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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 No. TG-120033

**WASTE MANAGEMENT'S MOTION
TO COMPEL DISCOVERY FROM
STERICYCLE**

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1 **I. RELIEF REQUESTED**

2 1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of
3 Washington (“Waste Management”) moves to compel Protestant Stericycle of Washington, Inc.’s
4 (“Stericycle”) response to nine Data Requests.

5 **II. STATEMENT OF FACTS**

6 2. Stericycle provides biomedical waste services to Washington generators under a tariff
7 which Stericycle has never sought to change since it first filed the tariff more than 20 years ago.¹
8 Stericycle contends in this proceeding that statewide competition from Waste Management will
9 materially harm Stericycle’s ability to make a profit from its biomedical waste services.² Waste
10 Management believes that Stericycle’s regulated services in Washington have long yielded a highly
11 remunerative return and that Stericycle can well withstand competition from Waste Management.

12 3. To rebut Stericycle’s claim that competition will result in financial ruin, Waste
13 Management has sought in discovery financial and other information to determine and analyze
14 Stericycle’s cost of services and the true return on its Washington biomedical waste services. Stericycle
15 has provided trifling bits of information, but has refused to produce most of the information necessary to
16 rebut Stericycle’s claim of future harm.³ This Motion follows multiple unsuccessful discovery
17 conferences with Stericycle to resolve these issues as reflected in the correspondence attached to the
18 Declaration of Polly McNeill.

19 **III. STATEMENT OF ISSUES**

20 4. Is Waste Management entitled to discovery which is critical to rebutting Stericycle’s
21 contention that competition from Waste Management will cause material financial injury to Stericycle
22 and, hence, to generators of biomedical waste?
23

24 ¹ Tariff No. 1 of Stericycle of Washington, Inc. d/b/a Stericycle.

25 ² Protest of Stericycle of Washington, Inc. to Application for Permanent Solid Waste Collection Authority ¶ 7 (Feb. 17, 2012)
26 (“The granting of additional state-wide authority to the Applicant overlapping Stericycle’s state-wide authority and the
27 authority of other certificated solid waste companies would harm Stericycle and the other certificate holders and jeopardize
28 their ability to provide quality and reasonably priced biomedical waste collection and transportation services to biomedical
waste generators throughout the state and would therefore be detrimental to the public interest.”).

³ Waste Management also believes this information will, independently, demonstrate that Stericycle’s unchanged tariff rates
have yielded such a handsome return as to amount to service which cannot be to the satisfaction of the Commission under
RCW 81.77.040.

1 **IV. EVIDENCE RELIED UPON**

2 5. Waste Management relies on the Declarations of Michael Weinstein and Polly McNeill
3 filed herewith, and Waste Management’s Application for authority to provide extended service.

4 **V. ARGUMENT**

5 6. Waste Management has sought, and Stericycle has refused to produce, the following
6 discovery. Waste Management now seeks an order compelling Stericycle to respond in full to these
7 outstanding Data Requests.

8 7. DATA REQUEST NO. 1: Waste Management originally sought a general ledger for
9 Stericycle’s Washington operations for 2011.⁴ Stericycle objected that it does not maintain a general
10 ledger and that it would be burdensome to generate one.⁵ In light of this objection, Waste Management
11 offered instead to accept the more limited balance sheet for Stericycle’s Washington operations for
12 2011.⁶ A balance sheet would include Stericycle’s assets (including fixed assets), liabilities and equity.
13 Waste Management requires this information to confirm that the list of depreciated assets supplied by
14 Stericycle is accurate and to determine Stericycle’s true cost of service. Without a balance sheet, Waste
15 Management – and the Commission – must simply take on faith Stericycle’s recitation of assets
16 employed in its regulated services. The annual report form required by the Commission for Class A
17 companies asks for much more information than the form used for Class C companies, most relevantly
18 including a balance sheet and also a report of volumes and expenses for waste tendered for disposal and
19 processing.⁷ However, to date Stericycle has avoided this requirement because it is a Class C company.
20 Stericycle takes the position that a balance sheet is irrelevant.⁸ Stericycle also contends that it “does
21 not prepare a balance sheet for its Washington regulated operations.”⁹ Waste Management has
22 requested, and would accept, a balance sheet for “Stericycle’s Washington operations,”¹⁰ which

23 _____
24 ⁴ Declaration of Polly L. McNeill in Support of Waste Management’s Motion to Compel Discovery from Stericycle
25 (“McNeill Decl.”), Ex. 1.

26 ⁵ *Id.*

27 ⁶ *Id.*, Ex. 2.

28 ⁷ RCW 81.77.080, RCW 81.04.080.

⁸ McNeill Decl., Exs. 3-5.

⁹ *Id.*, Ex. 5 (emphasis added).

¹⁰ *Id.*, Ex. 2 (emphasis added).

1 includes regulated and non-regulated operations. It appears – though Waste Management cannot
2 confirm absent the requested information – that Stericycle’s list of depreciated assets improperly
3 includes assets used in both its regulated and non-regulated operations.¹¹

4 8. DATA REQUEST NO. 2: Waste Management requested a price-out explaining the
5 basis for Stericycle’s WUTC revenues for 2009-2012.¹² A price-out states (1) each service category
6 identified in the tariff, (2) the number of services performed in each service category for the year, (3)
7 the tariff rate for each service category, and (4) the product of (2) and (3).¹³ A price-out will permit
8 Waste Management – and the Commission – to verify within a few percentage points that Stericycle
9 has properly billed its tariff services at tariff rates as reported in Stericycle’s annual report. Based on
10 Stericycle’s objection, Waste Management agreed to limit its request to 2011 and 2012.¹⁴ Stericycle
11 has steadfastly maintained that this information does not exist, that it would be very burdensome to
12 provide, and that it is only required in a rate proceeding initiated by the Commission.¹⁵ Stericycle
13 contends that it would “consume a minimum of 80 hours of CPA time at \$195/hour, for a total of at
14 least \$16,000; and a minimum of 100 hours of Stericycle accounting staff time at an average cost of
15 about \$80/hour, for a total of at least \$8,000. The work involved would probably take at least two
16 months”¹⁶ This estimate is preposterous. The information necessary for the price-out should be
17 readily available on Stericycle’s Tower billing system which it advertises as “a proprietary information
18 management system for tracking that provides detailed documentation of [the generator’s] regulated
19 medical waste.”¹⁷ Stericycle’s data management system “has the capability to provide [generators]
20 with monthly summary reports, which detail [the generator’s] service utilization for [the generator’s]
21 entire facility.”¹⁸ As a point of reference, it would take Waste Management no more than one day for a

22
23 ¹¹ *Id.*, Ex. 1 at Exhibit DR #3.

24 ¹² *Id.*, Ex. 1.

25 ¹³ *See* WAC 480-07-520(4)(f).

26 ¹⁴ McNeill Decl., Ex. 2.

27 ¹⁵ *Id.*, Exs. 1, 3-4.

28 ¹⁶ *Id.*, Ex. 5.

¹⁷ *Id.*, Ex. 1 at Exhibit DR #23-2.

¹⁸ *Id.*

1 Waste Management employee to query its accounting system to prepare a price-out.¹⁹ Stericycle
2 further contends that Waste Management's theory of improper profits cannot justify the request for a
3 price-out,²⁰ but fails altogether to address Waste Management's fundamental need for complete
4 financial information to rebut Stericycle's claim of financial harm.²¹

5 9. DATA REQUEST NO. 7: Stericycle has not objected to this request for information
6 regarding the arrangement between Stericycle and its affiliated processing facility at Morton,
7 Washington.²² Stericycle has thus waived any right to object and must provide a full response.²³
8 Waste Management seeks this information to determine how Stericycle has allocated Morton's costs
9 and profits and whether those profits come at the expense of Washington rate payers, or at the very
10 least afford Stericycle a financial cushion to withstand its unsupported prediction of financial harm
11 from Waste Management's entry into Stericycle's exclusive territories. Specifically, Stericycle agreed
12 to provide the following information from 2011 by July 27: "(1) the price per ton charged to Stericycle
13 for processing at Morton; (2) the number of tons charged to Stericycle for processing at Morton;
14 (3) what percentage of the Morton facility's processing is of Washington biomedical waste; (4) whether
15 the Morton facility charges the same rates to process biomedical waste from outside Washington; and
16 (5) and how much it costs to operate the Morton facility."²⁴ To date, Stericycle has not provided any of
17 this information. Rather, on July 27, Stericycle informed Waste Management only of the number of
18 containers handled at Morton in 2011, without specifying container size, let alone weight.²⁵

19 10. DATA REQUEST NO. 14: Waste Management requested "the volume of biomedical
20 waste [Stericycle] collected in Washington in 1995, 2001, 2009, 2010, 2011, and 2012 (to date),
21 respectively."²⁶ Stericycle provided the information for 2011 and 2012, but refused to provide the
22

23 ¹⁹ Declaration of Mike Weinstein in Support of Waste Management's Motion to Compel Discovery from Stericycle, ¶ 2.

24 ²⁰ See *supra* n.3.

25 ²¹ McNeill Decl., Ex. 5.

26 ²² *Id.*, Ex. 1.

27 ²³ WAC 480-07-405(6)(a).

28 ²⁴ McNeill Decl., Exs. 3-4.

²⁵ *Id.*, Ex. 5.

²⁶ *Id.*, Ex. 1.

1 information for the prior years.²⁷ This information is necessary to evaluate Stericycle's historic cost per
2 pound for processing biomedical waste and to rebut Stericycle's contention that it will suffer material
3 financial injury if it must compete with Waste Management. Stericycle contends that in a telephonic
4 discovery conference off the record on June 20, 2012, Judge Kopta indicated that all of Waste
5 Management's inquiries to Protestants should be confined to the years 2011 and 2012.²⁸ It is Waste
6 Management's understanding that the Judge was inclined to limit discovery to 2011 and 2012 because
7 information regarding historic trends was otherwise available in Protestants' annual reports.²⁹ In the
8 context of the discussion regarding the WRRR Protestants, that is an accurate assumption. However,
9 Stericycle, alone among the parties to this proceeding, files the more limited annual report for Class C
10 solid waste companies which does not include the volume of waste collected.

11 11. DATA REQUEST NO. 15: Waste Management requested the total volume of
12 biomedical waste Stericycle collected in Washington in 2009, 2010, 2011, and 2012 where the waste
13 was generated in territory where Stericycle was the only service provider.³⁰ Stericycle professed an
14 inability to determine the territory in which it was the only option for biomedical waste services.³¹ To
15 assist Stericycle in defining this territory, Waste Management agreed to limit its request to the entire
16 counties identified in footnote 13 of Waste Management's Opening Brief on Preliminary Legal Issue,
17 the generators identified in footnote 15 of that same brief, plus the cities of Bellingham and Moses
18 Lake.³² Stericycle agreed to provide the volume of biomedical waste it collected in 2011 and 2012 in
19 the counties set forth in footnote 13 and the cities of Bellingham and Moses Lake, but not the waste it
20 collected from the generators identified in footnote 15, and not any information for 2009 and 2010.³³
21 However, Stericycle did not even provide the promised information. Instead, it meaninglessly advised
22 of the number of containers – without any reference to size or volume – which it collected in the

23
24 ²⁷ *Id.*

25 ²⁸ *Id.*, Exs. 3, 5.

26 ²⁹ *Id.*, Ex. 4.

27 ³⁰ *Id.*, Ex. 1.

28 ³¹ *Id.*

³² *Id.*, Exs. 2, 6.

³³ *Id.*, Exs. 3, 4, 5.

1 footnote 13 counties and Bellingham and Moses Lake for 2011 and 2012.³⁴ According to Stericycle,
2 “Counsel for Waste Management was unable to explain the relevance of the requested information for
3 the more than 50 hospitals referenced in footnote 15”³⁵ Of course, as Waste Management had
4 previously explained to Stericycle, the relevance of the hospitals identified in footnote 15 was precisely
5 the same as the relevance of the entire counties identified in footnote 13: together, they outlined for
6 Stericycle the bulk of the “territory served only by Stericycle.”³⁶ Of the 52 Stericycle customers
7 identified in footnote 15, 25 are generators outside the counties identified in footnote 13.

8 12. DATA REQUEST NO. 16: Waste Management requested the total volume of
9 biomedical waste Stericycle collected and the number of customers from whom Stericycle collected
10 waste within each Washington county for 1995, 2001, 2009, 2010, 2011 and 2012.³⁷ Stericycle
11 professed an inability to provide this information by county,³⁸ so Waste Management agreed to accept
12 the requested information by zip code instead.³⁹ Undisputedly, that information is readily available
13 from Stericycle’s billing system. In response to Stericycle’s objection that this information was
14 irrelevant to this proceeding,⁴⁰ Waste Management explained that “[t]his information is relevant to get a
15 complete picture of where and in what quantities Washington’s biomedical waste is generated. This
16 information is relevant to test Stericycle’s contention that its economies of scale will be materially
17 harmed and, particularly, that its service to rural areas will suffer material financial harm if Waste
18 Management is permitted to compete statewide.”⁴¹ Stericycle objected to Waste Management’s
19 modified data request “on the grounds that it seeks detailed confidential and proprietary business
20 information about Stericycle’s customers for an improper competitive purpose; i.e., the information
21 would allow Waste Management to focus its marketing efforts on Stericycle’s most valuable
22

23 ³⁴ *Id.*, Ex. 5.

24 ³⁵ *Id.*

25 ³⁶ *Id.*, Ex. 4.

26 ³⁷ *Id.*, Ex. 1.

27 ³⁸ *Id.*

28 ³⁹ *Id.*, Ex. 2.

⁴⁰ *Id.*, Ex. 3.

⁴¹ *Id.*, Ex. 4.

1 customers.”⁴² Waste Management purposefully did not ask for information about specific customers
2 and Stericycle does not explain how information about entire zip codes will reveal Stericycle’s detailed
3 confidential and proprietary information. In any event, Waste Management is entitled to discover this
4 information to rebut Stericycle’s claim that it will suffer material injury if it must compete with Waste
5 Management throughout the state.

6 13. DATA REQUEST NO. 20: Waste Management has requested all documents which
7 discuss, refer to or reflect a customer complaint made to Stericycle about its service since January 1,
8 2009.⁴³ Stericycle did not object to this Data Request and initially took the position that it had no
9 responsive documents.⁴⁴ Stericycle has thus waived any right to object and must provide a full
10 response.⁴⁵ Later, Stericycle professed “confusion” as to what was meant by “customer complaint,”⁴⁶
11 and Waste Management explained that this term “mean[s] a communication from a customer reflecting
12 dissatisfaction with service provided or not provided by Stericycle.”⁴⁷ Waste Management explained
13 that it is entitled to this information to demonstrate that Stericycle cannot serve to the satisfaction of the
14 Commission.⁴⁸ Stericycle has refused to produce responsive records contending that only “complaints”
15 filed with the WUTC can lead to the discovery of admissible evidence.⁴⁹ To the contrary, in exercising
16 its judgment as to whether an existing solid waste carrier will provide service to the Commission’s
17 satisfaction, the Commission will consider factors which relate to the overall quality of the existing
18 service, including the nature, the seriousness and the pervasiveness of complaints about service; the
19 carrier’s response to customer complaints, and its demonstrated ability to resolve them to the
20 Commission’s satisfaction.⁵⁰

21 _____
22 ⁴² *Id.*, Ex. 5.

23 ⁴³ *Id.*, Ex. 1.

24 ⁴⁴ *Id.*

25 ⁴⁵ WAC 480-07-405(6)(a).

26 ⁴⁶ McNeill Decl., Ex. 3.

27 ⁴⁷ *Id.*, Ex. 4.

28 ⁴⁸ *Id.*

⁴⁹ *Id.*, Ex. 5.

⁵⁰ *In re R.S.T. Disposal Co., Inc., d/b/a Tri-Star Disposal*, App. No. GA-845; *In re Seattle Disposal Co., d/b/a Rabanco Companies*, App. No. GA-851, Order M.V.G. No. 1402 at 17 (Wash. Utils. & Transp. Comm’n, July 31, 1989).

1 14. DATA REQUEST NO. 21: Waste Management requested documents which discuss,
2 refer to or reflect a customer complaint made about service at Stericycle’s affiliated processing facility
3 in Morton, Washington since January 1, 2009.⁵¹ Again, Stericycle did not object to this Data Request
4 and responded that no responsive documents existed.⁵² Stericycle has thus waived any right to object
5 and must provide a full response.⁵³ Again, Stericycle professed confusion as to the meaning of
6 “customer complaint,”⁵⁴ and it appears that Stericycle is now refusing to produce responsive documents
7 for the same improper reason belatedly raised in objection to Data Request No. 20.⁵⁵

8 15. DATA REQUEST NO. 22: Waste Management requested all documents which discuss,
9 refer to or reflect Stericycle’s violation, alleged violation, or investigation of a possible violation, of
10 any law, regulation, ordinance, or government rule since January 1, 2009 in performing WUTC-
11 regulated collection services. Waste Management also requested the same type of documents from
12 operating Stericycle’s affiliated processing facility in Morton, Washington.⁵⁶ In response, Stericycle
13 objected that citations related to the Morton facility were not reasonably calculated to lead to the
14 discovery of admissible evidence and produced only a list of five “minor ... roadside vehicle
15 inspections that did not result in citations.”⁵⁷ Waste Management pressed Stericycle for a full
16 response.⁵⁸ Stericycle reaffirmed its refusal to produce responsive information regarding processing at
17 the Morton facility of biomedical waste collected and delivered there by Stericycle.⁵⁹ Stericycle’s
18 “compliance with applicable rules and laws is an element of providing service to the satisfaction of the
19 Commission.”⁶⁰ Moreover, in the context of biomedical waste, the Commission considers the nature

21 ⁵¹ McNeill Decl., Ex. 1.

22 ⁵² *Id.*

23 ⁵³ WAC 480-07-405(6)(a).

24 ⁵⁴ *Id.*, Ex. 3.

25 ⁵⁵ *Id.*, Exs. 4-5.

26 ⁵⁶ *Id.*, Ex. 1.

27 ⁵⁷ *Id.*, Response to DR No. 22 & Exhibit DR #22.

28 ⁵⁸ *Id.*, Ex. 2.

⁵⁹ *Id.*, Ex. 3.

⁶⁰ *In re Am. Envtl. Mgmt. Corp.*, App. No. GA-874, Order M.V.G. No. 1452 at 8 (Wash. Utils. & Transp. Comm’n, Nov. 30, 1990).

1 and quality of disposal and processing sites because “proper disposal of the waste and its unsuitability
2 for disposal in a landfill are some of the primary factors behind the need for the service.”⁶¹ Waste
3 Management is entitled to discover information about alleged violations of applicable laws at the
4 Morton facility and it is evident that Stericycle is withholding such information. For example, Waste
5 Management has learned from a public records request to the Department of Ecology that in June 2010
6 the Morton facility was cited for failing to properly designate waste streams as required by state law.⁶²
7 Stericycle should be required to fully respond to this Data Request and to certify that it has, in fact,
8 done so.

9 VI. CONCLUSION

10 16. Waste Management requests that an order be entered compelling Stericycle to fully
11 respond to each of the nine Data Requests discussed above so that Waste Management may properly
12 evaluate and rebut Stericycle’s claim that statewide competition from Waste Management will cause
13 Stericycle material financial injury.

14 DATED this 31st day of July, 2012.

15 SUMMIT LAW GROUP PLLC

16
17 By 

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24
25 ⁶¹ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 13 (Wash. Utils. & Transp. Comm’n, Nov. 30,
26 1990); *see also In re Med. Res. Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 3 (Wash. Utils. &
27 Transp. Comm’n, May 25, 1994) (“in recognition of the service and potential liabilities and responsibilities of generators,
28 [the Commission] has considered the concerns of waste generators about the process used for disposal”); *In re Ryder Distrib.*
Res., Inc., App. No. GA-75154, Order M.V.G. No. 1761 at 12 (Wash. Utils. & Transp. Comm’n, Aug. 11, 1995) (“our
analysis permits the reasonable disposal needs of generators of biohazardous waste streams to become one factor to be
considered in need for additional service”).

⁶² McNeill Decl., Ex. 7.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method indicated below, pursuant to WAC 480-07-150.

Table with 2 columns: Recipient Information and Service Method. Rows include Washington Utilities and Transportation Commission, Gregory J. Kopta, Fronda Woods, Stephen B. Johnson, and James K. Sells.

DATED at Seattle, Washington, this 31st day of July, 2012.

Handwritten signature of Deanna L. Schow

Deanna L. Schow