

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STERICYCLE OF WASHINGTON, INC.,

Complainant,

v.

WASTE MANAGEMENT OF WASHINGTON,  
INC., d/b/a WM HEALTHCARE SOLUTIONS  
OF WASHINGTON,

Respondent.

DOCKET TG-121597

COMMISSION STAFF  
ANSWER TO STERICYCLE  
OF WASHINGTON, INC.'S  
MOTION FOR  
RECONSIDERATION OF  
ORDER DENYING THIRD  
PARTY DISCOVERY FROM  
NORTHWEST HOSPITAL

1 Commission Staff (Staff) opposes Stericycle's motion to review Order 05 in this docket which denied Stericycle's Motion for Third Party Discovery.

2 Stericycle bases its motion on the need to resolve factual disputes either in a dispositive motion or at hearing. Motion of Stericycle, ¶ 2. The motion primarily focuses on Stericycle's need for the information for purposes of a motion for summary determination. Motion of Stericycle, ¶ 3. This basis was not raised in the underlying Motion for Third Party Discovery. Consequently, the Administrative Law Judge did not address this argument in ruling on that motion.

3 While it is within the Commission's discretion to grant the requested relief, Staff does not view the intent to bring a summary motion as a compelling basis for granting third party discovery. If that basis were adequate, third party depositions would be readily available in UTC hearings. In practice before the Commission however, deposing third parties is an extraordinary event. Order 05, ¶ 9. In any event, it is not clear that such

depositions would resolve genuine issues of material fact so as to make summary disposition possible. This will depend on whatever countervailing evidence Waste Management submits on the issue of a linkage between commercial recycling rates and biomedical waste service. A part of Stericycle's motion is based on the expectation that Waste Management will present such evidence on the issue of a quid pro quo. Motion of Stericycle, ¶ 3.

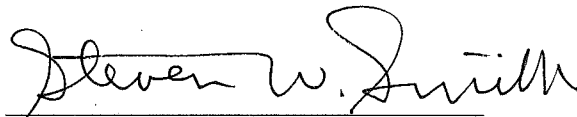
4           Turning from discovery to the hearing itself. The Administrative Procedure Act provides that any attorney of record may issue subpoenas to require appearance at an adjudicative proceeding. This authority is state wide in scope. RCW 34.05.446(1), (6). Under this authority, Stericycle may subpoena the Northwest Hospital employees to appear at the hearing. While this subpoena authority is not available to Stericycle for discovery, it gives the company the opportunity to make its factual record at the hearing.

5           For these reasons, the Commission Staff opposes Stericycle's request to reverse Order 05 Denying Stericycle's Motion for Third party Discovery.

Dated this 4<sup>th</sup> day of September 2013.

Respectfully submitted,

ROBERT M. MCKENNA  
Attorney General of Washington



STEVEN W. SMITH  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff