

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of)	DOCKET TG-120033
)	
WASTE MANAGEMENT OF)	
WASHINGTON, INC. D/B/A WM)	ORDER 01
HEALTHCARE SOLUTIONS OF)	
WASHINGTON)	
)	PREHEARING CONFERENCE
For an Extension of Certificate G-237)	ORDER; NOTICE OF HEARING
for a Certificate of Public Convenience)	(Set for September 24 - 26, 2012)
and Necessity to Operate Motor)	
Vehicles in Furnishing Solid Waste)	
Collection Service)	
.....)	

1 **NATURE OF PROCEEDING.** 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. Notice of the Application was published in the Commission’s weekly Docket on February 7, 2012. On February 17, 2012, a protest against Waste Management’s application was filed jointly by Washington Refuse & Recycling Association (WRRRA), Rubatino Refuse Removal, Inc. (Rubatino), Consolidated Disposal Services, Inc. (Consolidated), Murrey’s Disposal, Inc. (Murrey’s), and Pullman Disposal Service, Inc. (Pullman). On February 21, 2012, Stericycle of Washington, Inc. (Stericycle) filed a protest against Waste Management’s application.

2 **CONFERENCE.** The Commission convened a prehearing conference in this docket in Olympia, Washington on April 10, 2012, before Administrative Law Judge (ALJ) Gregory J. Kopta.

3 **APPEARANCES.** Polly L. McNeil and Jessica Goldman, Summit Law Group, PLLC, Seattle, Washington, represent Waste Management. James K. Sells, Attorney at Law, Gig Harbor, Washington, represents WRRRA, Rubatino, Consolidated,

Murrey's and Pullman. Stephen B. Johnson and Jared Van Kirk, Garvey Schubert Barer, Seattle, Washington, represent Stericycle. Contact information provided for the parties' representatives is attached as Appendix A to this order.

4 **PETITIONS FOR INTERVENTION.** No party sought to intervene in this docket.

5 **CONSOLIDATION.** The Commission proposed consolidating this docket with Docket TG-112025, in which Spartan Environmental, LLC, also seeks statewide authority to provide solid waste collection service consisting of bio-hazardous waste. The parties, as well as Commission Staff, opposed consolidation, arguing that the factual and legal issues are not sufficiently related and that consolidation could complicate, rather than simplify, the proceedings. The Commission will not consolidate the dockets at this time but will require joint briefing on a preliminary legal issue as described below.

6 **BRIEFING ON PRELIMINARY LEGAL ISSUE.** The Commission will require the parties in this docket and in Docket TG-112025 to brief the legal issue of the interpretation of the provision in RCW 81.77.040 that the Commission may issue a certificate for a service territory served by another certificate holder "only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission." Specifically, parties must address whether the statute authorizes the Commission to grant a certificate 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.

7 **DISCOVERY.** This proceeding does not fall within any of the types of proceedings specified in WAC 480-07-400(2)(b) in which methods of discovery other than subpoenas are automatically available. The Commission, however, exercises its discretion to determine that the needs of the case require the methods of discovery specified in the Commission's discovery rules, WAC 480-07-400 – 425, with the limitations set forth in this order.

8 Discovery is limited to the scope of the parties' interest in the proceeding pursuant to WAC 480-07-400(3). Specifically, the protesting parties do not have a significant interest in, and may not conduct discovery on, issues related to Waste Management's financial or operational fitness to provide service under the extended authority for which it has applied. Such issues include, but are not necessarily limited to, the statutory factors of an estimate of the costs of facilities to be used to provide the

proposed service, the Company's assets, or Waste Management's prior experience in the field. In addition, all parties must seek leave of the ALJ prior to scheduling or conducting any depositions under WAC 480-07-410.

9 The Commission reminds the parties that discovery "must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation." WAC 480-07-400(3). The Commission will have no tolerance for abuse of the discovery process. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

10 **PROCEDURAL SCHEDULE.** The parties were unable to agree during the prehearing conference on a procedural schedule. After considering the parties' arguments in support of their competing proposals, the Commission adopts the following schedule, which is also set forth in Appendix B:

Preliminary Briefing

Initial Briefs Due	May 15, 2012
Response Briefs Due	May 25, 2012

Hearing Schedule

Prefiled Direct Testimony	July 31, 2012
Prefiled Response Testimony	September 11, 2012
Witness/Exhibit Lists Due	September 18, 2012
Evidentiary Hearings	September 24-26, 2012

11 **WITNESSES.** Witnesses other than those representing generators of bio-hazardous waste or others who are not parties to this proceeding must prefile their testimony. Each party must file a list of witnesses it intends to call during the evidentiary hearings, including witnesses who did not prefile testimony. As part of its witness list, each party calling a witness who did not prefile testimony must provide a brief summary of the testimony that witness is expected to give. A party may not call a witness to testify during the evidentiary hearings if that witness was not included on the party's witness list.

- 12 **EXHIBIT LISTS AND CROSS-EXAMINATION EXHIBITS.** Each party must file a list in the standard Commission format that identifies all exhibits the party intends to use or introduce into the record during the evidentiary hearings, including cross-examination exhibits. Exhibits, including cross-examination exhibits, that are not included in a party's exhibit list may not be used during the evidentiary hearings and will not be admitted into the record without a showing that the party did not possess, and reasonably could not identify, that exhibit at the time it filed its exhibit list. A party identifying cross-examination exhibits must designate the witness through whom the party intends to introduce the exhibit into the record. Each party must submit to the ALJ and serve all parties with hard copies of the party's cross-examination exhibits at the time it files its exhibit list. Parties should not file cross-examination exhibits prior to the hearings. The ALJ will establish at the hearing or shortly thereafter the date by which parties must file the cross-examination exhibits that were admitted into the record.
- 13 **CROSS-EXAMINATION TIME ESTIMATES.** When each party files its witness and exhibit lists it must also identify all witnesses the party intends to cross-examine during the hearings and the amount of time the party estimates for cross-examination of each witness. The Commission has scheduled three days for the evidentiary hearings in this docket and intends to complete the hearings within that time. The Commission may limit the amount of cross-examination accordingly.
- 14 **NOTICE OF PUBLIC RECORD REQUESTS.** Parties should not attempt to circumvent the discovery process or restrictions by seeking information through requests to the Commission for public records. The parties agreed to notify each other of any public records requests they make to the Commission concerning the subject matter of this proceeding during the pendency of this docket, and the Commission adopts that agreement as a requirement.
- 15 **NOTICE OF HEARING.** The Commission will hold evidentiary hearings in this matter beginning **September 24, 2012**, at 9:30 a.m., and continuing thereafter, as necessary, on **September 25 and 26, 2012**, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

- 16 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an original plus **four** (4) copies of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 17 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 18 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to records@utc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 19 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus **four** (4) paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding ALJ (gkopta@utc.wa.gov) as well as to the parties to the proceeding.
- 20 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1355.

- 21 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective April 16, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET TG-120033**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington	Michael A. Weinstein 720 4 th Avenue, Suite 400 Kirkland, WA 98033			mweinstein@wm.com
	Jessica Goldman Summit Law Group 315 Fifth Avenue S Suite 1000 Seattle, WA 98101-2939	206-676-7062	206-676-7063	jessicag@summitlaw.com
	Polly L. McNeill	206- 676-7040	206- 676-7041	pollym@summitlaw.com
Washington Refuse and Recycling Association	4160 - 6 th Avenue SE Suite 205 Lacey, WA 98503			
Rubatino Refuse Removal, Inc,	2812 Hoyt Avenue P.O. Box 1029 Everett, WA 98206-1029			
Consolidated Disposal Services, Inc.	2370 Basin S.W. P.O. Box 1154 Ephrata, WA 98823-1154			
Murrey's Disposal, Inc.	P.O. Box 399 Puyallup, WA 98371			
Pullman Disposal Service, Inc.	135 NW Harold Pullman, WA 99163			
	James K. Sells Attorney at Law PMB 22 3110 Judson Street Gig Harbor, WA 98335	360-307-8865	360-981-0168	jamesells@comcast.net

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Stericycle of Washington, Inc.	20320 80 th Avenue S. Kent, WA 98032			
	Stephen B. Johnson Garvey Schubert Barer 1191 Second Avenue Suite 1800 Seattle, WA 98101	206-816-1309	206-464-0125	sjohnson@gsblaw.com
	Jared Van Kirk	206-816-1372		jvankirk@gsblaw.com

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TG-120033**

EVENT	DATE
Initial Briefs Due on Preliminary Legal Issue	May 15, 2012
Response Briefs Due	May 25, 2012
Prefiled Direct Testimony (all parties)	July 31, 2012
Prefiled Response Testimony (all parties)	September 11, 2012
Witness Lists, Exhibit Lists, and Cross-Examination Time Estimates Due	September 18, 2012
Evidentiary Hearings	September 24-26, 2012
Posting Hearing Briefs and Filing of Admitted Cross-Examination Exhibits	TBD