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January 9, 2012

VIA EMAIL AND U.S. MAIL

David W. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, SW
P. O. Box 47250
Olympia, WA 98504-7250

2012 JAN 11 AM 8:21
STATE OF WASHINGTON
UTILITY AND TRANSPORTATION
COMMISSION
RECEIVED
PERSONNEL MANAGEMENT

Re: Application of Waste Management of Washington, Inc. for Temporary Biomedical Waste Collection Authority, TG-120034

Dear Secretary Danner:

We are attorneys for Stericycle of Washington, Inc., holder of certificate G-244, and are writing to you in that capacity.

We have reviewed the application for temporary authority filed by Waste Management of Washington, Inc., seeking to extend Waste Management's authority to collect biomedical waste beyond the territory covered by G-237. Waste Management's application for temporary biomedical waste collection authority should be denied for the reasons set out below.

WAC 480-70-131(2) provides that the Commission may grant temporary solid waste collection authority if it determines that granting the requested authority is "consistent with the public interest" based on an evaluation of the following factors:

- (a) The fitness of the applicant.
- (b) The immediate or urgent need for the requested service. . . .
- (c) Whether the requested service is currently available from an existing company serving the territory; and
- (d) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

WAC 480-70-131(3) requires applicants for temporary authority to submit "signed and sworn statements from one or more potential customers identifying all pertinent facts relating to need for the proposed



service.” (Emphasis added.) It follows that the applicant is limited to its potential customers’ sworn statements to establish “all pertinent facts” relevant to the Commission’s decision.

Waste Management’s application for temporary authority is in derogation of the rights of other certificate holders who hold existing authority in the territory covered by the application, including Stericycle. Permanent authority for such overlapping authority can only be granted if the Commission finds, after notice and hearing, that existing carriers “will not provide service to the satisfaction of the commission.” The Commission’s rules do not provide for notice and hearing before the Commission determines an application for temporary authority. Accordingly, where, as here, an applicant seeks temporary authority without a hearing in a territory already served by existing carriers, the applicant must carry a particularly heavy burden to demonstrate that a grant of temporary authority is in the public interest.


Waste Management’s application for temporary authority entirely fails to establish that there is an “immediate or urgent need” for the proposed service. Waste Management’s application fails to establish any “need” whatsoever, much less a need that is “immediate” or “urgent” and thus justifies a grant without a hearing of temporary overlapping authority. Neither Waste Management’s application nor the single shipper statement offered in its support identify any features of Waste Management’s proposed service that are not “currently available from an existing company serving the territory;” i.e., from Stericycle.

In support of its application, Waste Management filed a “sworn statement” by a representative of only a single generator: Pathology Associates Medical Laboratories (“PAML”). PAML’s statement recites that PAML uses Waste Management for service to facilities located within the territory covered by G-237 and that PAML would like to use Waste Management’s services at its other locations in Washington. The stated reason: “It will promote efficiencies, eliminate administrative redundancies, and reduce internal overhead costs to use one company.” However, the alleged efficiencies to be derived from using a single carrier to serve all of PAML’s facilities can be achieved now, without a grant of Waste Management’s application, by obtaining service from Stericycle.

Waste Management’s application for temporary authority fails to establish an “immediate” or “urgent” need for the proposed service and must be denied.

Very truly yours,

GARVEY SCHUBERT BARER

By 
Stephen B. Johnson

cc: Polly L. McNeill, Esq.
Frona Woods, Esq.
Mr. Michael Philpott