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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STERICYCLE OF WASHINGTON, INC.,
Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC., d/b/a WM
HEALTHCARE SOLUTIONS OF
WASHINGTON,

Respondent.

Docket No. TG-121597

COMPLAINANT STERICYCLE OF
WASHINGTON, INC.'S MOTION FOR
THIRD-PARTY DISCOVERY

1 1. Stericycle of Washington, Inc. (“Stericycle”) hereby moves for third-party
2 discovery as set forth below in the form of subpoenas for deposition testimony and documents
3 from four medical waste generators and one former contractor of a medical waste generator.
4 Third-party discovery was jointly proposed by Stericycle and Respondent Waste Management
5 of Washington, Inc. (“Waste Management”) in the parties’ proposed discovery plan and was
6 adopted in concept by the Commission in its Order 04 Authorizing and Limiting Discovery.
7 Order 04, ¶14. Stericycle has been unable to obtain relevant testimony and documents from
8 these third-parties through informal means. Therefore, Stericycle requests that the Commission
9 authorize the limited third-party discovery discussed in this motion and issue appropriate
10 subpoenas for depositions and records.

11 **I. Procedural History**

12 2. In this complaint proceeding Stericycle claims that Waste Management has
13 improperly offered or provided unlawful rebates to biomedical waste generators by offering
14 discounted rates for recycling services in exchange for a generator’s agreement to contract with
15 Waste Management for biomedical waste services. Existing evidence indicates that this is the
16 case, including an email from Waste Management to Valley Medical Center stating “If we can
17 also service you for medical waste . . . we can reduce your recycling to \$120 haul fee and
18 \$15/ton processing. This is similar to what we did for Northwest Hospital.” Declaration of
19 Steven Johnson (hereinafter “Johnson Decl.”), Ex. A.

20 3. This quid pro quo offered to Northwest Hospital and Valley Medical Center
21 would be an unlawful rebate. In this proceeding Stericycle has sought to gather additional
22 information to determine the extent of Waste Management’s unlawful rebating. One necessary
23 avenue of inquiry is to seek information and documents directly from those biomedical waste
24 generators to whom Waste Management offered both biomedical waste and recycling services.
25 These generators are the only neutral third-parties who can explain the terms of the offers made
26

1 by Waste Management and whether any reduction in recycling costs was conditioned on
2 acceptance of biomedical waste services. Direct inquiry to generators is also the only way to
3 obtain testimony from the prospective customers about communications that may not appear in
4 any formal documentation and documents that are in the generators' possession.

5 4. To this end, Order 04 authorized Stericycle to conduct discovery into specific
6 matters relevant to its rebating claim, including the “[e]ntities to whom Waste Management has
7 solicited, offered or provided commercial recycling services *and* solicited, offered or provided
8 regulated biomedical waste services.” Order 04, ¶17 (emphasis in original). In response to a
9 data request asking for this information, Waste Management indicated that it had “solicited,
10 offered, and/or provided” biomedical waste and recycling services to Northwest Hospital,
11 Valley Medical Center, Virginia Mason Medical Center, and Skagit Valley Hospital. Johnson
12 Decl., Ex. B, DR No. 1 (excerpts of Waste Management responses to data requests). Waste
13 Management also identified the basic timeline of its contacts with each of these four hospitals
14 and identified the hospital representatives involved in those contacts. *Id.*, Ex. B, DR No. 2.

15 5. Additionally, Order 04 authorized discovery into “[t]he terms of any such
16 solicitations, offers or agreements to provide commercial recycling and biomedical waste
17 services,” “[c]ommunications between Waste Management and any medical waste generator
18 concerning any solicitation by, offer by or agreement with Waste Management to provide
19 commercial recycling and biomedical waste services,” and “[i]nternal medical waste generator
20 communications concerning any solicitation by, offer by or agreement with Waste Management
21 relating to the provision of commercial recycling and biomedical waste services.” Order 04,
22 ¶17.

23 6. To meet the need for information and documents directly from generators,
24 Stericycle has made substantial efforts to obtain information responsive to these areas of
25 inquiry from the four hospitals identified by Waste Management through means other than
26 formal third-party discovery. To date, however, these informal discovery efforts have not been

1 successful. Stericycle requests formal subpoenas in order to obtain important information and
2 documents that can not be obtained through informal means.

3 **II. Discussion**

4 **A. Northwest Hospital**

5 7. Information and documents from Northwest Hospital (“Northwest”) concerning
6 its negotiations with Waste Management over biomedical waste and recycling services is
7 highly relevant to Stericycle’s rebating claims. As Waste Management wrote in the May 11,
8 2012 email to Valley Medical Center quoted above, it offered a deal to Northwest in which it
9 provided lower recycling rates in exchange for Northwest agreeing to contract for biomedical
10 waste services. Johnson Decl., Ex. A (describing the deal with Northwest Hospital as “similar”
11 to the offer to Valley Medical Center described in the email).

12 8. In addition, Waste Management’s responses to data requests stated that
13 Northwest Hospital has been a recycling customer of Waste Management since before 2010.
14 Johnson Decl., Ex. B, DR No. 2. Waste Management provided Northwest with a service
15 agreement for biomedical waste services on January 1, 2012 which Northwest accepted and
16 signed on February 15, 2012. *Id.* However, an email produced by Waste Management
17 indicated that Northwest apparently decided to switch their biomedical waste service to Waste
18 Management by November 2011, after Waste Management had already spoken to Northwest
19 about lowering its recycling haul charge and providing it with a rebate on recyclable
20 commodities. Johnson Decl., Ex. C (November 1, 2011 email from J. Norton to M. Jefferies).
21 This timing is consistent with the Valley Medical Center email, indicating that the offer to
22 reduce current recycling rates was made in exchange for a biomedical waste agreement.

23 9. Finally, Juan Escalante of Northwest Hospital confirmed in telephone call with
24 Stericycle that Waste Management had offered to reduce the cost of recycling services in
25 exchange for Northwest Hospital agreeing to switch its biomedical waste service to Waste
26 Management. Declaration of James Ryan, ¶3. Waste Management identified Mr. Escalante as

1 the Northwest employee most responsible for the negotiations with Waste Management, as well
2 as Northwest employee Rose Hong. Johnson Decl., Ex. B, DR No. 2.

3 10. To better understand this course of negotiations, confirm that Northwest
4 Hospital contracted for biomedical waste services in exchange for more favorable terms for its
5 recycling services, and to obtain any documentation available from Northwest, Stericycle made
6 substantial efforts to contact and interview both Ms. Hong and Mr. Escalante. Johnson Decl.,
7 ¶¶6-8. Stericycle first made multiple phone calls to Mr. Escalante and left voice messages that
8 went unanswered. *Id.*, ¶6. Stericycle next called Ms. Hong to discuss these issues and seek her
9 help in reaching Ms. Escalante and left a telephone message. *Id.*, ¶7. Mr. Escalante then
10 returned Stericycle's calls and stated that he needed to check with Northwest's "PR people"
11 and on behalf of himself and Ms. Hong declined to speak until receiving approval. *Id.*

12 11. The next day Stericycle was contacted by Associate General Counsel Hillary
13 Domeika of University of Washington Medicine, with whom Northwest Hospital is affiliated,
14 who identified herself as in-house counsel for Northwest Hospital. *Id.*, ¶8. Stericycle
15 explained the nature of its complaint in this proceeding and its need for information from Ms.
16 Hong and Mr. Escalante to investigate this complaint. *Id.* Unfortunately, Ms. Domeika stated
17 that Ms. Hong and Mr. Escalante were "not interested" in participating in this proceeding and
18 declined to make Northwest Hospital representatives available for interviews without a
19 subpoena. *Id.*, ¶8.

20 12. Now that informal discovery from Northwest Hospital has been foreclosed,
21 Stericycle has no avenue for obtaining information or documents from Northwest Hospital
22 relevant to Waste Management's rebating offer other than through a subpoena issued by the
23 Commission.

24 **B. Skagit Valley Hospital**

25 13. Information and documents from Skagit Valley Hospital ("Skagit") concerning
26 its negotiations with Waste Management over biomedical waste and recycling services are also

1 highly relevant to Stericycle's rebating claims. In its responses to data requests Waste
2 Management stated that it made an initial proposal to Skagit to provide a bundle of services,
3 including biomedical waste and recycling service, in early 2010. Johnson Decl., Ex. B, DR No.
4 2. However, Waste Management indicates that it did not enter into a fixed-price contract with
5 Skagit to provide that service bundle until October 15, 2011, more than a year and a half later.
6 *Id.*

7 14. This substantial period of time provided Waste Management with ample
8 opportunity to negotiate the specific terms of the bundled service contract and the relative
9 pricing of the services that were going to be provided under the fixed price. The final
10 agreement included both recycling and biomedical waste services and charged a fixed price of
11 \$15,800 per month for all bundled services, including tariffed services like solid waste and
12 biomedical waste, and non-tariffed services like commercial recycling. Johnson Decl., Ex. D.
13 There is an annual limit of 3,300 biomedical waste containers per year that will be transported
14 at this fixed price. *Id.* (providing for additional tariff rates to be charged on containers
15 exceeding 10% of the annual estimate of 3,000 containers). The contract documents and Waste
16 Management's responses to data requests do not identify the negotiations that occurred to
17 determine the fixed price for the bundled services, the communications that were made about
18 the pricing and value of recycling services relative to the fixed price, or any reduction in
19 recycling prices based on the inclusion biomedical waste services or the amount of biomedical
20 waste that would be collected at the fixed-price. This information is all relevant to determining
21 the terms offered by Waste Management, the basis for Skagit's decision to accept a bundle of
22 services including biomedical waste services, and whether Skagit is being offered reduced price
23 recycling services as part of the bundled service agreement.

24 15. Waste Management identified Skagit employee Robert Spohn as the Skagit
25 representative knowledgeable about the entire negotiating process, "from sales to execution."
26 Johnson Decl., Ex. B, DR No. 2. Stericycle determined that Mr. Spohn is no longer an

1 employee of Skagit and is now the Facilities Manager at Scott and White Memorial Hospital in
2 Temple, Texas. Declaration of Jared Van Kirk (hereinafter, "Van Kirk Decl."), ¶3, Ex. 1.

3 16. Despite Mr. Spohn's departure for an out-of-state position, Stericycle has made
4 extensive efforts to interview him telephonically to discuss the negotiations between Waste
5 Management and Skagit, the pricing offers made by Waste Management, and to determine
6 whether documentation of these events is available from Skagit. *Id.*, ¶5. For over a month
7 counsel for Stericycle called Mr. Spohn on multiple occasions and left multiple telephone
8 messages. *Id.* At one point, counsel for Stericycle and Mr. Spohn spoke briefly and arranged
9 to have a telephone call at a more convenient time for Mr. Spohn. *Id.*, ¶6. However, Mr.
10 Spohn did not follow through with communicating a time for the interview. *Id.* Stericycle's
11 counsel continued to call and leave messages for Mr. Spohn but, to date, has received no
12 further response. *Id.*

13 17. Stericycle has no other informal resource to obtain comprehensive information
14 and documents from Skagit. Waste Management's responses to data requests indicate that
15 Richard Delaney, Director of Facilities, may have relevant knowledge "on a macro level."
16 Johnson Decl., Ex. B, DR No. 2. However, Mr. Delaney and other individual employees of
17 Skagit would have no obligation to acquire complete information from Skagit's employees and
18 records for the purpose of an informal inquiry. Thus, Stericycle is in need of a formal
19 subpoena to Skagit Valley Hospital for a deposition in the form of a Civil Rule 30(b)(6)
20 deposition requiring Skagit to present Mr. Delaney or some other individual who has become
21 informed through reasonable diligence of the events in question and who can provide
22 comprehensive testimony as well as any available records.

23 **C. Valley Medical Center**

24 18. The situation with Valley Medical Center ("Valley") is similar. The email from
25 Waste Management to Valley quoted above is an offer to reduce recycling rates in exchange for
26 contracting for biomedical waste service that was made in May 2012. Johnson Decl., Ex. A.

1 Waste Management's responses to data requests also indicate that Waste Management had
2 "preliminary discussions" with Valley about biomedical waste services in Summer 2012 and
3 January 2011. Johnson Decl., Ex. B, DR No. 2. Thus, the evidence currently available is
4 consistent with Waste Management having early discussions with Valley to contract for
5 biomedical waste services and when that was not successful offering Valley a discount off its
6 recycling rates to as part of a deal for biomedical waste services.

7 19. Waste Management identified Neal Trebbe as the employee it contacted
8 concerning biomedical waste services. Johnson Decl., Ex. B, DR No. 2. Stericycle counsel has
9 learned that Mr. Trebbe is actually an employee of Aramark, Inc., which formerly operated
10 Valley's facilities services. *Id.*, ¶10. Aramark no longer performs this function and Stericycle
11 has learned that Mr. Trebbe no longer resides in Washington State. *Id.* Nevertheless,
12 Stericycle has made unsuccessful efforts to reach Mr. Trebbe to learn more about Waste
13 Management's offers to provide biomedical waste services and Valley's response. *Id.*, ¶11.
14 Stericycle's counsel contacted Aramark's outside counsel by telephone identifying the issues in
15 this complaint and his need to speak with Mr. Trebbe. *Id.* In that call Aramark's counsel
16 indicated that she would pass on the request to speak with Mr. Trebbe to Aramark's in-house
17 counsel. *Id.* To date, however, Stericycle's counsel has received no response to its request. *Id.*

18 20. In addition, in its responses to Stericycle's data requests Waste Management
19 identified Valley employee Jeremy Wyatt as having discussed recycling services with Waste
20 Management. Johnson Decl., Ex. B, DR No. 2. Mr. Wyatt was the recipient of the email
21 quoted above in which Waste Management offered a recycling discount in exchange for an
22 agreement to contract for biomedical waste services. *Id.*, Ex. A. However, information from
23 Mr. Wyatt is also not available informally. After requesting an interview with Mr. Wyatt
24 Stericycle counsel has been informed that Valley will not permit any informal interview of Mr.
25 Wyatt. Van Kirk Decl., ¶7.

1 21. Stericycle is not aware of any other informal source of information
2 knowledgeable about Waste Management's offers to provide biomedical waste or recycling
3 services to Valley. To acquire this information Stericycle is in need of two subpoenas. The
4 first to Aramark, Inc., which has ongoing business operations in Washington State, to produce
5 Mr. Trebbe for a telephonic deposition and the second to Valley Medical Center for a
6 deposition of Mr. Wyatt as well as any available records.

7 **D. Virginia Mason Medical Center**

8 22. Virginia Mason Medical Center ("Virginia Mason") is also a source of relevant
9 information that Stericycle cannot access without process from the Commission. Waste
10 Management's responses to data requests indicate that it provided a proposal to provide
11 biomedical waste services to Virginia Mason on July 1, 2011. Johnson Decl., Ex. B, DR No. 2.
12 This proposal was not accepted and Waste Management then provided an "updated bid" to
13 provide biomedical waste *and* recycling services in early 2012. *Id.* This is consistent with
14 Waste Management offering lower cost recycling services as an inducement to contract for
15 biomedical waste services. Waste Management identified Virginia Mason employee Andy
16 Flodin as the person knowledgeable about these offers. *Id.*

17 23. Stericycle contacted Mr. Flodin to discuss the nature of Waste Management's
18 communications and to determine whether documentation is available from Virginia Mason.
19 Van Kirk Decl., ¶8. After multiple phone calls and voice messages over the course of two
20 weeks, Mr. Flodin informed Stericycle counsel that he would not provide information before
21 being cleared to do so by Virginia Mason legal counsel. *Id.* Stericycle then contacted
22 Associate General Counsel Debra Madsen and explained the nature of Stericycle's rebating
23 complaint in this proceeding and its need for information from Mr. Flodin to investigate and
24 establish this complaint. *Id.*, ¶9. Ms. Madsen indicated that she would provide a response as to
25 whether Mr. Flodin would be permitted to speak informally but, despite follow-up telephone
26 calls, to date Stericycle counsel has received no response. *Id.* Stericycle now has no avenues

1 for obtaining information or documents from Virginia Mason other than through a subpoena
2 issued by the Commission for the deposition of Mr. Flodin and for any records from Virginia
3 Mason.

4 **II. Conclusion**

5 24. WAC 480-07-400 provides that subpoenas are always available as a discovery
6 mechanism. In cases where additional discovery mechanisms have been authorized, WAC
7 480-07-410 also authorizes depositions of persons identified as potential witnesses as of right,
8 and of other persons by approval of the presiding officer if those persons appear to possess
9 information significant to the requesting party's case.

10 25. Order 04 authorized discovery through depositions in this case, and Waste
11 Management has identified Northwest Hospital, Skagit Valley Hospital, Valley Medical
12 Center, and Virginia Mason Medical Center as entities that have information relevant to
13 Stericycle's claims that Waste Management has offered unlawful rebates by offering
14 discounted recycling services in exchange for the generators' agreement to contract for Waste
15 Management's biomedical waste services. Depositions of these identified witnesses should be
16 available as a matter of course within the authorized discovery mechanisms and, at the very
17 least, should be authorized because these entities have information significant to Stericycle's
18 rebating complaint. Additionally, Order 04 already agreed to the concept of a second phase of
19 discovery involving third-party witnesses.

20 26. As required by Order 04, the foregoing discussion demonstrates that Stericycle
21 has not been able to obtain important information and documents from hospitals that have been
22 offered biomedical waste and recycling services by Waste Management and will not be able to
23 do so without the assistance of subpoenas to compel testimony and documents from these
24 witnesses.

25 27. For the foregoing reasons, and consistent with the third-party discovery
26 preliminarily approved in Order 04, the Commission should enter an order approving the third-

1 party discovery discussed herein and issue subpoenas to be served on Northwest Hospital,
2 Skagit Valley Hospital, Valley Medical Center, Aramark, Inc., and Virginia Mason Medical
3 Center requiring the deposition testimony and documents set forth in the draft subpoenas filed
4 together with this motion. This third-party discovery should be completed as soon as
5 practicable after issuance of the subpoenas, in consultation with the third-parties responsible for
6 producing records and deposition witnesses.

7 DATED this 19th day of July, 2013.

8
9 Respectfully submitted,
GARVEY SCHUBERT BARER

10
11 By Stephen B. Johnson by s/b
12 Stephen B. Johnson, WSBA #6196
13 Jared Van Kirk, WSBA #37029
14 Attorneys for Protestant Stericycle of
15 Washington, Inc.

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CERTIFICATE OF SERVICE

I, Vickie L. Owen, certify under penalty of perjury under the laws of the State of Washington that, on July 19, 2013, I caused to be served on the person(s) listed below in the manner shown a copy of COMPLAINANT STERICYCLE OF WASHINGTON, INC.'S MOTION FOR THIRD-PARTY DISCOVERY:

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Dated at Seattle, Washington this 19th day of July, 2013.



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