

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of:

WASTE MANAGEMENT OF WASHINGTON,  
INC. D/B/A WM HEALTHCARE SOLUTIONS  
OF WASHINGTON

For an Extension of Certificate G-237 for a  
Certificate of Public Convenience and Necessity  
to Operate Motor Vehicles in Furnishing Solid  
Waste Collection Service

Docket No. TG-120033

**WASTE MANAGEMENT'S  
OPPOSITION TO STERICYCLE'S  
MOTION FOR LEAVE TO TAKE  
DEPOSITION AND TO COMPEL  
RESPONSES TO DEPOSITION  
QUESTIONS**

**I. RELIEF REQUESTED**

1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington (“Waste Management”) requests that the Commission deny Stericycle of Washington, Inc.’s (“Stericycle”) Motion for Leave to Take Deposition and to Compel Responses to Deposition Questions (“Third Motion to Compel”).

**II. STATEMENT OF FACTS**

2. The Presiding Officer has been forced to referee discovery several times during the course of this proceeding and each time has made it clear that discovery is to be limited and focused, and that the approach to discovery in judicial cases will not be countenanced in this administrative proceeding. At the outset of this proceeding, the Presiding Officer limited the scope of permissible discovery.

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.<sup>1</sup>

The Prehearing Conference Order further "remind[ed] 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."<sup>2</sup>

3. Right away, Stericycle objected to the Commission's discovery limitations and demanded that it be allowed to conduct discovery regarding "[f]inancial, operational, and regulatory fitness."<sup>3</sup> In response to the first such objections, the Presiding Officer reaffirmed the discovery limitations and found that:

Stericycle fundamentally misunderstand[s] the nature of discovery in administrative adjudicative proceedings in general, and in the context of the fitness issues in this docket in particular.

Unlike civil litigation in state superior court, the availability of discovery in Commission adjudicative proceedings is discretionary except in certain specified cases. This is not one of those cases. The Commission often conducts adjudicative proceedings in which no discovery is authorized, relying solely on the evidence the parties have developed independently. Consistent with RCW 34.05.446 and WAC 480-07-400, therefore, the Commission could have precluded any and all discovery in this case.<sup>4</sup>

The Presiding Officer reaffirmed that "no party, including protestants, has a right to discovery at all in this docket, much less on any specific issues."<sup>5</sup> He held that RCW 81.77.040 does not "contemplate a need for party discovery on the specified fitness factors the Commission is

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<sup>1</sup> Order 01 ¶ 8 (emphasis added).

<sup>2</sup> *Id.* ¶ 9.

<sup>3</sup> Stericycle's Obj. to Prehearing Conf. Order & Request for Clarification at 2:15-16.

<sup>4</sup> Order 03 ¶¶ 14-15 (n. omitted).

<sup>5</sup> *Id.* ¶ 15.

required to consider.”<sup>6</sup> Moreover, he held that Stericycle had failed to identify any “legitimate interest” Stericycle “has in whether Waste Management is fit to provide the requested service.”<sup>7</sup> Examination of Waste Management’s fitness “is the responsibility of the Commission, not private parties, particularly when those private parties are competing service providers. Protestants are not entitled to engage in discovery on issues that do not affect them.”<sup>8</sup>

4. Stericycle again objected to the discovery limitation in opposition to Waste Management’s Motion for Summary Determination.<sup>9</sup> For the third time, the Presiding Officer rejected Stericycle’s request for expansive, burdensome discovery, and refused to revisit prior orders prohibiting Stericycle from conducting discovery on issues of Waste Management’s financial and operational fitness.<sup>10</sup>

5. Notwithstanding these limitations, Stericycle served voluminous data requests on Waste Management seeking detailed information and documentation of Waste Management’s financial and operational fitness and unduly burdensome discovery of permissible subjects. After Waste Management produced 688 pages of documents in response to Stericycle’s initial data requests, Stericycle moved for an order compelling yet further response.<sup>11</sup>

6. The Presiding Officer denied Stericycle’s motion to compel discovery regarding Waste Management’s alleged use of recycling discounts to induce generators to switch their biomedical waste services to Waste Management:

I don’t need to hear anything more on that. I think that that’s farther afield that we are going here. If you have concerns about what Waste Management is doing, you can always file a complaint. This is not an opportunity to provide every problem or objection you have to what Waste Management is doing.<sup>12</sup>

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<sup>6</sup> *Id.* ¶ 16.

<sup>7</sup> *Id.* ¶ 17.

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> Stericycle’s Opp. to WM’s Mot. for Summ. Det. at 12-16.

<sup>10</sup> Order 04 ¶ 10.

<sup>11</sup> Stericycle’s Mot. to Compel Responses to Data Requests & Prod. of Docs.

<sup>12</sup> Declaration of Deanna Schow in Support of Waste Management’s Opposition to Stericycle’s Motion for Leave to Take Deposition and to Compel Responses to Deposition Questions (“Schow Decl.”), Ex. 1 at 92:14-20 (emphasis added).

Unmoved, Stericycle's counsel responded: "So, Your Honor, just so that I understand your ruling. This goes directly to regulatory fitness, if they are violating the tariff requirements."<sup>13</sup>

The Presiding Officer explained:

If you are aware of those, I am not saying that you cannot provide testimony on that. Although, I am not saying at this point that I would allow it, I am just saying at this point that I am not going to compel discovery on it.... At this point, I don't see that it is sufficiently relevant. This is not an occasion to air every complaint. I don't want to hear from Waste Management about your profitability and your overearning. And I don't want to hear from you about what you think Waste Management is doing wrong in its current service territory. That's not what we are here to talk about.<sup>14</sup>

Again, Stericycle's counsel insisted that Stericycle be permitted to conduct discovery regarding "regulatory fitness."<sup>15</sup> Again, the Presiding Officer said "no."

And to the extent that you have information that Waste Management is operating illegally or unlawfully or inconsistent with Commission rules or its own tariff, then I am not saying that you cannot provide that information. What I am saying is that I am not going to sanction an exploratory effort to try and look behind Waste Management's practices to find those kinds of things. I understand that you believe that you have seen smoke and you are looking for the fire.<sup>16</sup>

Again, Stericycle's counsel pressed the issue.

We have, actually, a declaration in the file that supports the notion that Waste Management has in fact offered a recycling discount to Northwest Hospital as an inducement for them to move their waste collection service to Waste Management. That's not hypothetical, it's not speculation, it's particular people having told particular people of the facts.<sup>17</sup>

And, again, the Presiding Officer said "no." "I am not going to compel a response to those requests."<sup>18</sup>

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<sup>13</sup> *Id.* at 92:23-93:1.

<sup>14</sup> *Id.* at 93:2-6, 93:14-21 (emphasis added).

<sup>15</sup> *Id.* at 94:23.

<sup>16</sup> *Id.* at 95:7-16 (emphasis added).

<sup>17</sup> *Id.* at 95:17-24.

<sup>18</sup> *Id.* at 96:3-4.

7. In early September, the Presiding Officer issued a fifth Order regarding the evidentiary burdens and proper administrative procedures applicable to the hearing in this matter. He held that the Commission would conduct a hearing on two issues related to competition:

[Whether] (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 [whether] (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.<sup>19</sup>

In other words, the hearing would be *about Stericycle*: (1) whether *Stericycle's service* is unsatisfactory to generators, and (2) whether competition from Waste Management would impair *Stericycle's viability*. The Presiding Judge ordered that the “parties should prefile testimony and exhibits directed to these issues separately from evidence to be offered on other issues.”<sup>20</sup> “Evidence on the issues other than those arising from competitive entry” – that is, fitness – “must be filed in the form of declarations or affidavits 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.”<sup>21</sup>

8. Further discovery ensued, now informed by the Commission's guidance on the evidentiary burdens and procedures. Stericycle served a second voluminous set of data requests and then brought another motion to compel further responses to those data requests.<sup>22</sup> At the hearing on October 3, 2012, the Presiding Officer explained:

I hope it comes as no surprise that I intend to be as consistent as possible with our last disposition of these types of requests. I will say that in general. I am only going to be looking for how these relate to the issues that we will be addressing at the hearing.<sup>23</sup>

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<sup>19</sup> Order 05 ¶ 11.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* ¶ 13.

<sup>22</sup> Stericycle's Mot. to Compel Resp. to Second Data Requests & Prod. of Docs.

<sup>23</sup> Schow Decl., Ex. 2 at 106:15-20 (emphasis added).

Again, the Presiding Officer denied Stericycle's attempt to get information about Waste Management's bad acts and "fitness."<sup>24</sup> He denied as "farther than we need to know" Stericycle's request for information about how Waste Management stores sharps waste headed for recycling in California or how often Waste Management transports that waste to California.<sup>25</sup>

9. Meanwhile, abiding by the Commission's directives distinguishing between the two categories of evidence, Waste Management on October 1, 2012 prefiled testimony and exhibits of Waste Management employees Jeff Norton and Michael Weinstein, the president of WM Healthcare Solutions, Inc. Michael McInerney, and eight shipper witnesses<sup>26</sup> regarding the two hearing issues *about Stericycle*:

[Whether] (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 [whether] (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.<sup>27</sup>

As directed, Waste Management separately filed declarations of Waste Management employees Jeff Daub and Jeff Norton addressing the other statutory elements of RCW 81.77.040 *about Waste Management's fitness* to serve in the territory outside of its existing authority in Certificate No. G-237.

10. Waste Management employee Jeff Norton submitted testimony on both sets of issues, divided between direct testimony and a declaration as the Presiding Officer had directed. His direct testimony addresses the competition issues which the Presiding Officer ordered would be the subject of live testimony at the hearing: Stericycle's "response to customer complaints and to competition from Waste Management as well as describing some of the differences between the regulated biomedical waste ("RMW") services offered by Waste Management and

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<sup>24</sup> *Id.* at 109:6-8.

<sup>25</sup> *Id.* at 113:9-12.

<sup>26</sup> The shipper witnesses are Lake Chelan Community Hospital in Chelan, Wendel Family Dental Centre in Vancouver, Pathology Associates Medical Laboratories in Spokane, PeaceHealth in Vancouver, the University of Washington in Seattle, Providence Medical Group in Spokane, Olympic Medical Center in Port Angeles, and the Washington State Dental Association.

<sup>27</sup> Order 05 ¶ 11.

the Protestants.”<sup>28</sup> Mr. Norton described four differences between Waste Management’s and Stericycle’s RMW services: (1) Waste Management’s ecoFinity sharps recycling program; (2) Stericycle’s minimum monthly fee; (3) the closer proximity of Waste Management’s treatment facility to the bulk of facilities generating RMW; and (4) Waste Management’s use of trains to transport RMW.<sup>29</sup>

11. In turn, Mr. Norton’s declaration addressed Waste Management’s fitness: a description of Waste Management’s RMW services (none of which is alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>30</sup> the number and nature of Waste Management’s present RMW customers,<sup>31</sup> a brief description of Waste Management’s non-regulated services,<sup>32</sup> and a description of Waste Management’s ecoFinity sharps recycling program.<sup>33</sup> Because Waste Management considers the information about its ecoFinity program to go to both the competitive issues and Waste Management’s fitness, Mr. Norton’s testimony on this subject appears in both his direct testimony and his declaration.<sup>34</sup>

12. Waste Management employee Jeff Daub submitted testimony *only* in the form of a declaration regarding Waste Management’s fitness.<sup>35</sup> He described the relationship between Waste Management and its corporate affiliates,<sup>36</sup> provided the names and titles of the Waste Management employees who are involved with providing RMW services,<sup>37</sup> described Waste Management’s RMW services (none of which is alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>38</sup> described the training Waste Management provides to its

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<sup>28</sup> Schow Decl., Ex. 3 at 3:5-8.

<sup>29</sup> *Id.* at 4:16-5:23.

<sup>30</sup> *Id.*, Ex. 4 ¶ 4.

<sup>31</sup> *Id.* ¶ 5.

<sup>32</sup> *Id.* ¶ 6.

<sup>33</sup> *Id.* ¶ 7.

<sup>34</sup> Schow Decl., Ex. 3 at 4:16-5:9; Ex. 4 ¶ 7.

<sup>35</sup> *Id.*, Ex. 5.

<sup>36</sup> *Id.* § I.

<sup>37</sup> *Id.* ¶ 7.

<sup>38</sup> *Id.* ¶ 8.

employees (which is not alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>39</sup> identified Waste Management's requirements for segregation, packaging and labeling of RMW (none of which is alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>40</sup> explained how Waste Management schedules collection (which is not alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>41</sup> described how Waste Management marks its vehicles (which is not alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>42</sup> set forth how Waste Management cleans its equipment (which is not alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>43</sup> stated the limits and nature of Waste Management's insurance coverage,<sup>44</sup> described the facilities and equipment used by Waste Management (none of which is alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>45</sup> described Waste Management's permits and regulatory activity (none of which is alleged to be a basis for distinguishing Waste Management and Stericycle),<sup>46</sup> and described Waste Management's facilities and equipment for statewide service (none of which is alleged to be a basis for distinguishing Waste Management and Stericycle).<sup>47</sup>

13. In August 2012, prior to having prepared its prefiled testimony and prior to the Presiding Officer's order regarding the submission of separate testimony regarding fitness, Waste Management agreed to Stericycle's request to depose Messrs. Norton and Daub. After Waste Management filed its direct testimony on the competitive service issues and the declarations regarding Waste Management's fitness, Waste Management advised Stericycle:

We are hereby withdrawing our agreement to make Jeff Daub available for a deposition. We originally agreed that you could take his deposition because we

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<sup>39</sup> *Id.* ¶ 9.

<sup>40</sup> *Id.* ¶¶ 10-12.

<sup>41</sup> *Id.* ¶ 13.

<sup>42</sup> *Id.* ¶ 14.

<sup>43</sup> Schow Decl., Ex. 5 ¶ 15.

<sup>44</sup> *Id.* ¶ 16.

<sup>45</sup> *Id.* § III.

<sup>46</sup> *Id.* § IV.

<sup>47</sup> *Id.* § V.



did not know whether he would be providing testimony on issues other than Waste Management's fitness and experience. As you can see from our prefiled direct testimony, the only issues on which his testimony is offered are those regarding subjects which Judge Kopta ordered were not properly a subject of discovery by the Protestants.<sup>48</sup>

14. Waste Management made Mr. Norton available for deposition because he had filed direct testimony regarding Stericycle and the competitive service issues. That deposition began at 9:30 am and concluded at 4:10 pm.<sup>49</sup> Waste Management's counsel gave Stericycle's counsel latitude to address issues even remotely related to the competitive service issues but where the questions concerned Waste Management's fitness and experience, Waste Management's counsel objected based on the Presiding Officer's prior limitations on discovery by Stericycle including:

- The order that Stericycle "may not conduct discovery on, issues related to Waste Management's financial or operational fitness" including "Waste Management's prior experience in the field";<sup>50</sup>
- The order that examination of Waste Management's fitness "is the responsibility of the Commission, not private parties, particularly when those private parties are competing service providers. Protestants are not entitled to engage in discovery on issues that do not affect them";<sup>51</sup>
- The order that Stericycle could not conduct discovery into issues of "regulatory fitness" or regarding "what [Stericycle] think[s] Waste Management is doing wrong in its current service territory" including regarding Stericycle's contention that Waste Management wrongfully "offered a recycling discount to Northwest Hospital as an

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<sup>48</sup> *Id.*, Ex. 6 (quoting the discovery restriction in Order 01 ¶ 8).

<sup>49</sup> *Id.*, Ex. 7 at 6, 192.

<sup>50</sup> Order 01 ¶ 8.

<sup>51</sup> *Id.*

- inducement for them to move their waste collection service to Waste Management,”<sup>52</sup> and regarding how Waste Management stores sharps headed for recycling;<sup>53</sup> and
- The Presiding Officer’s affirmation that he would be consistent in his rulings on discovery.<sup>54</sup>

Objections to questions regarding Waste Management’s fitness and experience also were based on the Presiding Officer’s order that cross examination of declarants on these issues would not be permitted *even* at the hearing absent permission from the Presiding Officer.<sup>55</sup>

### III. STATEMENT OF ISSUES

15. Should Stericycle’s request to use depositions to harass, cause unnecessary delay and needlessly increase the costs of this litigation be denied as being contrary to the Presiding Officer’s prior rulings in this matter, unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence?

### IV. EVIDENCE RELIED UPON

16. Waste Management relies on the Declaration of Deanna Schow filed herewith.

### V. ARGUMENT

17. As the Presiding Officer has ruled, “Stericycle fundamentally misunderstand[s] the nature of discovery in adjudicative proceedings in general, and in the context of the fitness issues in this docket in particular.”<sup>56</sup> Discovery in this matter is discretionary and the Presiding Officer repeatedly has exercised that discretion to restrict Stericycle’s discovery to issues in which Stericycle has a “significant interest.”<sup>57</sup> Demonstrating a surprisingly brazen refusal to comply with the Presiding Officer’s prior orders, Stericycle again presents itself before the Commission to argue that “no” actually does not mean “no.” Stericycle is not entitled to take the

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<sup>52</sup> Schow Decl., Ex. 1 at 92-96.

<sup>53</sup> *Id.*, Ex. 2 at 109:6-8, 113:9-12.

<sup>54</sup> *Id.* at 106:15-20.

<sup>55</sup> Order 05 ¶ 13.

<sup>56</sup> Order 03 ¶ 14.

<sup>57</sup> Order 01 ¶ 8.

deposition of Mr. Daub or to further extend Mr. Norton's deposition. Waste Management requests that Stericycle's abusive and unwarranted discovery tactics again be rejected.

**A. Stericycle Is Not Entitled to an Order Compelling the Deposition of Jeff Daub.**

18. Heeding the Presiding Officer's order and RCW 81.77.040, Waste Management submitted evidence regarding its fitness and experience exclusively in the form of declarations. Mr. Daub's declaration addresses only these issues. Stericycle is plainly wrong in contending that his declaration "describes numerous aspects of the services that Waste Management intends to provide that have been alleged as superior to Stericycle's services and/or alleged to respond to a generator's alleged dissatisfaction with some aspect of Stericycle's service."<sup>58</sup> Neither Mr. Daub nor Waste Management contends that *anything* in his declaration should be taken as *any* evidence regarding the competitive service issues which the Presiding Officer directed should be offered through separate direct testimony.

19. Incredibly, Stericycle urges that Mr. Daub "is the employee most knowledgeable" about *Mr. Norton's* direct testimony "that Waste Management's processing facility is more convenient to generators and carries lower risk."<sup>59</sup> Not only is this preposterous on its face, but Stericycle neglects to mention that *Mr. Norton* was deposed on this subject at length.<sup>60</sup>

20. Stericycle also contends it should be allowed to depose Mr. Daub regarding several of the generators who submitted prefiled testimony "to examine what these generators have stated with respect to their needs and experiences with Stericycle and to allow Stericycle to prepare to cross examine the generators concerning their prefiled testimony."<sup>61</sup> The best evidence of "what these generators have stated" is in the generators' direct testimony filed and served on October 1, 2012. That information is more than enough for Stericycle to prepare its onslaught against its customers.

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<sup>58</sup> Stericycle's Third Mot. to Compel ¶ 12.

<sup>59</sup> Stericycle's Third Mot. to Compel ¶ 13.

<sup>60</sup> Schow Decl., Ex. 7 at 162-69.

<sup>61</sup> Stericycle's Third Mot. to Compel ¶ 14.

21. The Commission should reject Stericycle's request to compel Mr. Daub's deposition. Stericycle continues to "fundamentally misunderstand the nature of discovery in administrative adjudicative proceedings in general," and stubbornly refuses to acknowledge the limitations imposed on discovery in the context of the fitness issues in this docket.

**B. Stericycle Is Not Entitled to an Order Compelling Answers to Deposition Questions from Jeff Norton.**

**1. "And in the past, has there been an account management employee who was qualified to and directed to provide services related to medical waste?"<sup>62</sup>**

22. Stericycle contends that it is entitled to an answer to this question because it "clearly goes to Waste Management's customer service, which is an issue of public need and public interest raised by certain generator testimony claiming dissatisfaction with customer service, including the alleged lack of local customer service representatives."<sup>63</sup> Mr. Norton *did* provide many, many pages of testimony about precisely how Waste Management provides customer service to its Washington biomedical waste customers. To understand this question in context and just how far afield Stericycle had gone by the time it reached this question, we provide, with apologies, the related questions and testimony which preceded it.

23. Mr. Norton testified regarding how Waste Management responds to issues about customer service. "We have a customer service [telephone] line for Washington that's general for all waste services. We also have a medical waste line ... that goes directly into our medical waste office."<sup>64</sup>

Q. Besides you, is there anyone in Washington who provides direct customer service to medical waste generators for medical waste services?

A. No.

...

Q. Is this same situation true in the other states you cover, or in those other states, are there other employees who can provide direct customer service for medical waste services?

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<sup>62</sup> Schow Decl., Ex. 7 at 55:22-24.

<sup>63</sup> Stericycle's Third Mot. to Compel ¶ 21.

<sup>64</sup> Schow Decl., Ex. 7 at 34:14-19.

- A. That's correct. So in other states – in Northern California, there are other folks.
- Q. So other folks that have the same responsibilities as you?
- A. No. More on account management. And I'll say – if I can say, we're going through a reorganization, so there are other spots, kind of, right now that are getting filled in. And one of them is a Northwest account management type person.
- Q. So in Northern California, these people just have a portfolio of accounts that they provide services to and support to?
- A. Correct.
- Q. How many employees like that are there in Northern California?
- A. One.
- Q. One? Okay. What about other states? Oregon?
- A. Zero.
- Q. Just you for Oregon?
- A. That's correct.
- Q. What about Idaho?
- A. Well, so when you talk customer service, we do have folks in our office in Seattle that offer customer service through our 800 number. So when I'm talking account management, I guess I should clarify that; that it's for our larger customers that have larger hospitals, healthcare facilities, that have multiple waste streams.
- Q. So all the customer service for smaller generators goes through the 800 number?
- A. Correct.
- Q. So with the understanding that you just put out there, what about for Idaho? Is there anybody other than you?
- A. No. As I mentioned, I – some of the solid waste and recycling representatives could offer an emergency help if I needed it, where I couldn't be there, where I couldn't – and they needed on-site help for some reason.
- ...
- Q. So I'm now a signed-up customer, and let's say I have an issue; not necessarily a complaint. Let's say I filled up my container too fast and I need a new one or something. What do I do next? What's my – who do I contact and what happens from there?
- ...

- A. You would call into the 800 number that we set you up with, and it goes directly to our operation specialist for medical waste and they set up a pickup.
- Q. It's a different 800 number, then, once I've signed up?
- A. No. I think – yes, so that there's – there are two 800 numbers. Yes.
- Q. Am I understanding you correctly, then, once I'm a signed-up customer, if I have an issue, whatever it is, but I feel like I need to call, I call a number and I don't go to this call center anymore?
- A. That's correct.
- Q. So when I call the new 800 number and I think – I think you said the operations specialist?
- A. (Witness nods head.)
- Q. Is that a person or a group of people?
- A. That's a person.
- Q. Okay. Is he located here in Washington?
- A. She is.
- Q. She is. Sorry. And is she also employed by Waste Management Healthcare Solutions, Inc.?
- A. No.
- Q. Who is she employed by, if you know?
- A. I believe it's Waste Management Healthcare Solutions of Washington.
- Q. What's her name?
- A. Her name is Carol Dellumo.
- Q. So just so I understand, her job is basically field all the calls, for whatever reason, for people who don't have a direct representative like you. Right?
- A. Correct. Either/or. The customers that I deal with directly, they have that number, as well.
- Q. Okay.
- A. So she can –
- Q. She's responsible for fielding calls from any Washington customer?
- A. That's correct.
- ...
- Q. I was thinking with respect to customer service. You know, when customers call in and need help, are there plans for how to handle increased – what I assume would be increased call volume with increased customers [if statewide authority is granted]?

A. Correct. Not – not a specific plan or a specific amount of customers that I know of right now that would have to be put on, but the plan would be to add account management on the streets that would be able to be face to face, as well as internal representatives to field calls.

...

Q. Does Waste Management Healthcare Solutions, Inc., have a call center not just dedicated to setting up customers, but for providing customer service, as well?

A. They do, but we are not a part of that.

Q. Okay. Do you know where that's located?

A. I believe it's in New Jersey.

Q. But does that provide – what other parts of the country does that provide service to, if you know?

A. I don't know, but I think most of the country.

Q. Okay. But not Washington?

A. Not our Pacific Northwest; Washington, Oregon, northern Idaho.

Q. Do you know why?

A. I don't.

Q. So it's possible at least that a solution to increased customers would be either rope in the resource of that call center; right?

A. Yes.

Q. Do you know if that's been discussed?

A. I don't know.

...

Q. You mentioned – just to clarify, you mentioned that there was currently a local account representative position open for the Northwest. Is that correct?

A. Correct.

Q. Has there been an employee to fill that in the past, or is that a new position that's been created?

A. We've had – yes, we've had other employees that have had similar positions, maybe a different name. But, yes, the names have changed. Like my title changed, but similar positions as account management.

Q. And in the past, has there been an account management employee who was qualified to and directed to provide services related to medical waste?<sup>65</sup>

By this point, Stericycle had gone far afield from the question of how and who at Waste Management handles biomedical waste customer services issues in Washington. Having asked questions about customer service for an hour and a half,<sup>66</sup> this question was improper because it goes to the proscribed “prior [Waste Management] experience in the field,”<sup>67</sup> and it has nothing to do with any of the generator complaints about Stericycle's poor customer service reflected in the direct testimony filed in support of Waste Management's application. Stericycle's motion to compel further testimony should be denied.

**2. “Does the machine take the lids off the containers, or is that done by hand?”<sup>68</sup>**

24. Stericycle contends this question concerning the handling of sharps containers was proper because it concerns “an issue of safety and, hence, whether the services are in the public interest.”<sup>69</sup> Again, we supply the context.

Q. So talking about – now talking about sharps generally, what we've just been talking about, that applies not only just to ecoFinity, but for all the sharps that Waste Management collects; right?

A. Correct.

Q. Because Waste Management collects a lot of sharps outside the ecoFinity program; correct?

A. That's correct.

Q. And those are all collected under the normal biomedical waste services; correct?

A. Correct.

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<sup>65</sup> Schow Decl., Ex. 7 at 36:10-55:24 (emphasis added).

<sup>66</sup> *Id.* at 56:19.

<sup>67</sup> Order 01 ¶ 8.

<sup>68</sup> Schow Decl., Ex. 7 at 118:24-25.

<sup>69</sup> Stericycle's Third Mot. to Compel at 6:26-7:1.



- Q. Am I also correct in understanding that, outside the ecoFinity program, those sharps containers are all single-use disposable containers?
- A. Correct. They're all processed and disposed of, correct.
- Q. In the landfill?
- A. Correct.
- Q. And that's the vast majority of all the sharps waste that you collect; correct?
- A. Correct.
- Q. So leaving aside ecoFinity for just a second, when these other kinds of sharps make it to the Seattle facility, how are they handled for processing?
- A. They are basically dumped into a steel bin and put into an autoclave for treatment. They're usually mixed with other waste. It's not just sharps in that container – or in those tubs.
- Q. Are they dumped by hand or is there a machine that does that?
- A. There's a machine.
- Q. Does the machine take the lids off the containers, or is that done by hand?<sup>70</sup>

25. Neither the question at issue – which finally drew an objection – nor *any* of the prior questions has anything to do with the two competitive service issues<sup>71</sup> about which *Stericycle* has a “legitimate interest.”<sup>72</sup> Examination of Waste Management’s fitness “is the responsibility of the Commission, not private parties, particularly when those private parties are competing service providers. Protestants are not entitled to engage in discovery on issues that do not affect them.”<sup>73</sup> *Stericycle*’s motion to compel further testimony should be denied.

**3. “Is this a contract in which Waste Management – WM Healthcare Solutions, Inc., is acting as an agent for Skagit Valley to sort of coordinate the services both of the City and of Waste Management of Washington, Inc.?”<sup>74</sup>**

26. *Stericycle* contends this is a proper question to ask Mr. Norton because it “goes to understanding which companies provide services to Washington customers or purport to act as

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<sup>70</sup> Schow Decl., Ex. 7 at 117:19-118:25 (emphasis added).

<sup>71</sup> Order 05 ¶ 11.

<sup>72</sup> Order 03 ¶ 17.

<sup>73</sup> *Id.*

<sup>74</sup> Schow Decl., Ex. 7 at 179:14-17.

their agents in contracting for regulated services” and because *Mr. Daub’s declaration* about Waste Management’s fitness described for the Commission Waste Management’s relationship with its corporate affiliates.<sup>75</sup> At the deposition, Stericycle’s counsel claimed that this question was proper because it went to “regulatory fitness.”<sup>76</sup> Again, the context.

Q. This is a contract with Skagit Valley Hospital. It’s not signed by WM Healthcare Solutions, Inc., but is this contract still in effect, to your knowledge?

A. It has been amended, but this is the original, yes.

Q. And the parties to this contract are Skagit Valley Hospital and WM Healthcare Solutions, Inc.; correct?

MS. GOLDMAN: Objection. The contract speaks for itself.

A. Correct.

Q. Did you negotiate this contract?

A. Yes.

Q. And who is providing service to Skagit Valley Hospital?

A. What service?

Q. Medical waste service.

A. Waste Management.

Q. Which Waste Management company?

A. Waste Management of Washington, or Healthcare Solutions of Washington.

Q. And who is providing solid waste service?

A. City of Mount Vernon.

Q. Okay. Was solid waste part of this when it was originally negotiated?

A. Yes.

Q. Did the City of Mount Vernon change its carrier?

A. No. It’s a city franchise. The City takes care of it.

Q. Okay. What solid waste services are provided under this agreement?

A. Solid waste services?

Q. Yes.

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<sup>75</sup> Stericycle’s Third Mot. to Compel ¶ 23.

<sup>76</sup> Schow Decl., Ex. 7 at 180:11-21.

A. Let's see here. If you look at Addendum A, which is WM 224, it explains the different services. There's a 30-yard compactor for solid waste at the hospital, there's a 20-yard compactor at the kidney center, and an open top in the loading dock –

Q. Right.

A. – for C and D.

Q. There are collection services; right?

A. That's correct.

Q. Okay. So Waste Management provides solid waste collection to Skagit Valley?

A. No. City of Mount Vernon provides it. They bill us.

Q. Okay. So you're just really managing their waste up to the point of collection, then?

A. Correct, yeah. We're not – we don't have any service trucks that are providing for their solid waste.

Q. So there's no transportation services for solid waste involved in this contract?

A. That's correct.

Q. There are transportation services for regulated medical waste?

A. That's correct.

Q. And those are provided by WM Healthcare Solutions?

MS. GOLDMAN: Objection. Mischaracterizes the testimony.

A. Waste Management, yeah – Healthcare Solutions of Washington, yes.

Q. But the contract is with Waste Management Healthcare Solutions, Inc.; right?

A. That's correct.

Q. So is it then the case that WM Healthcare Solutions, Inc., is contracting out the services to Waste Management of Washington?

A. Correct.

Q. Is this a contract in which Waste Management – WM Healthcare Solutions, Inc., is acting as an agent for Skagit Valley to sort of coordinate the services both of the City and of Waste Management of Washington, Inc.?<sup>77</sup>

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<sup>77</sup> Schow Decl., Ex. 7 at 176:24-179:17 (emphasis added).

27. This question, and the ones that preceded it, have nothing to do with the two competitive service issues<sup>78</sup> about which *Stericycle* has a “legitimate interest.”<sup>79</sup> The Presiding Officer has prohibited an “exploratory effort to try and look behind Waste Management’s practices” for evidence “that Waste Management is operating illegally or unlawfully or inconsistent with Commission rules or its own tariff.”<sup>80</sup> The Presiding Officer has repeatedly rejected Stericycle’s self-professed prosecutorial authority here. Stericycle’s motion to compel further testimony should be denied.

#### **4. Questions regarding rebating.**

28. Stericycle contends that it should be permitted to conduct discovery regarding “the issue of unlawful rebating of regulated biomedical waste rates.”<sup>81</sup> Stericycle acknowledges that at the August 8<sup>th</sup> hearing, the Presiding Officer prohibited precisely such discovery but contends that the prior ruling no longer controls because Waste Management subsequently produced an email which Stericycle interprets to be “express” proof of “unlawful rebating” at Northwest Hospital and Valley Medical Center. But that is precisely the same argument Stericycle made at the August 8 hearing *after* the Presiding Officer had repeatedly rejected the “rebating” discovery demanded by Stericycle.

We have, actually, a declaration in the file that supports the notion that Waste Management has in fact offered a recycling discount to Northwest Hospital as an inducement for them to move their waste collection service to Waste Management. That’s not hypothetical, it’s not speculation, it’s particular people having told particular people of these facts.<sup>82</sup>

The Presiding Officer was unambiguous in ordering that he did not “want to hear anything more on that. I think that that’s farther afield than we are going here. If you have concerns about what Waste Management is doing, you can always file a complaint.”<sup>83</sup> Stericycle has since filed a

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<sup>78</sup> Order 05 ¶ 11.

<sup>79</sup> Order 03 ¶ 17.

<sup>80</sup> Schow Decl., Ex. 1 at 95:7-16.

<sup>81</sup> Stericycle’s Third Mot. to Compel ¶ 26.

<sup>82</sup> Schow Decl., Ex. 1 at 95:17-24.

<sup>83</sup> *Id.* at 92:14-20.

complaint challenging what it believes to be Waste Management's illegal rebating. This Application proceeding continues to be an improper forum for Stericycle to explore its rebating theory. The Presiding Officer made this very clear: "I don't want to hear from you about what you think Waste Management is doing wrong in its current service territory. That's not what we are here to talk about."<sup>84</sup> Stericycle's refusal to take "no" for an answer should be firmly admonished, and Stericycle's motion to compel further testimony should be denied.

## VI. CONCLUSION

29. The sheer volume of materials which have been produced by Waste Management in response to data requests, the amount of resources which have been devoted to discovery, and the time and energies spent on battling over disputes is far disproportionate to what is reasonably necessary. Stericycle stubbornly ignores the clear bounds demarcated by the Commission and litigiously pursues every nook and cranny in a manner that shocks the conscience. Its request to compel the deposition of Jeff Daub and to continue the questioning of Jeff Norton must be rebuffed. Waste Management requests that the Commission deny Stericycle's Third Motion to Compel. Enough is enough.

DATED this 31st day of October, 2012.

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<sup>84</sup> Schow Decl., Ex. 1 at 93:14-21.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method indicated below, pursuant to WAC 480-07-150.

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DATED at Seattle, Washington, this 31st day of October, 2012.

Deanna L. Schow