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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 REPLY
MEMORANDUM CONCERNING THE
PRELIMINARY LEGAL ISSUE RE:
SATISFACTORY SERVICE

PROTESTANT STERICYCLE OF WASHINGTON, INC.'S REPLY
MEMORANDUM CONCERNING THE PRELIMINARY LEGAL ISSUE
RE: SATISFACTORY SERVICE

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1 **I. Introduction**

2 1. Stericycle of Washington, Inc. ("Stericycle"), through its undersigned attorneys,
3 respectfully submits this Reply Memorandum Concerning Satisfactory Service in compliance
4 with paragraph 6 of the Commission's Prehearing Conference Order 01 in this proceeding and
5 in response to the memoranda submitted on this issue by the Commission Staff and applicant
6 Waste Management.

7 2. As discussed in detail in Stericycle's opening memorandum, RCW 81.77.040
8 provides that an application for solid waste collection authority in a territory already served by
9 an existing carrier may be granted "only if the existing solid waste collection company or
10 companies serving the territory will not provide service to the satisfaction of the commission . .
11 . ." (Emphasis added.) The Commission has repeatedly cited this provision as reflecting a
12 statutory policy favoring the grant of exclusive service territories to solid waste collection
13 companies. Prior Commission biomedical waste application cases make clear that whether an
14 existing carrier will provide satisfactory service depends upon whether the existing carrier's
15 services reasonably serve the needs of the biomedical waste generators -- and that an applicant
16 for overlapping biomedical waste collection authority must show that the services provided by
17 existing carriers do not meet the reasonable needs of biomedical waste generators, that there are
18 objective differences between the services offered by the applicant and the services offered by
19 existing carriers and that the different services offered by the applicant will meet the unmet
20 needs of biomedical waste generators.

21 3. Stericycle and the Commission Staff are largely in agreement on the showing
22 that must be made by an applicant for overlapping biomedical waste authority to establish that
23 existing certificate holders will not provide service to the satisfaction of the Commission, as
24 required by RCW 81.77.040. As stated in the Commission Staff's opening memorandum,
25 "RCW 81.77.040 authorizes the Commission to grant a certificate for biomedical waste
26 collection authority in an area already served by other providers if the applicant demonstrates,

1 through [generator] testimony, that incumbent providers are not meeting the specialized needs
2 of customers.”¹

3 4. In contrast with the Commission Staff’s fair and straightforward presentation of
4 the law, Waste Management’s opening memorandum is an exercise in misrepresentation and
5 distortion. Waste Management would stand the Commission’s jurisprudence on its head,
6 attempting to transform the statutory presumption in favor of exclusive service territories,
7 repeatedly recognized by the Commission, into a policy favoring no-holds-barred competition
8 in biomedical waste collection. This is a gross misrepresentation of the Commission’s
9 biomedical waste application cases and disregards both the overall statutory scheme governing
10 solid waste collection and the specific requirements of RCW 81.77.040, as previously
11 recognized by the Commission.

12 **II. RCW 81.77.040 Forbids the Granting of Overlapping Biomedical Waste**
13 **Collection Authority Unless the Applicant Demonstrates that the Services**
14 **Offered by Existing Carriers Do Not Meet the Reasonable Needs of**
15 **Biomedical Waste Generators.**

16 5. As noted in Stericycle’s opening memorandum, the statutory scheme of chapter
17 81.77 RCW reflects the monopoly service model common of public utility regulation,
18 combining limitations on entry with the regulation of carrier rates and services.

19 The law regulating the transportation of solid waste for collection and disposal
20 in Washington, Chapter 81.77 RCW, follows the pattern of utility regulation, in
21 that it treats solid waste collection as a natural monopoly with efficiencies and
22 public benefit gained through exclusive service in a territory. The law provides
23 for service in territories in which a carrier may be the sole provider, but must in
24 return offer nondiscriminatory service at regulated rates²

25 The monopoly service model and Commission oversight of carrier rates and services are two
26 interconnected elements of the same complete regulatory plan. As noted most recently in the
Commission’s declaratory ruling in Docket No. TG-970532, “The statute also expresses a

¹ Commission Staff’s Initial Brief on Preliminary Legal Issue at p. 5.

² *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, Docket No. GA-75968 (Nov. 19, 1993), at p. 8.

1 preference for monopoly service in the collection of solid waste, allowing the Commission to
2 grant new authority in already-served territory only if it finds that the existing certificate holder
3 will not provide satisfactory service.”³ It is simply not possible, consistent with this statutory
4 scheme, for the Commission to wake up one day and decide that competition is preferable to
5 exclusive service territories as a matter of policy. If Waste Management believes that
6 biomedical waste collection in Washington should be deregulated, it should present its
7 arguments to the Legislature, not the Commission. Only the Legislature has the authority to
8 revise the existing regulatory regime to implement a program for the deregulation of
9 biomedical waste collection, addressing both entry and rate regulation.

10 6. Where an applicant seeks overlapping solid waste collection authority, the plain
11 language of RCW 81.77.040 forbids the Commission from granting the application unless the
12 applicant proves, “after notice and an opportunity for a hearing,” that “the existing solid waste
13 collection company or companies serving the territory will not provide service to the
14 satisfaction of the Commission.” What would be the purpose of the hearing and what would an
15 applicant be required to prove if the Commission were free to decide that overlapping authority
16 (*i.e.*, competition) is a good in itself that overrides the interests of existing certificate holders as
17 a matter of policy?⁴ RCW 81.77.040 is clearly intended to protect existing certificate holders
18 and clearly contemplates an adjudication to determine, among other things, whether their
19 “services” are “satisfactory.” The Commission has repeatedly “held that the statutory standard
20 of service to the satisfaction of the Commission ‘declares the Legislature’s strong preference
21 for regulated monopoly service in the collection of solid waste.’”⁵ As the Commission Staff

22 ³ *In re Petition of Comm'n Staff for a Declaratory Ruling*, Docket No. TG-970532, Declaratory Order at
23 p. 9 (Aug. 14, 1998).

24 ⁴ Clearly, the purpose of the hearing cannot be to assess the applicant’s fitness or the broader questions
25 of “public convenience and necessity,” since the requirement that the Commission determine those
26 issues does not depend under RCW 81.77.040 on whether a hearing is required to address the objections
of an existing carrier.

⁵ *Superior Refuse Removal, Inc. v. Washington Utilities and Transportation Commission* (Wash. Ct.
App. May 22, 1997), 1997 Wash. App. LEXIS 787 at p. 4 (unpublished opinion), quoting *In re Superior
Refuse Removal Corp.*, M.V.G. No. 1639, Docket No. GA-896 (June 30, 1993); see also, *In re R.S.T.
Disposal Co.*, M.V.G. No. 1402, Docket Nos. GA-845 and GA-851 (July 31, 1989) at pp. 15-16.

1 acknowledges,⁶ this statutory requirement applies to all applications for overlapping solid waste
2 authority, including applications for biomedical waste collection authority. The Commission is
3 not free to ignore this statutory requirement by adopting, as Waste Management suggests, an *a*
4 *priori* policy favoring competition in biomedical waste collection.

5 7. The requirements of RCW 81.77.040 have been in place since 1961. In 2005,
6 the Washington Legislature amended section of RCW 81.77.040 in a manner that re-confirmed
7 the Commission's long-standing interpretation of RCW 81.77.040⁷ and the Legislature's intent
8 to protect existing certificate holders from duplicative grants of authority, absent a showing that
9 the services of existing carriers are in some sense deficient. The 2005 amendment⁸ added the
10 language shown underlined in the current text, as follows:

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

17 The added language emphasizes the purpose of this provision to protect existing certificate
18 holders and to limit the authority of the Commission to grant overlapping authority to their
19 detriment. Thus, only "if the existing solid waste collection company does not object" may the
20 Commission grant overlapping authority without a hearing. The hearing requirement itself
21 makes clear that Commission must determine on a case-by-case basis that the particular
22 "services" offered by the existing carriers are "unsatisfactory" in some particular way before it
23 may grant overlapping authority. The notion that a "need for competition" could satisfy this

24 ⁶ Commission Staff's Initial Brief on Preliminary Legal Issue at p. 1.

25 ⁷ The 2005 amendment represents legislative confirmation of the Commission's interpretation of
26 RCW 81.77.040 prohibiting the grant of overlapping authority in the absence of a showing of some
27 deficiency in existing service. *See, e.g., Green River Community College v. Higher Education*
28 *Personnel Board*, 95 Wash.2d 108, 118, 622 P.2d 826 (1980) ("[A] contemporaneous construction by
29 the department charged with administering an ambiguous statute is even more persuasive if the
30 legislature not only fails to repudiate the construction, but also amends the statute in some other
31 particular without disturbing the administrative interpretation.").

⁸ Laws of 2005, Ch. 121, §6.

1 requirement would simply write the “satisfactory service” test and the hearing requirement out
2 of the statute. This the Commission may not do.

3 8. The plain language of RCW 81.77.040 requires an applicant for overlapping
4 authority to prove by the presentation of evidence that the “service” provided by existing
5 carriers will be unsatisfactory in some objectively demonstrable way. In evaluating whether
6 existing service is satisfactory, “[t]he Commission applies objective tests”⁹ The
7 Commission’s numerous cases addressing this issue over the last 50 years make clear that there
8 must be some objective defect or inadequacy in the services provided by existing certificate
9 holders to overcome the statutory presumption in favor of exclusive service territories. In the
10 case of universal garbage service, the defect is typically some combination of service failures.
11 In the case of biomedical waste collection companies, the Commission has extended the
12 concept of unsatisfactory service to include failure to meet the specialized needs of biomedical
13 waste generators. In either case, RCW 81.77.040 and the Commission’s precedents require the
14 applicant to prove the inadequacy of the services provided by existing certificate holders before
15 it may consider the broad policy questions implicit in a determination of public convenience
16 and necessity.

17 9. In essence, Waste Management argues that 50 years of Commission
18 jurisprudence confirming the statutory presumption in favor of exclusive service territories
19 should simply be disregarded in favor of its opposite – a new presumption proposed by Waste
20 Management in favor of competition.¹⁰ Waste Management attempts to manufacture a
21 colorable basis for its claim that competition is favored in biomedical waste collection by
22 quoting out of context some of the Commission’s comments in prior cases about the differences
23 between neighborhood garbage collection and biomedical waste collection.¹¹ However, when
24

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

¹⁰ Predictably, we can expect this presumption to be advocated by Waste Management only insofar as it would benefit Waste Management. *See* Waste Management’s protest in the Spartan Environmental case. *In re Spartan Environmental, LLC*, App. No. 112025 (2012).

¹¹ Waste Management’s Opening Brief on Preliminary Legal Issue at ¶¶ 11, 14-16.

1 read in context, the Commission's references to these differences merely explain the
2 Commission's expansion of its satisfactory service analysis in biomedical waste cases beyond
3 the type of service failures considered in garbage cases to include "need-related service
4 insufficiency."¹² The Commission's willingness to grant overlapping authority has only
5 extended to cases where the applicant could show that the services of existing certificate
6 holders were insufficient to meet legitimate generator needs.

7 10. For example, in the *Sure-Way Incineration* case, the Commission noted the
8 differences between "neighborhood solid waste collection" and the kind of service proposed in
9 an application for statewide biomedical waste collection authority.

10 The collection of medical waste is quite a different situation. . . . The
11 Commission is at this point unconvinced that any single carrier presently
12 authorized to serve in the state of Washington could provide a level of service,
13 on its own, which would satisfy the Commission and meet the needs of the
14 waste generators. Therefore, while sound policy and economic reasons exist in
15 favor of exclusive authority for typical residential or commercial collection in a
16 specific territory, those reasons are less compelling in this new, specialized area.
17 The Commission is not ready to say that a grant of one application for statewide
18 authority would preclude a grant of others, and will consider this element in
19 future proceedings.¹³

20 These statements must be read in light of the Commission's grant of statewide biomedical
21 waste collection authority in the *American Environmental* case,¹⁴ decided the same day as *Sure-*
22 *Way Incineration*, and against the backdrop of the Commission's cases strictly limiting
23 overlapping authority in universal garbage collection. In this context, the thrust of the
24 Commission's statement is that its grant of statewide biomedical waste collection authority to
25 American Environmental Management Corp. was not a decision by the Commission for all
26 time that it would never make a future grant of authority to another carrier for biomedical waste
collection services anywhere in Washington.

¹² *In re Sureway Medical Services, Inc. supra*, at p. 11.

¹³ *In re Sure-Way Incineration*, Order M.V.G. No. 1451, App. No. GA-868 (Nov. 30, 1990) at pp. 16-17 (emphasis added).

¹⁴ *American Environmental Management Corp.*, Order M.V.G. No. 1452, App. No. GA-874 (Nov. 30, 1990).

1 11. In describing the differences between neighborhood solid waste collection and
2 statewide biomedical waste collection, the Commission focused particularly on the difference
3 between the limited service territories involved in neighborhood solid waste collection and the
4 statewide biomedical waste collection authority it granted to American Environmental
5 Management Corp. The Commission was clearly skeptical that American Environmental (*i.e.*,
6 a new carrier offering a new service and the only carrier then “presently authorized to serve the
7 state of Washington”) “could provide a level of service, on its own, which would satisfy the
8 Commission and meet the needs of the waste generators” throughout the state and expressly
9 reserved that issue for later determination. The Commission made clear that its grant of
10 statewide authority to American Environmental did not, by itself, mean that the Commission
11 would never allow another biomedical waste collection company to provide such services
12 anywhere in Washington.

13 12. The Commission has broadened its satisfactory service analysis to include need-
14 based sufficiency of service issues in the biomedical waste context. However, the Commission
15 did not, as Waste Management now suggests, ignore or overturn the statutory presumption in
16 favor of exclusive territories in *Sure-Way Incineration* or *American Environmental*. In both
17 *Sure-Way Incineration* and *American Environmental*, the Commission emphasized that the
18 services to be provided by the applicants did not merely “duplicate” the services already
19 provided by existing carriers.¹⁵ In the subsequent *Ryder* case, the Commission similarly made
20 clear that the services of existing carriers were not “equivalent” to those proposed by the
21 applicant.¹⁶ The Commission has never granted overlapping biomedical waste collection

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23 ¹⁵ “[T]he service that was being performed by the existing solid waste collection companies is not being
24 duplicated by this grant of [authority for] a new, specialized infectious waste service.” *American*
25 *Environmental, supra*, at p. 9. The Commission emphasized in both *Sure-Way Incineration* and
26 *American Environmental* that the specialized services needed by generators were not being provided by
existing carriers “in any way, shape, or form.” *American Environmental, supra*, at p. 8.

¹⁶ “Stericycle is providing a service that in total helps the generators to assure themselves that they do
not incur federal, state, or civil liability. The existing carriers do not provide an equivalent service.” *In*
re Ryder Distribution Resources, Inc., Order M.V.G. No. 1596, Docket No. GA-75154 (Jan. 25, 1993)
at p. 11.

1 authority in the absence of a showing that the applicant's services would meet reasonable
2 generator needs that were not then being met by existing carriers.

3 13. Waste Management makes much of a single sentence in the Final Order in
4 *Stericycle of Washington, Inc. v. Waste Management of Washington, Inc.*, Docket No.
5 TG-110553, asserting that "the Commission has historically found that promoting competition
6 in this segment of the industry is in the public interest because, among other things, it promotes
7 higher quality of service in terms of protecting the public health and safety."¹⁷ However,
8 Waste Management's reliance on this statement reflects a fundamental misunderstanding of the
9 separate satisfactory service and public interest determinations that the Commission is required
10 to make under RCW 81.77.040. Whether existing certificate holders are providing satisfactory
11 service is a threshold issue that must be determined before the Commission may consider the
12 applicant's fitness, sentiment in the community or the broader questions of the "public interest"
13 encompassed by the concept of "public convenience and necessity."

14 Biohazardous waste is solid waste and its transportation is governed by chapter
15 81.77 RCW and by RCW 81.77.040. That section bars the Commission from
16 granting authority in territory served by an existing carrier unless the
17 Commission finds that the existing carrier will not provide service to the
18 satisfaction of the Commission. If it makes that finding, under the same law it
19 must then also find that the proposed service is required by the public
20 convenience and necessity before it can grant the application.¹⁸

18 The Commission considers its satisfaction with the existing service before it
19 examines the public's need and the applicant's fitness. . . . Indeed, it is only
20 logical to address the question of satisfactory service first. The answer to that
21 question may foreclose granting the applicant a certificate, regardless of its
22 fitness to serve.¹⁹

21 The Commission's statement in the *Stericycle v. Waste Management* Final Order speaks only to
22 the broader question of the public interest as it bears on public convenience and necessity and
23 simply does not address the threshold satisfactory service issue. It is true but irrelevant to the
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25 ¹⁷ *Stericycle of Washington, Inc. v. Waste Management of Washington, Inc.*, Docket No. TG-110553,
Final Order (July 13, 2011) at pp. 14-15.

26 ¹⁸ *In re Medical Resource Recycling System, Inc.*, *supra*, at p. 2.

¹⁹ *Superior Refuse Removal, Inc. v. Washington Utilities and Transportation Commission* (Wash. Ct.
App. May 22, 1997), 1997 Wash. App. LEXIS 787 at p. 6 (unpublished opinion).

1 present question that the Commission has “historically” found that granting overlapping
2 authority was in the public interest -- in those cases where it reached that issue after
3 determining that existing certificate holders were not providing satisfactory service.²⁰ The
4 quoted statement simply does not address the standards applicable to the threshold satisfactory
5 service determination required by RCW 81.77.040.

6 14. None of the Commission’s biomedical waste application cases supports Waste
7 Management’s assertion that a desire for competition alone can justify a grant of overlapping
8 authority; in fact, just the opposite is true. It has been “the Commission’s consistent view that
9 . . . mere preference for competition, does not demonstrate a need for an additional carrier.”²¹
10 Thus, the Commission has emphatically denied that a desire for competition alone may justify a
11 grant of overlapping authority.²²

12 15. In *In re Ryder Distribution Resources, Inc.*, the Commission dealt with the
13 situation it had anticipated in *American Environmental* -- an application for statewide
14 biomedical waste collection authority overlapping entirely the statewide biomedical waste
15 collection authority the Commission had granted to American Environmental Management
16 Corp.²³ *Ryder Distribution Resources* contains an extended discussion of the Commission’s
17 need-based satisfactory service analysis in the biomedical waste application context.²⁴ In
18 addressing Stericycle’s application for statewide biomedical waste collection authority in the
19 *Ryder* case, the Commission evaluated the services of existing carriers, both general solid waste
20 and specialized biomedical waste collection companies, as follows:

21 ²⁰ The asserted relationship between “competition” and “public health and safety” is accurate to the
22 extent, e.g., that a grant of overlapping authority was indeed deemed necessary to public health and
23 safety in the early cases where the applicant offered for the first time a specialized biomedical waste
24 collection service that would segregate the handling, collection, transportation and disposal of
25 potentially infectious biomedical waste from the general solid waste stream. See, e.g., the *Sure-Way*
26 *Incineration* and *American Environmental* cases, both *supra*.

²¹ *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1674, App. No. GA-75968 (Dec. 20, 1993)
at pp. 4-5.

²² *Id.*

²³ *In re Ryder Distribution Resources, supra*. By the time of the *Ryder* decision, the American
Environmental certificate had been acquired by BFI Medical Waste Services of Washington, Inc.

²⁴ *In re Ryder Distribution Resources, Inc., supra*.

1 This application does not seek "traditional" universal garbage service. The
2 supporting shippers do have specialized needs not encountered by a typical
residential customer. . . .

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

16 Because existing carriers do not offer a collection, transportation and disposal
17 service which meets those needs, the existing carriers will not provide service to
18 the satisfaction of the Commission.²⁵

19 The Commission further explained its need-based satisfactory service analysis in *Sureway*
20 *Medical Services*²⁶ and *Medical Resource Recycling System*,²⁷ two cases (like *Ryder*) also
21 involving applications for overlapping biomedical waste collection authority.

22 In Order M.V.G. No. 1596, *In re Ryder Distribution Resources, Inc.*, App. No.
23 GA-75154 (January 1993), the Commission further developed the framework
24 for evaluating applications for overlapping biohazardous waste authority. It
25 concluded that the satisfactory nature of the services by existing providers of
26 specialized solid waste collection services should be measured according to the
specialized needs of customers. . . .

27 In evaluating whether existing [biomedical waste collection] companies will
28 provide service to the satisfaction of the Commission, the Commission will not
limit its consideration to evidence of service failures of the sort that usually are
significant in neighborhood garbage collection service, such as service refusals,
missed pickups or garbage strewn about. Rather, it will broaden the satisfactory
service inquiry to include need-related sufficiency of service considerations --
whether existing service reasonably serves the needs of the specialized market.²⁸

25 *Id.* at pp. 10-12.

26 *In re Sureway Medical Services, Inc.*, *supra*.

27 *In re Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707, App. No. GA-76820
(May 25, 1994).

28 *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, *supra*, at pp. 10-11 (emphasis added).

1 In *Sureway Medical*, the Commission expressed concern that BFI, the only carrier at that time
2 with permanent statewide biomedical waste collection authority, did not have the ability to
3 provide a complete service to thousands of biomedical waste generators throughout the state
4 with only two terminals and eight drivers and ultimately determined that the applicant had
5 established an unmet need for its services in King and Snohomish Counties.²⁹ The
6 Commission made clear in its decision on BFI's subsequent petition for reconsideration that
7 *Sureway Medical* did not announce a new standard for satisfactory service.

8 BFI contends that it is apparent from the Commission's analysis that a perceived
9 need for another carrier on the part of generators, either as a contingent carrier
10 or just for the sake of competition, now constitutes need for additional authority
11 under RCW 81.77.040. The final order does not announce or apply any such
12 principle. The satisfactory service/public need standards that the final order
13 applied are those set out in Order M.V.G. No. 1596, In re Ryder Distribution
14 Resources, Inc., App. No. GA-75154 (January 1993). The satisfactory nature of
15 service by existing providers of specialized solid waste collection services will
16 be measured according to the specialized needs of customers.³⁰

17 The Commission went on to reaffirm "the Commission's consistent view that . . . mere
18 preference for competition, does not demonstrate a need for an additional carrier."³¹

19 16. The Commission's analysis in *Medical Resource Recycling System* reflects the
20 same need-based satisfactory service standard applied in *Ryder* and *Sureway Medical*.

21 We believe that the needs expressed by the supporting witnesses for service
22 characteristics such as recycling, non-incinerative disposal, and environmentally
23 protective storage reflect true shipper needs and that failure [of existing carriers]
24 to provide them means that the service is unsatisfactory. We so find in this
25 proceeding.³²

26 ²⁹ *Id.* at 15. The Commission's decision in *Sureway Medical* may also have been influenced by the fact
that *Sureway Medical* was formed to implement a reorganization of the medical waste services
previously provided under Commission authority by the Rabanco Companies in portions of King and
Snohomish Counties, *see id.* at pp. 3-7 & 24 (finding of fact no. 8), and that the conditional grant of
authority to *Sureway Medical* allowed the Commission to obtain surrender of other authorities held by
the applicant and its affiliates.

³⁰ *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1674, *supra*, at p. 4.

³¹ *Id.* at pp. 4-5.

³² *In re Medical Resource Recycling System, Inc.*, *supra*, at p. 3.

1 As stated in *Ryder* Order M.V.G. No. 1596: "The satisfactory nature of service by providers of
2 specialized solid waste collection services is measured according to the specialized needs of
3 customers."³³

4 17. When addressing the separate issue of public convenience and necessity in
5 evaluating applications for overlapping biomedical waste collection authority, the Commission
6 has repeatedly noted that competition is not always in the public interest.

7 In determining whether the public convenience and necessity require an
8 additional carrier, the Commission must balance needs of existing carriers for a
9 customer base that is large enough for economic viability, considering their
obligation to provide satisfactory service, with the public's need for responsive
service.³⁴

10 As the Commission noted in *Ryder*, in balancing the public's need for
11 responsive service and the existing carrier's need for a customer base that is
12 large enough for economic viability, the Commission may deny an application
13 for overlapping authority even if existing carriers are unable to provide the
14 service the public desires, when the existing service is satisfactory to the extent
provided and the customer base cannot support another carrier. The
Commission recognizes that competition in the collection and disposal of
biohazardous waste may not necessarily benefit the public.³⁵

15 Nonetheless, Waste Management now argues that the Commission should ignore the
16 comprehensive statutory scheme of chapter 81.77 RCW, the specific terms of RCW 81.77.040
17 and the Commission's prior precedents and adopt a new policy in favor of substantially
18 unrestricted competition in biomedical waste collection -- at least until Waste Management gets
19 in the door. As the discussion above and in Stericycle's opening memorandum shows, Waste
20 Management's arguments cannot be reconciled with the statutory scheme, RCW 81.77.040 or
21 the Commission's prior cases.

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25 ³³ *In re Ryder Distribution Resources, Inc.*, Order M.V.G. No. 1596, App. No. GA-75154 (Jan. 1993) at
p. 11.

26 ³⁴ *Id.* at p. 15.

³⁵ *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, *supra*, at p. 16 (emphasis added).

1 **III. Conclusion**

2 18. As both Stericycle and the Commission Staff agree, to prevail on its application,
3 Waste Management must prove that the services it proposes to offer will meet reasonable
4 generator needs that are not currently being met by existing certificate holders.
5 “RCW 81.77.040 authorizes the Commission to grant a certificate for biomedical waste
6 collection authority in an area already served by other providers if the applicant demonstrates,
7 through [generator] testimony, that incumbent providers are not meeting the specialized needs
8 of customers.”³⁶ Absent such a showing, Waste Management’s application must fail.

9
10 DATED this 22nd day of June, 2012.

11 Respectfully submitted,

12 GARVEY SCHUBERT BARER

13
14 By Stephen B. Johnson
15 Stephen B. Johnson, WSBA #6196
16 Jared Van Kirk, WSBA #37029
17 Attorneys for Protestant Stericycle of
18 Washington, Inc.

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25
26 ³⁶ Commission Staff’s Initial Brief on Preliminary Legal Issue at p. 5.

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 22, 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 REPLY
5 MEMORANDUM CONCERNING THE PRELIMINARY LEGAL ISSUE RE:
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8 Transportation Commission
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Dated at Seattle, Washington this 22nd day of June, 2012.

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