs that are specialized, but that are real. They are reasonable needs in light of the generators' responsibilities and potential liabilities. Generators described reasonable concerns about custody of the waste that are addressed by having a single carrier. They described reasonable concerns about incinerator emissions and ash that are addressed by a non-incinerative disposal option. They have described reasonable concerns about work place safety that are addressed by a carrier's willingness and ability to provide training and puncture-proof collection containers. The Commission concludes that the waste generators' testimony establishes a need for the collection, transportation and disposal services offered by SWI and Stericycle. The service offered is tailored to meet the needs described by the generators as important to the medical community.

Because existing carriers do not offer a collection, transportation and disposal service which meets those needs, the existing carriers will not provide service to the satisfaction of the Commission. None of the protestants offers a disposal option other than incineration and none offers recycling. BFI's service does otherwise address the generators' needs for single carrier service, reusable collection tubs, and education and training for the generators' employees who handle the waste. As noted in the prior order in this matter, this conclusion carries no moral judgment. To find that existing service is satisfactory would deny the health care industry an innovative, valuable service meeting public needs and would be inconsistent with the public interest and the Commission's responsibilities to the public as well as to the regulated industry under the statutes governing its operations.

WRRRA contends that because the applicant did not present the testimony of generators expressing needs for service in nine of the state's 39 counties, the application should be denied as to those counties. This proceeding is an application for statewide authority, notwithstanding that the counties are listed separately and individually under two docket numbers. The counties define the total territory sought, not individual cells of service. The applications are a request for authority in the entire state of Washington, rather than a request to serve totally and individually within every county of the state. Statewide authority may be granted on a showing of public need throughout the territory, if the result is clear from that showing that authority is needed in the entire territory. See, Order M. V. No. 144730, In re Gerald R. Severson, App. No. P-75194 (March 1992).

Protestants also presented evidence that relates to the state generically through various illustrations. The applicant seeks to offer a statewide service through illustrations of statewide need. An applicant for smaller territories need not show a need on each block, or in each development, so long as need is demonstrated throughout the territory sought. A showing of statewide need for the service does not require an individual witness for each village, town, city, or county -- so long as sufficient illustrations are presented throughout the territory to support a finding that need exists within the entire territory. This record provides sufficient representative illustrations throughout the territory to demonstrate that need exists.

C. Public Convenience and Necessity

The initial order found that testimony of public need, the sentiment in the community, and the ability of SWI to meet those needs, all lead to the conclusion that the proposed service is required by the public convenience and necessity.

The initial order also discussed the appropriate standard to apply regarding specialized solid waste collection service, such as medical waste, citing several cases,¹⁰ and concluded that an additional carrier is required by the public convenience and necessity.

Protestant challenges several aspects of this conclusion; we have discussed its arguments elsewhere in this Order. The result of the initial order is correct.

D. Public interest

The initial order found that adverse effects on existing carriers were insufficiently demonstrated to support denial of the application. We believe that the issue addressed here is consistency of the application with the public interest.

WRRRA argues on review, in essence, that competition is antithetical to the interests of carriers and ultimately to the public interest. It is true that some carriers have left the business in Washington for financial reasons. It is true that carriers in an environment of controlled competition may not be able to make as much money as carriers with a monopoly franchise. Protestant acknowledges that a grant of this authority will not render protestants insolvent.

The test of public interest involves a review of all potential effects of additional service. While competition may operate in a limited market to reduce available business to uneconomic levels, it is also true that competition can bring benefits to consumers. The record in this proceeding shows both. There has been a reduction in the number of carriers,

¹⁰In addition to prior orders in the current proceeding, they included Order M. V. G. No. 1663, In re Sureway Medical Services, Inc., App. No. GA-75968 (Nov. 1993). Order M. V. G. No. 1707 In re Medical Resource Recycling System, Inc., App. No. GA-76820 (May 1994).

but when comparing the services available at the time of the first hearings with those available at the time of the second, it appears that substantial improvements occurred in the range of services offered by carriers serving this market and the ability of carriers to meet the particular needs of generators of this specialized waste stream.

WRRRA argues that we must assess the prospective marketplace and remaining carrier operations, service, and pricing levels that an applicant proposes to overlap. The Association apparently proposes a test for denial that is measured by adverse effect upon existing carriers' financial returns. We think that the review thus phrased is too narrow. Rather, we believe the proper test for public interest to be whether the entry of an additional carrier, who has demonstrated public need for its services, will result in damage to carriers that causes a reduction to unacceptable levels of available reasonably priced service to consumers.

The initial order found that possible negative impact on BFI and others was uncertain and not established on the record. It noted that BFI serves profitably in the Old Territory where it currently has competition from SWI. BFI's unprofitable accounts are in Eastern Washington and it is not clear what impact an additional carrier would have.¹¹ The proper test for public interest when reviewing contentions of too many competitors is whether the addition of a competitor will result in unacceptable levels of service to the public. We agree with the initial order that this record does not show that harm to customers would result from a grant of additional needed authority.

Finally, the initial order noted a reduction in disposal options to generators, leading to potential new business. It may indeed be anticipated that there is potential for customer growth in the New Territory.

V. CONCLUSION.

The Commission affirms and adopts the result of the initial order. The applications are granted. The Commission reverses the initial order on its ruling that the so-called "marketing arrangement" is a proper means of securing services.

FINDINGS OF FACT

Having discussed the evidence and having stated findings and conclusions, the Commission makes the following findings of fact and conclusions of law. Portions of the preceding findings pertaining to the ultimate facts are incorporated herein by this reference.

¹¹It may well be more fair to BFI, the only statewide service provider, to grant statewide authority to Stericycle and require it, also, to serve less urbanized areas as well as small customers in the urban areas.

1. On June 21, 1991, Ryder Distribution Resources, Inc. ("Ryder"), filed an application for contract carrier authority to furnish biohazardous or biomedical waste collection service. As redocketed in October 1993 and as amended, the application names Stericycle of Washington, Inc. (SWI), as the applicant and requests common carrier authority to transport biohazardous or biomedical waste between the facilities of Stericycle, Inc., located at or near Morton, Washington, on the one hand, and, on the other hand, Clark, Cowlitz, Thurston, Pierce, King, Snohomish, Skagit, Whatcom, Mason, Grays Harbor, Pacific, Yakima, Clallam, Jefferson, Lewis, Kitsap, and Spokane Counties. The filing was docketed as GA-75154 and is referred to in this order as the Old Territory.

2. On October 29, 1993, SWI filed an application for common carrier authority to provide solid waste collection service consisting of biohazardous or biomedical waste in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman Counties for disposal at Stericycle located at or near Morton, Washington. These counties constitute the remainder of Washington counties not included in Application GA-75154. This later application is Docket No. GA-77539 and is referred to in this order as the New Territory. On January 25, 1994, the Commission consolidated the two applications for hearing and decision.

3. The Washington Refuse and Recycling Association (WRRRA) protested both applications on behalf of its members. In addition, protests were filed to GA-75154 by BFI Medical Waste Systems of Washington, Inc. (BFI), The Disposal Group, Inc., and Buchmann Sanitary Service, Inc.

4. SWI is a wholly-owned subsidiary of Stericycle, Inc. Stericycle, Inc., owns a disposal facility in Morton where SWI brings the waste for treatment and disposal. Stericycle sends its pathological wastes to an incinerator. SWI collects waste from generators in reusable plastic steritubs which Stericycle provides. The waste is rendered inert through a process called electro-thermal deactivation. It is then shredded to reduce the volume and landfilled. Stericycle, Inc., treats source segregated sharps waste and sends it for recovery and recycling of the plastics. The applicant pays a set fee of \$5.46 for each steritub it brings in for disposal. Stericycle does not allow other carriers to dispose of waste at its facility because it has no storage space, because it does not want to contend with scheduling deliveries with a number of different carriers and because it would have to provide more steritubs if multiple carriers served the facility.

5. SWI has the financial ability to conduct the proposed operations. The testimony of witnesses Mr. Clesen and Mr. Demas establishes the viability of the operations as currently performed under temporary authority and the feasibility of expanded operations statewide. SWI will operate suitable equipment and employ qualified personnel to perform the waste collection and transportation services.

6. The applicant provided credible assurances of its willingness and ability to operate in compliance with applicable law if this application is granted. SWI served one generator in violation of its temporary authority, but the violation was an error made in good faith and was neither flagrant nor repeated.

7. The evidence of record does not establish that the applicant is or will be engaged in cream skimming in violation of its common carrier obligation to serve. The applicant does not misrepresent to generators the amount of waste which is recycled. Stericycle, Inc., pays a fee to WHS, a for-profit service subsidiary of the Washington Hospital Association. A portion of SWI's revenues from serving nonprofit hospitals is returned for the benefit of those customers to a for-profit activity in which they have an interest, providing an effective reduction in rates not available to others, without any apparent relationship to the value of services rendered.

8. The applicant presented shipper witnesses from both the Old and the New Territory. Findings based on their testimony are set forth below:

a. Kenneth Whitney of Swedish Hospital, King County. The service SWI offers is not materially different from that offered and provided by Ryder and supported by this witness during the original hearings in this matter.

b. Herman Meier of Holy Family Hospital, Spokane County. SWI's service is the same as previously provided by Ryder. This shipper wants one company to be responsible for its waste from collection until it arrives in Morton. The education and training provided by SWI are valuable and important to this generator. This shipper strongly desires a non-incinerative disposal method because of concerns about toxic ash.

c. John Valentine of the Polyclinic, King County. This shipper had a bad experience with BFI regarding billing which prompted his decision to seek other service. This shipper prefers the full range of services offered by SWI, as compared to the "curbside" service previously provided by Sureway. This shipper desires recycling of the waste if feasible.

d. Gerald Wallace of Willapa Harbor Hospital, Pacific County. This shipper began using Stericycle's service in March 1992 because of the training, recycling, and steritubs which were provided as a part of the service package. It is not material to this shipper, or to others who testified on this subject, that Stericycle and SWI no longer use the bar code tracking system originally offered by Stericycle and Ryder.

e. Arne Ericksen of Affiliated Health Services, Skagit County. This shipper supports recycling of portions of the waste. The shipper finds reusable, stackable, plastic collection containers to be superior to red-bagged cardboard containers.

f. Keith Rothbauer of St. Joseph's Hospital, Whatcom County. This shipper has concerns about the potential liability associated with incinerator ash and wants a disposal option that allows recycling and which does not involve incineration. This shipper finds the leak-proof, reusable, stackable plastic steritubs to be superior to cardboard collection containers. This shipper also values the waste audits and training provided by SWI.

g. Carol Winter of Kaiser Permanente, Clark and Cowlitz Counties. This shipper requires a medical waste collection service which has components addressing safety, education, and the environment. SWI provides education and training which cover safety issues. This shipper finds the plastic steritubs to be safer than cardboard containers, especially for preventing needle sticks. The environmental requirement is addressed by the ability to recycle some of the waste and by the non-incinerative disposal method. This shipper also wishes to use just one vendor for collection and disposal.

h. Larry Dickson of Sisters of Providence Health Care System, with facilities in King, Snohomish, Thurston, Lewis, and Yakima Counties. This shipper expressed a desire to use the same medical waste collection company for all its facilities. The shipper's concern about liability causes it to require strict control over the waste until it is rendered inert. The shipper finds a non-incinerative disposal method superior to incineration because of concerns about air and water quality issues. The shipper is concerned about safety and finds that the steritubs address that concern because they are puncture and leak-proof and resist tipping over. The shipper is committed to a recycling program and purchases plastic containers which are made from the recovered plastic of sharps waste.

i. Glenda Schuh, St. John's Medical Center, facilities in Cowlitz and Wahkiakum Counties. This shipper finds the following service characteristics important in selecting a medical waste collection service: the ability to recycle part of the waste, education, training and waste audit surveys, plastic collection containers such as steritubs.

j. Petra Dorland of Pacific Cataract and Laser Institute, facilities in Lewis, King, and Benton Counties. This shipper used the services of Waste Management for its medical waste collection and found the use of cardboard collection containers unsatisfactory. This shipper requires a service which allows it to recycle some of its waste and reduce landfill use.

k. Rand Masteller of Inland Cardiology testified as to future need for service in Benton County. This shipper wants a single carrier from collection to disposal (meaning when it is rendered inert) because of liability concerns. The shipper also wants the ability to recycle some of the waste, and finds the training offered by Stericycle to be important.

l. Paul Strohbehn of Columbia County Hospital District, facilities in Columbia and Walla Walla Counties. This shipper now landfills its waste. It would consider any qualified service provider for collection and disposal service. This shipper likes the use of plastic collection containers and the idea of a single carrier who is responsible for the waste from collection to disposal.

m. Larry Carlson of Chelan Community Hospital, Chelan County. This shipper currently uses BFI but likes the idea of being able to recycle part of the waste. This shipper supports competition and would choose a carrier based on cost. This evidence fails to support the application.

n. Dave Little of Kennewick Family Medicine, Benton County. This shipper will need service from its soon-to-open facility. It would choose SWI if given the choice because of recycling, training, and rigid collection containers. This shipper would also consider BFI.

o. Marcia Medler of Mid-Columbia Family Health Center, facilities in Skamania and Klickitat Counties. This shipper will soon require medical waste collection and disposal service from both facilities. The shipper is very concerned about potential liability for any harm associated with medical waste and therefore requires a single carrier to take responsibility for the waste from point of collection to disposal. Rigid plastic containers which are leak and puncture-proof also address the liability concerns.

p. Randy Nunamaker of Our Lady of Lourdes Health Center, Franklin County. BFI currently provides this shipper an acceptable level of collection service. This shipper is very concerned about liability for incinerator ash, however, and would therefore use a non-incinerative disposal method if one were available. This shipper would also like to receive service from SWI because the applicant's collection containers are superior and because of the education and training offered.

q. Thomas Paul of Whitman Hospital and Medical Center, Whitman County. This shipper self-hauls its medical waste to MRRJ in Spokane County for autoclave sterilization and disposal. This shipper would choose a transportation service based on the following factors: cost, square plastic tubs with lids, a non-incinerative disposal method, recycling, single carrier service.

r. Michael Shaw of Jefferson General Hospital, Jefferson County. This shipper uses SWI and is satisfied with the service. This witness could not speak to the situation which existed at the time of filing the application for the Old Territory.

s. Michael Cadman of Whidbey General Hospital, Island County. This witness's testimony does not establish a need for service.

t. Rob Jones of Community Medical Center in Okanogan County. This witness's testimony does not establish a need for service.

u. Michael Wiltermood of Coulee Community Hospital, Grant County. This shipper uses BFI now, but is not satisfied with cardboard collection containers. This witness could not speak to the situation which existed at the time of filing the application for the New Territory.

v. Randy Kaiser of Kittitas Valley Community Hospital, Kittitas County. This shipper incinerates its waste on site, but anticipates shutting down its incinerator in the near future. This shipper uses BFI as a backup carrier, but would change to SWI because of the possibility of recycling some of the waste.

w. Sandy Buchanan of Lincoln Hospital, Lincoln County. This shipper currently self-hauls to MRRRI in Spokane County. This shipper would select a transportation company based on the availability of square plastic containers, the possibility of recycling some of the waste, and the cost of the service.

x. Charles Riffel of Newport Community Hospital, Pend Oreille County. This shipper currently receives satisfactory collection service from BFI. This shipper would choose SWI over BFI because of the recycling and because of information received from WHS about the service.

y. Dan Dinjian of Okanogan Douglas Hospital District, Okanogan County. This shipper incinerates its own medical waste. It would choose SWI as its backup carrier because of the recycling service that carrier offers.

9. Dan Dietrich of Consolidated Disposal Service, Inc., testified in opposition to this application. This carrier offers medical waste collection and disposal service in Grant and Adams Counties under certificate G-190. Consolidated Disposal collects and stores (freezes) medical waste for subsequent collection and incineration by BFI. This carrier offers both cardboard and plastic collection containers.

10. Pete Dahlquist of Dahl-Smyth, Inc., testified in opposition to this application. This protestant offers service within its territory in Walla Walla and Columbia Counties under certificate G-165. This carrier offers cardboard collection containers and currently serves one customer. The waste is picked up from Dahl-Smyth by BFI for incineration.

11. Don Young of Basin Disposal testified in opposition to this application. This carrier offers medical waste collection service in its territory in Walla Walla and Franklin Counties under certificate G-118. It currently serves three generators, using cardboard collection containers. Basin stores the collected waste until it is transported to Consolidated Disposal, where it is collected by BFI for incineration.

12. Roger Van Valkenburgh and Jeff Daub of BFI testified in opposition to this application. BFI has authority and offers medical waste collection and disposal statewide, but has a restriction in its permit against service to the Stericycle facility at Morton. BFI collects and transports waste for disposal at the incinerator in Ferndale. BFI does not offer any recycling service as it believes that recycling is not feasible at this time. BFI provides a choice of cardboard disposal containers or round plastic reusable tubs. BFI offers education and training to generators regarding safety issues. BFI uses a tracking system to address generators' concerns about liability and to assure generators that the waste is accounted for and disposed of.

BFI is currently operating at a profit in the state of Washington. It is losing money on some accounts in Eastern Washington. Since it began doing business in the state in November of 1992, it has lost accounts to Stericycle. This carrier believes that the market for medical waste collection and disposal service in the state is fixed and declining. It believes that more carriers in the market will necessarily lead to reduced profitability for all and will hinder its ability to provide service. It points to its acquisition of AEMC and Sureway (and Brem-Air's medical waste customers) as evidence that the market will not support multiple carriers.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. The applicant is fit, willing and able to provide the service herein requested under the provisions of chapter 81.77 RCW and under chapter 480-70 WAC.

3. The protestants do not provide service to the satisfaction of the Commission. It has been established that public need exists for the amended authority applied for by the applicant.

4. It is in the public interest and required by the public convenience and necessity, pursuant to the provisions of RCW 81.77.040, that the applicant be issued a certificate authorizing it to operate in garbage and refuse collection service as follows:

Biohazardous or biomedical waste in the State of Washington, restricted to disposal at the facilities of Stericycle, Inc., located at or near Morton, Washington; solid waste at the named facilities, for disposal.

5. The "marketing fee" paid by Stericycle, Inc., to a division of the Washington Hospital Association based on SWI revenues from serving nonprofit hospitals is unlawful as a discriminatory rebate of charges for service and is improper as device to impede customers' decisions based on the cost and value of service.

6. All motions made in the course of this proceeding that are consistent with the findings, conclusions and decision herein are granted, and those inconsistent therewith are denied.

Based upon the above findings of fact and conclusions of law, the Commission enters the following order.

ORDER

THE COMMISSION ORDERS That, consolidated Applications GA-75154 and GA-77539 of Stericycle of Washington, Inc., for a certificate of public convenience and necessity to operate motor vehicles in furnishing solid waste collection service, are granted as amended.

THE COMMISSION FURTHER ORDERS That, contingent upon the applicant's compliance with the provisions of chapter 81.77 RCW and with the Commission's rules, the Commission will issue a certificate of public convenience and necessity as set forth in Appendix A, attached hereto and incorporated herein by this reference.

THE COMMISSION ORDERS That, the "marketing fee" paid by the applicant's owner to a division of the Washington Hospital Association shall be terminated, and Stericycle, Inc., shall certify that it is terminated as a precondition to any grant of authority under this Order.

DATED at Olympia, Washington and effective this
day of August 1995.

gll

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

Richard Hemstad

RICHARD HEMSTAD, Commissioner

Wm. R. Gillis

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

Solid Waste consisting of biohazardous or biomedical wastes in the State of Washington, (restricted to disposal at the facilities of Stericycle, Inc., located at or near Morton, Washington); Solid Waste from the facilities of Stericycle, Inc., for disposal.

AUG 14 1998

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition	)	DOCKET NO. TG-970532
of Commission Staff for a)	
Declaratory Ruling [Regarding	)	DECLARATORY ORDER
Biomedical Waste Carriers])	
.)	

PROCEEDING: This is proceeding on a petition for declaratory ruling. On March 21, 1997, the Staff of the Washington Utilities and Transportation Commission ("Commission Staff") filed a petition seeking a declaratory ruling. The petition alleges that certain competitive practices of biohazardous or biomedical waste carriers operating in this state are anticompetitive, and detrimental to the customers and the carriers. The practices that concern Commission Staff include the presence of terms in service agreements requiring a minimum period of service, extended notice requirements for cancellation, liquidated damages for early cancellation, and offering reduced (below-tariff) rates to nonprofit hospitals and clinics in order to attract their business. The petition asks the Commission to declare the application of Commission rules and statutes to the identified practices.

On April 2, 1997, the Commission gave notice of receipt of the petition and notice of opportunity to participate to all certificated solid waste companies and other persons. The Commission received comments and requests for party status.

Two prehearing conferences were held before Administrative Law Judge John Prusia. The parties subsequently agreed to submit the matter to the Commission on stipulated facts and an agreed schedule. The parties asked the presiding officer to enter an initial order, and to make the initial order subject to review and entry of a final order as in adjudicative proceedings. This was allowed. The parties filed stipulated facts and briefs. In their briefs, several parties requested relief that was not sought in the Commission Staff petition.

INITIAL ORDER: The Initial Order was entered on October 29, 1997. The Initial Order would declare that minimum period of service and notice of discontinuance of service provisions in service agreements for the collection and transportation of biomedical waste must comply with WAC 480-70-710(1); that liquidated damages provisions are subject to the tariff filing requirements of RCW 81.28.080; and that the current practice in the solid waste industry of biomedical waste carriers charging reduced rates for service to nonprofit hospitals and clinics, for competitive rather than charitable purposes, is illegal. The Initial Order would deny requests that the Commission grandfather existing below-tariff agreements. It would deny a request to consider the legality or appropriateness of a marketing agreement between Stericycle of Washington, Inc. ("Stericycle") and the marketing arm of the Washington State Hospital Association ("WSHA").

PETITIONS FOR ADMINISTRATIVE REVIEW: All parties except the Commission Staff petition for review and modification of the Initial Order. Two petitioners (BFI Medical Waste Systems of Washington, Inc. [BFI] and Stericycle) request modification of the conclusion and declaration with respect to the practice of charging reduced rates. All petitioners except Stericycle request that the Commission either grandfather existing below-tariff rates in service agreements, or provide an adjustment interval during which the below-tariff rates may remain in effect. BFI and the Washington Refuse & Recycling Association ("WRRRA") ask the Commission to scrutinize the marketing agreement between Stericycle and the WSHA. All parties except WSHA filed responsive briefs. The Commission Staff supports the petitioners' requests for an adjustment period.

COMMISSION: The Commission declares 1) that a service agreement for the collection and transportation of biomedical waste must meet the requirements of WAC 480-70-710(1) regarding minimum length of service and notice of discontinuance of service. 2) Provisions in such an agreement that require a customer to give more than three business days' notice to the carrier to discontinue service, or that require a minimum-length term of service of more than three business days, or that provide liquidated damages for violating such provisions, violate WAC 480-70-710(1). 3) Any liquidated damages provision in such a service agreement is subject to the tariff filing requirements of RCW 81.28.080.

The Commission also declares 4) that biomedical waste collection companies' provision of regular biomedical waste collection service to nonprofit hospitals and clinics at below-tariff rates does not fall within the exception in RCW 81.28.080. Biomedical waste collection companies are not hauling property free or at reduced rates for charitable purposes, but rather as a means to compete for business. Finally, 5) the Commission declares that any provision of services at free and reduced rates must be provided subject to a "free or reduced" rate tariff approved by the Commission. Any provision of biomedical collection that is not at a tariff rate should cease.

The Commission will not take any action to enforce the instant Order for a period of sixty days following its entry to allow carriers that presently provide biomedical waste collection service at reduced rates an opportunity to file tariffs for the services.

The Commission declines to review the service agreement between Stericycle and the WSHA in this proceeding because this is a declaratory judgment action, not an action to examine whether particular contract reimbursements are in fact for services rendered.

APPEARANCES: Mary M. Tennyson, Senior Assistant Attorney General, Olympia, represents the Commission Staff. James K. Sells, attorney, Bremerton, represents the WRRRA, Murrey's Disposal, American Disposal, Rubatino Refuse, Inc., LeMay Enterprises, Inc., Empire Disposal, Inc., Consolidated Disposal, Inc., and Disposal Services. David W. Wiley, attorney, Seattle, represents BFI. Stephen B. Johnson, attorney, Seattle, represents Stericycle. Barbara Allen Shickich, attorney, Seattle, represents the WSHA.

MEMORANDUM

This is a proceeding on a petition for declaratory ruling filed by the Commission Staff relating to biohazardous or biomedical waste. The petition alleges that certain practices of carriers of biomedical waste are anticompetitive and detrimental to both customers and the carriers. The practices that the petition identifies as of concern include terms in service agreements requiring a minimum period of service, long notice requirements for cancellation; liquidated damages for early cancellation; the offering of reduced (below-tariff) rates to nonprofit hospitals and clinics in order to attract their business, resulting in bidding "wars" between carriers; and the failure of carriers with biomedical waste authority to hold themselves out as available to provide service in less profitable areas in their authorized service territories. The petition asks the Commission to declare the application of Commission rules and statutes to the identified practices.

I. PROCEDURAL HISTORY

The Commission Staff filed its petition on March 21, 1997. The Commission gave notice of receipt of the petition and notice of opportunity to participate to all certificated solid waste companies, and to other persons that the Commission identified as having a possible interest in the rates and practices of biomedical waste carriers.

The Commission received requests for party status; all were granted. The following parties participated: the Commission Staff; BFI, Stericycle, the WRRRA, several small solid waste collection companies that participated jointly with the WRRRA (Murrey's and American Disposal; Rubatino Refuse, Inc.; LeMay Enterprises, Inc.; Empire Disposal, Inc.; Consolidated Disposal, Inc.; Disposal Services); and the WSHA.

Two prehearing conferences were held. The prehearing conferences took the form of round table discussions of current practices in the industry, issues raised by the petition, and possible amendments to the petition.

On June 27, 1997, the parties submitted an agreement on process, and a schedule. The agreement on process provided that the matter would be submitted on stipulated facts, that the the presiding officer should enter an initial order, and that the initial order would be subject to review and entry of a final order as in adjudicative proceedings. The parties filed memoranda or briefs.

The presiding officer accepted this proposal, and entered the Initial Order on October 29, 1997.

II. THE PETITION FOR DECLARATORY RULING

The Commission Staff petition for a declaratory ruling expressed concern that certain practices exist in the biomedical waste industry which are anticompetitive and detrimental to customers and the carriers. The practices causing concern include: 1) the presence of terms in service agreements requiring a minimum period of service, extended notice requirements for cancellation, and liquidated damages; 2) bidding "wars" between carriers to provide service to charitable or nonprofit hospitals and clinics; and 3) the failure of carriers with biomedical waste authority to hold themselves out as available to provide service in less profitable areas in their authorized service territories.

The petition seeks a Commission declaration that:

1. Any requirement for a minimum length term of service or notice of cancellation in a service agreement is subject to the terms of WAC 480-70-710(1), which allows a customer to discontinue service by notifying the company at least three full business days before the next scheduled pickup to stop service, and a longer minimum service period therefore is prohibited.
2. Liquidated damages provisions in service agreements are a violation of RCW 81.28.080, which requires that a carrier only charge tariffed rates, and therefore are prohibited.
3. Carriers may not charge free or reduced rates to charitable or nonprofit hospitals or clinics under RCW 81.28.080 without demonstrating a "charitable purpose."
4. Any carrier's obligation to serve all customers in a service territory requires the carrier to hold itself out to provide service to all customers by advertising throughout their service territory.

III. STIPULATED FACTS

The parties agreed and stipulated to the following facts:

1. Requiring a customer to sign an agreement specifying a minimum term of service may have the effect of discouraging the customer from exercising its right to terminate service under WAC 480-70-710(1) and choose another carrier. Some regulated carriers may be using preprinted service agreement forms implemented before the advent of the Commission's customer service rules.
2. Some carriers are including minimum lengths of service, extended notice requirements for cancellation, and liquidated damages provisions in service agreements for transportation and disposal of medical waste.
3. Including a liquidated damages provision in a service agreement discourages customers from exercising their right to terminate service under [WAC 480-70-710(1)] and choose service provided by another carrier without restriction.
4. There are currently approximately 75 solid waste carriers with authority to transport biomedical waste in limited service areas of the state, and two carriers of biomedical waste with statewide authority. While the carriers with statewide authority are in competition with each other across the state, they also compete with carriers in limited service areas.
5. There is currently competition in the market for provision of services of transportation and disposal of biomedical waste.
6. Not-for-profit hospitals have requested bids from different carriers in order to obtain the lowest rates.
7. There is an exception to the requirement that carriers may only assess rates and charges set forth in tariffs filed with the Commission. RCW 81.28.080 provides, in part, that "common carriers subject to the provisions of this title may carry, store, or handle, free or at reduced rates, property for . . . charitable purposes."
8. Under the current practice of carriers providing reduced rates to not-for-profit hospitals and clinics but charging tariffed rates to for-profit hospitals and clinics, the difference is not the type of service provided, but the organization to whom the service is provided.

9. Biomedical waste collection companies do not offer below-tariff rates for regular biomedical waste collection service to non-profit hospitals and clinics for charitable purposes but rather as a means to compete for this business.

IV. ADDITIONAL REQUESTS FOR RELIEF

In the briefs and memoranda submitted to the administrative law judge, various parties requested the following additional or different relief beyond that sought by the Commission Staff in its petition.

BFI, WRRRA, the WSHA, and the Commission Staff requested that the Commission grandfather existing service agreements between biomedical waste carriers and nonprofit hospitals and clinics.

BFI and WRRRA requested that the Commission examine whether an exclusive marketing agreement between Stericycle and the marketing arm of WSHA, Washington Hospital Services, is appropriate in a regulated market.

The Commission Staff stated in its Reply Memorandum that it had no specific evidence to support its concern that carriers with biomedical waste collection authority are not holding themselves out as available to provide service in less profitable areas, and abandoned that part of its request.

The Commission Staff requested, in its Reply Memorandum, that the Commission order that biomedical waste collection companies that provide regular biomedical or other regular waste collection service to nonprofit organizations, governmental units, or charitable organizations to have on file an approved tariff including the reduced rates prior to providing such service.

V. INITIAL ORDER

The Initial Order would conclude and declare that:

1. Provisions in a service agreement for the collection and transportation of biomedical waste relating to minimum period of service and notice of discontinuance of service are subject to the requirements of WAC 480-70-710(1).

2. Requirements in a service agreement for the collection and transportation of biomedical waste that require a customer to give more than three business days' notice to the carrier to discontinue service, or that require a minimum length term of service of more than three business days, or that provide liquidated damages for violation of such provisions, violate WAC 480-70-710(1).

3. A liquidated damages provision in a service agreement for the collection and transportation of biomedical waste is subject to the tariff filing requirements of RCW 81.28.080.

4. The current practice in the solid waste industry of biomedical waste carriers charging reduced rates for service to nonprofit hospitals and clinics, for competitive rather than charitable purposes, is illegal.

The Initial Order would conclude that it would be improper for the Commission to grandfather existing below-tariff rates. It would conclude that even free or reduced-rate service must be conducted under tariff, but would decline to enter an order to that effect. It would decline to review the marketing agreement between Stericycle and Washington Hospital Services, concluding that the legality or appropriateness of the agreement is beyond the scope of the issues raised by the petition, and that insufficient facts are before the Commission concerning the agreement.

VI. PETITIONS FOR ADMINISTRATIVE REVIEW

All parties except Commission Staff filed petitions for administrative review.

No party on review contends that the prevailing practice among biomedical waste carriers of offering reduced rates to nonprofit hospitals and clinics for competitive purposes is permissible under Commission statutes. However, BFI and Stericycle take issue with the Initial Order's analysis and the wording of its proposed conclusion and order on the reduced-rate issue.

The WSHA requests that the Commission grandfather existing reduced rates in service agreements. BFI, WRRRA, and the small carriers that are participating jointly with WRRRA request that the Commission provide an adjustment interval during which the reduced rates may remain in effect.

BFI and WRRRA request that the Commission scrutinize the marketing agreement between Stericycle and the market arm of the WSHA. BFI contends that to ignore or deflect this opportunity to address the issue will relegate this proceeding to an incomplete and ultimately ineffective effort to reevaluate this unique industry. BFI contends that the Commission should remand for evidentiary hearings if additional facts are necessary.

WRRRA, BFI, and Stericycle respond to other parties' petitions for administrative review. Commission Staff replies to the petitions. Commission Staff concurs in the conclusions reached in the Initial Order, with one exception.

Commission Staff requests that the Commission modify the Initial Order to allow a brief transition period in which companies that have been providing biomedical waste collection services to nonprofit organizations under contracts or service agreements with the understanding that these agreements were not subject to the tariff filing requirements of the Commission may continue to serve these customers under these agreements until a tariff filing is made. Commission Staff suggests that the companies be required to file tariffs for these services within thirty days of the service of a final order.

VII. RELEVANT STATUTES AND RULES

The following rules and statutes provide the legal framework for analysis of the issues framed by the Commission Staff petition.

A. Terms of service; notice of cancellation;

WAC 480-70-710 Discontinuance of service. (1) By a customer. A customer may discontinue service by notifying the company to stop service. The notice shall be made to the company at least three full business days before the next scheduled pickup date.

B. Rates

RCW 81.28.010 Duties as to rates, services, and facilities. All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, . . . shall be just, fair, reasonable and sufficient.

RCW 81.28.040 Tariff schedules to be filed with commission--Public schedules--Commission's powers as to schedules. Every common carrier shall file with the commission and shall print and keep open for public inspection, schedules showing the rates, fares, charges, and classification for the transportation of persons and property within the state between each point upon the carrier's route and all other points thereon; . . .

The Commission has power, from time to time, to determine and prescribe by Order such changes in the form of the schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting, and filing of schedules either in particular instances or by general rule or Order applicable to special or peculiar circumstances or conditions.

RCW 81.28.050 Tariff changes--statutory notice--Exception. Unless the commission otherwise orders, no change may be made in any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier other than a rail carrier, except after thirty days' notice to the commission and to the public. In the case of a solid waste collection company, no such change may be made except after forty-five days' notice to the commission and to the public[.]

RCW 81.28.080 Published rates to be charged--Exceptions. No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon Order of the commission as hereinafter provided, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all person and corporations under like circumstances. No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except . . . [a long list of exceptions and provisos follows].

Common carriers subject to the provisions of this title may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service.

* * *

RCW 81.28.180 Rate discrimination prohibited. A common carrier shall not, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or lesser compensation for any service rendered or to be rendered in the transportation of persons or property, except as authorized in this title, than it charges, demands, collects, or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions[.]

RCW 81.28.190 Unreasonable preferences prohibited. A common carrier shall not make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . .

VIII. THE COMMISSION'S REGULATION OF BIOMEDICAL WASTE COLLECTION

The transportation of solid waste for collection or disposal is governed by Chapter 81.77 RCW. Biohazardous or biomedical waste is solid waste for purposes of Chapter 81.77. Other chapters in Title 81 RCW govern all regulated carriers or common carriers in general, including solid waste collection companies.

The collection and disposal of biomedical waste requires specialized handling, and involves heightened exposure to liability for both the carrier and the generator of the waste. Because of the unique requirements and attributes of the activity, some holders of general solid waste authority from the Commission do not provide biomedical waste collection service. Certain carriers have specialized in biomedical waste collection service.

The Commission has recognized the specialized nature of biomedical waste collection in granting authority to provide such service. Although the solid waste industry historically has been characterized by monopoly service in a given territory, the Commission has granted overlapping authority for this specialized service.¹

¹ RCW 81.77.040 provides that the Commission may grant solid waste authority only if the service is required by the public convenience and necessity. The statute also expresses a preference for monopoly service in the collection of solid waste, allowing the Commission to grant new authority in already-served territory only if it finds that the existing certificate holder will not provide satisfactory service. In applications for specialized biomedical waste authority, the Commission has interpreted the statutory requirements consistently with the unique requirements and attributes of the service, giving considerable weight to testimony of waste generators regarding their service requirements. See, Order M.V.G. No. 1596, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (January 1993); Order M.V.G. No. 1663, In re Sureway Medical Services, Inc., App. No. GA-75968 (November 1993); and 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 (August 1995), and Orders cited therein. The Commission has granted statewide specialized biomedical

The Commission has emphasized that the generator/shipper of the waste may face continued liability for its handling, and has afforded considerable weight to the reasons underlying a shipper's request to use a certain company. One result of a grant of overlapping authority is competition among carriers, a situation which generally has not occurred in traditional segments of the industry. The difference in treatment and the resulting evolution of a highly competitive market in this segment of the industry apparently has caused some carriers to question whether Commission regulations that apply to the solid waste industry in general apply to these specialized carriers.

IX. COMMISSION DISCUSSION AND DECISION

The specialized service of collection and transportation of biomedical waste has come into being within this decade. As noted above, it 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.² Service agreements have become the norm in this industry, in part because of the up-front costs of commencing service. Many agreements were drafted before the Commission's consumer notice rules were adopted, and have not been updated to comply with the rules.

We recognize that there has been uncertainty both within the industry and among the Staff of the Commission concerning the applicability to this specialized service of the Commission's consumer notice rules, concerning the applicability of the "charitable purposes" exception in RCW 81.28.080, and concerning the necessity to charge tariff rates nonprofit hospitals. This is the Commission's first opportunity to consider formally the issues raised in the petition for declaratory ruling. As noted above, a number of the Initial Order's proposed conclusions were not challenged; after our own review we adopt these agreed-upon conclusions.

A. UNCONTESTED ISSUES

1. Service Agreements

The Commission agrees with the Initial Order's conclusions and orders with respect to minimum period of service, notice of termination of service, and liquidated damages, and adopts them.

waste authority to two carriers -- the predecessor of BFI, and Stericycle.

² A more lengthy discussion is provided in BFI's brief.

The parties have stipulated that some carriers of biomedical waste are using service agreements which include a minimum length of service, extended notice requirements for cancellation of service by a customer, and liquidated damages provisions for termination earlier than allowed by the agreement.

WAC 480-70-710 applies to all solid waste collection companies. There is no exception to its requirements, express or implied. All of the parties appear to concur in the Initial Order's conclusion and order respecting the applicability of the rule, and its conclusion and order to the effect that provisions in biomedical waste collection service agreements that are inconsistent with the rule violate the rule.

RCW 81.28.080 prohibits carriers from demanding or collecting charges that are not set out in a filed tariff. A liquidated damages charge for violating length of service or notice of cancellation provisions of a biomedical service agreement, therefore, must be set out in a tariff in order to be lawfully demanded or collected. No party challenges the Initial Order's conclusion that the tariff filing requirements of RCW 81.28.080 are applicable to liquidated damages provisions.

Clearly, provisions in a service agreement or other service arrangement for biomedical waste service that require a customer to provide more than three-business-days' notice to a solid waste carrier to terminate service, or that require a minimum service period longer than three business days, or that provide liquidated damages applicable on violation of such provisions, violate WAC 480-70-710(1), unless the carrier has obtained a waiver of the rule from the Commission. Liquidated damages provisions in a service agreement are subject to the tariff filing requirements of RCW 81.28.080 (and therefore also subject to the requirements of RCW 81.28.040 and WAC 480-70-240).

2. Reduced Rates

On review, no party challenges the Initial Order's determination of several threshold issues. We adopt the following determinations from the Initial Order for purposes of this Order. The certificated carriers that are offering reduced (below-tariff) rates to nonprofit hospitals and clinics for biomedical waste collection service are common carriers, as defined by RCW 81.77.010(3). As common carriers, they are subject to the requirements of chapter 81.28 RCW. The charitable purposes provision of RCW 81.28.080 allows a common carrier to choose to provide free or reduced-rate service; the exception is not a grant of discretionary authority to the Commission to allow or disallow carriers to charge free or reduced rates.

RCW 80.28.020 provides that common carriers may carry property free or at reduced rates "for charitable purposes." In determining whether a carrier is offering free or reduced-rate service for charitable purposes, we must look at both the nature of the recipient and at the intention of the carrier. The recipient must be what is commonly viewed as an object of charity, and the carrier must have a donative intent. It is well established in Washington that nonprofit hospitals are charitable organizations. In re Rust's Estate, 168 Wash. 344, 12 P.2d 396 (1932). Thus, the recipients are charitable organizations.

The second inquiry then becomes: do the carriers providing the service have a donative intent. Thus, the test examines the purpose of the carrier providing the service. In this proceeding the parties have stipulated:

9. Biomedical waste collection companies do not offer below-tariff rates for regular biomedical waste collection service to non-profit hospitals and clinics for charitable purposes but rather as a means to compete for this business.

Stipulation of Facts.

Based upon this factual stipulation, the prevailing practice among biomedical waste carriers offering reduced rates for regular service to nonprofit hospitals and clinics is competition rather than charity. Such a practice is not justified by the "charitable purpose" exception in RCW 81.28.080.

B. CONTESTED ISSUES

What declaratory relief is appropriate and necessary to bring the practices found improper to an end, and whether the Commission should allow the practices to continue temporarily during the life of existing agreements or during an adjustment period, are subjects upon which the parties disagree. We first will address the question of the appropriate declaratory relief.

1. Appropriate Relief

BFI argues on review that the practice of charging reduced rates to non-profit hospitals has long been accepted by the industry and the Commission, but is no longer appropriate in light of the highly evolved competitive market for collection and disposal fostered by the Commission's interpretation of RCW 81.77.040. BFI recommends that the Commission conclude as follows with respect to the practice:

The current and long-standing practice of biomedical waste carriers charging reduced rates to non-profit hospitals can no longer be justified under the Commission's analysis of the charitable purpose exception codified in RCW 81.28.080.

We do not adopt BFI's recommended conclusion and order language on this issue. We recognize that there has been uncertainty in the industry as to the applicability to this specialized segment of the industry of the "charitable purposes" exception in RCW 81.77.040. However, there is no evidence in this record that biomedical waste carriers have ever offered reduced rates for "charitable purposes," and we do not believe it is appropriate to enter a declaration that implies that the carriers' practice of charging nonprofit hospitals and clinics below-tariff rates once was justified. We do not agree with BFI's suggestion that a change in the Commission's interpretation of the "charitable purposes" exception in RCW 81.77.040 has caused the practice to become impermissible. This is the Commission's first opportunity to formally consider the issues raised in the petition for declaratory ruling, but our decisions are consistent with past Commission interpretations.

Stericycle contends that the Initial Order does not accurately reflect the parties' stipulation, which is that companies do not offer regular biomedical waste collection service to nonprofit hospitals and clinics at free or reduced rates for charitable purposes. Stericycle recommends that the Commission conclude as follows with respect the practice:

It is unlawful and therefore prohibited under RCW 81.28.080, RCW 81.28.040, RCW 81.28.180 and RCW 81.28.190 for biomedical waste collection companies to offer below-tariff rates for regular biomedical waste collection service to non-profit hospitals and clinics.

The conclusion recommended by Stericycle correctly reflects that factual stipulation nine refers to "regular" service.

We searched the record and were not able to find a definition of "regular" in the stipulation or transcript. However, from the discussion accompanying the petitions for review we are able to discern that the parties appear to use "regular" as synonymous for services offered at tariff rates, and that "not-regular" services are those offered at a non-tariff "free or reduced" discount. As discussed more fully below, the Commission believes that all rates and charges should be tariffed, and that "free or reduced" rates may only be offered by way of a "free and reduced" tariff. Until such time as such a tariff is considered, we will not be able to analyze the purpose for the "free or reduced" service to charitable institutions.

Accordingly, the Commission will modify the Initial Order, and enter the following declaration with respect to the questioned practice:

Biomedical waste collection companies' provision of regular biomedical waste collection service to nonprofit hospitals and clinics at reduced (below-tariff) rates does not fall within the exception in RCW 81.28.080 allowing carriers to haul property free or at reduced rates for charitable purposes, because biomedical waste collection companies do not offer reduced rates for such service for charitable purposes but rather as a means to compete for that business.

2. Tariffing requirement

The petition for declaratory order only requests that the Commission address the applicability of the "charitable purposes" exception. Another issue, raised by Commission Staff before the administrative law judge, is whether all regular service must be provided under tariff. It has long been the position of this Commission that all services, even reduced rate or free services, must be conducted under tariff. See, Order M.V.G. No. 1402, In re R.S.T. Disposal Company, Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Company, d/b/a Rabanco Companies, Cause No. GA-851 (July 1989), footnote 14. This view is supported by a 1939 opinion of the Attorney General, a copy of which is attached to the Initial Order in this proceeding. Opinion of the Attorney General, October 20, 1939.

The question of whether free service, or reduced rate service, is being offered as a charitable donation or a competitive tool can be examined in proceedings in which parties may seek a tariff to provide free or reduced rate service. The Commission is not allowed to permit companies to include their charitable contributions as a business expense. Jewell v. WUTC, 90 Wn.2d 775 (1978). We do encourage regulated companies to be good neighbors in the community, but they must support their giving with shareholder or owner, not ratepayer, funds.

3. Transition period

The WSHA requests that the Commission grandfather existing service agreements which include reduced rates. BFI, WRRRA, and the small carriers that are participating jointly with WRRRA request that the Commission provide an adjustment interval during which the reduced rates may remain in effect. WSHA contends that the Commission has authority to grandfather the existing rates under RCW 81.28.190, RCW 80.01.040, and WAC 480-70-410.

The Association contends that failing to grandfather the rates would unjustly penalize parties for their good faith reliance on industry practice, and would have an adverse financial effect upon nonprofit hospitals and clinics. It argues that grandfathering the rates will allow the Commission to engage in any rulemaking that may be necessary to address issues raised in the proceeding. Parties supporting an adjustment interval argue that allowing existing below-tariff rates to remain in effect for a fixed period is in the public interest in that it will give the companies time to negotiate new agreements and file tariffs, give the Commission time to review the tariffs, and avoid "rate shock" for hospitals.

Stericycle opposes allowing existing below-tariff rates to continue. It argues that the Commission lacks authority to grandfather service agreements which are unlawful or to allow such agreements to continue in effect after the effective date of the Commission's Order.

We agree with various parties that it is in the public interest to allow a transition period during which carriers that have been providing biomedical waste collection services to nonprofit hospitals and clinics under contract or service agreement may decide whether to file tariffs that will allow future service at reduced rates to objects of their charity. The Commission will not order, in a declaratory order proceeding, that tariffs be filed within a certain time. We will, however, indicate our intention to wait sixty days before our enforcement staff begins auditing the practices of biomedical waste haulers who engage in practices declared improper in the instant Order.

4. The Stericycle Marketing Arrangement

BFI and the WRRRA request that the Commission scrutinize the marketing agreement between Stericycle and the marketing arm of the WSHA. BFI contends that to ignore or deflect this opportunity to address the issue will relegate this proceeding to an incomplete and ultimately ineffective effort to reevaluate this unique industry. BFI contends that the Commission should remand for evidentiary hearings if additional facts are necessary.

The issue of the legality or appropriateness of the marketing agreement between Stericycle and Washington Hospital Services is beyond the scope of issues raised by the Commission Staff's petition, and insufficient facts are before the Commission concerning this agreement and its alleged impacts on the marketplace. The Commission will not examine the marketing agreement in this proceeding.

The Commission notes, however, that both the WSHA and Stericycle are parties to this proceeding and familiar with the issues raised. We expect that they will examine their legal relationship in light of the principles announced in this Order,

and ensure that all compensation flowing under any contract between them is, in fact, for services actually rendered, and is not a sham transaction which seeks to provide a rebate of tariffed rates. Tools that allow the Commission or competitors to bring a complaint exist, if evidence of any improper rebates should be found.

Based upon the record submitted, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On March 27, 1997, the staff of the Washington Utilities and Transportation Commission filed a Petition for Declaratory Ruling requesting resolution of issues relating to service agreements and rates of carriers of biomedical waste.

2. On April 2, 1997, the Commission gave notice of receipt of the petition and of opportunity to participate to all certificated solid waste companies and to other persons that the Commission identified as possibly having an interest in the rates and practices of biomedical waste carriers.

3. Two prehearing conferences were held. The Commission granted requests for party status filed by Washington Refuse and Recycling Association (WRRRA); Murrey's and American Disposal; Rubatino Refuse, Inc.; LeMay Enterprises, Inc.; Empire Disposal, Inc; Consolidated Disposal, Inc.; Disposal Services; BFI Medical Waste Systems of Washington, Inc. (BFI); Stericycle of Washington, Inc. (Stericycle); and Washington State Hospital Association (WSHA). The parties agreed to submit the matter to the Commission upon stipulated facts and an agreed schedule. The parties agreed that the presiding officer should enter an initial order, which would be subject to review and entry of a final order as in adjudicative proceedings.

4. The parties filed stipulated facts, as follows:

a. Requiring a customer to sign an agreement specifying a minimum term of service may have an effect of discouraging the customer from exercising its right to terminate service under [WAC 480-70-710(1)] and choose another carrier. Some regulated carriers may be using preprinted service agreement forms implemented before the advent of the [Commission's] customer service rules.

- b. Some carriers are including minimum lengths of service, extended notice requirements for cancellation, and liquidated damages provisions in service agreements for transportation and disposal of medical waste.
- c. Including a liquidated damages provision in a service agreement discourages customers from exercising their right to terminate service under [WAC 480-70-710(1)] and choose service provided by another carrier without restriction.
- d. There are currently approximately 75 solid waste carriers with authority to transport biomedical waste in limited service areas of the state, and two carriers of biomedical waste with statewide authority. While the carriers with statewide authority are in competition with each other across the state, they also compete with carriers in limited service areas.
- e. There is currently competition in the market for provision of services of transportation and disposal of biomedical waste.
- f. Not-for-profit hospitals have requested bids from different carriers in order to obtain the lowest rates.
- g. There is an exception to the requirement that carriers may only assess rates and charges set forth in tariffs filed with the Commission. RCW 81.28.080 provides, in part, that "common carriers subject to the provisions of this title may carry, store, or handle, free or at reduced rates, property for . . . charitable purposes."
- h. Under the current practice of carriers providing reduced rates to not-for-profit hospitals and clinics but charging tariffed rates to for-profit hospitals and clinics, the difference is not the type of service provided, but the organization to whom the service is provided.
- i. Biomedical waste collection companies do not offer below-tariff rates for regular biomedical waste collection service to nonprofit hospitals and clinics for charitable purposes but rather as a means to compete for this business.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to enter a declaratory order with respect to the interpretation of pertinent statutes as applied to the facts that are found, to determine the Commission's proper application of the laws governing the Commission's operation to the facts.

2. The declaratory order entered in this matter relates only to and is entirely dependent upon the facts as found from the submissions of the parties.

3. The Commission should enter a declaratory order as set out below.

Based upon the above findings of fact and conclusions of law, the Commission enters the following declaratory order.

ORDER

THE COMMISSION ORDERS That, pursuant to RCW 34.05.240 and WAC 480-09-230, the Commission issues a declaratory order that:

1. Provisions in a service agreement for the collection and transportation of biomedical waste relating to minimum period of service and notice of discontinuance of service are subject to the requirements of WAC 480-70-710(1).

2. Requirements in a service agreement for the collection and transportation of biomedical waste that require a customer to give more than three business days' notice to the carrier to discontinue service, or that require a minimum-period of service of more than three business days, or that provide liquidated damages for violation of such provisions, violate WAC 480-70-710(1).

3. A liquidated damages provision in a service agreement for the collection and transportation of biomedical waste is subject to the tariff filing requirements of RCW 81.28.080.

4. Biomedical waste collection companies' provision of regular biomedical waste collection service to nonprofit hospitals and clinics at reduced (below-tariff) rates does not fall within the exception in RCW 81.28.080 allowing carriers to haul property free or at reduced rates for charitable purposes, because biomedical waste collection companies do not offer reduced rates for such service for charitable purposes but rather as a means to compete for that business.

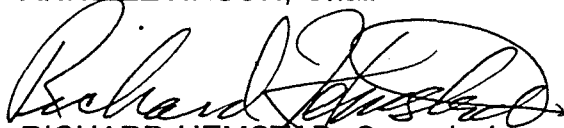
5. Biomedical waste collection companies that presently are providing biomedical waste collection services to nonprofit hospitals or clinics under an agreement, at below-tariff rates, shall file tariffs for those services within 30 days after entry of this Order to become effective no more than statutory notice. The Commission does not intend to take enforcement action against practices declared in this Order to be improper that occur prior to 60 days following the effective date of this Order.

DATED at Olympia, Washington, and effective this 14th day of August 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chair



RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-09-820(1).

**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, Uptegraff & 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).¹

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.

¹ 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.²
- 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.³ 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.⁴ Stericycle’s

² 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).

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

⁴ 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.⁵ 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.⁶
- 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."⁷ 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]."⁸
- 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

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

⁶ *Id.*

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

⁸ *Id.* Decision Not to Initiate Adjudicative Proceeding ¶ 10.

the one-day notice rule, WAC 480-70-261.⁹ 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 480-70-262.¹⁰

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.

⁹ 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."

¹⁰ 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*.¹¹ 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.¹²

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.”¹³ The Commission concluded that an “[a]mendment recognizing major service types is appropriate.”¹⁴ In *LeMay*, the Commission exercised its discretion to amend LeMay’s certificate, restricting it exclusively to “garbage and refuse collection in drop box containers.”¹⁵

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*

¹¹ *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).

¹² *Id.* at 8 (Conclusion of Law 2).

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *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.¹⁶

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

¹⁶ *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.¹⁷ 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.¹⁸

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).

¹⁷ 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.

¹⁸ "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,¹⁹ 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.²⁰ As held in *LeMay*, evidence that a company having a G certificate “did not actually serve residential customers

¹⁹ 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.

²⁰ 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.²¹

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.²² 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.²³ 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

²¹ *Id.*

²² Stericycle Motion for Summary Determination ¶ 55.

²³ *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 2011.²⁴ 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.²⁵ It follows on the basis of the undisputed facts in the record of this proceeding that Waste Management was

²⁴ See ¶¶ 9, 23.

²⁵ *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.²⁶

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

²⁶ 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.²⁷ 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.²⁸

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

²⁷ *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”).

²⁸ 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.²⁹ Thus, Commission policy has historically encouraged competition in the provision of biomedical waste services.³⁰

- 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.”³¹ 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.³²

²⁹ 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.

³⁰ See *Id.* at 10 – 11.

³¹ *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.”)

³² 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.³³

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

³³ 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.