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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

STERICYCLE'S OPPOSITION TO WASTE
MANAGEMENT'S MOTION TO COMPEL
DISCOVERY

STERICYCLE'S OPPOSITION TO WASTE MANAGEMENT'S MOTION
TO COMPEL DISCOVERY

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1 1. Stericycle of Washington, Inc. ("Stericycle") responds to Waste Management of
2 Washington, Inc.'s Motion to Compel Discovery as follows:

3 **I. Overview.**

4 2. By its Data Requests and Motion to Compel Discovery, Waste Management
5 seeks to distract the Commission from the real issues in this application case; *i.e.*, the nature of
6 the services offered by Waste Management and whether those services are responsive to
7 legitimate generator needs not served by existing carriers; whether Waste Management is fit,
8 willing and able to serve the territory covered by its application in compliance with law and the
9 Commission's regulations; and whether the public interest will be served by dividing the
10 market between multiple carriers in the largely rural territory covered by Waste Management's
11 application. Instead, Waste Management wants to make this case about Stericycle -- hence,
12 Waste Management's extensive and intrusive Data Requests No. 1-16 concerning confidential
13 and competitively sensitive Stericycle customer and financial information, which Waste
14 Management tries to justify by only the most speculative and far-fetched claims of relevance.

15 3. Waste Management's Motion to Compel Discovery in effect asks the
16 Commission to allow Waste Management to convert this proceeding into a mini rate case in
17 which Waste Management will play the role of the Commission Staff in auditing Stericycle's
18 books and examining its profitability. This proceeding is not adapted to such an examination
19 and Waste Management is not the proper party to conduct it. Waste Management's Motion to
20 Compel should be denied in full as to WM Data Requests No. 1-16.

21 4. Stericycle's profitability is fully disclosed in its annual reports to the
22 Commission. Each of Stericycle's annual reports has been certified by an authorized official
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1 for Stericycle.¹ In response to Waste Management's Data Request No. 1, Stericycle has
2 provided additional detail on its expenses in an effort to accommodate Waste Management's
3 inquiry. Nothing more is legitimately necessary for purposes of this proceeding.

4 5. Waste Management complains that Stericycle has provided biomedical waste
5 collection services at stable rates throughout Washington for almost 20 years. Waste
6 Management views this as suspicious and would therefore like to audit Stericycle's annual
7 reports. Waste Management speculates with no basis whatsoever that Stericycle is earning
8 excess profits on its medical waste collection business and concealing these profits -- and then,
9 on that basis, argues that it should be allowed to run its own analysis of Stericycle's
10 profitability, effectively turning this into a mini rate proceeding run by Waste Management.²

11 6. Based on Stericycle's history of rate stability, Waste Management speculates
12 that Stericycle's rates are unreasonably high and on the basis of such speculation asks for the
13 opportunity to poke around in Stericycle's confidential financial information -- a classic
14 "fishing expedition" -- to see if it can find something to make this unsubstantiated claim stick
15 (or to gain competitive advantage). Among other things, this argument fails to recognize the
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19 ¹ The certification provided with the annual report is as follows: "I certify that, [name], the responsible
20 account officer for [Stericycle] have examined the foregoing report; that, to the best of my knowledge,
21 information and belief, all statements of fact contained in said report are true and said report is a correct
22 statement of the business and affairs of the abovenamed respondent in respect to each and every matter
23 set forth therein during the period from January 1, [] to December 31, [], inclusive."

24 ² See, e.g., Declaration of Polly L. McNeill in Support of Waste Management's Motion to Compel
25 Discovery From Stericycle (hereinafter, "McNeill Decl."), Ex. 2, p. 1 (letter of Jessica Goldman to
26 Stephen B. Johnson, dated July 17, 2012):

The evidence we have received so far suggests that Stericycle of Washington, Inc. ("Stericycle") has been charging higher rates at the expense of the Washington rate payers under tariff rates that are over 20 years old. We believe that Stericycle's financial information will demonstrate that Stericycle is over-earning on its Washington business and/or that the tariff rates are being (and have been) improperly inflated as a result of intra-company charges by its affiliated Morton processing facility.

1 role of the Commission in rate-setting. Under RCW 81.77.030, the Commission is charged to
2 “supervise and regulate every solid waste collection company in this state . . . [b]y fixing and
3 altering its rates, charges, classifications, rules and regulations” Thus, it is the
4 Commission’s responsibility to ensure that rates charged by Stericycle to biomedical waste
5 generators are reasonable and that Stericycle’s profits remain within the permissible range.
6 Stericycle’s rates are contained in a Commission-approved tariff and its resulting profits, based
7 on those tariff rates, must be presumed reasonable until the Commission determines otherwise
8 in an appropriate rate proceeding.³ If Waste Management has a credible basis for questioning
9 Stericycle’s rates or annual reports, it should provide that information to the Commission. If
10 the Commission wishes to audit Stericycle’s rates and annual reports, it has the authority and
11 the means to do so. However, there is no justification for allowing Waste Management -- a
12 highly interested competitor -- to do so in the context of this application proceeding -- on the
13 basis of no credible claim of relevance whatsoever to any issue in which Waste Management
14 has a legitimate interest.⁴

17 7. Waste Management also argues that it should be allowed to go behind
18 Stericycle’s annual reports to audit Stericycle’s profitability because Stericycle has put its
19 profitability at issue by claiming that it will be driven from the market if Waste Management’s
20 application is granted. This is not Stericycle’s contention. Stericycle makes no claim that

22 ³ Waste Management also fails to note that Stericycle’s rates are the product of the competitive pricing
23 environment in place in Washington when Stericycle entered the market – competition offered at that
24 time by Waste Management itself and several others in portions of the state and BFI Medical Waste
Systems of Washington, Inc. statewide. *See* Declaration of Michael Philpott in Opposition to Waste
Management’s Motion to Compel (hereinafter “Philpott Decl.”), filed herewith, at ¶ 4.

25 ⁴ This is a paradigm instance of a party attempting to obtain discovery on a matter in which it “do[es]
26 not have a significant interest.” *Cf.* Order 01, ¶ 8. Under the logic of the Commission’s Order 01 in this
proceeding, if an audit of Stericycle’s annual reports were indicated, this would clearly be a matter for
the Commission Staff and the Commission, not Waste Management.

1 Waste Management's entry into the market in the territory covered by its application would
2 drive Stericycle out of business.

3 8. Stericycle will argue, however, that Waste Management's proposed service in
4 the new territory is not financially feasible, that Waste Management cannot operate at a profit if
5 it serves throughout the new territory, as it would be obligated to do, and that the only way for
6 Waste Management to operate profitably would be to engage in cream-skimming -- actively
7 marketing its services only in the more profitable urban areas adjacent to its existing G-237
8 territory and along the I-5 corridor -- e.g., Olympia, Vancouver and Bellingham -- while
9 leaving Stericycle to continue serving its existing customers in the less profitable outlying areas
10 of the state. Stericycle will also argue that the cost per unit of waste collected will necessarily
11 increase and revenue earned will necessarily decrease as a result of a divided market in the new
12 territory. To maintain profitable services throughout this territory, the necessary response of all
13 carriers serving the territory will be to reduce the level of service offered to customers in many
14 areas, to increase the rates paid by to those customers, or both. In short, the issues that
15 Stericycle intends to raise at the hearing do not turn on a claim that it will be driven from the
16 marketplace by Waste Management but instead will simply direct the Commission's attention
17 to the indisputable effects that a divided market and cream-skimming by Waste Management
18 would have on the costs of any carrier attempting to provide service throughout the territory in
19 question -- and the inevitable consequences which such increased costs would have on rates
20 and service levels in that territory. In short, Stericycle will argue that the Commission's goal of
21 reasonable rates and biomedical waste collection services responsive to public need throughout
22 the state will be harmed, not served, by granting Waste Management's application. *See In re*
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1 *Ryder Distribution Resources, Inc.*, Order M.V.G. No. 1761, Docket No. GA-75154 (Aug. 11,
2 1995), at p. 14. (“...the proper test for public interest [is] whether the entry of an additional
3 carrier, who has demonstrated public need for its services, will result in damage to carriers that
4 causes a reduction to unacceptable levels of available reasonably priced service to
5 consumers.”).

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7 **II. Discussion of Specific Waste Management Data Requests.**

8 9. WM Data Request No. 1. Waste Management originally requested “a detailed
9 general ledger” for Stericycle’s Washington operations in 2011. Stericycle objected on the
10 grounds that Stericycle does not maintain a general ledger limited to its Washington operations;
11 that the effort and expense to create one was not justified by any relevance of the requested
12 information; that “a detailed general ledger” involved a record of every item of revenue and
13 expense and the names of all payors and payees, customers and vendors, which in printed form
14 would run to hundreds and perhaps thousands of pages; and that this information was
15 confidential and proprietary business information for which Waste Management had provided
16 inadequate justification.⁵ Nonetheless, in an effort to be responsive, Stericycle produced an
17 income statement for 2011, with additional detail concerning its expenses.⁶

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19 10. During negotiations between the parties, Waste Management abandoned its
20 request for “a detailed general ledger” and instead asked that Stericycle produce a “balance
21 sheet” for its Washington operations. This is an entirely new data request; it seeks information
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24 ⁵ In his informal guidance to the parties during the conference held to address WRRRA’s objections to
discovery, including an identical data request, Judge Kopta suggested to the parties that production of
the kind detailed information encompassed by “a detailed general ledger” would not be required.

25 ⁶ Waste Management neglected to include this income statement, attached to Stericycle’s Responses and
26 Objections as Exhibit DR#1, in Waste Management’s filings with its Motion to Compel Discovery,
although it saw fit to include other materials produced by Stericycle and attached to Stericycle’s
Responses and Objections. *See* McNeill Decl., Ex. 1.

1 not encompassed by Waste Management's Data Request No. 1; it is not a narrowing or
2 clarification of that request; and therefore Stericycle has no duty to respond to it. Nonetheless,
3 Stericycle counsel asked Waste Management to explain the relevance of the requested balance
4 sheet to any issue in this proceeding. Counsel for Waste Management responded that "Waste
5 Management wishes to confirm that the list [of depreciable assets provided by Stericycle in
6 response to WM Data Request No. 3] is complete by cross-referencing the total asset value
7 represented in Stericycle's balance sheet."⁷ On the basis of this explanation, Stericycle
8 understands that Waste Management has requested a balance sheet merely to confirm data
9 already provided to Waste Management in another form and without any basis to question the
10 completeness or accuracy of the previously reported data. As such the requested balance sheet
11 would add nothing to the information Stericycle has already produced.⁸ Further, as Stericycle
12 explained in its Supplemental Responses to Waste Management's data requests,⁹ Stericycle
13 does not prepare a balance sheet in the ordinary course¹⁰ and to prepare an appropriate balance
14 sheet would require reconstruction of Stericycle's book revenue and expense from its
15 inception.¹¹ If the Commission were to order Stericycle to prepare and produce a balance sheet
16 for its operations, the Commission would be allowing Waste Management to conduct discovery
17 on issues as to Stericycle (i.e., its assets, liabilities and equity) that Stericycle has been
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21 ⁷ Letter of Jessica Goldman to Stephen B. Johnson, dated July 24, 2012, at p. 2. McNeill Decl., Ex. 4.

22 ⁸ To the extent Waste Management argues that the information contained in a balance sheet is relevant
23 to defending against a Stericycle claim that it would be driven out of business if Waste Management's
24 application is granted, Stericycle has made clear above that it asserts no such claim.

25 ⁹ McNeill Decl., Ex. 5.

26 ¹⁰ In Stericycle's Supplemental Response to Waste Management Data Request No. 1, Stericycle stated
that it "does not prepare a balance sheet for its Washington regulated operations . . . (Emphasis added).
The underlined words have apparently misled Waste Management into believing, incorrectly, that
Stericycle prepares a balance sheet for its total (regulated and non-regulated) business. See Waste
Management Motion to Compel at p. 2.

¹¹ Walker Decl., ¶ 7.

1 precluded from seeking as to Waste Management pursuant to the Commission's Order 01, ¶8.
2 It would be anomalous to subject a protestant to more intrusive discovery than the Commission
3 allows the protestant to seek from an applicant. Given the redundancy of the information
4 requested, its lack of relevance and the burdens of producing it, the Commission should deny
5 Waste Management's request that Stericycle be ordered to generate and produce a balance
6 sheet for purposes of this proceeding.
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8 11. WM Data Request No. 2. Stericycle has objected to Waste Management's
9 request for a complete "revenue price-out" for its services in 2011 and 2012 on the grounds that
10 generating such a price-out would be unreasonably burdensome and irrelevant to any legitimate
11 issue in this proceeding. In effect, as noted above, Waste Management wants to turn this
12 proceeding into a rate case with Waste Management playing the role of Commission Staff in
13 auditing Stericycle's annual reports. As discussed at length above, this proceeding is not an
14 appropriate forum for such an examination and Waste Management is not a proper party to
15 conduct it. Waste Management's attempt to audit Stericycle's Commission-approved rates and
16 resulting profits is a diversion and should be rejected.¹²
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18 12. Stericycle has also objected to the requested revenue price-out as unreasonably
19 burdensome. Counsel for Waste Management characterizes Stericycle's claims in this regard
20 as "preposterous" and contends that the information required for a revenue price-out "should"
21 be readily available from Stericycle's billing or data management system.¹³ However, the
22 Declaration of Nanette M. Walker, CPA, in Opposition to Waste Management's Motion to
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24 ¹² Based on the informal conference on the WRA discovery objections, which included the same data
25 request, it is our understanding that the Commission has no intention of allowing Waste Management to
26 turn this proceeding into a rate case against the protestants. Waste Management's counsel is attempting
to resurrect issues that Stericycle believes were put to rest in the WRA discovery conference.

¹³ Waste Management's Motion to Compel Discovery at p. 3, ¶8.

1 Compel Discovery, filed herewith, indicates that Stericycle's financial accounting system has
2 not been set up or programmed to generate the kind of revenue price-out requested by Waste
3 Management. Ms. Walker is an independent certified public accountant familiar with the
4 requirements for general rate increase presentations by Class A and B solid waste collection
5 companies under WAC 480-07-520, including the "revenue price-out" required by WAC 480-
6 07-520(f). Ms. Walker is also familiar with Stericycle's financial accounting systems, having
7 consulted with Stericycle on the Commission's accounting requirements for more than nine
8 years. After consulting with Stericycle's financial accounting staff and considering what would
9 be required to prepare a revenue price-out in compliance with WAC 480-07-520(f), Ms.
10 Walker has estimated that "at least 80 hours of my time at \$195/hour and at least 100 hours of
11 Stericycle staff accounting time at an average cost of approximately \$80/hour would be
12 required for Stericycle to prepare the revenue price-out requested by Waste Management in
13 accordance with the requirements of WAC 480-07-520(f)."¹⁴ As Ms. Walker further explains
14 in her declaration,

17 the project involved to generate a revenue price-out for Stericycle is not
18 comparable to the task described by Mr. Weinstein [in his declaration in
19 support of Waste Management's Motion to Compel Discovery] for several
20 reasons. First, Waste Management is a Class A solid waste collection
21 company subject to WAC 480-07-520(f) and has a history of general rate
22 increases, presumably prepared in accordance with that regulation. Thus,
23 Waste Management's accounting system is programmed and otherwise
24 specifically set up to generate the information required for that purpose.
25 Stericycle is not subject to WAC 480-07-520(f), has never requested a
26 general rate increase and its accounting system is not set up to generate the
data required to prepare a revenue price-out. Accordingly, Stericycle
would need first to evaluate its accounting system to determine what it
would take to access the data required to generate a revenue price-out and
then re-program its accounting system software to generate the necessary
data for this purpose. Further effort would be required to build the

¹⁴ Walker Decl., at ¶ 5.

1 required data for Stericycle because the relevant data is collected and
2 maintained on a consolidated basis by Stericycle, Inc. This would require
3 making appropriate cost allocations between Stericycle, Inc. and
4 Stericycle and then between Stericycle's regulated and non-regulated (e.g.,
5 federal and non-Washington) services. Given my other work
6 commitments and the commitments of Stericycle's accounting staff, I
believe the time required to generate a revenue price-out in the manner
requested by Waste Management would take a minimum of two months at
a cost of not less than \$25,000 -- and perhaps substantially more.¹⁵

7 For the reasons indicated here and above, the Commission should deny Waste Management's
8 Motion to Compel Stericycle to produce the requested revenue price-out as both irrelevant to
9 any legitimate issue in this proceeding and unreasonably burdensome.

10 13. WM Data Request No. 7. Stericycle believes that it has now responded fully to
11 this data request. The information provided concerning the arrangements between Stericycle
12 and Stericycle, Inc. contains substantially equivalent information to that contained in the annual
13 affiliated interest report filed recently by Waste Management in compliance with its obligations
14 as a Class A solid waste collection company under WAC 480-70-079.¹⁶ In addition to that
15 information, as agreed in the July 18 conference call among counsel and as reflected in the
16 letter of Stephen B. Johnson to Jessica Goldman, dated July 19, 2012, Stericycle committed in
17 its Supplemental Responses to provide information concerning the volume of both regulated
18 and non-regulated waste handled at its Morton processing facility in 2011 and 2012 (through
19 May 31) and total Morton costs for those periods. That information has now been provided.

20 14. Waste Management makes much of the fact that Stericycle did not object to its
21 Data Request No. 7 and argues in its Motion to Compel that Stericycle has "agreed" to provide
22 a list of data set out in an extended quotation from a letter written by counsel for Waste
23 Management. In the context of the argument, this quotation seems intended to give credibility

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25 ¹⁵ *Id.*, ¶ 6.

26 ¹⁶ See Declaration of Stephen B. Johnson in Opposition to Waste Management's Motion to Compel
Discovery (hereinafter, "Johnson Decl."), filed herewith, Ex. C.

1 to the supposed “agreement” by Stericycle. But there was no such agreement and counsel for
2 Waste Management is merely quoting herself.¹⁷

3 15. Stericycle has responded fully to WM Data Request No. 7. Stericycle has even
4 produced in substance all of the data that Waste Management is newly requesting in its letter,
5 including the weight of all waste processed at the Morton facility, the weight of all Washington
6 State waste processed, and the total costs of the Morton facility, from which the percentage of
7 Washington State waste and a cost per ton amount could be calculated. Nothing more is
8 required. Although counsel for Waste Management may wish she had requested this
9 information in the specific form she now seeks to compel Stericycle to produce, Data Request
10 No. 7 does not require Stericycle to provide any additional information, Stericycle did not agree
11 to provide it and Waste Management’s Motion to Compel Stericycle to respond to this new
12 request or provide information in a different form should be denied.

13 16. WM Data Request No. 14. In WM Data Request No. 14, Waste Management
14 asks for “the volume of biomedical waste [Stericycle] collected in Washington in 1995, 2001,
15 2009, 2010, 2011 and 2012 (to date), respectively.” Stericycle has provided the requested data
16 for 2011 and 2012 (5/31) but has declined to provide the requested data for prior years because
17 the information for prior years is not relevant to this proceeding and because of the informal
18 guidance provided on this point during the conference call on WRRRA’s discovery objections.
19 Waste Management explains in its Motion to Compel that “This information is necessary to
20 evaluate Stericycle’s historical cost per pound for processing biomedical waste and to rebut
21 Stericycle’s contention that it will suffer material financial injury if it must compete with Waste
22 Management.”¹⁸ The first rationale reflects Waste Management’s ongoing effort to, in effect,
23 audit Stericycle’s annual reports and substantiate its baseless speculation that Stericycle is

24 ¹⁷ Counsel for Stericycle objected to the inaccurate characterizations of Stericycle’s positions in Ms.
25 Goldman’s letters on discovery issues in an email dated July 25, 2012 and declined to be drawn into a
26 further exchange of one-sided letters, pending completion of each party’s supplemental production and
the filing of motions to compel discovery. Johnson Decl., ¶ 6 & Ex. C.

¹⁸ WM Motion to Compel at p. 5, ¶ 10.

1 hiding its profits and secretly “over-earning.” That effort should be rejected by the
2 Commission for the reasons discussed extensively above. In addition, Stericycle’s “historical
3 cost per pound for processing biomedical waste” has nothing whatsoever to do with any issue
4 in this proceeding, which will determine whether there is a current need for the services Waste
5 Management is proposing and whether those services are in the public interest going forward.
6 The request for historical waste volume data likewise has nothing to do with Stericycle’s
7 potential claims about the impact which granting Waste Management’s application would have
8 on costs, rates and service levels in the new territory. To the extent that Stericycle’s waste
9 volumes and processing costs are relevant to this proceeding, the only relevant data is the data
10 for its current volumes and costs -- and that information, as Waste Management acknowledges,
11 has already been provided.

12 17. WM Data Request No. 15. This Data Request sought the total volume of
13 biomedical waste Stericycle collected in Washington from 2009-2012 in territory where
14 Stericycle is the only service provider. Stericycle understands this data request to seek
15 information for territory where Stericycle is currently the only biomedical waste collection
16 option. Stericycle advised Waste Management that it was unable to accurately identify this
17 territory, in part because of the irregularity of Waste Management’s G-237 territory. Waste
18 Management subsequently modified its request to designate what Stericycle understands to be
19 the area in which Waste Management contends Stericycle is currently the only service provider.
20 Stericycle provided the requested information for the counties and cities specified by Waste
21 Management for 2011 and 2012 (5/31).¹⁹ Stericycle does not believe that data for years prior to
22 2011 is relevant to this proceeding.

23 ¹⁹ During the conference call among counsel on July 23, 2012, counsel for Stericycle corrected a
24 reference to “weight” data in his letter of July 19, explained that the reference should have been to
25 “volume” and that “volume” data to be provided for collections might be limited to “number of
26 containers.” Waste Management’s counsel raised no objection to “volume” data based on number of
containers at the time, although she does so now on Waste Management’s Motion to Compel. Johnson
Decl., ¶ 7. Weight data by customer is not available and, thus, cannot be aggregated for per-county or
per-zip- code weight data. “Volume” data is available, and was produced, as number of containers.

1 18. In the context of discussions among counsel concerning this data request, Waste
2 Management also requested that Stericycle provide data on the total volume of biomedical
3 waste collected by Stericycle from a list of 52 biomedical waste generators in the years 2009-
4 2012. Stericycle was and is unable to see any relationship between this new request and
5 original WM Data Request No. 15. This new request is not limited to generators in areas where
6 Stericycle is currently the only service provider. For example, several of the listed generators
7 are located in Pierce County, within the territory Waste Management is authorized to serve
8 under G-237. Similarly, this list does not include many small quantity generators in areas
9 where Stericycle is in fact currently the only service provider. Accordingly, Stericycle believes
10 that the requested data for these 52 customers is beyond the scope of Data Request No. 15 and
11 is not otherwise relevant to any issue in this proceeding and has declined to produce it for these
12 reasons.²⁰ Waste Management's Motion to Compel provides no coherent explanation of how
13 the information it now requests is related to WM Data Request No. 15 or how it is relevant to
14 this application proceeding. Accordingly, Waste Management's Motion to Compel Stericycle
15 to produce the requested data for these 52 customers should be denied.

16 19. WM Data Request No. 16. WM Data Request No. 16 requests that Stericycle
17 provide the number of Stericycle's customers and the total volume of biomedical waste
18 collected from such customers for each Washington county. Stericycle objected to this request
19 on the grounds that it is unreasonably burdensome; seeks information that is neither relevant
20 nor likely to lead to the discovery of relevant information; seeks information that is confidential
21 and proprietary; seeks information for an improper competitive purpose; and that Stericycle
22 does not collect customer or waste data by county. Waste Management has responded by
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25 ²⁰ To the extent that Waste Management intended this data request to cover information for territory in
26 which Stericycle was the only service provider in years prior to 2011, Stericycle does not have sufficient
information about the service territories of other carriers in prior years to respond to it and is likewise
unable to see any relevance of such data to the issues presented by Waste Management's application.

1 requesting the same data by zip code -- a request that responds to the last of Stericycle's
2 objections but none of the others.

3 20. Stericycle cannot provide the requested data by zip code without disclosing the
4 locations of key customers. In the smaller communities within the territory targeted by Waste
5 Management, customer and waste collection information by zip code would allow Waste
6 Management to identify all of Stericycle's major customers. This would enable Waste
7 Management to target its marketing efforts to specific locations and specific Stericycle
8 customers. The detail requested is highly confidential and has no significance for any issue
9 involved in this proceeding. The issues that Stericycle intends to raise at the hearing with
10 respect to the impact that granting Waste Management's application would have on per-unit
11 costs, rates and service levels can be addressed by composite data for the territory covered by
12 Waste Management's application as a whole. The detailed data now requested by Waste
13 Management (an interested competitor) on the specific locations of Stericycle's key customers
14 and the volumes of waste generated by those customers in the territory covered by Waste
15 Management's application is not relevant to any legitimate issue in this proceeding and
16 discovery of that data by Waste Management would substantially prejudice Stericycle's
17 competitive position in the event that the application is granted.

18 21. WM Data Request No. 20. WM Data Request No. 20 requested documents
19 concerning "customer complaints" made to Stericycle since January 1, 2009. Stericycle
20 responded in its initial Response that it had no such documents.²¹ In a subsequent letter to
21 counsel for Waste Management dated July 19, 2012,²² counsel for Stericycle indicated that
22 "there may be confusion as to the scope of the term 'customer complaints'" and requested
23 clarification. During a subsequent conference call among counsel on discovery issues, counsel
24 for Stericycle explained that, while Stericycle, Inc. operates a national "800-number" for
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26 ²¹ McNeill Decl., Ex. 1, p. 10.

²² McNeill Decl., Ex. 3, p. 3.

1 customer service calls, none of the categories used to log such calls reflect customer complaints
2 and, accordingly, Stericycle does not view the 800-number customer service logs as responsive
3 to WM Data Request No. 20.²³

4 22. Stericycle's Data Request No. 40 is a data request parallel to WM Data Request
5 No. 20. Stericycle Data Request No. 40 requested that Waste Management "Identify and
6 Produce all Documents Relating to any customer complaint . . . from January 1, 2009 to the
7 present."²⁴ By letter dated July 25, 2012,²⁵ counsel for Waste Management advised Stericycle
8 that it declined to identify or produce documents generated by its West Coast call center on the
9 following rationale:

10 Waste Management has a call center which handles customer calls from
11 throughout the West Coast. There are more than one hundred employees
12 who staff this call center. We do not believe that any information about
13 customer complaints which may be found in the call center logs is relevant
14 to the issue of Waste Management's regulatory fitness or justifies the
15 burden of reviewing logs for possible customer complaints. . . . To the
16 degree there are any relevant complaints about Waste Management's
17 services, those complaints are available from the Commission.

18 Stericycle believes it has fully and properly responded to Waste Management's Data
19 Request No. 20. However, to the extent that Waste Management may view Stericycle's
20 800-number customer service logs as potentially containing information relevant to this
21 data request, Stericycle (like Waste Management) "does not believe that any information
22 about customer complaints which may be found in the call center logs . . . justifies the
23 burden of reviewing logs for possible customer complaints. To the degree there are any
24 relevant complaints about [Stericycle's] services, those complaints are available from the
25 Commission." Stericycle believes that it has responded fully to WM Data Request No.

26 ²³ See Philpott Decl., ¶ 6 ("The call center does not track 'customer complaints.'").

²⁴ Protestant Stericycle of Washington Inc.'s Motion to Compel, Ex. A.

²⁵ Johnson Decl., Ex. D.

1 20 and, accordingly, that Waste Management's Motion to Compel a further response or a
2 review of the voluminous call center logs should be denied.

3 23. WM Data Request No. 21. Stericycle has fully and completely responded
4 to Waste Management's Data Request No. 21, asking Stericycle to produce any
5 documents related to customer complaints about service at Stericycle, Inc.'s Morton
6 processing facility since January 1, 2009. Stericycle has no documents that discuss, refer
7 to or reflect any customer complaint about service at Morton. Stericycle offers an
8 integrated biomedical waste collection, treatment and disposal service in conjunction
9 with Stericycle, Inc.'s Morton processing facility. The Morton processing facility does
10 not provide services directly to customers. Accordingly, any customer complaints
11 concerning services provided by the Morton plant would be reflected in complaints about
12 Stericycle's services. Stericycle has fully responded to Waste Management's inquiry
13 regarding customer complaints in its responses to WM Data Request No. 20, as discussed
14 above.
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17 24. WM Data Request No. 22. WM Data Request No. 22 seeks documents
18 that discuss, refer to or reflect any violation of law, alleged violation or investigation
19 concerning any alleged violation of law by Stericycle in performing WUTC-regulated
20 collection services since January 1, 2009. Stericycle has fully responded and has
21 produced all documents it has been able to locate that are responsive to this request.
22

23 25. WM Data Request No. 22 also requested production of documents
24 concerning any violation of law, alleged violation or investigation concerning any alleged
25 violation of law by Stericycle, Inc.'s processing facility at Morton. Stericycle objected to
26

1 producing such documents for Stericycle, Inc.'s Morton processing facility on the
2 grounds that such documents are not relevant to this application proceeding and are not
3 reasonably calculated to lead to the discovery of relevant evidence. Waste Management
4 has identified documents related to a Dangerous Waste Compliance Inspection conducted
5 by the Washington Department of Ecology on June 1, 2010, at the Morton processing
6 facility which identified alleged violations of WAC chapter 173-303, related to the
7 designation of solid waste accepted inside sharps containers and liquids released from
8 autoclave units. Without waiving its objections, Stericycle will produce the Department
9 of Ecology orders related to these alleged violations. As indicated in the Declaration of
10 Michael Philpott, filed herewith, there have been no other violations of law, alleged
11 violations of law or investigations involving an alleged violation of law involving
12 Stericycle, Inc.'s Morton processing facility since January 1, 2009, except as disclosed in
13 the materials produced related to these alleged violations.
14
15


16 **III. Conclusion.**

17 26. For the reasons set out above, Waste Management's Motion to Compel further
18 responses to its data requests should be denied.
19

20 DATED this 6th day of August, 2012.

21 Respectfully submitted,

22 GARVEY SCHUBERT BARER

23
24 By 

25 Stephen B. Johnson, WSBA #6196
26 Jared Van Kirk, WSBA #37029
Attorneys for Protestant Stericycle of
Washington, Inc.

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 August 6, 2012, I caused to be served on the person(s) listed below in the
4 manner shown a copy of STERICYCLE'S OPPOSITION TO WASTE MANAGEMENT'S
5 MOTION TO COMPEL DISCOVERY:

6 Washington Utilities and
7 Transportation Commission
8 1300 S. Evergreen Park Dr. SW
9 PO Box 47250
10 Olympia, WA 98504-7250
11 (360) 664-1160
12 records@utc.wa.gov

- Via Legal Messenger
- Via Facsimile
- Via U.S. Mail, First Class,
Postage Prepaid
- Via Email

13
14 Administrative Law Judge
15 Gregory Kopta
16 gkopta@utc.wa.gov

- Via Email

17
18 Jessica Goldman
19 Polly L. McNeill
20 Summit Law Group
21 315 - 5th Avenue South
22 Seattle, WA 98104
23 jessicag@summitlaw.com
24 pollym@summitlaw.com
25 kathym@summitlaw.com
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Dated at Seattle, Washington this 6th day of August, 2012.



 Vickie L. Owen
vowen@gsblaw.com