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GARVEY SCHUBERT BARER

A PARTNERSHIP OF PROFESSIONAL CORPORATION

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August 3, 2004

**VIA MAIL AND EMAIL**

Hon. Ann E. Rendahl  
 Administrative Law Judge  
 Washington Utilities & Transportation Commission  
 P.O. Box 47250  
 Olympia, WA 98504-7250

Re: Consolidated Docket Nos. TG-040221, TG-040248 and TG-040553

Dear Judge Rendahl:

I write to you in response to the letter written by Jim Sells, dated July 28, 2004, requesting your guidance on the applicability to generator witnesses of the August 13, 2004 deadline for applicants to prefile testimony in these consolidated cases.

I note that Mr. Sells seeks not only clarification with respect to the applicability of the August 13 deadline to the prefiled testimony of shipper/generator witnesses, but also requests your concurrence in his position that applicants are not required to identify their shipper/generator witnesses to protestants until "a few days before the hearing." Since Stericycle submitted Data Requests to both LeMay and Kleen pursuant to the Commission's discovery rule, WAC 480-07-400, requesting that applicants identify and describe the anticipated testimony of all witnesses they intend to call to testify at the hearing, including shipper/generator witnesses, Mr. Sells is actually asking you to rule on the propriety of these Stericycle Data Requests, as they apply to such witnesses.

Stericycle's position on the substance of Mr. Sells' requests is as follows:

(1) If applicants wish to file written testimony for any shipper/generator witnesses, then they must serve and file such written testimony on or before August 13, 2004, in accordance with the prehearing order in this case.

(2) Stericycle agrees that it is generally inappropriate for an applicant to present the testimony of shipper/generator witnesses in the form of written testimony. Therefore, it is Stericycle's view that applicants should not be required to prefile the testimony of shipper/generator witnesses.

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(3) Applicants LeMay and Kleen must identify all witnesses they intend to call as witnesses at the hearing, including shipper/generator witnesses currently known to them, and provide a brief summary of the substance of their anticipated testimony in response to the Data Requests that Stericycle served on them prior to the July 16, 2004 discovery cut-off in these cases.

Stericycle is preparing a motion to compel LeMay and Kleen to provide the information sought in Stericycle's Data Requests, including the identity of shipper/generator witnesses known to applicants and a summary of their anticipated testimony. The witnesses that a party intends to call at hearing and the substance of the anticipated testimony are clearly appropriate subjects for discovery. The prehearing order permits discovery pursuant to WAC 480-07-400.

Although Mr. Sells asserts, that protestants (presumably including his client, Harold LeMay Enterprises, Inc.) may "solicit[], otherwise embarrass[], or even harass[]" these witnesses," Stericycle believes this concern is far-fetched in the context of the medical waste collection business and is clearly outweighed by the interests of protestant Stericycle in knowing the basis for the alleged "shipper need" for applicants' proposed services so that Stericycle can prepare its case for hearing.


Medical waste generators are commercial enterprises. Physicians and dentists are highly educated and fully capable of fending off unwanted solicitations from either applicants or protestants. Other medical waste generators are large companies or medical institutions. The notion that witnesses representing physicians, dentists, medical enterprises or medical institutions will allow themselves to be embarrassed or harassed by medical waste collection companies who seek their support in the upcoming hearings is not credible.

A critical issue in the hearings on these applications will be the alleged generator need for the applicants' services. The Commission should not allow this critical issue to be addressed through a form of "trial by ambush." This is precisely what pre-hearing discovery is supposed to avoid. Stericycle is entitled to know well in advance of the hearing which shipper/generator witnesses applicants intend to call in support of their applications, as well as the substance of their anticipated testimony. Without such information, Stericycle will not be able to prepare its case for the hearing.

Sincerely,

GARVEY SCHUBERT BARER

By



Stephen B. Johnson



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Cc: James K. Sells (via mail and email)  
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Gregory J. Trautman (via mail and email)  
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