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February 10, 2011

VIA EMAIL AND COURIER

Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Re: In the Matter Petition of the Stericycle of Washington, Inc., For an Order Suspending Tariff Filings and Initiating an Adjudicatory Proceeding concerning the Proposed Biomedical Waste Collection and Transportation Services of Waste Management of Washington, Inc., dba WM Healthcare Solutions (G-237)

Dear Secretary:

Enclosed are the original and 12 copies of the above-captioned petition which was e-filed earlier today, together with a cover page to conform stamp and returned in the enclosed self-addressed stamped envelope.

Please let me know if you have any questions regarding the enclosed.

Very truly yours,

GARVEY SCHUBERT BARER

By

Stephen B. Johnson

Enclosures

cc: Waste Management of Washington, Inc., dba WM Healthcare Solutions
Stericycle of Washington, Inc.

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

In the Matter of the Petition of)	
)	
STERICYCLE OF WASHINGTON, INC.,)	Docket No.
)	
For an Order Suspending Tariff Filings and)	Petition of Stericycle of
Initiating an Adjudicatory Proceeding concerning)	Washington, Inc.
the Proposed Biomedical Waste Collection and)	
Transportation Services of Waste Management)	
of Washington, Inc., dba WM Healthcare)	
Solutions (G-237))	
_____)	

Stericycle of Washington, Inc. (“Stericycle”), through its attorneys Garvey Schubert Barer, Stephen B. Johnson and Donald B. Scaramastra, respectfully submits this petition for order, as follows:

A. Identification of Petitioner and Petitioner’s Representative

Stericycle of Washington, Inc. (G-244)
20320 80th Avenue S.
Kent, WA 98032

Stephen B. Johnson
Donald B. Scaramastra
Garvey Schubert Barer
1191 Second Avenue, Suite 1800
Seattle, WA 98101
Attorneys for Petitioner

B. Relief Requested

1. Stericycle provides specialized biomedical waste collection services throughout the state of Washington under certificate G-244. Stericycle’s authority under G-244 is limited to biomedical waste. Waste Management of Washington, Inc. (“Waste

Management”) has been soliciting Stericycle customers for a biomedical waste collection service that Waste Management proposes to offer within days in the limited territories in which it holds general solid waste authority under certificate G-237.

2. Stericycle respectfully petitions the Washington Utilities and Transportation Commission for an order requiring Waste Management to establish affirmatively that its rates and terms of service are just and reasonable and imposing other terms and conditions on Waste Management’s proposed entry into the business of collecting and transporting biomedical waste for disposal in Washington to preclude unfair competition by Waste Management with Stericycle’s existing statewide service under G-244 and to ensure that Waste Management’s biomedical waste collection services are conducted in a manner that serves the public interest and the interests of medical waste generators throughout the state.

3. More specifically, Stericycle respectfully requests the Commission to issue an order (1) suspending any tariff filed by Waste Management for biomedical waste collection and transportation services pending the Commission’s investigation of the issues presented by this petition and an affirmative showing by Waste Management that its proposed rates are just and reasonable and that it is fit to provide the proposed service; (2) initiating an investigation into tying arrangements and/or rate discounts offered by Waste Management for combined biomedical waste collection and general solid waste collection and disposal services; (3) initiating an investigation into the use of revenues from Waste Management’s general solid waste collection services to subsidize Waste Management’s biomedical waste collection services; (4) conditioning approval of any tariff filed by Waste Management for biomedical waste collection and transportation services on the successful
Petition of Stericycle of Washington, Inc. - 2

prosecution by Waste Management of an application for statewide biomedical waste collection authority; or, in the alternative, authorizing Stericycle to discontinue biomedical waste collection services in territories that Waste Management does not propose to serve; and (5) conditioning approval of any tariff filed by Waste Management on assurances by Waste Management that its affiliates will allow disposal of processed medical waste in landfills they operate on a non-discriminatory basis in order to ensure that Stericycle is not placed at an unfair and unreasonable competitive disadvantage.

4. This petition is based on RCW 81.04.110, RCW 81.04.130, RCW 81.77.030, RCW 34.05.240, WAC 480-07-305, WAC 480-70-339 and other applicable law.

C. Overview

5. During the past year, Waste Management has hired former Stericycle managers with access to Stericycle's confidential and proprietary business information and intimate knowledge of Stericycle's business and customers in Washington. For several months, one of these ex-Stericycle managers has been approaching Stericycle customers and soliciting them for a new biomedical waste collection and transportation service to be offered by Waste Management and its affiliates on the basis of representations concerning the rates Waste Management will offer for the proposed service. These solicitations are adversely impacting Stericycle's business, although the proposed rates have not been published in Waste Management's tariff or approved by the Commission.

6. Stericycle has provided specialized biomedical waste collection and transportation services to Washington hospitals, healthcare facilities and others under rates

Petition of Stericycle of Washington, Inc. - 3

that have been substantially unchanged since 1993. Stericycle is currently the only solid waste collection company that offers biomedical waste collection services throughout the state. Stericycle recognizes that the Commission may welcome additional competition in biomedical waste collection and does not oppose fair competition. However, Stericycle believes that Waste Management's proposed services will have unfair competitive advantages that will harm Stericycle and generators of biomedical waste, including most immediately generators in small towns and rural areas of the state, and that these effects can be avoided only by exercise of the Commission's authority to impose terms and conditions on Waste Management's proposed biomedical waste collection services in the public interest.

7. Waste Management and its affiliates propose to offer their new biomedical waste collection service in limited areas within Washington where Waste Management holds general solid waste authority under G-237 -- principally in urban areas or areas along major transportation corridors. Waste Management's certificate G-237 covers portions of only 16 of Washington's 39 counties but over 80% of the biomedical waste generated in the state. Waste Management's entry into the medical waste collection business in these limited, relatively high density areas will give Waste Management an unfair competitive advantage over Stericycle, which must serve the entire state under Stericycle's certificate G-244.

8. Absent the requested relief from the Commission, Waste Management will be able to limit its service to high-density, low cost/high profit areas of the state, while Stericycle will be required to continue to serve the whole state, including high cost/low

Petition of Stericycle of Washington, Inc. - 4

profit generators in small towns and rural areas. The effect will be to give Waste Management an unfair cost advantage in areas of the state where both carriers compete, because only Stericycle will be required to absorb the cost of unprofitable service to small towns and rural areas. Ultimately, Waste Management's unfair cost advantage could adversely affect Stericycle's ability to serve its healthcare customers statewide or require it to impose drastic service cut-backs and/or rate increases on healthcare facilities in rural counties and small towns. To ensure fair competition and the preservation of service throughout the state, Waste Management should be required to successfully prosecute an application for statewide biomedical waste collection authority if it wishes to enter the medical waste collection business, rather than limiting its service to the state's higher density urban areas and transportation corridors.¹

9. Waste Management abandoned biomedical waste collection and transportation operations under its certificate G-237 many years ago and should not be permitted to reclaim biomedical waste collection authority under G-237 without establishing its fitness and demonstrating that the proposed services are in the public interest. Biomedical waste collection, transportation and disposal services present particular regulatory compliance challenges and require specialized expertise and specialized equipment, as well as access to a permitted biomedical waste incinerator or another permitted biomedical waste processing facility. As the Commission's rules make

¹ Stericycle does not argue that every solid waste collection company that wishes to provide biomedical waste collection and transportation services must serve the entire state. However, where (as here) a company proposes to serve most of the major urban centers within the state, it should be required to serve the entire state. Any other result would ensure that the potential benefits of increased competition are unsustainable.

clear, "It is a matter of statewide concern that biomedical waste be handled in a manner that protects the health, safety, and welfare of the public, the environment, and the workers who handle the waste." WAC 480-70-426. Waste Management has made no showing of its ability or fitness to provide the proposed services in compliance with applicable law. Before approving a Waste Management tariff for biomedical waste collection and transportation services long ago abandoned by Waste Management, the Commission should require Waste Management to demonstrate its fitness and ability to provide the proposed services in compliance with applicable regulatory requirements, in a manner that is protective of public health and safety, and in a manner that is consistent with the public interest.

10. As the Commission well knows, Waste Management is a subsidiary of a massive corporation engaged in solid waste collection and disposal within this state and throughout the United States. If the public is to benefit from Waste Management's entry into the biomedical waste collection business, it is imperative that the Commission exercise its authority to ensure that Waste Management does not destroy its smaller competitors through unfair competition. To prevent unfair competition, the Commission should require Waste Management to seek authority to serve the entire state. In addition, the Commission must take steps to ensure that Waste Management does not use profits from its general solid waste operations to subsidize its biomedical waste collection services. The Commission must make sure that rates offered for combined solid waste and biomedical waste collection services fairly reflect the costs of each. Finally, the Commission should not permit Waste Management's access to landfills operated by its

affiliates in Washington to guarantee it an unfair competitive advantage. Waste Management's affiliates currently prohibit disposal by Stericycle of processed biomedical waste at their landfills, thus imposing additional costs on Stericycle for waste disposal. If Waste Management wishes to use these landfills for disposal of its processed medical waste, the Commission should require Waste Management to ensure that its competitors have equal, non-discriminatory access to these landfills.

D. The Commission Has Broad Authority to Prevent Unfair Competition

11. Waste Management's selective, limited entry into the market place will harm Stericycle without long-term benefits for the state's biomedical waste generators. "Cream skimming" is the classic description of Waste Management's strategy. By offering its biomedical waste collection services only in the limited territory where it has general solid waste collection authority, Waste Management plans to limit its new service to the state's urban centers and major transportation corridors. If permitted by the Commission, this will ensure Waste Management a significant cost advantage over Stericycle, an advantage which over time will threaten Stericycle's ability to serve to the extent of its authority under G-244. The Commission has repeatedly held that "'cream skimming' is not in the public interest and contrary to public policy." *See, e.g., In re Superior Refuse Removal Corporation*, Order M.V.G. No. 1335, June 1, 1988.

12. Ultimately, it is the public that will be harmed if Waste Management is allowed to enter the market in a service territory limited to higher density population centers and transportation corridors. While generators in these areas may be offered lower prices for a time, ultimately the burden of serving the lower density areas of the state will

Petition of Stericycle of Washington, Inc. - 7

increase Stericycle's costs and will either drive Stericycle from the market place or require Stericycle to drastically reduce service or raise rates beyond what generators in the more rural areas of the state can pay. The upshot: Stericycle's ability to serve generators statewide will be adversely affected, generators in high density areas will lose any initial benefit from increased competition and many generators outside of urban areas and major transportation corridors could be left without access to a critical service at an affordable price.

13. The Commission has ample authority to regulate all aspects of a biomedical waste collection carrier's business to ensure that the public interest is served. The Commission is "vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts and affiliated interests of public service companies, including solid waste companies. RCW 80.01.040, RCW 81.01, RCW 81.04, RCW 81.16, RCW 81.28 and RCW 81.77." WUTC v. Harold Lemay Enterprises, Inc., 2010 WL 5483966 (Wash.U.T.C. 2010). RCW 80.01.040 requires the Commission to "Regulate in the public interest . . . the rates, services, facilities, and practices of all persons engaging in the transportation of persons or property within this state for compensation." It is fundamental that common carriers "shall not make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality . . . in any respect whatsoever, or subject any particular person or corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." RCW 81.28.190. Of course, this is precisely what a selective market entry by Waste Management would do -- both prefer and disadvantage different localities and generators.

14. RCW 81.28.230 requires that, whenever the Commission finds that a common carrier's rates, or the regulations or practices of the common carrier affecting those rates, are "unjust, unreasonable, unjustly discriminatory, or unduly preferential," the Commission "shall determine and fix by order the just, reasonable, or sufficient rates, fares, or charges, or the regulations or practices to be thereafter observed and enforced." In support of this authority, the Commission is authorized to investigate all tariff filings by regulated carriers and to suspend the effect of such filings while its investigation is pending. RCW 81.04.130 (Commission may investigate any rate change filed by a public service company, either upon its own motion or upon complaint, and -- if the filing is made by a solid waste collection company -- may suspend the operation of the filing for a period not exceeding ten months). *See also* WAC 480-70-339 (Commission authorized to suspend tariffs of solid waste collection companies).

15. Under RCW 81.77.030, the Commission is authorized and directed to "supervise and regulate every solid waste collection company in this state." The Commission should use its authority to suspend any tariff filing made by Waste Management in support of its proposed biomedical waste collection and transportation services until the Commission is satisfied that the proposed services will be provided without unfair competition, that the rates proposed are just and reasonable, that Waste Management is fit, willing and able to provide the proposed services in all respects in compliance with applicable law and that the proposed services will be provided in a manner that is in the public interest.

E. Conclusion

16. For the foregoing reasons Stericycle respectfully petitions the Commission for an order suspending any tariff filing made by Waste Management in support of its proposed biomedical waste collection and transportation services and initiating an adjudicatory proceeding to determine whether Waste Management's proposed rates and rules are just and reasonable, whether it is fit, willing and able to provide the proposed services, and whether its proposed services are in the public interest.

17. Stericycle further requests that the Commission decline to approve tariff rates for biomedical waste collection services by Waste Management service that extend to less than the entire state; or, in the alternative, that Stericycle be allowed to discontinue service to areas of the state outside the territories covered by G-237.

Dated this 10th day of February, 2011.

Respectfully submitted,

GARVEY SCHUBERT BARER

By 

Stephen B. Johnson

Donald B. Scaramastra

Attorneys for Petitioner

Stericycle of Washington, Inc.