

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

STERICYCLE OF WASHINGTON,)	DOCKET TG-121597
INC.,)	
)	
Complainant,)	ORDER 05
)	
v.)	
)	ORDER DENYING STERICYCLE’S
WASTE MANAGEMENT OF)	MOTION FOR THIRD PARTY
WASHINGTON, INC., d/b/a WM)	DISCOVERY
HEALTHCARE SOLUTIONS OF)	
WASHINGTON,)	
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On October 3, 2012, Stericycle of Washington, Inc. (Stericycle) filed a complaint against Waste Management of Washington, Inc., d/b/a WM Healthcare Solutions of Washington (Waste Management). As relevant here, the complaint alleges that Waste Management is unlawfully soliciting biomedical waste collection business from Washington generators by offering discounts on Waste Management’s recycling or other services, or otherwise rebating a portion of its biomedical waste tariff rates.
- 2 On March 1, 2013, Stericycle filed a proposed Discovery Plan. On March 5, 2013, Waste Management filed its Response. On March 8, 2013, the Commission entered Order 04, Order Authorizing and Limiting Discovery (Order 04), to establish appropriate boundaries for the discovery process in this proceeding.
- 3 Order 04 divided discovery into two parts. Order 04 approved Phase I, allowing written discovery between the parties and authorizing Stericycle to depose Waste Management’s employees. Order 04 accepted Phase II in concept, providing Stericycle the opportunity to request to engage in discovery from various third parties. Order 04 specified “Phase II discovery may be approved upon a showing that Stericycle cannot obtain information necessary to support its claims in any other way” and noted that “[t]he Commission will also consider third party opposition to discovery requests.”

4 Stericycle propounded written discovery on Waste Management and has obtained over 400 pages of documents. On July 17, 2013, Stericycle deposed Waste Management employee Jeff Norton.¹

MOTION TO ENGAGE IN THIRD PARTY DISCOVERY

5 On July 22, 2013, Stericycle filed a Motion for Third-Party Discovery (Motion). Stericycle argues that it must be allowed to seek information and documents directly from biomedical waste generators to whom Waste Management offered both biomedical waste and recycling services. Stericycle explains that it has been unable to informally obtain relevant testimony and documents from specified third-parties.

6 Stericycle asks the Commission to authorize and issue subpoenas for depositions and records to employees of four biomedical waste generators and a related contractor, as follows:

- Mr. Juan Escalante of Northwest Hospital & Medical Center, Seattle
- Ms. Rose Hong of Northwest Hospital & Medical Center, Seattle
- Mr. Richard Delaney of Skagit Valley Hospital, Mount Vernon
- Mr. Jeremy Wyatt of Valley Medical Center, Renton
- Mr. Neal Trebbe of Aramark, Inc. (prior contractor to Valley Medical Center)
- Mr. Andy Flodin of Virginia Mason Medical Center, Seattle

Stericycle's motion details the efforts made by its counsel to contact these individuals and obtain their consent in supplying requested information on an informal basis. Stericycle states that each person refused to cooperate with Stericycle's inquiries and that corporate counsel for these persons' employer precluded further discussions with some of these employees.

7 On July 29, 2013, Waste Management filed its opposition to Stericycle's motion. Waste Management argues that Stericycle has not demonstrated an inability to obtain information it seeks in "any other way," as required by Order 04. According to Waste Management, Stericycle should be required to make its case with the results of discovery obtained directly from Waste Management.

¹ Waste Management's Opposition, ¶ 3.

DISCUSSION AND DECISION

- 8 The Commission ruled in Order 04 that “Phase II discovery *may* be approved upon a showing that Stericycle cannot obtain information necessary to support its claims in any other way” (emphasis added). Stericycle’s motion explains that it has already obtained evidence indicating that Waste Management has improperly offered or provided unlawful rebates to biomedical waste generators by offering discounted rates for recycling services in exchange for a generator’s agreement to contract with Waste Management for biomedical waste services.² Stericycle thus concedes its ability to acquire relevant information from Waste Management needed to make its case before the Commission. Stericycle seeks to gather *additional* information to determine the *extent* of Waste Management’s unlawful rebating,³ but that request falls far short of the showing required in Order 04.
- 9 The Commission also explained in Order 04 that it would consider “third party opposition to discovery requests.” The Commission is very reluctant, at best, to compel third parties to participate in a proceeding against their will and will do so, if at all, only on a strong showing of a need consistent with the public interest. Stericycle’s counsel encountered strenuous resistance when seeking information from third parties. It is clear that the companies and their employees identified in the motion strongly oppose any participation in Stericycle’s dispute with Waste Management. Weighing Stericycle’s desire to obtain additional discovery against the interests of the targeted third parties, the Commission finds that the balance tips decidedly in favor of the third parties.
- 10 Therefore, the Commission declines to issue the requested subpoenas.

² Stericycle Motion, ¶¶ 2-3.

³ *Id.*

ORDER

11 THE COMMISSION ORDERS That Stericycle of Washington, Inc.'s Motion for Third-Party Discovery is DENIED.

Dated at Olympia, Washington, and effective August 16, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge