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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 No. TG-120033

**WASTE MANAGEMENT'S RESPONSE  
TO RUBATINO, ET AL.'S OBJECTION  
TO APPLICANT'S DATA REQUESTS  
AND MOTION FOR DISCOVERY  
CONFERENCE**

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1 **I. RELIEF REQUESTED**

2 1. Waste Management of Washington, Inc. (“Waste Management”) respectfully requests  
3 that the Commission strike Protestants Rubatino Refuse Removal, Inc.; Consolidated Disposal Services,  
4 Inc.; Murrey’s Disposal, Inc.; and Pullman Disposal Service, Inc.’s Objection to Applicant’s Data  
5 Requests and Motion for Discovery Conference (“Protestants’ Objection”).

6 **II. STATEMENT OF FACTS**

7 2. On May 24, 2012, Waste Management served 18 data requests, respectively, on  
8 Protestants Rubatino, Consolidated, Murrey’s, and Pullman (collectively, the moving parties are referred  
9 to as “Protestants”).<sup>1</sup>

10 **III. STATEMENT OF ISSUES**

11 3. Is Waste Management entitled to information which Protestants possesses about  
12 Protestants’ incumbent services and which is relevant to a determination of whether such services are  
13 satisfactory?

14 **IV. EVIDENCE RELIED UPON**

15 4. Waste Management relies on the Declaration of Jessica L. Goldman filed herewith and  
16 the records and file herein.

17 **V. ARGUMENT**

18 **A. Waste Management’s Data Requests Seek Relevant Information.**

19 5. Following the prehearing conference, the Commission ruled that “the needs of the case  
20 require the methods of discovery specified in the Commission’s discovery rules ....”<sup>2</sup> Pursuant to RCW  
21 480-07-400(3), discovery is proper if it seeks “information that is relevant to the issues in the  
22 adjudicative proceeding or that may lead to the production of information that is relevant.” The  
23 Commission expresses a no-tolerance policy for discovery “used for any improper purpose, such as to  
24 harass or to cause unnecessary delay or needless increase in the costs of litigation.”<sup>3</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> Declaration of Jessica L. Goldman in Support of Waste Management’s Response to Rubatino, et al.’s Objection to  
Applicant’s Data Requests and Motion For Discovery Conference., Ex. 1.

27 <sup>2</sup> *In re Waste Mgmt. of Wash., Inc.*, Docket TG-120033, Prehearing Conference Order ¶ 7 (Wash. Utils. & Transp. Comm’n,  
28 Apr. 16, 2012).

<sup>3</sup> *Id.* ¶ 9 (citing WAC 480-07-400(3)).

1           6.       What information is relevant is established by RCW 81.77.040 and the Commission's  
2 decisions applying the statute. In considering an application for solid waste authority, the Commission  
3 requires proof regarding both the applicant's financial and operational wherewithal, as well as proof  
4 regarding the incumbents' existing service. The Commission is to consider "sentiment in the  
5 community contemplated to be served as to the necessity for [the proposed new] service," and whether  
6 "the existing solid waste collection company or companies serving the territory will not provide service  
7 to the satisfaction of the commission ...."<sup>4</sup>

8           7.       In determining the quality of incumbent service, the Commission considers a variety of  
9 information. The Commission evaluates whether the incumbent has missed pickups, improperly  
10 handled waste, or failed to satisfy the stated needs of generators for responsive service, and considers  
11 whether shippers are dissatisfied with the existing disposal options.<sup>5</sup> Satisfying generators' needs for  
12 recycling and for environmentally-sound disposal methods is critical for incumbent service to be  
13 sufficient.<sup>6</sup> Evidence regarding incumbent service failures comes from the customers of those  
14 incumbents.<sup>7</sup> "The question of what service is required is related to what services are already being  
15 provided by existing carriers."<sup>8</sup> The Commission also considers whether incumbent haulers are  
16 "making reasonable efforts to make [their] services known and to attract business throughout the  
17 territory."<sup>9</sup>

18           8.       In the case of biomedical waste collection services, the Commission gives "considerable  
19 weight to the judgment of biohazardous waste generators regarding the sufficiency of existing  
20 service ...."<sup>10</sup> The Commission has recognized generators' "need for an integrated and unified

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21 <sup>4</sup> RCW 81.77.040.

22 <sup>5</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 11 (Wash. Utils. & Transp. Comm'n,  
23 Jan. 25, 1993).

24 <sup>6</sup> *In re Med. Res. Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 3 (Wash. Utils. & Transp. Comm'n,  
25 May 25, 1994).

26 <sup>7</sup> *Id.* at 12.

27 <sup>8</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 10 (Wash. Utils. & Transp. Comm'n,  
28 Aug. 11, 1995).

<sup>9</sup> *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 16 (Wash. Utils. & Transp. Comm'n,  
Nov. 19, 1993).

<sup>10</sup> *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1674 at 4 (Wash. Utils. & Transp. Comm'n,  
Dec. 20, 1993).

1 transportation function” throughout the state.<sup>11</sup> Generators’ preferences for the type of containers used  
2 by the hauler, and whether the incumbent is using such containers, also will dictate the sufficiency of  
3 incumbent service.<sup>12</sup>

4 9. The Commission has recognized that “[t]he test of public interest involves a review of all  
5 potential effects of additional service,” including whether competition operates to “render protestants  
6 insolvent” and “causes a reduction to unacceptable levels of available reasonably priced service to  
7 consumers.”<sup>13</sup> In their Protest, Protestants contend that granting Waste Management’s Application  
8 “would be detrimental” to the existing permit holders.<sup>14</sup>

9 10. Waste Management’s data requests precisely seek information regarding the quality of  
10 Protestants’ services which the Commission has deemed proper in evaluating the incumbents’ service, as  
11 well as information necessary to gauge the asserted financial impact of competition from Waste  
12 Management. The requested information regarding Protestants’ services and customer satisfaction with  
13 those services, naturally, resides with Protestants. Waste Management itself has access to proof of its  
14 fitness to operate, but only the Protestants have access to the information necessary to evaluate the  
15 impact caused by the proposed expansion on the financial viability of the existing certificate holders or  
16 the legitimate service demands of their customers. We address the data requests in turn.

17 11. Data Requests Nos. 1-10, 12.

- 18 • **DATA REQUEST NO. 1:** Produce a detailed general ledger for your Washington  
19 operations for calendar year 2011.
- 20 • **DATA REQUEST NO. 2:** Provide a detailed revenue price-out (explaining the basis for  
21 your WUTC revenues) for calendar years 2009, 2010, 2011, and 2012 (to date) respectively,  
22 including the volume of each size container you collected in each year, the number of  
23

24  
25 <sup>11</sup> *In re Ryder Distribution Sys., Inc.*, App. No. GA-75563, Order M.V.G. No. 1536 at 4-5 (Wash. Utils. & Transp. Comm’n,  
26 Jan. 30, 1992); *accord In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 12 (Wash. Utils.  
27 & Transp. Comm’n, Jan. 25, 1993) (“single carrier service is a reasonable shipper need”).

28 <sup>12</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 10 (Wash. Utils. & Transp. Comm’n,  
Aug. 11, 1995).

<sup>13</sup> *Id.* at 13-14.

<sup>14</sup> *In re Waste Mgmt. of Wash., Inc.*, Docket No. TG-120033, Protest of WRRRA, et al., ¶¶ 2-6 (Feb. 17, 2012).

1 customers for each size container in each year, and the rate you charged for each such  
2 collection in each year.

- 3 • **DATA REQUEST NO. 3:** Produce a detailed depreciation schedule listing all assets used to  
4 provide WUTC-regulated biomedical services in Washington.
- 5 • **DATA REQUEST NO. 4:** Describe specifically the methodology used to determine any  
6 overhead charges to your WUTC-regulated biomedical waste operation. For all overhead  
7 allocations, provide calculations in electronic format supporting the methodology.
- 8 • **DATA REQUEST NO. 5:** Describe specifically the methodology and allocation factors you  
9 use to separate common expenses for WUTC-regulated biomedical waste services and other  
10 operations.
- 11 • **DATA REQUEST NO. 6:** Identify any person or entities which have an affiliated interest  
12 (as that term is defined in RCW 80.16.010) with your regulated biomedical waste operations.
- 13 • **DATA REQUEST NO. 7:** Produce contracts and any other documents reflecting  
14 arrangements or transactions between you and any affiliated interest (as that term is defined  
15 in RCW 80.16.010). If no documents are available, state a summary of the services provided  
16 and the prices or values paid.
- 17 • **DATA REQUEST NO. 8:** Produce your WUTC annual reports for 2009, 2010, and 2011.
- 18 • **DATA REQUEST NO. 9:** State the volume of biomedical waste you collected in  
19 Washington in 2009, 2010, 2011, and 2012 (to date), respectively.
- 20 • **DATA REQUEST NO. 10:** State the volume of biomedical waste you collected, and the  
21 number of customers from whom you collected such waste, within each Washington county,  
22 respectively, in 2009, 2010, 2011, and 2012 (to date), respectively.
- 23 • **DATA REQUEST NO. 12:** State the number of customers you served in Washington in  
24 2009, 2010, 2011, and 2012 (to date), respectively.

25 Protestants contend that granting Waste Management’s Application “would be detrimental” to  
26 Protestants.<sup>15</sup> The requested information provides a baseline to evaluate Protestants’ contention and to  
27

28 \_\_\_\_\_  
<sup>15</sup> *Id.* ¶¶ 2-6.

1 prove that competition from Waste Management will not “render protestants insolvent.”<sup>16</sup> The  
2 information sought by these Data Requests should be readily available to the Protestants since it is  
3 similar to what would be necessary for a tariff filing. Plainly, Waste Management would have no need  
4 for this information if Protestants would stipulate (as Waste Management has previously suggested) that  
5 competition from Waste Management would not “cause[] a reduction to unacceptable levels of available  
6 reasonably priced service to consumers.”<sup>17</sup>

7 12. Data Request No. 11.

- 8 • **DATA REQUEST NO. 11:** Identify by name and address each facility to which you  
9 transported or arranged to have transported biomedical waste generated in Washington in  
10 2009, 2010, 2011, and 2012 (to date), respectively, and as to each such year, identify the  
11 volume of biomedical waste you tendered to each such facility.

12 Protestants contend that granting Waste Management’s Application “would be detrimental” to  
13 Protestant.<sup>18</sup> The requested information provides a baseline to evaluate Protestants’ contention and to  
14 prove that competition from Waste Management will not “render protestants insolvent.”<sup>19</sup> The  
15 requested information also is relevant to determining whether Protestants are properly handling  
16 biomedical waste, whether shippers are satisfied with Protestants’ disposal options,<sup>20</sup> and whether  
17 Protestants are recycling the waste and otherwise employing environmentally sound disposal methods.<sup>21</sup>

18 13. Data Request No. 13.

- 19 • **DATA REQUEST NO. 13:** State the number of customers for whom you provided services  
20 at more than one affiliated facility in Washington in 2009, 2010, 2011, and 2012 (to date),  
21 respectively.

22 \_\_\_\_\_  
23 <sup>16</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 13-14 (Wash. Utils. & Transp.  
Comm’n, Aug. 11, 1995).

24 <sup>17</sup> *Id.* at 13-14.

25 <sup>18</sup> *In re Waste Mgmt. of Wash., Inc.*, Docket No. TG-120033, Protest of WRRRA, et al., ¶¶ 2-6 (Feb. 17, 2012).

26 <sup>19</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 13-14 (Wash. Utils. & Transp.  
Comm’n, Aug. 11, 1995).

27 <sup>20</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 11 (Wash. Utils. & Transp. Comm’n,  
Jan. 25, 1993).

28 <sup>21</sup> *In re Med. Res. Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 3 (Wash. Utils. & Transp. Comm’n,  
May 25, 1994).



1 Waste Management is entitled to know the number of Protestants' customers which have multiple  
2 facilities and which, naturally, would have a "need for an integrated and unified transportation function"  
3 throughout the state which Protestants cannot provide (and whose needs would not be satisfied by  
4 having Stericycle serve as the only statewide option).<sup>22</sup> The Data Request does not seek the  
5 identification of the customers and refrains from asking for proprietary information.

6 14. Data Request Nos. 14-15.

- 7 • **DATA REQUEST NO. 14:** Produce all documents which discuss, refer to or reflect a  
8 customer complaint made to you or about your service since January 1, 2009.
- 9 • **DATA REQUEST NO. 15:** Produce all documents which discuss, refer to or reflect your  
10 violation, alleged violation, or investigation of your possible violation, of any law,  
11 regulation, ordinance, or government rule since January 1, 2009 in performing WUTC-  
12 regulated collection services.

13 Waste Management is entitled to know about the quality of Protestants' service, including whether  
14 Protestants have missed pickups, improperly handled waste, or otherwise failed to satisfy their  
15 customers' needs for responsive service or to satisfy the governing law.<sup>23</sup> Protestants' suggestion that  
16 all "bona fide customer complaints are on file with the WUTC"<sup>24</sup> lacks any citation and defies logic.  
17 There is no prohibition against customers taking the logical step of complaining directly to their service  
18 provider. Waste Management cannot be expected to meet its burden of proof without having the  
19 responses to the Data Requests as only the Protestants can access their own internal customer services  
20 information.

21 15. Data Request No. 16.

- 22 • **DATA REQUEST NO. 16:** Produce all documents which discuss, refer to or reflect your  
23 efforts to make your services known and to attract business in Washington since January 1,  
24 2009 including, without limitation, copies of all yellow pages advertising.

25  
26 <sup>22</sup> *In re Ryder Distribution Sys., Inc.*, App. No. GA-75563, Order M.V.G. No. 1536 at 4-5 (Wash. Utils. & Transp. Comm'n, Jan. 30, 1992); *accord In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 12 (Wash. Utils. & Transp. Comm'n, Jan. 25, 1993) ("single carrier service is a reasonable shipper need").

27 <sup>23</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 11 (Wash. Utils. & Transp. Comm'n, Jan. 25, 1993).

28 <sup>24</sup> Protestants' Objection ¶ 2.

1 Waste Management is entitled to know whether Protestants have been “making reasonable efforts to  
2 make [their] services known and to attract business throughout their territory.”<sup>25</sup>

3 16. Data Request No. 17.

- 4 • **DATA REQUEST NO. 17:** Describe the containers you provide to your customers to serve  
5 as repositories of biomedical waste including, without limitation, stating the sizes of the  
6 containers, the manufacturers of the containers, how long you have been using the containers,  
7 and where in Washington you provide each such container to customers.

8 Waste Management is entitled to know about the types of containers Protestants are using to gauge if  
9 those containers best satisfy the demands of generators.<sup>26</sup>

10 17. Data Request No. 18.

- 11 • **DATA REQUEST NO. 18:** Describe if, and how, you recycled biomedical waste in  
12 Washington in 2009, 2010, 2011, and 2012 (to date), respectively.

13 Waste Management is entitled to know whether Protestants are satisfying generators’ needs for  
14 recycling and for environmentally sound disposal methods.<sup>27</sup>

15 **B. Protestants Conflate Burden of Proof With Entitlement to Discovery.**

16 18. Protestants contend that Waste Management “has the entire burden of proof” under  
17 RCW 81.77.040, and that Protestants do not have the burden of proving satisfactory service.<sup>28</sup> From  
18 this basic proposition, Protestants take the unwarranted leap of arguing that they need not supply  
19 relevant information to Waste Management which Waste Management may then use to satisfy its  
20 burden of proof. Responding to data requests for relevant information does not improperly force  
21 Protestants to “make [the] Applicant’s case.”<sup>29</sup> Key information regarding the incumbents’ quality of  
22 service, naturally, resides with the incumbents. The authorized discovery here calls for a process

23  
24 <sup>25</sup> *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 16 (Wash. Utils. & Transp. Comm’n,  
Nov. 19, 1993).

25 <sup>26</sup> *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 10 (Wash. Utils. & Transp. Comm’n,  
Aug. 11, 1995).

26 <sup>27</sup> *In re Med. Res. Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 3 (Wash. Utils. & Transp. Comm’n,  
27 May 25, 1994).

28 <sup>28</sup> Protestants’ Objection ¶ 1.

<sup>29</sup> *Id.*

1 through which relevant information will be brought to light and the Commission will be able to make  
2 its determination on a complete record. This is how the discovery process is meant to work.

3 **C. Waste Management Does Not Object to Protestants' Request for a Hearing on Its Motion.**

4 19. Protestants have requested that the Commission convene a “Discovery Conference” as  
5 contemplated by WAC 480-07-425,” and has requested that Judge Kopta preside over such a  
6 conference.<sup>30</sup> Protestants proceed to lay out three of the “many” issues they wish addressed at the  
7 conference<sup>31</sup> to be followed by an order from Judge Kopta resolving these issues.<sup>32</sup> The process which  
8 Protestants have described, and which is set forth in WAC 480-07-425, is a hearing which follows a  
9 motion and results in an order. A “discovery conference” is an altogether different process which allows  
10 the parties to engage in an informal **exchange of discovery** which is to be made off the record absent the  
11 parties' agreement to the contrary.<sup>33</sup>

12 20. It is Waste Management's understanding that the proceeding which has been scheduled  
13 for June 20, 2012 before the Commission is the hearing allowed under WAC 480-07-425, **not** the  
14 “discovery conference” authorized by WAC 480-07-415.<sup>34</sup>

15 **VI. CONCLUSION**

16 21. Waste Management has carefully tailored and limited its data requests to Protestants to  
17 discover the information necessary to assess Protestants' incumbent services, generator satisfaction with  
18 those services, and the effect on that service of competition from Waste Management. The fact that  
19 Waste Management has the burden of proof has nothing to do with Protestants' independent duty to  
20 produce relevant information and documents. Waste Management respectfully requests that the  
21 Commission strike Protestants' Objection and order Protestants to respond to the pending Data  
22 Requests.

23  
24 <sup>30</sup> *Id.* ¶ 6.

25 <sup>31</sup> *Id.* ¶ 7.

26 <sup>32</sup> *Id.* ¶ 8.

27 <sup>33</sup> WAC 480-07-415.

28 <sup>34</sup> Based on this understanding, Waste Management will be represented by counsel at the hearing. Waste Management's corporate representatives, who would participate in any informal exchange of discovery, will not be present. If, however, the Protestants wish to convene a “discovery conference,” Waste Management would be willing to as long as it clearly promoted efficiencies and saved resources.

1 DATED this 18th day of June, 2012.

2 SUMMIT LAW GROUP PLLC

3 By 

4 Polly L. McNeill, WSBA #17437  
5 Jessica L. Goldman, WSBA #21856  
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8 *Attorneys for Waste Management of*  
9 *Washington, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method indicated below, pursuant to WAC 480-07-150.

Table with 2 columns: Recipient Information and Service Method. Rows include Washington Utilities and Transportation Commission, Gregory J. Kopta, Fronda Woods, Stephen B. Johnson, and James K. Sells.

DATED at Seattle, Washington, this 18th day of June, 2012.

Handwritten signature of Deanna L. Schow over a horizontal line.