

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

COMMISSION STAFF'S
RESPONSE BRIEF ON
PRELIMINARY LEGAL ISSUE

1 The Staff of the Washington Utilities and Transportation Commission (“Staff”) submits this response brief on the preliminary legal issue posed in Paragraph 6 of the Prehearing Conference Order. Staff responds only to Waste Management’s Opening Brief and has no comment on the briefs submitted by the protestants.

2 Staff agrees with Waste Management that the Commission has broad discretion to determine whether existing solid waste service is satisfactory. Nevertheless, that discretion is limited by the plain language of RCW 81.77.040:

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

According to Waste Management, the Commission’s prior biomedical waste orders stand for the proposition that “biomedical waste service by only one statewide hauler is not

satisfactory,” as a matter of law, under RCW 81.77.040.¹ The Commission has never interpreted RCW 81.77.040 that broadly.

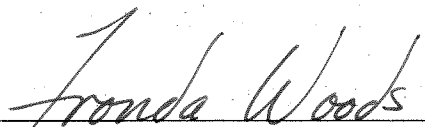
3 As described in Staff’s Initial Brief on Preliminary Legal Issue, the Commission has consistently required a *factual* showing that an incumbent provider is not meeting the specialized needs of customers before the Commission will grant a certificate for biomedical waste collection authority in an area already served by another provider. When the Commission granted Stericycle’s statewide application in 1995, it did not declare that the incumbent’s status as the only statewide provider was, as a matter of law, unsatisfactory service under RCW 81.77.040. It held that Stericycle, through the testimony of more than a dozen customers, had established a public need for its services statewide.²

4 In this docket, as in prior biomedical waste cases, the Commission should exercise its discretion in light of a factual record when it determines whether the incumbent providers “will not provide service to the satisfaction of the commission” under RCW 81.77.040.

DATED this 22nd day of June, 2012.

Respectfully submitted,

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¹ *In re Waste Mgmt.*, Docket TG-120033, Waste Management’s Opening Brief on Preliminary Legal Issue ¶ 26 (filed June 14, 2012); *see id.* ¶¶ 1, 24.

² *In re Ryder Distrib. Res., Inc.*, Order M. V. G. No. 1761 at 10-12, 16-19 (Wash. Utils. & Transp. Comm’n, Aug. 11, 1995).