

Docket TG-181023

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of:

SUPERIOR WASTE & RECYCLE, LLC

for Authority to Operate as a Solid Waste
Collection Company in Washington

DOCKET TG-181023

POST-HEARING BRIEF OF

DANIEL STEIN

ON BEHALF OF SUPERIOR WASTE & RECYCLE LLC

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1 **I. INTRODUCTION**

2 In this case, the applicant, Superior Waste and Recycle, asks the Commission to grant it
3 a G-Certificate, and the authority to operate legally as a waste hauling company in Kitsap
4 County, Washington. This application transpires from Waste Management’s inability and
5 lack of desire to meet the needs of its customers. The applicant hopes that the Commission
6 will see reason and the need of certain households in the area Superior wishes to serve and
7 allow Superior to provide service in that area.

8 **II. SUMMARY**

9 Generally, in order to operate as a solid waste collection company, a certificate of
10 convenience and necessity is required. “A solid waste collection company shall not operate
11 for the hauling of solid waste for compensation without first having obtained from the
12 commission a certificate declaring that public convenience and necessity require such
13 operation.” RCW 81.77.040. The State of Washington has allowed certain companies to
14 hold a monopoly in the areas they serve by allowing only one company to hold the certificate
15 within a certain territory.

16 For another company to serve customers in that same territory requires a show of fault
17 by the company that has been granted a certificate. “When an applicant requests a certificate
18 to operate in a territory already served by a certificate holder under this chapter, the
19 commission may, after notice and an opportunity for a hearing, issue the certificate only if
20 the existing solid waste collection company or companies serving the territory will not
21 provide service to the satisfaction of the commission or if the existing solid waste collection
22 company does not object.” Id.

23 While drafting the law, the legislators mentioned that one of the items considered when
24 determining the necessity of granting a certificate should be, “...**sentiment in the**

1 **community contemplated to be served as to the necessity for such a service.” Id.**
2 [Emphasis Added]. The community has time and time again shown a necessity for the
3 service the applicant intends to provide, and Waste Management’s refusal to do so. They
4 showed up in support of the applicant at his hearing against Seabeck, and then again in
5 support for his hearing in this matter. While supporting the applicant, this same community
6 has routinely denounced Waste Management.

7 **III. ANALYSIS**

8 **A. Waste Management’s service.**

9 Waste Management has shown it cares little about these customers. They continue to
10 use their monopoly to provide inadequate and unsatisfactory service to its customers. They
11 also hide behind the “safety” exception of the rules to refuse to provide service to anyone
12 they deem is not profitable for their business. Commission has already previously said that
13 Waste Management will not provide services to Commission’s satisfaction. (Tr. at 104:12-
14 104:13). Waste Management has created arbitrary boundaries of one hundred feet for
15 packout service and one mile for drive-in service to hide behind the blanket of safety
16 exclusion, while providing no evidence why it’s unsafe for their drivers to go beyond these
17 distances. (Tr. at 138:13-138:19). They changed these distances from their initial short
18 distances and added additional tariffs for the longer distance. (Tr. at 108:22-109:10). These
19 changes seem entirely motivated by money, without regard to actual safety considerations.

20 In fact, since the hearing in August 2019, multiple customers have called Waste
21 Management for service beyond these thresholds only to be given a blanket “no”, without
22 anyone from Waste Management actually verifying if the location is safe to drive. Waste
23 Management does not care whether everyone in their territory is receiving service. Waste
24 Management even refuses to track who they refuse service to (Tr. at 111:25-112:7), so there

1 could be hundreds of people in their territories not getting service at all. Normally, the
2 Commission would hope that the citizens of this State bring these complaints to them, and
3 in an ideal setting that would happen. But as indicated by the applicant's testimony, not
4 many people are even aware of Commission's existence. When first approached by the
5 Commission last year, Mr. Stein believed them to be a hoax perpetrated by Waste
6 Management. (Tr. at 38:10-38:14; Tr. at 91:23-91:23).

7 Waste Management has not shown they have taken any steps to provide pack-out or
8 drive-in service. (Tr. at 117:19-117:22). They are still only exploring a year later (Tr. at
9 117:13-117:18), and the only thing they've come up is that they need smaller vehicles. (Tr.
10 at 125:12-125:17). They have no current plans to purchase (Tr. at 118:1-118:4), and no other
11 options on the table. (Tr. at 124:15-124:18). Commission is also unaware of any progress
12 made by Waste Management in that area. (Tr. at 143:20-143:22). Waste Management seems
13 to not know or care about the issues affecting its customers. (Tr. at 109:13-109:13; Tr. at
14 112:4-112:7; Tr. at 111:6-111:6; Tr. at 124:10-124:10; Tr. at 127:11-127:11; Tr. at 136:21-
15 136:21). If Waste Management doesn't care enough to educate themselves on the issues
16 facing its customers, it certainly doesn't care enough to fix those same issues.

17 Waste Management somehow believes a monopoly is better for keeping prices down (Tr.
18 at 104:20-104:24), while every economist in history has argued for competition and against
19 monopolies. Even the Federal Sherman Anti-Trust Act outlaws monopolistic business
20 practices in favor of competition and free economy. Even Waste Management state they're
21 unsure if they will make any changes (Tr. at 131:4-131:7), and only competition will get
22 them to serve all its customers. (Tr. at 131:20-131:24). Without the threat of competition,
23 Waste Management is likely to keep the status quo and continue providing inadequate service
24 to its customers.

1 **B. Separate Category.**

2 Waste Management has defined pack-out service as service requiring a pickup at a
3 distance between the current curb-side service threshold up to 100 feet, and drive-in service
4 as service requiring them to drive one mile. Currently, pack-out or drive-in service is not
5 considered a separate service by the Commission, but rather it gets commingled with the
6 general waste pickup service. However, this is not appropriate as many customers in the
7 State of Washington rely on this specific type of service. Lumping it in with the general
8 waste collection service provides a disservice to the individuals, as major trash companies
9 are unwilling to invest in the costs associated with serving these individuals.

10 Washington is a large and varied state. As Waste Management themselves acknowledge,
11 the area the applicant wishes to service is a unique one and presents many challenges. (Tr. at
12 132:11-132:16). A company would have to be willing to go the extra mile, no pun intended,
13 to service these customers. To service these customers requires owning and operating
14 different equipment and vehicles.

15 There is precedent for a different category to be created to serve specific needs. State of
16 Washington treats biomedical waste as a different category. WAC 480-70-426. The
17 Commission also allows a different company to haul biomedical waste, than the company
18 who holds the certificate to haul general waste. In fact, Waste Management themselves
19 fought to have biomedical waste be treated differently than general waste. Stericycle of
20 Washington Inc. v. Washington Utilities & Transp. Comm'n, 190 Wn. App. 74, 77, 359 P.3d
21 894, 895 (2015).

22 In that case, the Commission argued that, “The collection of medical waste is quite a
23 different situation. Customers are only a small percentage of the total business in any given
24 territory.... Therefore, while sound policy and economic reasons exist in favor of exclusive

1 authority for typical residential or commercial collection in a specific territory, those reasons
2 are less compelling in this new, specialized area.” Id.

3 The same is true for customers that require pack-out or drive-in service. Both Waste
4 Management and Commission acknowledge that this is a specialized service, and customers
5 who need this service are few and far between. (Tr. at 124:15-124:18; Tr. at 141:8-141:13).
6 That’s fifty-three customers out of tens of thousands of customers Waste Management serves
7 in that territory. It is safe to say it would fit the same requirements Commission alluded to
8 in the Stericycle case of the base being small enough for it to be considered a separate
9 specialized area that requires a separate certificate.

10 Additionally, the persons more likely to use this service are the elderly and the disabled.
11 The applicant has noticed time and time again that the ones having trouble with their waste
12 pickup by Waste Management happen to be individuals who are unable to move their trash
13 cans a few feet, let alone a few hundred feet or over a mile. Waste Management, on the other
14 hand, are using the certificate granted by the commission to potentially discriminate against
15 the elderly and the disabled. Making pack-out and drive-in service a separate category will
16 ensure needs of these individuals are being met.

17 **C. Superior’s Capabilities.**

18 Superior already owns the vehicle required and can rent proper backup vehicles, per
19 Superior’s previously submitted Backup Plan. Waste Management has yet to even order the
20 equipment needed to serve the needs of the customers in the proposed territory, despite the
21 ample amount of time they have been given to do so. Staff has determined that Superior has
22 the financial capabilities to operate the business. (Tr. at 144:16-144:19; Tr. at 146:16-
23 146:20). Staff agrees that granting the applicant a certificate could help meet the needs of
24 Washington residents. (Tr. at 143:12-143:13).

1 Mr. Stein is ready, willing, and able to start serving the community immediately. He has
2 the right equipment and a passion for helping people. Every person starts a new business
3 without being an expert in the industry, but Mr. Stein is more than willing to learn what it
4 takes to work under the rules and regulations of the Commission and the local county.
5 Moreover, there are already other companies operating in exclusive territories, with the
6 approval of Waste Management. Having the applicant serve a few customers from
7 thousands of Waste Management customers in the area will not be a detriment to Waste
8 Management or anyone else.

9 IV. CONCLUSION

10 What may be good for Waste Management is not necessarily good for the citizens of
11 Washington. Waste Management created arbitrary distance thresholds to save them money.
12 There are no safety issues for their drivers and there are no other valid reasons to not provide
13 service to everyone that requests it. Waste Management decided that the costs to serve these
14 customers outweighed their obligation. Waste Management adamantly said they were
15 unaware of these issues, and they have taken no steps to remediate them since they learned
16 of their existence. In fact, they are unsure they ever will and mentioned only competition
17 may force them to take action.

18 Mr. Stein is more than willing to do whatever it takes to meet the customers' needs, while
19 Waste Management only cares about its bottom line. If we leave it up to Waste Management,
20 they will continue to let their customers suffer with no plan on addressing their shortcomings.
21 As such, the applicant should be granted a certificate to operate in his proposed territory, to
22 provide pack-out and drive-in waste collection service.