



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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June 19, 2013

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Re: *Stericycle of Washington, Inc. v. Waste Management of Washington, Inc., d/b/a
WM Healthcare Solutions of Washington, Docket TG-121597*

Counsel:

On June 7, 2013, Complainant Stericycle of Washington, Inc. (Stericycle) and Respondent Waste Management of Washington, Inc. (Waste Management) filed a Stipulation Requesting Entry of Protective Order with the Washington Utilities and Transportation Commission (Commission). According to the stipulation, the parties seek to facilitate discovery by Stericycle of certain confidential documents from Waste Management. Commission Staff has no objection to entry of the requested order.

The Commission recognizes that Stericycle and Waste Management are engaged in discovery and that certain information requested by Stericycle from Waste Management or its affiliates may be proprietary or otherwise sensitive in nature. Nevertheless, the Commission declines to enter the requested protective order in this docket.

As you know, the Commission's authority for its rule governing filing and treatment of confidential information, WAC 480-07-160, comes from RCW 80.04.095, which is specific to utilities regulated under RCW Title 80. There is no corresponding provision in RCW Title 81. Accordingly, the Commission cannot treat information submitted by Title 81 companies as confidential under any circumstances. Past instances where the Commission may have afforded such treatment to Title 81 company materials are being reconsidered.

Entry of the requested protective order in this adjudicative proceeding does not resolve the lack of statutory authority to treat Title 81 company information as confidential. The only lawful basis on which the Commission can exempt information provided by Title 81 companies from disclosure is if the information is expressly exempt from such disclosure under the Public Records Act, RCW 42.56.

The Commission's lack of statutory authority to protect the parties' confidential information need not ruinously disrupt discovery. If Commission Staff waives receipt of unredacted copies of certain documents, Stericycle and Waste Management would remain free to enter into a private non-disclosure agreement that may suit those private parties' needs. Of course, at hearing, no such documents could be introduced as exhibits to the administrative record without being subject to later disclosure as public records.

I trust that Stericycle and Waste Management will arrive at a creative solution that serves both parties' requirements and does not require the submission of confidential information to the Commission.

ADAM E. TOREM
Administrative Law Judge