

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET TG-110287
)	
STERICYCLE OF WASHINGTON,)	
INC.,)	
)	
For an Order Suspending Tariff Filings)	DECISION NOT TO INITIATE
and Initiating an Adjudicatory Proceeding)	ADJUDICATIVE PROCEEDING
Concerning the Proposed Biomedical)	
Waste Collection and Transportation)	
Services of Waste Management of)	
Washington, Inc., d/b/a WM Healthcare)	
Solutions (G-237))	
)	
.....)	

BACKGROUND

- 1 On February 10, 2011, the Washington Utilities and Transportation Commission (Commission) received a petition from Stericycle of Washington, Inc. (Stericycle or Petitioner) requesting that the Commission initiate an adjudicatory proceeding to consider imposing certain conditions and restrictions on the proposed entry of Waste Management of Washington, Inc. (Waste Management) into the business of collecting and transporting biomedical waste for disposal in Washington (Stericycle Petition). The Stericycle Petition does not allege that Waste Management has filed tariffs or otherwise has sought authority from the Commission to enter into the business of collecting and transporting biomedical waste for disposal in Washington or that Waste Management has entered into that business without Commission authority.

- 2 On February 16, 2011, the Commission issued a Notice of Opportunity to Comment (Notice) on whether the Stericycle Petition seeks resolution of an actual case or controversy subject to the Commission’s jurisdiction. On March 4, 2011, the Commission received comments from Waste Management and from the Washington Refuse and Recycling Association (WRRRA), both of which stated that until Waste

Management files a tariff or otherwise takes action to initiate medical waste collection service, no such case or controversy exists.

- 3 Stericycle also filed comments in response to the Notice on March 4, 2011. Stericycle observes that the Commission has jurisdiction to regulate companies providing biomedical waste collection services. Stericycle contends that Waste Management has abandoned its authority to collect and transport medical waste and accordingly should be required to apply to regain this abandoned authority if Waste Management seeks to offer this service. Stericycle claims, “The Commission’s authority includes initiating an adjudicative proceeding to determine whether an existing certificate holder that previously abandoned biomedical waste operations in the state is fit, willing, and able to provide biomedical waste collection and transportation services and whether the proposed service is in the public interest.” Stericycle Comments ¶ 14.
- 4 Stericycle also alleges that even though Waste Management has not yet begun physical collection of biomedical waste, the company is actively soliciting customers for such a service to be offered in the near future, including representing that its rates for the new service will be significantly lower than Stericycle’s rates. Stericycle asserts that “by actively soliciting biomedical waste generators as customers and proposing and advertising rates, Waste Management is currently operating as a biomedical solid waste collection company” whose activities are subject to Commission oversight. *Id.* ¶ 15. Stericycle claims that these solicitation activities have damaged and continue to damage Stericycle, resulting in an actual case or controversy subject to the Commission’s jurisdiction.

DISCUSSION AND DECISION

- 5 The Administrative Procedure Act and Commission rules authorize the Commission to “commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority.” WAC 480-07-305(1); *accord* RCW 34.05.413(1). “A person involved in an actual case or controversy subject to the commission’s jurisdiction may apply to the commission for an adjudicative proceeding by filing the appropriate form of pleading.” WAC 480-07-305(2). Within 90 days the Commission either must commence an adjudicative

proceeding or decide not to conduct such a proceeding and explain its reasoning. WAC 480-07-305(5).

- 6 The Commission has decided not to conduct an adjudicative proceeding in response to the Stericycle Petition. Waste Management has not entered, or sought Commission authority to enter, into the business of collecting and transporting biomedical waste for disposal in Washington. We agree with Waste Management and the WRRRA that until Waste Management takes such action, the Stericycle Petition does not present an actual case or controversy subject to the Commission's jurisdiction.
- 7 The Commission is not persuaded by Stericycle's argument that the Commission's authority to regulate solid waste companies necessarily extends to examining a company's fitness to provide a particular service before the company seeks authority or begins to provide that service. Without a filing from the company or other action to initiate the service, debates over whether the company is able to provide the service, if the public interest would be served by the company's provision of the service, or whether the rates, terms, and conditions of the service would be fair, just, reasonable, and sufficient raise, as Waste Management observes, "purely academic issue[s]." Waste Management Comments ¶ 7. The Commission does not address such issues through its adjudicative process.
- 8 Nor do we find compelling Stericycle's contention that Waste Management's alleged solicitation activities trigger Commission jurisdiction over Stericycle's claims. That argument is based on the Commission's plenary authority to regulate Waste Management as an existing certificate holder to "operate for the hauling of solid waste for compensation" under RCW 81.77.040, which defines that term to include "advertising, soliciting, offering, or entering into an agreement to provide that service." Even using this definition as Stericycle proposes,¹ the Waste Management activities alleged in the Stericycle Petition do not rise to the level of "operating for the hauling of solid waste for compensation."

¹ That statute requires solid waste collection companies to obtain a certificate of convenience and necessity from the Commission prior to initiating operations. Waste Management already holds such a certificate. The issue is whether the Commission has jurisdiction to determine whether Waste Management is exceeding its authority under that certificate by informing potential customers that it intends to provide a particular service. RCW 81.77.040 does not address that issue.

9 The legislature established both the statutory term and its definition in the present tense – “*operating* for the hauling of solid waste,” and “advertising, soliciting, and offering . . . *to provide* that service.” (Emphasis added.) Stericycle, however, complains that Waste Management is advertising rates and soliciting customers for a service that Waste Management does not yet provide but *intends* to offer *in the future*.² The plain language of the statute does not apply to those circumstances, and the Commission finds no basis under the statutory language or the allegations in the Stericycle Petition on which to extend the Commission’s plenary jurisdiction over certificated solid waste companies to include a company’s exploratory marketing efforts with respect to new services the company may provide some time in the future.

10 The Commission, therefore, lacks authority to address the claims in Stericycle’s petition at this time. We note, however, that Waste Management states that it “does intend to file a tariff and take steps necessary to collect and transport biomedical waste in Washington at some point in time.” Waste Management Comments ¶ 8. Stericycle retains the same rights as any other interested party to protest, oppose, or otherwise comment on whatever such filing Waste Management makes after Waste Management makes that filing.

DATED at Olympia, Washington, and effective March 10, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA

Director, Administrative Law Division

² Stericycle asserts that “Waste Management has not yet commenced physical collection of biomedical waste,” but its “communications to generators have represented that these new services *will be offered* in Washington very soon.” Stericycle Comments ¶ 2 at 2 (emphasis added); *accord, e.g.*, Stericycle Petition ¶ 5 (alleging that Waste Management “has been approaching Stericycle customers and soliciting them for a new . . . service *to be offered* by Waste Management . . . on the basis of representations concerning the rates Waste Management *will offer* for the *proposed* service”) (emphasis added).

NOTICE OF AVAILABLE ADMINISTRATIVE REVIEW

This is a determination by the Director of the Administrative Law Division, which will be considered an Initial Order for purposes of administrative review. Pursuant to WAC 480-07-825(2), Petitioner has twenty (20) days after service of this Notice of Decision Not to Initiate Adjudicative Proceeding to file a Petition for Administrative Review (Petition). Section (3) of the rule identifies what the Petitioner must include in any Petition as well as other requirements for a Petition.

WAC 480-07-825(4) states that any party may file an Answer to a Petition (Answer) within (10) days after service of the Petition. For purposes of this docket, a “party” will be considered to be anyone who filed comments in this docket.

To file a Petition or Answer with the Commission, you must file an original and eleven (11) copies of your Petition by mail delivery to:

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250