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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of
WASTE MANAGEMENT OF
WASHINGTON, INC.
d/b/a WM Healthcare Solutions
of Washington
720 4th Ave. Ste 400
Kirkland, WA 98033-8136

Docket No. TG-120033

PROTESTANT STERICYCLE OF
WASHINGTON, INC.'S MEMORANDUM
CONCERNING THE SHOWING AN
APPLICANT FOR OVERLAPPING
AUTHORITY IS REQUIRED TO MAKE
TO ESTABLISH THAT EXISTING
CERTIFICATE HOLDERS WILL NOT
PROVIDE SERVICE TO THE
SATISFACTION OF THE COMMISSION

PROTESTANT STERICYCLE OF WASHINGTON, INC.'S MEMO.
CONCERNING SHOWING AN APPLICANT IS REQUIRED TO MAKE
TO ESTABLISH THAT EXISTING CERTIFICATE HOLDERS WILL NOT
PROVIDE SERVICE TO SATISFACTION OF COMMISSION

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PROTESTANT STERICYCLE OF WASHINGTON, INC.'S MEMO.
CONCERNING SHOWING AN APPLICANT IS REQUIRED TO MAKE
TO ESTABLISH THAT EXISTING CERTIFICATE HOLDERS WILL NOT
PROVIDE SERVICE TO SATISFACTION OF COMMISSION - iii

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1
2 **I. Introduction**

3 1. Stericycle of Washington, Inc. ("Stericycle"), through its undersigned attorneys,
4 respectfully submits this memorandum in response to paragraph 6 of the Commission's
5 Prehearing Conference Order 01, requiring the parties to brief what an applicant for a certificate
6 of public convenience and necessity under RCW 81.77.040 must prove to prevail when the
7 applicant seeks biomedical waste collection authority in a territory already served by one or
8 more existing certificate holders.¹ RCW 81.77.040 provides that an application for solid waste
9 collection authority in a territory already served by an existing carrier may be granted "only if
10 the existing solid waste collection company or companies serving the territory will not provide
11 service to the satisfaction of the commission" The Commission has repeatedly cited this
12 provision as stating a legislative policy favoring the grant of exclusive service territories to
13 solid waste collection companies. Prior Commission biomedical waste application cases make
14 clear that whether an existing carrier will provide satisfactory service depends upon whether
15 the existing carrier's services reasonably serve the needs of the state's biomedical waste
16 generators -- and that an applicant for overlapping biomedical waste collection authority must
17 show that the services provided by existing carriers do not meet the reasonable needs of
18 biomedical waste generators, that there are objective differences between the services offered
19 by the applicant and existing carriers and that the different service features offered by the
20 applicant will satisfy the otherwise unmet needs of biomedical waste generators.

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22
23 ¹ "The Commission will require the parties in this docket . . . to brief the legal issue of the interpretation
24 of RCW 81.77.040 that the Commission may issue a certificate for a service territory served by another
25 certificate holder 'only if the existing solid waste collection company or companies serving the territory
26 will not provide service to the satisfaction of the commission.' Specifically, parties must address
whether the statute authorizes the Commission to grant a certificate only if the applicant demonstrates
that the service it proposes to provide is different than, or superior to, the services of the incumbent
provider offers or that the incumbent provider is otherwise unwilling or unable to provide the service the
applicant proposes to offer." Order 01 at ¶6.

1 **II. The Statutory Framework Governing Solid Waste Collection Includes a**
2 **Presumption in Favor of Exclusive Service Territories**

3 2. Chapter 81.77 RCW establishes a comprehensive regulatory scheme governing
4 the collection and transportation of solid waste for disposal. Chapter 81.77 RCW provides for
5 the regulation of entry into the business of solid waste collection, the regulation of rates
6 charged for solid waste collection services and the regulation of the services and operations of
7 solid waste collection companies. RCW 81.77.020 prohibits any person from engaging in the
8 business of operating as a solid waste collection company except in accordance with RCW
9 chapter 81.77.² RCW 81.77.030 requires the Washington Utilities and Transportation
10 Commission (hereinafter, the “WUTC” or “Commission”) to “supervise and regulate every
11 solid waste collection company in this state” in matters affecting the relationship between such
12 companies and the public which they serve, including:

- 13 (1) By fixing and altering its rates, charges, classifications, rules and
14 regulations;
15 (2) By regulating the accounts, service, and safety of operations;
16 (3) By requiring the filing of annual and other reports and data; [and]
17 (4) By supervising and regulating such persons or companies in all
18 other matters affecting the relationship between them and the public which they
19 serve;

20 RCW 81.77.040 prohibits any person from operating as a solid waste collection company
21 unless the Commission first issues a certificate of public convenience and necessity “declaring
22 that the public convenience and necessity require such operation.” Thus, the Washington
23 Legislature has prescribed a comprehensive program that treats solid waste collection
24 companies as public utilities, based on its determination that the public interest requires
25 stringent limitations on entry but recognizing that the absence of competition requires public
26 oversight of the rates, charges and services of the limited number of companies authorized to
provide such services.

² An exception is provided for solid waste collection conducted by cities or towns or under a contract with a city or town. This exception is inapplicable to the present case.

1 3. A certificate of public convenience and necessity is a traditional device for the
2 granting of exclusive operating rights to public utilities where the law recognizes that
3 monopoly service is in the public interest. RCW 81.77.040 reflects this intention in the context
4 of solid waste collection. The Commission has repeatedly held that chapter 81.77 RCW states
5 the Legislature's intent to regulate solid waste collection as a monopoly in particular service
6 territories.

7 The law regulating the transportation of solid waste for collection and disposal
8 in Washington, Chapter 81.77 RCW, follows the pattern of utility regulation, in
9 that it treats solid waste collection as a natural monopoly with efficiencies and
10 public benefit gained through exclusive service in a territory. The law provides
11 for service in territories in which a carrier may be the sole provider, but must in
12 return offer nondiscriminatory service at regulated rates³

13 The legislative policy favoring exclusive service territories is reflected in the requirement of
14 RCW 81.77.040 that a certificate of public convenience and necessity may be granted by the
15 Commission for service in a territory already served by another certificate holder "only if the
16 existing solid waste collection company or companies will not provide service to the
17 satisfaction of the commission." The relevant provision in RCW 81.77.040 reads in full as
18 follows:

19 When an applicant requests a certificate to operate in a territory already served
20 by a certificate holder under this chapter, the commission may, after notice and
21 an opportunity for a hearing, issue the certificate only if the existing solid waste
22 collection company or companies serving the territory will not provide service
23 to the satisfaction of the commission or if the existing solid waste collection
24 company does not object.

25 The Commission has repeatedly "held that the statutory standard of service to the satisfaction
26 of the Commission 'declares the Legislature's strong preference for regulated monopoly
27 service in the collection of solid waste.'"⁴

28 ³ *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, App. No. GA-75968 (Nov. 19, 1993),
29 at p. 8.

30 ⁴ *Superior Refuse Removal, Inc. v. Washington Utilities and Transportation Commission* (Wash. Ct.
31 App. May 22, 1997), 1997 Wash. App. LEXIS 787 at p. 4, quoting *In re Superior Refuse Removal*
32 *Corp.*, M.V.G. No. 1639, App. No. GA-896 (June 30, 1993); see also, *In re R.S.T. Disposal Co.*,
33 M.V.G. No. 1402, App. Nos. GA-845 and GA-851 (July 31, 1989), at pp. 15-16.

1 4. An applicant for a certificate authorizing it to provide service in a territory that
2 overlaps the territory of an existing certificate holder has the burden of proving that the existing
3 carrier will not provide satisfactory service before the consideration of other factors.⁵ This is a
4 threshold issue and must be decided before the Commission may consider the applicant's
5 fitness, sentiment in the community or the broader question of the public convenience and
6 necessity.

7 Biohazardous waste is solid waste and its transportation is governed by chapter
8 81.77 RCW and by RCW 81.77.040. That section bars the Commission from
9 granting authority in territory served by an existing carrier unless the
10 Commission finds that the existing carrier will not provide service to the
11 satisfaction of the Commission. If it makes that finding, under the same law it
12 must then also find that the proposed service is required by the public
13 convenience and necessity before it can grant the application.⁶

14 The Commission has held that whether the applicant's proposed service is superior to the
15 service of the existing carrier is not part of the "satisfactory service" determination.

16 At this stage . . . the Commission is not in the position of choosing between the
17 better of two applicants. The Commission is determining whether existing
18 service is unsatisfactory to a degree that competition is justified despite the
19 statutory preference for exclusive service territories.⁷

20 The Commission has held that an applicant for overlapping authority has a heavy burden to
21 show that an existing carrier will not provide satisfactory service:

22 The proposed order noted that the legislature in enacting RCW 81.77 was
23 reluctant to permit overlapping authorities in the collection and disposal of
24 garbage and refuse. The result, according to the proposed order, is statutory
25 language requiring an applicant to make a strong showing that the existing
26 carrier will not serve the territory in question to the satisfaction of the
Commission. Absent such a showing, the Commission may not grant a

27 ⁵ *In re Superior Refuse Removal Corp.*, Order M.V.G. No. 1639, *supra*, at p. 3. *See also, Superior*
28 *Refuse Removal, Inc. v. Washington Utilities and Transportation Commission* (Wash. Ct. App. May 22,
29 1997), 1997 Wash. App. LEXIS 787 at p. 6 ("The Commission considers its satisfaction with the
30 existing service before it examines the public's need and the applicant's fitness. . . . Indeed, it is only
31 logical to address the question of satisfactory service first. The answer to that question may foreclose
32 granting the applicant a certificate, regardless of its fitness to serve.").

33 ⁶ *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707, App. No. GA-76820
34 (May 25, 1994), at p. 2.

35 ⁷ *In re Superior Refuse Removal Corp.*, Order M.V.G. No.1639, *supra*, at p. 12.

1 competitor's application. The Commission agrees with the order's statement of
2 the law.⁸

3 In determining the issue of satisfactory service in the context of general solid waste collection,
4 the Commission considers the factors identified in *In re R.S.T. Disposal Co., supra*, including

5 the nature, the seriousness and the pervasiveness of complaints about service;
6 the carrier's response to customer complaints and its demonstrated ability to
7 resolve them to the Commission's satisfaction; and the carrier's history of
8 compliance with regulation, with special attention to the carrier's
9 cooperativeness on matters central to the Commission's regulation in the public
10 interest.

11 In evaluating these factors to determine whether existing service is satisfactory, "[t]he
12 Commission applies objective tests"⁹ A "mere preference" for one carrier over another
13 based on subjective factors will not suffice.¹⁰ In biomedical waste application cases as in
14 applications for general solid waste authority, it has been "the Commission's consistent view
15 that . . . mere preference for competition, does not demonstrate a need for an additional
16 carrier."¹¹

17 **III. The Commission's Biomedical Waste Application Cases Have Continued to**
18 **Recognize the Statutory Presumption in Favor of Exclusive Service**
19 **Territories While Expanding the Satisfactory Service Analysis**

20 5. Two things are clear from the foregoing discussion: (1) Chapter 81.77 RCW
21 expresses a legislative policy favoring exclusive service territories in solid waste collection;
22 and (2) the Commission's prior decisions on satisfactory service consistently acknowledge and
23 respect that policy, narrowly limiting the circumstances in which overlapping authority may be
24 granted. The Commission's cases dealing with overlapping authority in biomedical waste
25 application cases are consistent with each of these principles.

26 ⁸ *In re R.S.T. Disposal Co., supra*, at pp. 15-16.

⁹ *In re Sureway Medical Services, Inc., supra*, at p. 9.

¹⁰ *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707, *supra*, at p. 3.

¹¹ *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1674, App. No. GA-75968 (Dec. 20, 1993),
at pp. 4-5; *see also, In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, *supra*, at p. 8 ("The
Commission recognizes that competition in the collection and disposal of biohazardous waste may not
necessarily benefit the public.").

1 6. Biomedical waste is a category of solid waste and biomedical waste collection is
2 regulated under the statutory regime of chapter 81.77 RCW discussed above, combining strict
3 entry limitations and a presumption in favor of exclusive service territories with rate and
4 service regulation. Accordingly, as the Commission has recognized, the legislative policy of
5 chapter 81.77 RCW, favoring monopoly service in particular service territories, applies to
6 biomedical waste collection. While the Commission has noted that biomedical waste collection
7 differs from residential garbage collection in certain important respects, it has continued to
8 recognize the statutory policy favoring single-carrier service in biomedical waste collection and
9 has granted overlapping authority only in particular cases where an applicant provided
10 persuasive evidence that the specialized needs of Washington biomedical waste generators
11 were not being met by existing carriers.

12 7. The Commission dealt with a flurry of biomedical waste application cases in the
13 late 1980s and the early 1990s.¹² For the first time, the applicants in these cases proposed to
14 offer a specialized biomedical waste collection service that separated potentially infectious
15 biomedical waste from the general solid waste stream for purposes of handling, transportation,
16 treatment and disposal.¹³ In most of these cases, the applicants sought authority to provide
17 biomedical waste collection services in large areas of the State, usually statewide. In each of
18

19 ¹² This followed, not coincidentally, the highly publicized beach closings in New York due to washup of
20 medical waste debris in the summer of 1988, increasing concerns about potential transmission of the
21 hepatitis B virus and the HIV virus that causes AIDS, enactment by Congress of the Medical Waste
22 Tracking Act of 1988 and the development of OSHA's Bloodborne Pathogens Standard. At about the
23 same time, increasing restrictions on medical waste incinerators began forcing hospitals and other
24 healthcare facilities to discontinue use of on-site incinerators for this potentially dangerous waste
25 stream. See S. Jacobs and G. Siskind, *Medical Waste Handbook* (West 1999), at pp. 1-3, 3-11.

26 ¹³ See *In re Sure-Way Incineration, Inc.*, Order M.V.G. No. 1451, App. No. GA-868 (Nov. 30, 1990); *In re Sure-Way Incineration, Inc.*, Order M.V.G. No. 1475, App. No. GA-868 (Feb. 14, 1991); *In re American Environmental Management Corp.*, Order M.V.G. No. 1452, App. No. GA-874 (Nov. 30, 1990); *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, *supra*, at p. 8; *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1674, *supra*, at pp. 4-5; *In re Ryder Distribution Resources, Inc. and Stericycle of Washington, Inc.*, Order M.V.G. No. 1761, App. Nos. GA-75154 and GA-77359 (Aug. 11, 1995) (consolidated); *In re Ryder Distribution Resources, Inc.*, Order M.V.G. No. 1596, App. No. GA-75154 (Jan. 25, 1993); *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707, *supra*, at p. 2.

1 these cases, existing carriers holding certificates authorizing them to provide universal garbage
2 and solid waste collection in particular service territories protested the applications and argued
3 that the Commission should not grant applications for biomedical waste collection authority
4 that would overlap their service territories.

5 8. In this context, the Commission walked a fine line. It consistently recognized
6 and acknowledged the legislative policy of chapter 81.77 RCW favoring monopoly service in
7 solid waste collection but clearly also recognized the need of biomedical waste generators for a
8 specialized service that would separate potentially infectious biomedical waste from the general
9 solid waste stream and protect waste handlers and the general public from potential exposure to
10 infectious diseases. Accordingly, in interpreting the concept of satisfactory service, the
11 Commission broadened the exceptions to the monopoly service presumption where an
12 applicant for biomedical waste collection authority proved that existing certificate holders were
13 not meeting the unique, specialized needs of Washington biomedical waste generators. The
14 Commission developed a “need-based” satisfactory service analysis in these cases.

15 9. In *In re Sure-Way Incineration, Inc.*¹⁴ the Commission dealt for the first time
16 with an application for statewide authority to conduct biomedical waste collection services.
17 The starting point for the Commission’s analysis was the agreement of the parties “that
18 untreated medical waste should not be disposed of in the normal waste stream.”¹⁵ The
19 Commission noted “local regulations in effect in portions of the state which require treatment
20 of the waste before disposal” but held that “even absent those regulations, safety and health
21 concerns make disposal of untreated medical waste in a landfill an unacceptable practice.”¹⁶
22 The Commission concluded that the need for specialized biomedical waste collection services
23 was “overwhelming.”

24
25 ¹⁴ *In re Sure-Way Incineration, Inc.*, Order M.V.G. No. 1451, *supra*, at p. 4; *In re Sure-Way*
Incineration, Inc., Order M.V.G. No. 1475, *supra*.

26 ¹⁵ *In re Sure-Way Incineration, Inc.*, Order M.V.G. No. 1451, *supra*, at p. 4.

¹⁶ *Id.*

1 The evidence of public need is overwhelming. All parties agree that there is a
2 public need for the proposed service. In addition, the Commission has recently
3 adopted rules on the transportation of medical waste. See, WAC 480-70-500 et
4 seq. These rules require any hauler handling biohazardous, infectious, or
5 medical waste to follow certain procedures and to comply with training
6 requirements, packaging and handling requirements, record-keeping, insurance
7 and other requirements.¹⁷

8 While conceding the need for specialized biomedical waste collection services, existing
9 garbage haulers with general solid waste collection authority protested that they had never
10 refused to provide specialized service and were willing and able to provide it if requested.
11 Given these circumstances, the protestants argued, the Commission could not find their services
12 “unsatisfactory.”¹⁸ In response, the Commission acknowledged that it had interpreted
13 RCW 81.77.040 as contemplating exclusive service territories in neighborhood garbage
14 collection and that in that context “the Commission has required a showing of service failures
15 by the existing carrier before granting overlapping authority.”¹⁹ However, the Commission
16 held that the proper standard for judging whether the services of existing certificate holders are
17 satisfactory in the context of an application for specialized biomedical waste collection
18 authority is “whether the protestants were holding themselves out to provide the service and
19 whether the type of service provided reasonably serves the market.”²⁰ Applying this standard,
20 the Commission found that the existing carriers were not providing service to the satisfaction of
21 the Commission.

22 The existing certificate holders who protested this application were clearly not
23 holding out to provide specialized service. They did not have equipment,
24 personnel, or a disposal plan which would have enabled them to offer or provide
25 the service. They did not advertise the availability of any specialized collection
26 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

¹⁷ *Id.* at p. 13.

¹⁸ *Id.* at p. 14.

¹⁹ *Id.*

²⁰ *Id.* at p. 15.

1 Commission that they will provide satisfactory service. The protestant's [sic]
2 services did not reasonably serve the market for medical waste collection and
disposal.²¹

3 Although the Commission rejected the *Sure-Way* application on other grounds, the
4 Commission's decision in *Sure-Way* made clear that the certificates issued to existing garbage
5 haulers would not alone preclude the Commission from granting authority for the type of
6 specialized biomedical waste collection services for which there was "overwhelming evidence"
7 of an important unserved need.

8 10. The Commission noted the difference in the type of waste involved in universal
9 garbage collection service and biomedical waste collection service and the different needs and
10 interests of the generators related to the nature of those wastes. Garbage collection is an
11 uncomplicated "one size fits all" service. So long as a generator's garbage is picked up
12 regularly (without scattering it around) and properly disposed of, there is essentially no
13 difference between the services offered by different garbage haulers. Accordingly, in assessing
14 whether an existing garbage hauler's service is satisfactory in the context of an application for
15 overlapping garbage authority, the Commission has focused on whether an existing carrier's
16 service has been marked by service failures -- e.g., failure to make regular collections;
17 disorderly collection practices, resulting in cans tipped over and garbage strewn around; etc.

18 11. The Commission's decision in *Sure-Way Incineration* marks a shift in the
19 Commission's "satisfactory service" analysis from a focus on the service failures of existing
20 carriers (in the context of garbage and general solid waste service) to a focus on whether
21 existing carriers are meeting generator needs for specialized services (in the context of
22 biomedical waste collection service).²² However, the Commission has consistently held that
23

24 ²¹ *Id.* at p. 16.

25 ²² Of course, in the context of garbage collection and disposal, all generator needs are essentially the
26 same. It was first in the context of an application for specialized biomedical waste collection authority,
where "the need for special handling and special treatment before disposal" (*Sure-Way* at p. 14) was
contrasted with ordinary "haul-it-and-dump-it" garbage service, that the particular needs of generators
became relevant to the satisfactory service analysis.

1 the applicant retains the burden of proving the existence of unmet generator needs and that the
2 features of the applicant's service offering will meet those needs. The Commission's
3 biomedical waste application cases consistently hold that a mere preference for competition or
4 for another carrier does not establish such a need.

5 12. Consistent with the approach announced in *Sure-Way Incineration*, the
6 Commission focused on the unmet needs of biomedical waste generators for specialized service
7 in evaluating whether existing carriers were providing satisfactory service in *American*
8 *Environmental Management Corp.*, decided the same day as *Sure-Way*.²³ As in *Sure-Way*, the
9 Commission emphasized the need for specialized biomedical waste collection services in
10 response to protests filed by existing garbage haulers.

11 The evidence demonstrated that a potential threat to the public health and safety
12 is posed by infectious wastes and that there is a need for specialized garbage
13 and refuse collection service of infectious waste in the state of Washington. . . .
14 The potential for spread of disease, such as AIDS and hepatitis is of obvious
15 concern to the generators, to the people who transport such wastes, to personnel
16 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.²⁴

17 American Environmental Management Corp. proposed to provide a specialized biomedical
18 waste collection service that the Commission found was responsive to this need. In evaluating
19 whether the service of existing carriers was satisfactory, the Commission held as follows:

20 The situation as evidenced by the record in this case is that the service proposed
21 by the applicant was not available, in any way, shape, or form, from any of
22 these protestants during the relevant time. The protestants did not have the
23 equipment, personnel, or necessary disposal site available to provide the service
24 if requested. On these facts it is irrelevant that some shippers did not contact
25 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. . . . Based on the evidence of record . . .
26 , 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

²³ *In re American Environmental Management Corp.*, Order M.V.G. No. 1452, *supra*.

²⁴ *Id.* at p. 4.

1 that satisfactory service is being provided by such solid waste collection
2 companies in their collection activities of traditional solid waste, it was not
3 shown that those companies were specially equipped and trained to meet the
4 demonstrated need for specialized, infectious waste collection service, nor were
5 they in fact meeting the real public need for that service. This specialized
6 service involves distinct and different operational requirements. The certificate
7 holders were not serving o the full extent of their authorities, which left this
8 public need unserved. . . . Public needs have changed regarding infectious waste
9 and such needs were not being satisfactorily served during the period prior to
10 the filing of this application by AEMC.²⁵

11 For these reasons, the Commission concluded that the existing solid waste collection
12 companies were not providing satisfactory service. The Commission specifically
13 acknowledged “the Legislature’s reluctance to permit overlapping authorities in the garbage
14 and refuse industry”²⁶ but found that the evidence had established that existing carriers were
15 not meeting the needs of the market.

16 There was a demonstrated need for a specialized, containerized infectious waste
17 collection service, which was not being met by the holders of existing
18 permanent authority during the evaluation period. Accordingly, the service that
19 was being performed by the existing solid waste collection companies is not
20 being duplicated by this grant of [authority for] a new, specialized infectious
21 waste service.²⁷

22 It is therefore clear from the Commission’s holdings in both *Sure-Way Incineration* and
23 *American Environmental* that the Commission’s willingness to consider grants of overlapping
24 authority in biomedical waste cases was, in light of the statutory presumption in favor of
25 exclusive service territories, explicitly limited to the extent of unmet generator needs which the
26 unique characteristics of the applicants’ service offerings would meet.

13. As the *American Environmental* decision makes clear, the specialized services
offered by the applicants in these cases were not then being offered by existing carriers and
therefore did not merely “duplicate” the services offered by the existing carriers. Thus,
American Environmental and *Sure-Way* stand for the proposition that overlapping authority

²⁵ *Id.* at p. 8.

²⁶ *Id.* at p. 9.

²⁷ *Id.* at p. 9 (emphasis added).

1 may be considered in the biomedical waste context where (a) there is an unmet generator need,
2 (b) the services offered by existing carriers do not reasonably serve that need, and (c) unique
3 service features offered by the applicant will satisfy that need.

4 14. The Commission's analysis of "satisfactory service" in its subsequent medical
5 waste application cases similarly requires the applicant to demonstrate that it offers particular
6 service features that address otherwise unmet shipper needs and that do not duplicate the
7 services of existing certificate holders. In *In re Ryder Distribution Resources, Inc.*,²⁸ the
8 Commission held that generator testimony of the need for the applicant's unique treatment and
9 disposal services was sufficient to establish that existing service by other carriers was not
10 satisfactory and therefore to justify a grant of overlapping authority.

11 Although there was no service failure of a sort usually significant to issues of
12 universal service, such as missed pickups or garbage strewn about, the
13 witnesses identified flaws in the existing disposal options. . . . If one carrier's
14 method of disposal is not satisfactory [to generators], and another is reasonably
15 needed, the Commission will consider that need carefully. Stericycle is
16 providing a service that in total helps the generators to assure themselves that
17 they do not incur federal, state, or civil liability. The existing carriers do not
provide an equivalent service. . . . The satisfactory nature of service by
18 providers of specialized solid waste collection services is measured according to
19 the specialized needs of customers. It may include the technology of disposal,
20 the nature of protection afforded collected waste, and protections against
21 statutory and civil liability.²⁹

22 As in *American Environmental* and *Sure-Way*, the Commission in *Ryder* Order M.V.G.
23 No. 1596 found that the service offered by the applicant included particular features responsive
24 to legitimate generator needs that were not matched by the services provided by the existing
25 carriers.

26 15. This reasoning was reaffirmed in the Commission's final decision on the *Ryder*
case, Order M.V.G. No. 1761 (Aug. 11, 1995):

²⁸ *In re Ryder Distribution Resources, Inc.*, Order M.V.G. No. 1596, Docket No. GA-75154 (Jan. 25,
1993), at p. 11 (first emphasis added).

²⁹ *Id.* at p. 11 (emphasis added).

1 On this record, the biohazardous waste generators have demonstrated needs that
2 are specialized, but that are real. They are reasonable needs in light of the
3 generators' responsibilities and potential liabilities. Generators described
4 reasonable concerns about custody of the waste that are addressed by having a
5 single carrier. They described reasonable concerns about incinerator emissions
6 and ash that are addressed by a non-incinerative disposal option. They have
7 described reasonable concerns about work place safety that are addressed by a
8 carrier's willingness and ability to provide training and puncture-proof
9 collection containers. The Commission concludes that the waste generators'
10 testimony establishes a need for the collection, transportation and disposal
11 services offered by SWI and Stericycle. The service offered is tailored to meet
12 the needs described by the generators as important to the medical community.

13 Because existing carriers do not offer a collection, transportation and disposal
14 service which meets those needs, the existing carriers will not provide service to
15 the satisfaction of the Commission.³⁰

16 Similarly, in the *Medical Resource Recycling* case,³¹ the Commission held that the services of
17 an existing carrier did not meet the needs of generators for "service characteristics such as
18 recycling, non-incinerative disposal and environmentally protective storage" of collected
19 wastes and that "failure to provide them means that the service is unsatisfactory."³²

20 IV. Conclusion

21 16. To prevail on its application, Waste Management must prove that the reasonable
22 needs of biomedical waste generators are not being met by existing carriers and that unique
23 features of Waste Management's proposed services will meet those needs. Given the
24 Commission's consistent and definitive holdings in its prior biomedical waste application cases
25 with respect to the "satisfactory service" requirement of RCW 81.77.040, there simply is no
26 legitimate issue as to "whether the statute authorizes the Commission to grant a certificate only
if the applicant demonstrates that the service it proposes to provide is different than, or superior
to, the services of the incumbent provider offers or that the incumbent provider is otherwise
unwilling or unable to provide the service the applicant proposes to offer."³³ Although the

³⁰ *In re Ryder Distribution Resources, Inc.*, Order M.V.G. No. 1761, *supra*, at p. 12.

³¹ *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707, *supra*.

³² *Id.* at p. 3.

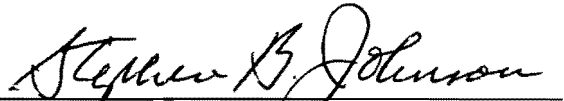
³³ Order 01 at ¶6.

1 Commission's biomedical waste application cases reflect the addition of a "need-based"
2 analysis to the "service failure" analysis used to assess satisfactory service in neighborhood
3 garbage cases, the Commission's need-based analysis clearly requires an applicant to
4 demonstrate that reasonable generator needs are not being met by the services of existing
5 carriers and that the applicant proposes to offer unique service features that will satisfy those
6 needs.

7
8
9 DATED this 14th day of June, 2012.

10 Respectfully submitted,

11 GARVEY SCHUBERT BARER

12
13 By 
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15 Jared Van Kirk, WSBA #37029
16 Attorneys for Protestant Stericycle of
17 Washington, Inc.

1 **CERTIFICATE OF SERVICE**

2 I, Vickie L. Owen, certify under penalty of perjury under the laws of the State of
3 Washington that, on June 14, 2012, I caused to be served on the person(s) listed below in the
4 manner shown a copy of PROTESTANT STERICYCLE OF WASHINGTON, INC.'S
5 MEMORANDUM CONCERNING THE SHOWING AN APPLICANT FOR OVERLAPPING
6 AUTHORITY IS REQUIRED TO MAKE TO ESTABLISH THAT EXISTING
7 CERTIFICATE HOLDERS WILL NOT PROVIDE SERVICE TO THE SATISFACTION OF
8 THE COMMISSION:

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10 Transportation Commission
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13 Dated at Seattle, Washington this 14th day of June, 2012.

14 

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