

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of)	DOCKET TG-120033
)	
WASTE MANAGEMENT OF)	ORDER 05
WASHINGTON, INC. D/B/A WM)	
HEALTHCARE SOLUTIONS OF)	INTERIM ORDER ON
WASHINGTON)	PREHEARING ISSUES
)	
For an Extension of Certificate G-237)	NOTICE OF PREHEARING
for a Certificate of Public Convenience)	CONFERENCE
and Necessity to Operate Motor)	(Set for Wednesday, November
Vehicles in Furnishing Solid Waste)	28, 2012, at 1:30 p.m.)
Collection Service)	
.....)	

BACKGROUND

- 1 On December 30, 2011, Waste Management of Washington, Inc. (Waste Management or Company), filed with the Washington Utilities and Transportation Commission (Commission) an application for an extension of authority under Certificate G-237, standing in the name of Waste Management of Washington, Inc., d/b/a WM Healthcare Solutions of Washington, for authority to provide solid waste collection service consisting of bio-hazardous waste in the state of Washington. The Washington Refuse & Recycling Association, Rubatino Refuse Removal, Inc., Consolidated Disposal Services, Inc., Murrey’s Disposal, Inc., and Pullman Disposal Service, Inc. (collectively WRRRA) and Stericycle of Washington, Inc. (Stericycle) filed protests against Waste Management’s application.

- 2 The Commission issued Order 01, Prehearing Conference Order (Order 01) on April 16, 2012. In paragraph 6 of that order, the Commission required the parties to brief the legal issue of whether RCW 81.77.040 authorizes the Commission to grant a solid waste company a certificate for a service territory served by another certificate holder “only if the applicant demonstrates that the service it proposes to provide is different than, or superior to, the services the incumbent provider offers or that the incumbent provider is otherwise unwilling or unable to provide the service the applicant proposes to offer.”

- 3 On June 14, 2012, the parties filed opening briefs on this issue. The parties filed responsive briefs on June 22, 2012.
- 4 Waste Management contends that the Commission has previously determined that “competition is necessary and proper in the biomedical waste collection market.”¹ Such “service without meaningful competition,” according to the Company, “is not, irrespective of incumbent service quality, ‘service to the satisfaction of the commission.’”² Waste Management concludes, “Even if the proffered service is not different than or superior to those of the incumbent service provider and the incumbent provider is willing and able to offer the proposed service, biomedical waste service by only one statewide hauler is not satisfactory.”³
- 5 Stericycle disagrees. Stericycle argues that both the legislature and the Commission favor exclusive service territories in solid waste collection, and consistent with that policy, the Commission has narrowly limited the circumstances in which overlapping authority may be granted.⁴ Stericycle maintains that the Commission’s prior decisions leave no room for doubt that “[t]o prevail on its application, Waste Management must prove that the reasonable needs of biomedical waste generators are not being met by existing carriers and that unique features of Waste Management’s proposed services will meet those needs.”⁵
- 6 WRRRA takes a similar view, arguing that “the Commission clearly has not embraced competition as a ‘stand alone’ concept. There still must be a clear showing that the existing carrier’s service is unsatisfactory and the proposed service is required by the public convenience and necessity.”⁶ WRRRA also claims that “there is a big difference between customer ‘needs’ and customer ‘desires,’” and “the Commission must be very careful to distinguish between a legitimate need for a specialized, unavailable service, and an accounting convenience”⁷ or “a ‘better deal.’”⁸

¹ Waste Management Opening Brief ¶ 22.

² *Id.* ¶ 24 (quoting RCW 81.77.040).

³ *Id.* ¶ 26 (emphasis in original).

⁴ Stericycle Opening Memorandum ¶ 5.

⁵ *Id.* ¶ 16.

⁶ WRRRA Initial Brief ¶ 6.

⁷ WRRRA Response Brief ¶ 3.

⁸ *Id.* ¶ 5.

7 Staff takes a somewhat different view, contending that “[i]n the area of biomedical waste, the Commission has focused on the needs of *customers*, not the applicant or incumbent. Testimony from biomedical waste generators about their needs is the most persuasive evidence on the issue of ‘provid[ing] service to the satisfaction of the commission.’”⁹ According to Staff, the Commission has never interpreted RCW 81.77.040 as broadly as Waste Management proposes but “has consistently required a *factual* showing that the incumbent provider is not meeting the specialized needs of customers before the Commission will grant a certificate for biomedical waste collection authority in an area already served by another provider.”¹⁰

DISCUSSION AND DECISION

8 When evaluating an application to provide overlapping biomedical waste collection service, the Commission has analyzed the competitive issues under two different factors specified in RCW 81.77.040: (1) whether the existing solid waste company or companies “will not provide service to the satisfaction of the commission”; and (2) whether the public convenience and necessity require the additional operations the applicant proposes. Staff correctly characterizes the Commission’s inquiry under the first factor as focused on customer needs. Prior Commission decisions consistently state that “[t]he satisfactory nature of service by providers of specialized solid waste collection services is measured according to the specialized needs of customers.”¹¹ With respect to the second factor, those cases also establish that “[i]n determining whether the public convenience and necessity require an additional carrier, the Commission must balance needs of existing carriers for a customer base that is large enough for economic viability, considering their obligation to provide satisfactory service, with the public’s need for responsive service.”¹²

9 Contrary to the positions Stericycle and Waste Management have taken, Commission precedent does not support a presumption or predisposition for either monopoly service territories or competition for the provision of biomedical waste collection and disposal services. Rather, the Commission weighs the evidence presented to

⁹ Staff Initial Brief ¶ 10 (quoting RCW 81.77.040).

¹⁰ Staff Response Brief ¶ 3 (emphasis in original).

¹¹ *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 11 (Jan. 25, 1993) (emphasis in original).

¹² *Id.* at 15.

determine whether entry of an additional provider in a particular service territory would serve unmet customer needs consistent with the public interest.

- 10 Waste Management nevertheless quotes language in past decisions that suggests that the Commission favors competition in the market for collection of biomedical waste. None of the Commission's decisions, however, can reasonably be interpreted to hold that a desire for competitive alternatives, without more, is sufficient to find that incumbent providers will not provide service to the satisfaction of the Commission. At the same time, those decisions do not support Stericycle's or WRRRA's arguments that the Commission considers only "reasonable" or "legitimate" needs of biomedical waste generators in determining whether the incumbents' existing service is satisfactory. The Commission does not second-guess these customers' stated needs but defers to "persons who have unique knowledge about the requirements of the service they need," and declines "to tell a professional in the body of knowledge at issue that a service does or does not meet her or his needs."¹³
- 11 The Commission may approve Waste Management's application, therefore, only if the Company demonstrates that (1) the biomedical waste collection service currently provided in the territory Waste Management proposes to serve does not satisfy the specialized needs of customers in that area as the customers determine those needs, and (2) the public's need for responsive service outweighs any negative impacts of the entry of an additional provider on the economic viability of existing carriers.
- 12 Stericycle accurately observes that RCW 81.77.040 requires a hearing on whether the incumbent providers are providing service to the satisfaction of the Commission.¹⁴ Accordingly, the evidentiary hearings scheduled in this docket will focus on that issue and the public interest balancing test discussed above. The parties should prefile testimony and exhibits directed to these issues separately from evidence to be offered on other issues.
- 13 The statute grants the Commission discretion to determine whether to conduct a hearing on issues other than those related to competitive entry. The Commission will exercise that discretion after all evidence to be offered has been prefiled in advance of the scheduled evidentiary hearings. Evidence on issues other than those arising from competitive entry must be filed separately in the form of declarations or affidavits

¹³ *In re Application GA-76820 of Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707 at 4 (May. 25, 1994).

¹⁴ Stericycle Reply Memorandum ¶ 6.

with supporting attachments. The Commission will determine based on those submissions which, if any, of those declarants or affiants will be subject to cross-examination during the hearings.

- 14 The Commission will conduct a prehearing conference on **Wednesday, November 28, 2012, beginning at 1:30 p.m.**, to determine the issues to be addressed during the evidentiary hearings and how those hearings will be conducted, including which witnesses will testify during the hearings.

ORDER

THE COMMISSION ORDERS:

- 15 (1) Waste Management must demonstrate that the biomedical waste collection and disposal service currently provided in the territory the Company proposes to serve does not satisfy the specialized needs of customers in that area as the customers determine those needs.
- 16 (2) Waste Management must demonstrate that the public's need for responsive biomedical waste collection and disposal service outweighs any negative impacts of the entry of an additional provider on the economic viability of existing carriers in the territory Waste Management has applied to serve.
- 17 (3) The evidentiary hearings will focus on testimony addressing whether existing carriers are providing biomedical waste collection and disposal service to the satisfaction of the Commission and the public interest impacts of an additional carrier's entry into the incumbents' service territory. The Commission will determine at a prehearing conference on November 28, 2012, the extent to which testimony on other issues will be presented and subject to cross-examination during those hearings.

Dated at Olympia, Washington, and effective September 5, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge