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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Application of  
WASTE MANAGEMENT OF  
WASHINGTON, INC.  
d/b/a WM Healthcare Solutions  
of Washington  
720 4th Ave. Ste 400  
Kirkland, WA 98033-8136

Docket No. TG-120033

PROTESTANT STERICYCLE OF  
WASHINGTON, INC.'S POST-HEARING  
BRIEF

PROTESTANT STERICYCLE OF WASHINGTON, INC.'S POST-  
HEARING BRIEF

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1           **I.       INTRODUCTION**

2           1.       In this application proceeding Waste Management of Washington, Inc. (“Waste  
3 Management”) seeks new authority from the Commission to provide biomedical waste  
4 collection and transportation services to generators in the large portion of Washington that it  
5 does not already serve. Stericycle of Washington, Inc. (“Stericycle”) opposes this application  
6 because it already provides comprehensive, quality biomedical waste services to generators in  
7 the application territory.

8           2.       Under the governing solid waste statute, to obtain overlapping authority in  
9 territory already served by another service provider – overcoming the presumption in favor of  
10 exclusive service territories – Waste Management must prove that Stericycle will not serve the  
11 application territory to the satisfaction of the Commission. To do so, Waste Management must  
12 present strong proof from testimony of biomedical waste generators in the application territory  
13 that Stericycle’s biomedical waste collection and disposal services do not satisfy the  
14 generators’ specialized needs. Waste Management must then prove that granting its application  
15 to provide its overlapping biomedical waste services is in the public’s interest.

16           3.       Waste Management has not met this burden. The testimony of witnesses  
17 representing biomedical waste generators in the application territory does not identify any  
18 unmet needs for biomedical waste service. In fact, the evidence strongly establishes that  
19 Stericycle does provide and will continue to provide service to the satisfaction of the  
20 Commission. Moreover, Waste Management’s proposed services will not serve the public  
21 interest because they fail to meet any service need, provide redundant or inferior service, all  
22 while threatening the stability of cost-effective service to rural generators.

23           4.       For each of these reasons, the Commission should deny Waste Management’s  
24 application for new, overlapping biomedical waste authority.  
25  
26

1           II.     ARGUMENT AND AUTHORITY

2     A.     Waste Management has Failed to Prove that Stericycle Will Not Provide Service to  
3           the Satisfaction of the Commission as Required by RCW 81.77.040.

4           1.     Waste Management must prove that Stericycle's services do not meet the  
5                 specialized needs of biomedical waste generators in the application territory.

6           5.     RCW 81.77.040 prohibits any person from operating as a solid waste collection  
7     company unless the Commission first issues a certificate "declaring that the public convenience  
8     and necessity require such operation." "When an applicant requests a certificate to operate in a  
9     territory already served by a certificate holder under this chapter, the commission may, after  
10    notice and an opportunity for a hearing, issue the certificate only if the existing solid waste  
11    collection company or companies serving the territory will not provide service to the  
12    satisfaction of the commission . . . ." RCW 81.77.040 (emphasis added). It is the burden of the  
13    applicant, here Waste Management, to prove that Stericycle will not provide service to the  
14    satisfaction of the Commission in the territory covered by Waste Management's application for  
15    new authority. *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, App. No. GA-  
16    75968 (Nov. 19, 1993), at p. 12 ("An applicant for solid waste authority has the burden of  
17    demonstrating that the services it proposes are required by the public convenience and  
18    necessity.").

19           6.     Early in this proceeding the Commission ordered briefing on the legal standard  
20    that governs this decision and the factual showing that Waste Management must make to  
21    satisfy the standard. *See* Order 01, ¶6. The Commission held that the satisfactory service  
22    inquiry addresses customer needs and that "the satisfactory nature of service by providers of  
23    specialized solid waste collection services is measured according to the specialized needs of  
24    customers." Order 05, ¶8 (quoting *In re Application GA-75154 of Ryder Distribution Services,*  
25    *Inc.*, Order M.V.G. No. 1596 at 11 (Jan. 25, 1993) (emphasis in original)). The Commission  
26    will consider the testimony of "professional[s] in the body of knowledge at issue" "about the  
  requirements of the service they need." Order 05, ¶10 (quoting *In re Application GA-76820 of*

1 *Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707 at 4 (May 25, 1994)).  
2 Ultimately, Waste Management must prove through the testimony of biomedical waste  
3 generators that “the biomedical waste collection service currently provided in the territory  
4 Waste Management proposes to serve does not satisfy the specialized needs of customers in  
5 that area as the customers determine those needs . . . .” Order 05, ¶11.

6 7. This is the correct legal standard and burden of proof, and highlights several  
7 additional elements identified in the Commission’s precedents that govern applications for  
8 overlapping biomedical waste authority. First, it is Waste Management’s burden to make a  
9 strong showing that Stericycle will not provide satisfactory service in the territory covered by  
10 Waste Management’s application. *In re Sureway Medical Services, Inc.*, Order M.V.G. No.  
11 1663, App. No. GA-75968 (Nov. 19, 1993), at p. 12; *In re R.S.T. Disposal Co.*, M.V.G. No.  
12 1402, App. Nos. GA-845 and GA-851 at pp. 15-16 (July 31, 1989) (stating that RCW  
13 81.77.040 requires “an applicant to make a strong showing that the existing carrier will not  
14 serve the territory in question to the satisfaction of the Commission.”). This showing must be  
15 based on the testimony of generators in the application territory – the testimony of Waste  
16 Management personnel is not relevant. *In re Sureway Medical Services, Inc.*, Order M.V.G.  
17 No. 1674, Hearing No., GA-75968 at 5, n.3 (Dec. 20, 1993) (“The Commission requires that  
18 need be shown through the testimony of persons who require the service.”); *see also In re*  
19 *SafeCo Safe Transport, Inc.*, Order M.V. No. 143916, Hearing No. P-73623 at 10 (Oct. 9,  
20 1991) (In a motor carrier application case raising the issue of public need, disregarding the  
21 testimony of an applicant’s employee and holding that “[a]n applicant may not present  
22 testimony about the needs of others for its own services.”).

23 8. Second, the satisfactory service inquiry does not consider Waste Management’s  
24 fitness, proposed service, or arguments that that service is superior to Stericycle’s service. “At  
25 this stage . . . the Commission is not in the position of choosing between the better of two  
26 applicants. The Commission is determining whether existing service is unsatisfactory to a

1 degree that competition is justified despite the statutory preference for exclusive service  
2 territories.” *In re Superior Refuse Removal Corp.*, M.V.G. No. 1639, App. No. GA-896 at p.  
3 12 (June 30, 1993); *see also Superior Refuse Removal, Inc. v. Washington Utilities and*  
4 *Transportation Commission*, 1997 Wash. App. LEXIS 787 at 6 (Wash. Ct. App. May 22, 1997)  
5 (“The Commission considers its satisfaction with the existing service before it examines the  
6 public’s need and the applicant’s fitness . . . . Indeed, it is only logical to address the question  
7 of satisfactory service first. The answer to that question may foreclose granting the applicant a  
8 certificate, regardless of its fitness to serve.”).

9 9. Third, the satisfactory service inquiry is focused on biomedical waste  
10 generators’ specialized service requirements related to biomedical waste. The Commission  
11 gives generator testimony concerning their service requirements “considerable weight” because  
12 biomedical waste generators, as healthcare providers, “are in a unique position to evaluate the  
13 risks and benefits of collection and disposal service from their own professional training and  
14 experience.” *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G.  
15 No. 1596 at 11 (Jan. 25, 1993). Ultimately, overlapping authority may not be granted to Waste  
16 Management unless it presents strong proof from testimony of biomedical waste generators in  
17 the application territory that they have specialized service requirements that Stericycle does not  
18 meet. *See, e.g., In re Ryder Distribution Resources, Inc.*, Order M.V.G. 1716, Hearing Nos.  
19 75154 and 77539 at 12 (Aug. 11, 1995) (citing generator testimony stating need for single  
20 carrier transportation and disposal, Stericycle’s non-incineration disposal method, customer  
21 training, and puncture-proof containers); *In re Application GA-75154 of Ryder Distribution*  
22 *Services, Inc.*, Order M.V.G. No. 1596 at 23-25 (Jan. 25, 1993) (citing generator testimony  
23 stating need for Stericycle’s non-incineration method of disposal, waste tracking, and  
24 integrated collection and disposal services); *In re American Environmental Management Corp.*,  
25 Order M.V.G. No. 1452, Hearing No. GA-874 at 8 (Nov. 30, 1990) (describing the then-unmet  
26 need for segregation and specialized packaging of infectious waste and finding that existing

1 solid waste providers were not “specially equipped and trained to meet the demonstrated need  
2 for specialized, infectious waste collection service” which has “distinct and different  
3 operational requirements.”).

4 10. In deciding the legal standard and burden of proof on the satisfactory service  
5 issue, the Commission has rejected Waste Management’s contention that the Commission  
6 favors competition between more than one biomedical waste collection company and that a  
7 lack of competition demonstrates that an existing service provider will not provide service to  
8 the satisfaction of the Commission. *See* Order 05, ¶¶4, 9, 10 (“None of the Commission’s  
9 decisions . . . can reasonably be interpreted to hold that a desire for competitive alternatives,  
10 without more, is sufficient to find that incumbent providers will not provide service to the  
11 satisfaction of the Commission.”). Again, the Commission’s decision is supported by clear and  
12 longstanding Commission precedent. The Commission has clearly stated its “consistent view  
13 that mere desire for a backup carrier in the event of possible discontinuance of, or deterioration  
14 in, existing service, or mere preference for competition, does not demonstrate a need for an  
15 additional carrier.” *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1674, Hearing  
16 No., GA-75968 at 4-5 (Dec. 20, 1993). Thus, generator testimony stating an alleged need for a  
17 competitive alternative to Stericycle, or for a back-up provider, does not demonstrate public  
18 need and, hence, is not evidence that Stericycle will not provide service to the satisfaction of  
19 the Commission.

20 11. One aspect of the Commission’s Order 05 merits further discussion. In adopting  
21 the correct legal standard and burden of proof on the satisfactory service issue, the Commission  
22 disagreed with Stericycle’s supporting argument that the statute and Commission precedent  
23 establish a preference for exclusive service territories and, therefore, that Waste Management  
24 faces a heavy burden of proof on its application to become the second (and in some areas the  
25 third) service provider in the application territory. Although Waste Management’s evidence  
26 from biomedical waste generators fails to meet the standard for granting overlapping authority



1 by any measure, that conclusion is strongly supported by the fact that RCW 81.77.040 has been  
2 uniformly interpreted by the Commission to favor exclusive service territories.

3 12. In one sense the statutory preference for exclusive service territories is  
4 unarguable. RCW 81.77.040 places a unique burden of proof on an applicant for overlapping  
5 solid waste authority in a territory already served by an existing service provider. The statute,  
6 therefore, establishes a presumption in favor of exclusive service territories that, in the case of  
7 biomedical waste collection services, may be rebutted only by a strong showing of unmet  
8 specialized service needs.

9 13. However, the Commission has gone further than simply acknowledging the  
10 legal burden of proof and, hence, presumption created by RCW 81.77.040. The Commission  
11 has explicitly found that chapter 81.77 RCW states the *legislature's intent* to regulate solid  
12 waste collection through monopoly service territories and provide regulated service providers  
13 protection from competition. In an early biomedical waste case the Commission explained that

14 [t]he law regulating the transportation of solid waste for  
15 collection and disposal in Washington, Chapter 81.77 RCW,  
16 follows the pattern of utility regulation, in that it treats solid  
17 waste collection as a natural monopoly with efficiencies and  
18 public benefit gained through exclusive service in a territory.  
The law provides for service in territories in which a carrier may  
be the sole provider, but must in return offer nondiscriminatory  
service at regulated rates . . . .

19 *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663, App. No. GA-75968 (Nov. 19,  
20 1993), at p. 8. "The statutory standard of service to the satisfaction of the Commission  
21 'declares the Legislature's strong preference for regulated monopoly service in the collection of  
22 solid waste.'" *Superior Refuse Removal, Inc. v. Washington Utilities and Transportation*  
23 *Commission*, 1997 Wash. App. LEXIS 787 at 4 (Wash. Ct. App. May 22, 1997) (*quoting In re*  
24 *Superior Refuse Removal Corp.*, M.V.G. No. 1639, App. No. GA-896 (June 30, 1993)); *see*  
25 *also In re R.S.T. Disposal Co.*, M.V.G. No. 1402, App. Nos. GA-845 and GA-851 (July 31,  
26 1989), at pp. 15-16. "The legislature has determined that a monopoly-based system for solid

1 waste collection is consistent with the public interest.” *In re Medical Resource Recycling*  
2 *System*, M.V.G. No. 1633, App. GA-76819 at 2 (May 28, 1993).

3 14. The creation of regulated monopolies also indicates the legislature’s intent to  
4 protect incumbent service providers from competition. Under the parallel statute governing  
5 private ferry services, the Commission has expressly stated that “the Commission may not  
6 grant a certificate to operate in an area already served by an existing certificate holder, unless  
7 the existing certificate holder has failed or refused to furnish reasonable and adequate service . .  
8 . .” and that this requirement provides “considerable protection from competition as long as  
9 they continue to provide satisfactory service and comply with regulations.” Washington  
10 Utilities and Transportation Commission, *Appropriateness of Rate and Service Regulation of*  
11 *Commercial Ferries Operating on Lake Chelan: Report to the Legislature Pursuant to ESB*  
12 *5894*, p. 11 (Jan. 14, 2010).<sup>1</sup> The Commission described the legislature’s rationale for this  
13 protection as follows:

14 The combination of statutory protection from competition, on the  
15 one hand, and stringent regulation of rates and terms of service,  
16 on the other, has historically been adopted for industries believed  
17 to have characteristics of a ‘natural monopoly.’ Such industries  
18 typically have very high capital costs, benefit from economies of  
19 scale, and provide an indispensable service to the public. With  
20 respect to these industries, the legislature has made a judgment  
21 that the public’s interest in reliable and affordable service is best  
22 served by a single, economically regulated provider whose  
23 owners can make the sizable investments needed to initiate and  
24 maintain service without the threat of having customers drawn  
25 away by a competing provider. Other industries regulated under  
26 this model in Title 81 RCW are **solid waste (garbage) collection**  
**companies under RCW 81.77**, and auto transportation (fixed  
terminus bus) companies under RCW 81.68. **The rate and**  
**service regulations that apply to these industries are intended**  
**to provide a surrogate for the pricing discipline that would be**  
**exerted by a competitive marketplace.**

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25 <sup>1</sup> Available at:  
26 <http://www.utc.wa.gov/regulatedIndustries/transportation/commercialFerries/Pages/default.aspx>.

1 *Id.* (emphasis added). Whatever the merits of competition in other areas, the Commission has  
2 consistently acknowledged that the legislature's intent expressed in RCW 81.77 favors  
3 exclusive service territories over competition in regulated solid waste collection.

4 2. The evidence fails to prove that Stericycle's robust services do not meet the  
5 specialized needs of biomedical waste generators in the application territory and,  
6 instead, establishes that Stericycle provides satisfactory service.

7 15. Waste Management presented prefiled testimony from eight witnesses employed  
8 by biomedical waste generators (one of whom also represents an association of generators).  
9 Testimony from two witnesses representing associations of biomedical waste generators was  
10 presented by Stericycle. Whether considered in the aggregate or individually, this testimony  
11 fails to demonstrate generator need for specialized biomedical waste services not currently  
12 provided by Stericycle.

13 16. The most remarkable feature of the generator testimony is that not one of the 10  
14 generator witnesses identified a biomedical waste service requirement that they alleged was not  
15 provided by Stericycle. In fact, testimony from the majority of these witnesses shows that  
16 Stericycle provides biomedical waste services that meet their needs and/or about which they  
17 have no complaint. There is a complete absence of any proof that could satisfy Waste  
18 Management's burden to show that "the biomedical waste collection service currently provided  
19 in the territory Waste Management proposes to serve does not satisfy the specialized needs of  
20 customers in that area as the customers determine those needs . . . ." Order 05, ¶11.

21 17. Michael Philpott, Stericycle's Regional Operations Director, offered extensive  
22 and uncontested testimony about Stericycle's biomedical waste services. He explained  
23 Stericycle's commitment to the safety of its and its customers' employees, including driver  
24 safety training, the use of automated robots to handle sharps containers during processing, and  
25 on-site waste management by trained Stericycle employees. MP-1T, ¶15, 18, 42, MP-4  
26 (employee training requirements). Mr. Philpott explained Stericycle's commitment to

1 environmental sustainability, including its pioneering use of heat treatment processes instead of  
2 incineration and its use of 100% reusable sharps containers that reduce landfilled sharps waste  
3 by over half. MP-1T, ¶15, 48. Mr. Philpott identified Stericycle's customer training on the  
4 OSHA bloodborne pathogens rule, waste segregation, safe handling of waste, and compliance  
5 with DOT requirements for shipping biomedical waste. MP-1T, ¶16, 37. Mr. Philpott  
6 identified the range of different kinds and sizes of reusable plastic collection containers  
7 available to Stericycle's customers. MP-1T, ¶17, MP-3 (listing Stericycle's containers  
8 currently in use). Mr. Philpott extensively described Stericycle's procedures for collecting,  
9 documenting, and tracking waste shipments using bar code labels and scanners that create  
10 electronic shipping manifests, records documenting each stage of transportation and treatment,  
11 and reports to customers providing information about the waste they generated. MP-1T, ¶19-  
12 24, 50, MP-2 (Waste Acceptance Protocol), MP-5 (bar code labels), MP-6 (waste transportation  
13 and processing record), MP-7 (shipping manifests), MP-8 (customer waste report). Mr.  
14 Philpott described Stericycle's trucks and trailers that are specially equipped to safely transport  
15 biomedical waste. MP-1T, ¶25, MP-9 (vehicle spill kit inventory). Mr. Philpott described  
16 Stericycle's efficient management of its transportation network. MP-1T, ¶26-28, MP-10  
17 (Washington transportation network map). Mr. Philpott described Stericycle's unique sharps  
18 service that uses proprietary reusable sharps containers to eliminate over half of the sharps  
19 waste traditionally disposed of in landfills, and that also makes available proactive, in-facility  
20 sharps management by trained Stericycle personnel. MP-1T, ¶35-48, 50, MP-11 (FDA  
21 clearance to market reusable sharps containers), MP-12 (report demonstrating container reuse  
22 diverts more than half the weight of sharps waste from landfills), MP-14 (reusable container  
23 volume report). Finally, Mr. Philpott described in detail Stericycle's procedures for safely and  
24 effectively rendering biomedical waste non-infectious and returning clean reusable containers  
25 to customers. MP-1T, ¶30-34, 41-46.  
26

1           18. Not one representative of a biomedical waste generator in the territory covered  
2 by Waste Management's application testified that any of these service elements are inadequate  
3 or that additional, unavailable service features are necessary to meet their biomedical waste  
4 collection and disposal needs. Indeed, testimony from six of the 10 generator witnesses  
5 affirmatively shows that Stericycle's services are satisfactory. Ray Moore of the Peace Health  
6 system testified that Stericycle has been a "good partner" and that he was "absolutely" not  
7 testifying that Stericycle was not treating and disposing of biomedical waste safely and  
8 effectively. (394:2-7).<sup>2</sup> Terry Johnson of Lake Chelan Community Hospital was also clear that  
9 he was not testifying that any aspect of Stericycle's biomedical waste service was  
10 unsatisfactory. (237:16-19). Danny Warner, a practicing dentist and President of the  
11 Washington State Dental Association, testified that he has "no problem" with Stericycle's  
12 biomedical waste services "at all." (412:12-413:5). Even Emily Newcomer from the  
13 University of Washington's Seattle campus, which is not a generator in the application  
14 territory, nevertheless stated that the campus uses Stericycle's services despite having the  
15 option to use Waste Management and testified that she has "no complaints" about Stericycle's  
16 biomedical waste services. (543:15:24, 545:24-546:11). Finally, Jeff Mero and Taya Briley of  
17 the Association of Washington Public Hospital Districts and Washington Hospital Services,  
18 respectively, testified that Stericycle is "a reliable and cost-effective provider of biomedical  
19 waste management and collection services." JM-1T, ¶3, TB-1T, ¶3.

20           19. In short, Stericycle provides biomedical waste services to over 7,700 biomedical  
21 waste customers in Washington. MAW-9, 5 (Stericycle 2011 Annual Report, indicating 7,713  
22 customers). Of these 7,700, during the nearly year-long preparation of its application for  
23 hearing Waste Management found exactly none in the area covered by its application that  
24 alleged Stericycle's extensive service offerings do not meet their specialized needs for

25 \_\_\_\_\_  
26 <sup>2</sup> All citations to the hearing transcript will be made using parenthetical references to transcript  
page and line numbers.

1 biomedical waste collection and disposal. The testimony of over half of the testifying  
2 generator witnesses, including four offered by Waste Management, affirmatively demonstrates  
3 that Stericycle provides satisfactory biomedical waste collection and disposal services.

4 3. The general preference of a few generator witnesses for competition is not  
5 evidence of an unmet need for specialized biomedical waste services.

6 20. In prefiled testimony most of the eight generator witnesses proffered by Waste  
7 Management expressed a desire for a competitive alternative to Stericycle's biomedical waste  
8 services. In the words of some generators, they want "leverage" over Stericycle. JL-1T, 3:14,  
9 EN-1T, 4:5-7. The hearing testimony makes clear, however, that these generators only want  
10 generic competition, not competition from Waste Management specifically and not because of  
11 any unique features of Waste Management's proposed services. For example, Rodger Lycan of  
12 Pathology Associates Medical Laboratories (PAML) testified that he merely wants competition  
13 "in the general sense." (443:21-23). Indeed, Mr. Lycan, Julie Sell of Olympic Medical Center,  
14 Jean Longhenry of Wendel Family Dental Centre, Carla Patshkowski of the Providence  
15 Medical Group, Mr. Moore of Peace Health, and Mr. Johnson of Lake Chelan Community  
16 Hospital all testified that their desire for competition (or a back-up service) is generic because  
17 the competing service does not have to be Waste Management's service. (215:6-12, 238:12-17,  
18 (244:23-25). 323:21-25, 393:19-394:1, 443:14-23, 481:4-13).

19 21. This testimony is irrelevant to determining whether Stericycle will provide  
20 service to the satisfaction of the Commission. Commission precedent unambiguously holds  
21 that a general preference for competition (or for a back-up service provider) is not evidence that  
22 an incumbent service provider will not provide service to the satisfaction of the Commission.  
23 *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1674, Hearing No., GA-75968 at 4-5  
24 (Dec. 20, 1993) ("mere desire for a backup carrier . . . or mere preference for competition, does  
25 not demonstrate a need for an additional carrier."). The generators could not have been clearer  
26 that they do not prefer competition because Waste Management fills a service need that

1 Stericycle does not but, rather, they simply want the perceived benefits of a competitive  
2 marketplace instead of the regulated marketplace the legislature created in RCW 81.77.

3 22. Even if this preference for generic competition were relevant, the generator  
4 witnesses' testimony merely speculates about the perceived benefits of competition in a  
5 regulated service market without any basis in professional knowledge or experience. For  
6 example, generators admitted they have no expertise, have not assessed the effects of  
7 competition in the regulated medical waste market, and or failed to consider the possibility that  
8 competition might actually lead to cost cutting and lower quality services. (324:1-4, 324:25-  
9 325:14) (Ms. Longhenry), (442:8-18, 443:3-7, 444:21-23) (Mr. Lycan), (409:8-18, 410:3-15)  
10 (Dr. Warner), (559:13-17) (Ms. Newcomer). Dr. Warner even admitted that his testimony  
11 about the alleged benefits of competition is a "generic assumption" and "advocacy." (409:8-  
12 18). And Mr. Lycan simply admitted that his testimony in favor of competition is his "personal  
13 opinion" and that he "doesn't really know" what the result of competition would be. (443:3-  
14 13). This testimony cannot establish a need for specialized services because the generator's  
15 uninformed belief in competition is not testimony of "professional[s] in the body of knowledge  
16 at issue" "about the requirements of the service they need." Order 05, ¶10 (quoting *In re*  
17 *Application GA-76820 of Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707 at  
18 4 (May 25, 1994)).

19 23. The generator witnesses' unsupported testimony is also contradicted by the fact  
20 that during the 13 years in which Stericycle has operated without a statewide competitor, it has  
21 continuously improved its services and has not raised its prices despite general inflation. Mr.  
22 Philpott offered un rebutted testimony that in these 13 years Stericycle innovated to meet  
23 customer need, for example by introducing reusable sharps containers and in-facility sharps  
24 management that did not previously exist in Washington. MP-15T, ¶¶7-8. Mr. Philpott also  
25 testified that in this time Stericycle introduced a range of different reusable biomedical waste  
26 containers, an OSHA compliance program, and a secure, on-line database of customer shipping

1 manifests even when it faced no statewide competition. MP-15T, ¶¶9-11. Finally, during 13  
2 years without statewide competition Stericycle has *lowered* the real costs of its services to  
3 Washington generators by declining to raise its prices even though general inflation has  
4 increased prices of goods and services by 68%. MP-15T, ¶15. Stericycle's service and price  
5 improvements without statewide competitive pressure demonstrate that the generators'  
6 unsupported opinions about the assumed benefits of competition are not correct.

7 4. The isolated complaints of a few generator witnesses about Stericycle's  
8 customer service do not demonstrate that Stericycle will not provide service to  
9 the satisfaction of the Commission.

10 24. Five of the eight generator witnesses proffered by Waste Management submitted  
11 prefiled testimony alleging specific incidents of customer service or service delivery errors. In  
12 its post-hearing brief the Commission Staff addressed these allegations. Although the staff  
13 observed that the record contains "some evidence of deficiencies in the service provided by  
14 Stericycle," it concluded that "Staff does not believe that these deficiencies, by themselves, are  
15 enough to support a finding that Stericycle will not provide service to the satisfaction of the  
16 Commission under RCW 81.77.040." Staff Post Hearing Brief, ¶26.

17 25. As discussed in more detail below, this is the correct conclusion. Regardless of  
18 their veracity, these complaints are few in number, relatively minor, isolated, and are consistent  
19 with the operations of a company that generally provides competent and responsive service to  
20 over 7,700 customers, including thousands within the application territory. Despite this large  
21 number of customers, Stericycle's complaints record has been exemplary. In Stericycle's 20  
22 years of service, only six complaints have been made to the Commission, and only two of those  
23 have been upheld. MP-15T, 9:3-13, MP-20. This record, and the small handful of complaints  
24 alleged in this proceeding by witnesses selected to support Waste Management's application,  
25 are entirely consistent with quality service. For example, Waste Management's larger solid  
26 waste operations have been the subject of hundreds of complaints to the Commission, which



1 have been upheld at a rate similar to, though slightly higher than, complaints against Stericycle.  
2 MP-15T, 9:15-21, MP-21. Large service providers, attempting to provide cost effective  
3 services to many customers using call centers and automated billing, will inevitably suffer  
4 some customer service and service delivery errors. As the Staff concluded, this does not mean  
5 that they will not provide service to the satisfaction of the Commission.

6 26. Finally, as discussed with respect to specific generators below, although a very  
7 small number of these complaint allegations do reflect a customer service error by Stericycle,  
8 subsequently corrected, many are not supported by the evidence or simply reflect the witness'  
9 lack of involvement and knowledge.

10 5. The few isolated customer service complaints were largely contradicted by the  
11 generator witnesses on cross examination, were exaggerated, or were  
12 unsupported by the witness' knowledge.

13 27. Unfortunately, the prefiled testimony of some generator witnesses must be  
14 discounted because of contradictions and outright reversals during cross-examination. For  
15 example, Ms. Longhenry of Wendel Family Dental Centre alleged "on-going, monthly errors in  
16 Stericycle's bills" in her prefiled testimony but at the hearing admitted that there had actually  
17 been only one billing error (which was corrected). JL-1T, 3:9-10; (317:18-318:1) ("Q: It's not  
18 that there were . . . multiple different billing errors on different occasions? A: Right.").  
19 Although Ms. Longhenry also offered prefiled testimony complaining that Stericycle  
20 representatives responded to complaints about the error by email, she ultimately admitted that  
21 resolving this billing error involved no email communication at all. JL-1T, 3:10-12, (319:6-15)  
22 ("Q: . . . So there was no issue with e-mails when it came to the billing errors? A: No . . .").  
23 On cross-examination she attempted to change her testimony to complain about Stericycle's  
24 use of email when she reinitiated service in 2012. (319:6-15, 19-22). However, Ms.  
25 Longhenry submitted no emails to support this changed testimony and admitted that she had  
26 given her email address to Stericycle as contact information and never indicated that it should

1 not be used. (320:2-19, 321:4-8). Ms. Longhenry's attempts to exaggerate and alter her  
2 allegations undermine the credibility of her testimony.

3 28. In the same vein, Julie Sell offered pre-filed testimony stating that "Olympic  
4 Medical Center has no local Stericycle contact." JS-1T, 3:9-11. At the hearing, however, she  
5 repeatedly contradicted that statement by testifying that James Ryan of Stericycle deals directly  
6 with Olympic Medical Center's "environmental services person," that the primary care clinic  
7 deals directly with Mr. Ryan through emails on which Ms. Sell is copied, and even that she met  
8 Mr. Ryan "once or twice" when he visited Olympic Medical Center, including concerning  
9 biomedical waste containers. (202:2-15, 204:11-20, 208:5-6, 209:2-9). These contradictions  
10 also undermine Ms. Sell's chief allegation, that there was no direct contact to help her resolve  
11 difficulty scheduling biomedical waste services for Olympic Medical Center clinics.

12 29. Finally, in prefiled testimony Carla Patshkowski alleged that the Providence  
13 Medical Group switched some facilities to Waste Management's service due to dissatisfaction  
14 with fees charged by Stericycle and because of waste audit services provided by Waste  
15 Management. CP-1T, 3:15-19. On cross-examination Ms. Patshkowski abandoned these  
16 allegations and provided a completely benign explanation of why her employer changed service  
17 providers – simply to "follow the practices" of its parent organization. (466:2-18, 466:19-25).  
18 Ms. Patshkowski's prefiled testimony reveals that she placed advocacy before accuracy.

19 30. It is also clear that several generator witnesses offered prefiled testimony that  
20 was based on nothing more than intuition or speculation, rather than actual knowledge of the  
21 facts alleged. In particular Ms. Patshkowski testified that she was not responsible for managing  
22 Stericycle's services at Providence Medical Group facilities and that the individual managers of  
23 each facility contacted Stericycle directly to arrange service schedules and to select biomedical  
24 waste containers. (467:5-13, 476:3-14). She never called anyone at Stericycle to discuss  
25 container sizes or pick-up frequency and she does not know about Stericycle's communications  
26 with facility managers to start up service. (473:22-474:2, 475:1-3). Nevertheless, Ms.

1 Patshkowski confidently stated in prefiled testimony that Stericycle charged for containers that  
2 were too large and required pick-ups that were too frequent. CP-1T, 3:11-19. This prefiled  
3 testimony obscures the fact that she was simply not involved in managing Stericycle's services  
4 to the Providence Medical Group facilities. In fact, undisputed testimony indicates that Mr.  
5 Ryan of Stericycle offered to perform waste audits at these facilities which Providence Medical  
6 Group never accepted. JR-7T, 4:4-7.

7 31. Likewise, Rodger Lycan of Pathology Associates Medical Laboratories (PAML)  
8 makes allegations in his prefiled testimony concerning the reason why PAML moved some of  
9 its facilities to Waste Management's services and how Stericycle supposedly terminated service  
10 too early. RL-1T, 3:14-23. In fact, it was another PAML employee, Lori Creighton, who  
11 oversaw the change of service. (421:12-16, 426:16-24). Mr. Lycan admits that he did not speak  
12 to any PAML facilities about the transfer of service or their communications concerning  
13 Stericycle's final date of service. (426:25-427:3, 431:4-7). Mr. Lycan admits that he did not  
14 ask Ms. Creighton about *her* communications with PAML facilities about the final dates of  
15 service. (431:8-11). Finally, Mr. Lycan testified that Ms. Creighton did not review his prefiled  
16 testimony and that he did not ask her whether it was accurate. (436:14-19). Mr. Lycan was  
17 apparently not aware that Stericycle communicated directly with the transitioning facilities to  
18 arrange final dates of service for each facility. *See* RA-1T, 4:10-19.

19 32. Finally, the testimony of one witness, Emily Newcomer of the University of  
20 Washington's Seattle campus, must be discounted in its entirety on the question of whether  
21 "the biomedical waste collection service currently provided in the territory Waste Management  
22 proposes to serve does not satisfy the specialized needs of customers in that area," Order 05,  
23 ¶11, because she does not represent a generator in the territory for which Waste Management  
24 has applied for new authority. Ms. Newcomer manages solid waste for the University of  
25 Washington's Seattle campus, which is outside of the application territory. (542:11-18). Ms.  
26 Newcomer has "no responsibility for any waste services at the Tacoma campus," has never

1 spoken to the employee who determines the Tacoma campus' waste service needs, and admits  
2 that she has "no idea whether the Tacoma campus manager feels there's any need for any  
3 different kind of biomedical waste service." (542:20-543:5, 543:9-12). Ms. Newcomer's  
4 testimony is not relevant to the determination of whether Stericycle will provide service to the  
5 satisfaction of the Commission in the application territory.

6 6. Waste Management has failed to establish that granting its application for  
7 overlapping authority is in the public interest.

8 33. Through the testimony of Jeff Norton, Waste Management's chief biomedical  
9 waste salesperson, Waste Management identifies service features that it believes meet a  
10 generator need. But the evidence demonstrates that these service features do not meet any need  
11 identified by generators in the application territory and that Stericycle already offers superior  
12 services to the generator public. Although no generator in the application territory has asked  
13 for different reusable collection containers, sharps services, or Seattle waste processing  
14 facilities, Waste Management relies on elements of its services that address these issues.  
15 Moreover, Stericycle already provides a choice of reusable containers that all parties agree are  
16 better than Waste Management's single type of reusable container. Stericycle already provides  
17 a reusable sharps container program that is more "environmentally sustainable" than Waste  
18 Management's pilot sharps recycling program, which at any rate is not available to Washington  
19 generators because Waste Management lacks sufficient processing capacity. Regardless of the  
20 alleged benefits of Seattle-based processing to one generator not in the application territory,  
21 granting Waste Management's application would increase emissions from transportation of  
22 waste, would increase the alleged risk of liability associated with this transportation and,  
23 therefore, would not serve the public interest.

24 34. Stericycle's record of customer complaints in its 20 year history, including the  
25 minor complaints alleged in this proceeding, demonstrate that it is an exemplary service  
26 provider. As noted above, in these 20 years, only six complaints have been filed with the

1 commission and only two have been upheld. MP-15T, 9:3-13, MP-20. The complaints alleged  
2 in this proceeding are not pervasive, relatively minor, and the Commission Staff has correctly  
3 concluded that they do not support a finding that Stericycle will not provide service to the  
4 satisfaction of the Commission. Staff Post-Hearing Brief, ¶26. Waste Management's record of  
5 customer complaints in its established businesses demonstrates that it will not provide any  
6 better service to the generator public than Stericycle.

7 35. Finally, the risk to generators in rural areas is not in the public interest and must  
8 be carefully avoided in this proceeding. Mr. Mero of the Association of Washington Public  
9 Hospital Districts has expressed concern on behalf of the rural members of his association that  
10 dividing service between two (or three) service providers could raise the costs of delivering  
11 those services to such a degree that would force service providers to increase prices or cutback  
12 services to rural providers. JM-1T, 4:22-26. The parties agree that service to areas of the state  
13 more distant from transportation centers involves greater costs, part of which is fixed due to  
14 fixed travel time to reach rural areas. Costs of service in these areas will increase as a share of  
15 revenue if revenues are divided between two service providers. Because of these economic  
16 features of service to rural areas, a significant loss of business in these areas will likely lead to  
17 price increases or service reductions that are not in the public interest.

18 **B. Analysis of Generator Testimony Demonstrates that Stericycle's Services Meet the**  
19 **Generators' Specialized Needs and that Stericycle Will Provide Service to the**  
20 **Satisfaction of the Commission.**

21 1. Julie Sell, Olympic Medical Center.

22 36. Julie Sell is the Emergency Preparedness Coordinator in the Disaster  
23 Preparedness department of Olympic Medical Center. JS-1T., 2:5. In her prefiled testimony  
24 she alleges that "Olympic Medical Center has no local Stericycle contact to arrange for  
25 scheduling " and that on a couple occasions Stericycle missed a pick-up at an Olympic Medical  
26 Center clinic. JS-1T, 3:9-14. In fact, Olympic Medical Center did have a Stericycle account

1 representative – a fact Ms. Sell’s hearing testimony demonstrates – she just did not make any  
2 attempt to raise scheduling concerns with that representative. Nevertheless, through  
3 communication with Stericycle’s drivers and customer service call center Ms. Sell has been put  
4 in touch with another local representative to schedule pick-ups. Ms. Sell identifies three  
5 isolated missed pick-ups at different clinics, all after Waste Management filed its application  
6 for new authority. Although she did not raise these incidents with Stericycle’s representative or  
7 explain them in her prefiled testimony, she testified at the hearing that each was promptly  
8 resolved by Stericycle. (214:7-8).

9           37. James Ryan of Stericycle is the Major Account Executive assigned to handle  
10 Olympic Medical Center’s accounts. JR-7T, 6:7-9. Ms. Sell’s hearing testimony frequently  
11 acknowledges Mr. Ryan’s role and her own awareness of his role. Ms. Sell acknowledged that  
12 she communicated with Mr. Ryan about changing the service at some clinics from scheduled to  
13 on-call service while he was visiting Olympic Medical Center in person. (202:2-7). This is  
14 consistent with Mr. Ryan’s testimony that Ms. Sell contacted him directly to change clinics to  
15 on-call service. JR-7T, 6:9-12. She also stated that the “last time” she conferred directly with  
16 James Ryan about biomedical waste collection was in July, 2012. (200:13-21, 206:20-23).  
17 Moreover, Ms. Sell testified that Mr. Ryan deals directly with Olympic Medical Center’s  
18 “environmental services person” with respect to biomedical waste services, has traveled in  
19 person to Olympic Medical Center to meet with that employee, that she met Mr. Ryan once or  
20 twice in the environmental services’ employee’s office, and that she was introduced to  
21 Mr. Ryan during a conversation concerning biomedical waste containers. (202:2-11,  
22 207:18-23, 208:5-6, 209:2-9). Finally, Ms. Sell also testified that Olympic Medical Center’s  
23 primary care clinic deals directly with Mr. Ryan, sending him emails concerning biomedical  
24 waste service on which she is copied. (202:8-15, 204:11-20).

25           38. Despite communicating directly with Mr. Ryan about Stericycle’s services,  
26 witnessing Mr. Ryan’s in-person meeting regarding biomedical waste service, and being copied

1 on emails to Mr. Ryan from the primary care clinic that concern biomedical waste service, Ms.  
2 Sell still testified that Olympic Medical Center has no local Stericycle contact. This appears to  
3 be inaccurate, Ms. Sell knew about Mr. Ryan and knew that he could be contacted regarding  
4 Olympic Medical Center's accounts.

5 39. However, Ms. Sell did not attempt to contact Mr. Ryan when she apparently had  
6 scheduling concerns concerning biomedical waste services at some Olympic Medical Center  
7 clinics. (207:4-8). She explained that she was originally told to "contact a Stericycle customer  
8 service number" to make requests for on-call service (205:23-206:2), but this does not explain  
9 Ms. Sell's decision not to make use of Olympic Medical Center's account representative when  
10 she experienced frustration in scheduling pick-ups. Ms. Sell was clear that "no one has told me  
11 not to call" Mr. Ryan about any scheduling issues she had. (206:24-207:3). Ms. Sell could not  
12 provide any reason why Mr. Ryan would not have responded promptly to any concerns that she  
13 might have raised with him. (209:25-210:5). Ultimately, when Ms. Sell raised her frustration  
14 with a Stericycle driver she was given the number for Stericycle's Fresno call center, which  
15 promptly put her in contact with a Stericycle employee in the Kent office to make scheduling  
16 arrangements. (206:4-15). Ms. Sell's frustration with Stericycle's general customer service  
17 number is unfortunate, but her prefiled testimony attempts to fault Stericycle for not providing  
18 a local contact to assist in resolving such difficulties. In fact, Ms. Sell's hearing testimony  
19 demonstrates that she failed to communicate with the local Stericycle representative who she  
20 knew had assisted her and other employees throughout her organization with biomedical waste  
21 services. Once she finally raised her concerns with a driver, a satisfactory solution was  
22 promptly found.

23 40. Ms. Sell's only other complaint was about "a couple" of missed pick-ups.  
24 JS-1T, 3:12-14. Her prefiled testimony included no detail about these alleged missed pickups,  
25 making an investigation and response by Stericycle impossible. Indeed, in attempting to  
26 respond to these vague allegations Mr. Ryan testified that he was only aware of an incident in

1 2011 when a clinic mistakenly requested a pick-up of biomedical waste when instead they  
2 needed a pharmaceutical waste pick-up. JR-7T, 6:20-7:5. However, Ms. Sell testified at the  
3 hearing to three occasions not raised with Mr. Ryan, in May, June, and July of 2012, when an  
4 on-call pick-up was allegedly missed at different clinics.<sup>3</sup> (213:15-214:1).

5 41. Nevertheless, Ms. Sell testified that each of these missed pick-ups was resolved  
6 by Stericycle the following month. (214:7-8). Each of these alleged incidents occurred when  
7 Ms. Sell was still using Stericycle's general customer service number. (214:3-6). As discussed  
8 above, although she did not raise her scheduling frustrations with Mr. Ryan, Ms. Sell has not  
9 experienced any difficulties scheduling pickups since she spoke to a Stericycle driver and  
10 obtained a second direct contact in Stericycle's Kent office. (205:25-206:9; 215:24-216:3).  
11 Ms. Sell's vague prefiled testimony did not allow an investigation of her claims before the  
12 hearing. However, assuming they are accurate, they indicate only a few scheduling errors that  
13 were promptly corrected by Stericycle, and that could likely have been prevented had Ms. Sell  
14 spoken to Olympic Medical Center's Stericycle representative.

15 42. Finally, in her prefiled testimony Ms. Sell stated that Olympic Medical Center  
16 wants another option for biomedical waste services. As noted previously, this preference for  
17 competition is generic, she confirmed that the "alternative doesn't have to be Waste  
18 Management," it could be any other company that can provide service. (215:6-12). This  
19 generic desire is not evidence of unsatisfactory service. *Sureway Medical Serv.*, Order M.V.G.  
20 No. 1674 at 4-5.

21  
22  
23  
24 <sup>3</sup> These alleged missed pick-ups all occurred after Waste Management filed its application for  
25 new authority in December 2011 and, hence, are outside the period in which Stericycle's  
26 service is evaluated under Commission precedent and should not be considered. *In re*  
*Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 10 (Jan.  
25, 1993) (holding that "[t]he tests for granting an application must be met as of the time it is  
filed." (emphasis added)).



1           2.     Terry Johnson, Lake Chelan Community Hospital.

2           43.     Terry Johnson is the Director of Plant Engineering for Lake Chelan Community  
3 Hospital. TJ-1T, 2:5. Stericycle has provided biomedical waste service to Lake Chelan  
4 Community Hospital for at least 13 years, as long as Mr. Johnson has worked there. (236:1-4).  
5 With this long experience as background, Mr. Johnson was unequivocal that he was not  
6 testifying that any aspect of Stericycle's biomedical waste service was unsatisfactory. (237:16-  
7 19) ("Q: So it is true, then, that you are not testifying that any aspect of Stericycle's current  
8 service are not satisfactory, right? A: That's correct, sir."). Mr. Johnson's testimony  
9 establishes that Stericycle currently provides Lake Chelan Community Hospital with  
10 biomedical waste service that meets its needs.

11           44.     In fact, Mr. Johnson testified that he wants a back-up service provider despite  
12 Stericycle's satisfactory service, and only because he would "like to have an alternative source"  
13 available. (237:20-238:8). Mr. Johnson is clear that his desire for a back-up provider is  
14 generic and has nothing to do with Waste Management's proposed services, he simply wants  
15 back-up services to be available from any company. (238:12-17). The Commission has held,  
16 however, that this general desire for back-up service does not indicate unsatisfactory service by  
17 existing service providers. *Sureway Medical Serv.*, Order M.V.G. No. 1674 at 4-5.

18           45.     Even if a general preference for back-up service were relevant, emergency back-  
19 up service is already available. Mr. Johnson testified that he wants a back-up service in the  
20 case of a natural disaster, such as an earthquake or fire, that he believes might potentially  
21 disrupt service. (238:19-239:8). As Mr. Ryan noted, however, the Commission has authority  
22 to grant temporary emergency authority to another service provider to provide exactly this  
23 back-up service, if necessary.<sup>4</sup> JR-7T, 8:4-6, *See* WAC 480-70-136 (providing the Commission

24           <sup>4</sup> Mr. Johnson has also based his desire for back-up service on the mistaken belief that  
25 Stericycle could not access his facility from alternate routes. In case of a road closure, he  
26 believes another carrier could reach the hospital from an alternate route, such as from Spokane.  
(239:21-240:4). In un rebutted testimony, however, Mr. Ryan made clear that Stericycle could  
dispatch trucks from multiple transfer yards, including one in Spokane. JR-7T, 7:22-8:2, MP-

1 authority to grant temporary, expedited authority “to meet an immediate or urgent need for  
2 service . . .,” including in “[a]n emergency rendering it impossible for the existing company to  
3 provide service.”)

4 46. Finally, Mr. Johnson believes that competition “may promote a market price.”  
5 (244:19-22). As noted previously, Mr. Johnson’s preference for competition is generic and  
6 unrelated to Waste Management’s services since he “[does] not have a preference” about which  
7 alternate company provides the competition. (244:23-25). Mr. Johnson’s generic desire for  
8 competition is not evidence of unsatisfactory service. *Sureway Medical Serv.*, Order M.V.G.  
9 No. 1674 at 4-5.

10 3. Jean Longhenry, Wendel Family Dental Centre.

11 47. In her prefiled testimony Jean Longhenry stated that Wendel Family Dental  
12 Centre had experienced “on-going, monthly errors in Stericycle’s bills” and that Stericycle  
13 representatives responded to complaints about these errors by email, making it more difficult to  
14 resolve the errors. JL-1T, 3:9-12. As discussed previously, Ms. Longhenry’s cross-  
15 examination revealed this prefiled testimony was not accurate. Instead, on cross examination  
16 Ms. Longhenry testified that there was only one billing error and that there was no email  
17 communication involved in correcting the error. *Supra*, ¶27.

18 48. Ms. Longhenry was clear that after a few months this error was corrected by  
19 Stericycle. (317:13-17). Although Ms. Longhenry initially testified on cross-examination that  
20 “I was constantly calling” to correct the error, she quickly admitted that, to the contrary, she  
21 had not communicated with Stericycle about the billing error. (316:10-11; 318:2-5, 10-17).  
22 Instead, Wendel Family Dental Centre’s “accounts payable person” communicated with  
23 Stericycle, which corrected the error. Ms. Longhenry has no personal knowledge of these  
24 communications. (318:10-17). There is, therefore, no evidence for any conclusion that the

25 10 (identifying Stericycle transfer yards, including in Spokane). Mr. Johnson admitted that he  
26 was not aware that Stericycle operates a transfer yard in the Spokane area, (239:8-13, 241:14-  
17).

1 communications were anything other than a normal, successful process of resolving a single,  
2 minor billing error.

3 49. As noted previously, in cross-examination Ms. Longhenry attempted to change  
4 her prefiled testimony by testifying that she was unhappy with Stericycle's use of email in the  
5 process to reinitiate service to Wendel Family Dental Centre in 2012.<sup>5</sup> *Supra*, ¶27,  
6 (319:19-22). Even if this version of her testimony is given credence, Ms. Longhenry is clear  
7 that email communication had been invited and that she had never raised a concern about email  
8 communication with Stericycle or asked that further communication be by phone. Specifically,  
9 Ms. Longhenry testified that when she initially called Stericycle's customer service line to  
10 reinitiate service, she gave both her email and phone number as contact information. (320:2-  
11 19). After that contact, Stericycle used email to communicate with Ms. Longhenry about  
12 setting up service. (320:20-23). Ms. Longhenry testified that she never asked that Stericycle  
13 stop using the email address she had given because she knew she could call the customer  
14 service number when she needed to. (321:4-8). Regardless of her restated concerns, service to  
15 Wendel Family Dental Centre was reinitiated and has been provided without complaint ever  
16 sense.

17 50. Finally, Ms. Longhenry's prefiled testimony stated that Wendel Family Dental  
18 Centre wanted a competing service provider because she believes that it currently lacks  
19 "leverage" to obtain good service.<sup>6</sup> JL-1T, 3:14. As noted previously, however,  
20 Ms. Longhenry only expresses a desire for generic competition, unrelated to Waste

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21 <sup>5</sup> Ms. Longhenry testified that Wendel Family Dental Centre had previously discontinued  
22 Stericycle's service in May 2010 or 2011 and in its place had accepted biomedical waste  
23 collection from Spartan, an entity that is not a certificated biomedical waste collection company  
24 and that also collected her facilities' amalgam waste. (313:11-19, 314:15-21). Ms. Longhenry  
25 explained that at the time her facility thought it would be easier to have a single carrier perform  
26 both services and wanted to give that arrangement a try. (313:20-24).

<sup>6</sup> At the hearing, Ms. Longhenry directly contradicted this testimony by stating that Wendel  
Family Dental Centre had previously switched to services provided by Spartan and that she  
believed that Spartan already provided an option between two carriers. (324:8-21). Spartan is  
not a certificated carrier, but Ms. Longhenry's testimony that she engaged unlawful services  
from an uncertificated carrier still contradicts her prefiled testimony.

1 Management's services. (323:21-25) (admitting that an alternative option could be "[a]ny  
2 company that could collect."). A preference for generic competition is not a basis for finding  
3 that Stericycle will not provide service to the satisfaction of the Commission.<sup>7</sup> *Sureway*  
4 *Medical Serv.*, Order M.V.G. No. 1674 at 4-5.

5 4. Ray Moore, PeaceHealth System.

6 51. Ray Moore is the Lead Contract Manager of Supply Chain for the PeaceHealth  
7 system. RM-1T, 2:5. He has worked in the supply chain at PeaceHealth for 21 years. (384:21-  
8 25). He is responsible for all supply and service contracts in the PeaceHealth system and is  
9 personally responsible for service contracts, including biomedical waste services. (385:18-  
10 386:8, 16-17). Mr. Moore is responsible for service contracts on behalf of the eight hospitals  
11 owned by PeaceHealth and over thirty other hospitals and numerous other facilities that  
12 purchase services through the PeaceHealth system. RM-1T, 2:20-22.

13 52. Mr. Moore's testimony unequivocally demonstrates that Stericycle has provided  
14 completely satisfactory services that meet the biomedical waste needs of the PeaceHealth  
15 system. Specifically, Mr. Moore stated that Stericycle has been a "good partner" to  
16 PeaceHealth and that he was "absolutely" not testifying that Stericycle was not treating and  
17 disposing of biomedical waste safely and effectively. (394:2-7). Mr. Moore elaborated that as  
18 a "good partner" Stericycle performed the biomedical waste services they were paid to perform  
19 and that the PeaceHealth system had "no complaints." (394:8-11). Even when discussing his  
20 opinion that general competition would be beneficial, Mr. Moore was careful to clarify that he

21 <sup>7</sup> In addition, Ms. Longhenry's conclusion that competition would result in improved service is  
22 not based on any professional knowledge or experience. As noted previously, Ms. Longhenry  
23 is not an expert in economics, admits that she has no expertise in competitive analysis in  
24 regulated markets, and admits that she has not assessed the effects of competition in the  
25 regulated medical waste market. (324:1-4, 325:10-14). She admits that competition between  
26 carriers could result in cost, but also admits that she had never considered the possibility that  
competition could actually lead to a decreased level of service. (324:25-325:9). Ms.  
Longhenry's testimony about competition in general cannot establish need because it is not the  
testimony of a "professional in the body of knowledge at issue" "about the requirements of the  
service they need." Order 05, ¶10 (quoting *In re Application GA-76820 of Medical Resource*  
*Recycling System, Inc.*, Order M.V.G. No. 1707 at 4 (May 25, 1994)).

1 is not testifying that there has been any problem with Stericycle's services. (395:22-23). Mr.  
2 Moore's testimony establishes that for the numerous hospitals and other facilities throughout  
3 Washington that obtain Stericycle's biomedical waste services through the PeaceHealth system,  
4 Stericycle provides fully competent, adequate, and satisfactory biomedical waste services and  
5 that there is no unmet service need.

6 53. With respect to his desire for competition in general, Mr. Moore stated that he  
7 believed competition would promote better services and lower prices, despite being clear that  
8 there is no problem with Stericycle's services.<sup>8</sup> (394:12-18; 395:19-23). The desire for  
9 competition is not a basis for finding that Stericycle will not provide service to the satisfaction  
10 of the Commission, especially where Mr. Moore has been so clear that Stericycle's services  
11 meet the needs of the PeaceHealth system. *Sureway Medical Serv.*, Order M.V.G. No. 1674 at  
12 4-5.

13 5. Danny Warner, Warner Dentistry and Washington State Dental Association.

14 54. Danny Warner is a practicing dentist and the current president of the  
15 Washington State Dental Association. Dr. Warner's testimony strongly supports the  
16 conclusion that Stericycle provides competent, adequate, and satisfactory service to  
17 Washington State's dentists. Dr. Warner clearly testified in response to two questions that he  
18 has "no problem" with Stericycle's biomedical waste services "at all." (412:12-413:5).

19 55. Dr. Warner clarified that his desire for a competitive alternative is despite the  
20 fact that Stericycle already provides satisfactory biomedical waste services. (412:17-25).  
21 Dr. Warner's desire for a competitive alternative is not a basis for finding that Stericycle does  
22 not provide satisfactory service, especially when Dr. Warner's testimony clearly indicates that  
23 Stericycle does provide completely satisfactory service.<sup>9</sup> *Sureway Medical Serv.*, Order

24 <sup>8</sup> Mr. Moore also clarified that his statement in prefiled testimony that competition will help  
25 "mitigate PeaceHealth's risk of residual liability" associated with its medical waste was simply  
26 another way of expressing his belief that competition will promote better services. (395:13-19).

<sup>9</sup> In addition, Dr. Warner's opinion that competition in the regulated biomedical waste market  
would promote better services and lower prices is not based on any professional knowledge or

1 M.V.G. No. 1674 at 4-5. Dr. Warner is clear that this entire aspect of his testimony is simply  
2 advocacy to promote the idea of a second statewide service provider.<sup>10</sup> (409:8-18) (“Q: So  
3 [your testimony concerning competition] is in the vein of advocacy for the Association?

4 A: Yes.”).

5 6. Rodger Lycan, Pathology Associates Medical Laboratories.

6 56. In his prefiled testimony Rodger Lycan purports to explain that PAML switched  
7 some of its facilities from Stericycle’s to Waste Management’s service because Waste  
8 Management’s prices were better and because Stericycle supposedly provided PAML more  
9 service than required. Mr. Lycan also purports to know that during this transition Stericycle  
10 terminated its services too quickly. RL-1T, 3:14-23. However, Mr. Lycan’s cross-examination  
11 clearly reveals that he has absolutely no knowledge of any of these events, that he has no  
12 knowledge of the communications between Stericycle and PAML’s facilities to facilitate the  
13 transfer of service to Waste Management, and that he did not attempt to inform himself before  
14 submitting testimony. In fact, the transfer of service was carefully coordinated by Stericycle  
15 with the transitioning facilities.

16 57. Mr. Lycan first makes clear that he did not have any responsibility for  
17 biomedical waste services prior to August 2012, well after all the events he purports to  
18 describe. (421:12-16). Instead, during service switch from Stericycle to Waste Management in  
19

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20 experience. As noted above, Dr. Warner is not an expert on competition or regulated markets  
21 and, in fact, he forthrightly admits that his testimony concerning competition is merely a  
22 “generic assumption” about what would happen if there was competition. (410:8-15). Dr.  
23 Warner admits that neither he nor the board of the Washington State Dental Association  
24 performed any research concerning his beliefs about the effects of competition in the regulated  
25 biomedical waste market, and that he is not aware of any studies of the consequences of  
26 competition for biomedical waste services. (409:8-18, 410:3-11). His uninformed and  
unsubstantiated testimony about the alleged benefits of competition does not demonstrate  
generator need because it is not testimony of a “professional in the body of knowledge at issue”  
“about the requirements of the service they need.” Order 05, ¶10 (quoting *In re Application*  
*GA-76820 of Medical Resource Recycling System, Inc.*, Order M.V.G. No. 1707 at 4 (May 25,  
1994)).

<sup>10</sup> Dr. Warner also testified that the board of the Washington State Dental Association did not  
review or approve of his testimony in favor of competition. (408:10-15).

1 late 2011 that responsibility resided with Lori Creighton, a PAML employee who did not  
2 provide testimony in this proceeding. (426:12-24). Although he purports to recount her  
3 experiences, Mr. Lycan admits that Ms. Creighton did not review his prefiled testimony before  
4 it was filed and that he did not ask her whether it was an accurate representation of her  
5 experience. (436:14-19).

6 58. Mr. Lycan's lack of knowledge is particularly telling with respect to the  
7 allegation that Stericycle discontinued service before PAML's facilities were prepared for the  
8 switch. Mr. Lycan admitted that he is not involved in the day-to-day functioning of PAML  
9 facilities and, therefore, he could not have been aware of the actions those facilities had taken  
10 to schedule their biomedical waste collection services. (423:24-424:12). Mr. Lycan admits  
11 that he did not ask Ms. Creighton whether individual PAML facilities had acted on their own to  
12 schedule biomedical waste services. (424:13-16). He admits that has not spoken to any PAML  
13 facilities about the transfer of biomedical waste service to Waste Management and that he did  
14 not ask the PAML facilities about their communications concerning Stericycle's final date of  
15 service. (426:25-427:3,431:4-7). He did not ask Ms. Creighton about her communications  
16 with the PAML facilities about Stericycle's final date of service. (431:8-11). And, again, Mr.  
17 Lycan admitted that he did not ask Ms. Creighton to confirm that his account of what was  
18 actually her experience was accurate. (436:14-19). Mr. Lycan is simply uninformed about the  
19 transfer of biomedical waste services at certain PAML facilities from Stericycle to Waste  
20 Management and failed to perform any investigation concerning these events.

21 59. Mr. Lycan's lack of knowledge is apparent in his misunderstanding of how  
22 Stericycle's final service dates for individual PAML facilities were selected. Mr. Lycan states  
23 that PAML was "aiming" for a single transition date of November 1, 2011 for all facilities  
24 switching service.<sup>11</sup> (433:13-14). Regardless of the initial target date PAML was "aiming" for,

25 <sup>11</sup> Although Mr. Lycan believes this date would have been communicated to Stericycle by Ms.  
26 Creighton, he did not confirm the accuracy of this statement with her and he admits that he did  
not attempt to locate any written communication. (436:14-19, 434:21-435:9). Ron Adams

1 Mr. Lycan agrees that because each facility has a schedule for pick-ups, it would be  
2 “reasonable that that one date might not work for every[ facility].” (434:14-20). He admits  
3 that the date was not “do or die” and that if logistics issues had been raised that PAML would  
4 have worked with Stericycle to execute a reasonable transition. (434:1-13). The problem with  
5 Mr. Lycan’s lack of knowledge is that he is simply unaware of the communications that did  
6 occur between Stericycle and the transitioning PAML facilities to schedule the actual final  
7 dates of service at each facility in light of each facilities’ pick-up schedule and readiness.

8 60. Ron Adams, Stericycle’s Regional Sales Director, testified that Stericycle  
9 received a letter from PAML in October, 2011 canceling service at several of its locations.  
10 RA-1T, 4:5-8. The letter received by Stericycle requested a final pick-up date of October 28,  
11 2011. RA-1T, 4:8-9. As Mr. Lycan anticipated, this date did not correspond with a scheduled  
12 service date at all of the canceling facilities. RA-1T, 4:10-11. Therefore, Stericycle’s staff  
13 communicated with each of the canceling facilities to ask when they wanted their final pick-up  
14 date to be. RA-1T, 4:11-12. A few facilities chose dates that were one or two days earlier,  
15 other facilities selected dates several days later. RA-1T, 4:12-17. Stericycle scheduled its final  
16 pick-up dates as requested by the individual PAML facilities. RA-1T, 4:17-19.

17 61. It is undisputed that Stericycle communicated directly with the PAML facilities  
18 to coordinate the cancelation of service and the PAML facilities, not Stericycle, selected their  
19 final dates of service. Mr. Lycan stated clearly that in his testimony he is “not saying that  
20 [Stericycle] didn’t communicate with the people in those [PAML] facilities” to coordinate the  
21 final day of service. (456:21-25). Mr. Lycan also testified that Ms. Creighton reviewed Mr.  
22 Adams’ testimony concerning Stericycle’s direct communications with PAML facilities to  
23 select their final dates of service and he reported that that she did not tell him that the final  
24 dates of service were not arranged between Stericycle and each of PAML’s facilities. (437:10-

25  
26 testified that the PAML cancelation letter indicated a target date of October 28, 2011 for  
completion of the transition. RA-1T, 4:8-9.



1 14). Stericycle did not err but, instead, provided conscientious service to the canceling  
2 facilities.<sup>12</sup>

3 62. In another portion of his prefiled testimony Mr. Lycan opines that “Stericycle  
4 does not have much interest in offering competitive prices or in reducing its costs.” RL-1T,  
5 3:13-14. Mr. Lycan’s cross-examination reveals this statement is simply advocacy. First, Mr.  
6 Lycan readily admitted that, of course, he has no idea what Stericycle does to reduce its own  
7 costs. (438:8-13). It is not clear why Mr. Lycan chose to endorse testimony purporting to  
8 declare that Stericycle does not have an interest in reducing its costs.

9 63. In addition, Mr. Lycan acknowledged that Stericycle is actually an exceptional  
10 vendor when it comes to pricing and cost control. Mr. Lycan testified that, in his experience,  
11 over time the cost of “most anything will eventually go up . . . based on the inflationary  
12 pressures . . .” (440:22-441:6). It is undisputed, however, that this has not been the case with  
13 the price of Stericycle’s biomedical waste services. Despite these inflationary pressures and the  
14 fact that Stericycle has no statewide competitor, Stericycle has not raised its rates, *lowering* the  
15 real cost of its services to customers. MP-15T, 6:1-15. Given this fact, Mr. Lycan  
16 acknowledged that Stericycle is an exception to his general expectation that prices will rise  
17 based on inflation. (441:7-13).

18 64. On cross-examination Mr. Lycan explained that his prefiled testimony that  
19 Stericycle does not have an interest in reducing its costs was merely an observation that PAML  
20 had asked Stericycle for ways to reduce PAML’s biomedical waste costs and, according to Mr.  
21 Lycan, had received no response. (439:5-11). But this is not true. Mr. Adams testified that  
22 Ms. Creighton was Stericycle’s contact with PAML during the relevant period and that she had

23  
24 <sup>12</sup> Even if taken at face value, Mr. Lycan testified that the alleged early service terminations  
25 affected only six PAML facilities that were switching service, that the majority – at least 80% –  
26 of facilities switching service were transitioned correctly from Mr. Lycan’s point of view, and  
that none of the six facilities were without biomedical waste service for more than a few days.  
(448:22-25, 455:17-24, 457:17-20). These claims of coordination issues with six facilities, if  
true, do not reflect unsatisfactory service.

1 asked about reducing PAML's biomedical waste costs. RA-1T, 2:19-20. Mr. Adams  
2 responded by offering to perform a waste audit at each of the PAML facilities to identify  
3 opportunities for cost savings. RA-1T, 2:20-3:1. Mr. Adams made several follow-up attempts  
4 to schedule those audits with Ms. Creighton but she never took advantage of the offer. RA-1T,  
5 3:1-2. Mr. Lycan was not responsible for PAML's biomedical waste services at the time and  
6 on cross-examination admitted that he would not know anything about conversations between  
7 Mr. Adams and Ms. Creighton. (439:12-22).

8           65. Mr. Lycan closes his prefiled testimony with the statement that PAML believes  
9 competition in regulated medical waste will "ensure the best quality of customer service and  
10 the most competitive pricing . . . ." RL-1T, 3:24-4:2. However, Mr. Lycan's cross-  
11 examination reveals that this seemingly definitive statement is, in fact, simply his "personal  
12 opinion." (443:11). Although it is his personal opinion that competition "in the general sense"  
13 would lead to better quality customer service, he admits that it is possible that price competition  
14 could actually lead to cost cutting and reduced quality services. (443:3-7, 444:21-23).  
15 Ultimately, Mr. Lycan testified that he "doesn't really know" what the result of competition  
16 would be and that his "personal opinion" "is worthless in this regard." (443:3-13). Finally, Mr.  
17 Lycan also agrees that there is no need for Waste Management's services in particular, that any  
18 company that could deal with biomedical waste effectively could provide the "general"  
19 competition he desires. (443:14-23). Mr. Lycan's uninformed preference for a generic  
20 competitive alternative is insufficient to demonstrate that Stericycle is not providing service to  
21 the satisfaction of the Commission. *Sureway Medical Serv.*, Order M.V.G. No. 1674 at 4-5.

22           7. Carla Patshkowski, Providence Medical Group.

23           66. Carla Patshkowski's prefiled testimony makes claims about elements of  
24 Stericycle's biomedical waste service that led Providence Medical Group to decide to change  
25 most of its clinics to Waste Management's service. However, Ms. Patshkowski's cross-  
26

1 examination reveals that the bulk of this testimony is erroneous or without any basis in  
2 Ms. Patshkowski's experience or personal knowledge.

3         67. Ms. Patshkowski states in her prefiled testimony that Providence Medical Group  
4 moved its biomedical waste business to Waste Management "because Waste Management does  
5 not charge a monthly minimum fee and Waste Management audited Providence Medical  
6 Group's various facilities and determined the most economical and efficient size of container  
7 and frequency of collection." CP-1T, 3:15-19. As discussed briefly above, Ms. Patshkowski's  
8 hearing testimony contradicts this statement. *Supra*, ¶29. In fact, Ms. Patshkowski testified  
9 that the Chief Operating Officer of Providence Medical Group made the decision to change  
10 from Stericycle to Waste Management after she had a meeting with the construction director  
11 for Providence hospitals, who informed her that the rest of the Providence system had already  
12 moved to Waste Management's service. According to Ms. Patshkowski, the Providence  
13 Medical Group Chief Operating Officer told her that the Medical Group needed to "follow the  
14 rest of Providence in this, and we need to cancel Stericycle and move to Waste Management,  
15 because that was a system decision." (466:2-18). Ms. Patshkowski then confirmed that  
16 Providence Medical Group's decision to transition from Stericycle to Waste Management was  
17 "just a decision to follow the practices of the rest of the Providence group made by [our]  
18 COO." (466:19-25). This benign explanation for Providence Medical Group's transition to  
19 Waste Management contradicts Ms. Patshkowski's prefiled testimony and entirely undermines  
20 it.

21         68. Ms. Patshkowski's testimony also reveals that she had very limited  
22 responsibility for biomedical waste services and no responsibility for choosing either the  
23 container sizes used by providence facilities or their service frequency. Despite her complete  
24 lack of involvement in and knowledge of individual clinics' selection of containers, pick-up  
25 schedules, or day-to-day management of biomedical waste services, Ms. Patshkowski purports  
26 to testify that Stericycle charged for containers that were too large for a few facilities and that

1 Stericycle required pick-ups that were too frequent for one facility. CP-1T, 3:11-19, (470:9-  
2 472:4) (indicating that only a few clinics were allegedly provided with containers that were too  
3 large and that only one clinic allegedly received service that was too frequent).

4 69. Ms. Patshkowski is a finance assistant for Providence Medical Group. She is  
5 responsible for “on-boarding” new clinics, which includes initiating biomedical waste service.  
6 (460:13-25, 461:8-12). She testified that when Stericycle was providing service to Providence  
7 Medical Group’s clinics her sole responsibility was initiating service for a new clinic. (461:13-  
8 15; 465:19-25, 467:5-13). After this initial start-up, biomedical waste services were managed  
9 by each clinic’s individual manager who contacted Stericycle directly to arrange a service  
10 schedule and select the biomedical waste containers needed at that facility. (467:5-13, 476:3-  
11 14). Ms. Patshkowski admits that she never called anyone at Stericycle to discuss container  
12 sizes or pick-up frequency at the facilities and that she does not know about any of Stericycle’s  
13 communications with individual facility managers related to start up issues. (473:22-474:2,  
14 475:1-3). Given her total lack of responsibility for or involvement in these issues, there is no  
15 basis on which to infer, as Ms. Patshkowski advocates, that Stericycle forced clinics to pay for  
16 more service than they needed. Indeed, she specifically testified that she does not know  
17 whether the facility managers contacted Stericycle to request smaller containers or less frequent  
18 service. (472:19-473:13).

19 70. In fact, Stericycle actively offered Providence Medical Group the opportunity to  
20 evaluate its facilities’ biomedical waste practices and determine the correct level of service.  
21 James Ryan was the Major Account Executive responsible for the Providence Medical Group  
22 facilities. His system-wide contact for the Providence Medical Group was Jerry Quinn, not Ms.  
23 Patshkowski. JR-7T, 2:23-3:1. In uncontested testimony, Mr. Ryan reports that he asked Mr.  
24 Quinn if Stericycle could perform waste audits at all Providence Medical Group facilities.<sup>13</sup>

25 <sup>13</sup> Ms. Patshkowski admits that waste audits would not have been a subject that she would have  
26 communicated with Stericycle about, that she never requested a waste audit from Stericycle,  
and that she has no information about whether the clinics were offered waste audits by

1 JR-7T, 4:4-6. Unfortunately, Mr. Quinn never accepted that offer and Mr. Ryan reports that no  
2 individual facility manager asked for a waste audit either. JR-7T, 4:6-7.

3 71. In short, Ms. Patshkowski has no knowledge of how containers or pick-up  
4 schedules were selected or managed by the individual Providence facility managers and she has  
5 no knowledge of Stericycle's offers to perform audits to minimize service costs. To the extent  
6 four Providence Medical Group facilities were either using containers that were "too large" or  
7 had pick-ups that were "too frequent," there is no basis in Ms. Patshkowski's testimony or  
8 otherwise to attribute those circumstances to any lack of diligence or inadequate customer  
9 service by Stericycle. The uncontradicted testimony indicates that, in fact, Providence Medical  
10 Group failed to take advantage of Stericycle's offers to audit the facilities' medical waste  
11 collection needs and service levels.

12 72. Finally, Ms. Patshkowski testified that Stericycle continued to bill for services  
13 for eight months after the cancelation of service at several facilities before the error was  
14 corrected. CP-1T, 3:19-4:2. Stericycle investigated this claim and determined that it was  
15 correct that Stericycle continued to bill for several canceled facilities for eight months before  
16 the error was corrected. JR-7T, 9-12, 477:23-478:1. Stericycle quickly acknowledged that the  
17 charges were incorrect, but also acknowledges that there was a long delay before the billing of  
18 these charges was corrected. Ms. Patchkowski acknowledges that Stericycle never disputed  
19 that the charges were incorrect. (490:23-491:3). This was an unfortunate customer service  
20 lapse, but an isolated occurrence at one of Stericycle's over 7,700 customers. As discussed  
21 below, an occasional billing error that is slow to be corrected is not inconsistent with the kinds  
22 of ordinary business problems encountered by large service providers like Waste Management  
23 and Stericycle that manage complex billing systems and cannot provide a basis for finding that  
24 Stericycle's services are unsatisfactory.

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26  

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Stericycle. (474:7-14, 477:13-16).

1           8.     Emily Newcomer, University of Washington, Seattle Campus.

2           73.     Emily Newcomer's testimony is not relevant to whether "the biomedical waste  
3 collection service currently provided in the territory Waste Management proposes to serve does  
4 not satisfy the specialized needs of customers in that area" because she neither works for nor  
5 represents any biomedical waste generator within the territory that Waste Management is  
6 applying to serve. Order 05, ¶11 (emphasis added). Ms. Newcomer manages solid waste and  
7 recycling operations for the University of Washington's Seattle campus only. (542:11-18).  
8 There is no dispute that the Seattle campus is outside of the application territory.  
9 Ms. Newcomer has no responsibility for waste services at the University of Washington's  
10 Tacoma campus. (542:20-22). She has never spoken to and does not even know the employee  
11 who determines the Tacoma campus' waste service needs. (542:23-543:5). Ms. Newcomer  
12 admits that she has no idea whether the Tacoma campus manager feels there is any need for  
13 different biomedical waste service. (543:9-12).

14           74.     This means that Ms. Newcomer has no idea whether the Tacoma campus agrees  
15 with any of her opinions about allegedly lower transportation emissions or reduced liability  
16 based on Waste Management's Seattle-based processing facility and she has no knowledge of  
17 the Tacoma campus' experience with Stericycle's customer service. Nor does she have any  
18 idea whether the Tacoma campus even favors competition in general or, rather, is entirely  
19 satisfied with Stericycle's service. Ms. Newcomer's prefiled testimony is, therefore, inaccurate  
20 and irrelevant when she purports to speak to each of these subjects on behalf of the "University  
21 of Washington." EN-1T, 3:18, 4:5, 7-8, 13-14.

22           75.     Even apart from the fact that Ms. Newcomer does not represent a customer in  
23 the application territory, her prefiled testimony does not demonstrate that Stericycle is not  
24 meeting generators' specialized biomedical waste needs. Most importantly, Ms. Newcomer's  
25 testimony affirmatively demonstrates that Stericycle does provide satisfactory service to the  
26 Seattle campus. Ms. Newcomer acknowledges that the Seattle campus has the option of using

1 Waste Management for all its biomedical waste services but, in practice, still uses Stericycle to  
2 perform biomedical waste collection from Seattle campus labs. (543:15:24, 545:24-546:3).  
3 Ms. Newcomer testified that she has “no complaints” about Stericycle’s biomedical waste  
4 service and that she is not testifying that Stericycle does not safely treat and dispose of  
5 biomedical waste. (546:4-11).

6 76. Ms. Newcomer stated that Waste Management’s Seattle-based processing  
7 facility would reduce emissions through less transportation. But her cross-examination reveals  
8 that this argument does not reflect the actual consequences of approving Waste Management’s  
9 application and authorizing overlapping service providers throughout Washington. Ms.  
10 Newcomer admits that she is not testifying that granting Waste Management’s application for  
11 statewide authority would lead to an overall reduction in emissions. (547:22-548:1). Rather,  
12 she acknowledges that if the portions of Washington currently served by a single provider  
13 instead had two providers then “more trucks would be on the road.” (549:3-14). Ms.  
14 Newcomer even acknowledges that in her experience at the Seattle campus, having both  
15 Stericycle and Waste Management provide biomedical waste service means “there are more  
16 emissions being generated.” (550:5-11). Ms. Newcomer’s testimony demonstrates what is  
17 common sense; i.e., when two providers must each serve the same territory the result will be  
18 increased transportation miles and, hence, increased emissions. Any argument to the contrary,  
19 whether in Ms. Newcomer’s prefiled testimony or otherwise, is erroneously addressing the  
20 hypothetical circumstance in which one carrier *replaces* another, not where a second carrier  
21 acquires overlapping authority to serve the same territory. Only the latter circumstance is at  
22 issue here, and it is clear from common sense and Ms. Newcomer’s testimony that granting  
23 Waste Management’s application would increase vehicle emissions in Washington.

24 77. Ms. Newcomer also testified that using Waste Management’s Seattle-based  
25 processing facility would reduce the University of Washington’s risk of liability by reducing  
26 the number of miles driven. EN-1T, 3:20-4:1. By liability she means the Seattle campus’s

1 “potential” liability for transmission of an infectious agent if waste is released from a truck  
2 during transportation, through an accident or other mechanism, and if someone in the public  
3 comes in contact with that waste. (552:10-553:5). But Ms. Newcomer explained that her  
4 opinion was just “common sense, that the less trucks that are on the road, the less chance there  
5 is of an accident . . . it’s not rooted in science or research . . . .”<sup>14</sup> (554:1-8). However, this  
6 intuition is wrong in the context of Waste Management’s application because, as  
7 Ms. Newcomer acknowledged, granting the application will result in more trucks on the road,  
8 not fewer. (549:3-14). It is undisputed that authorizing two (or three) overlapping service  
9 providers will result in more trucks and more transportation miles which, under  
10 Ms. Newcomer’s theory, would increase rather than decrease risk in the application territory.

11 78. Finally, Ms. Newcomer agreed that her perception of liability “might not be as  
12 big an issue” if it were true that Stericycle had not had an incident where waste had been  
13 released during transportation. (554:9-18). In fact, Mr. Philpott, who has managed Stericycle  
14 for over 12 years, testified that based on his consultation with Stericycle staff and his own  
15 experience he is not aware of any instance in Washington where waste has been released during  
16 his tenure. MP-15T, 19:15-20:2.

17 79. On cross-examination, Ms. Newcomer also recanted portions of her prefiled  
18 testimony, which implied that involving Stericycle’s “salespeople” in responding to inquiries  
19 from the University of Washington Seattle campus’s Infectious Waste Committee was  
20 inadequate customer service. EN-1T, 4:7-13. On the contrary, at the hearing Ms. Newcomer

21 \_\_\_\_\_  
22 <sup>14</sup> Ms. Newcomer also admitted that her testimony is not based on any professional knowledge  
23 or experience. She admitted that she has never experienced a situation where waste has been  
24 released during transportation, that she has not looked into whether or how often this happens,  
25 that she has not read any study about the risk of accident during transportation, that she has not  
26 studied the risk of liability at issue, and that she has not even read any study related to risk from  
release of waste. (553:8-25). Her testimony that more driving time increases the risk of  
transporting biomedical waste does not demonstrate generator need because it is not testimony  
of a “professional in the body of knowledge at issue” “about the requirements of the service  
they need.” Order 05, ¶10 (quoting *In re Application GA-76820 of Medical Resource  
Recycling System, Inc.*, Order M.V.G. No. 1707 at 4 (May 25, 1994)).



1 testified that “[t]here’s no problem” with putting the Committee’s questions to James Ryan, the  
2 “salesperson” at issue, that the process was the same in addressing questions to Waste  
3 Management, and that, in fact, Mr. Ryan had answered all the Committee’s questions.<sup>15</sup>  
4 (556:6-18). This reversal is perhaps explained by the fact that Ms. Newcomer was not  
5 informed about this subject, testifying that she was not involved in communications between  
6 the Committee and Stericycle. (555:21-556:2, 558:6-12). Ms. Newcomer offered no other  
7 basis for her vague testimony that “The University of Washington [Seattle campus] has found  
8 Stericycle’s customer service to be only adequately responsive.”<sup>16</sup> EN-1T, 4:7-9.

9 80. Finally, Ms. Newcomer testified that she desires competition between service  
10 providers because it will result in true market prices and provide “leverage” to ensure  
11 responsive service.<sup>17</sup> EN-1T, 4:5-7. Importantly, however, the Seattle campus already has  
12 competition between Stericycle and Waste Management and chooses to continue using  
13 Stericycle’s services. (560:16-20).

14 9. Jeff Mero, Association of Washington Public Hospital Districts.

15 81. Jeff Mero has been the Executive Director of the Association of Washington  
16 Public Hospital Districts (AWPHD) for 12 years. JM-1T, 1:17-20, (735:8-12). AWPHD  
17 represents the 56 public hospital districts in Washington, including the 44 hospitals operated by  
18 those districts. (728:5-8). His testimony strongly supports the conclusion that Stericycle  
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20 <sup>15</sup> Ms. Newcomer attempted to change her prefiled testimony by adding her speculation that she  
21 “think[s] the turnaround, the response time from Stericycle was a lot slower than it was from  
22 Waste Management.” (556:18-21). However, Ms. Newcomer was actually not involved in this  
23 process, has not seen any of the correspondence between the Committee and Mr. Ryan, and has  
24 not reviewed with anybody the dates or times when questions were asked and answered.  
(555:21-556:2, 557:1-8). Email records show that, in fact, Mr. Ryan responded to a question  
left in the last email was answered by phone. 624:8-11.

<sup>16</sup> In any event, adequate responsiveness does not indicate unsatisfactory service.

<sup>17</sup> As with other generator witnesses, Ms. Newcomer has not studied the effects of competition  
on regulated medical waste services and has not studied whether competition might result in  
cost cutting and lower quality services. (559:13-17). She is not, therefore, speaking from  
professional knowledge or experience.

1 provides services that meet the needs of biomedical waste generators in the application  
2 territory.

3 82. Mr. Mero testified that “AWPHD views Stericycle as a reliable and cost-  
4 effective provider of biomedical waste management and collection services.” JM-1T, 2:2-3.  
5 The Association also believes that “Stericycle has provided reliable biomedical waste  
6 management and collection services to Washington healthcare facilities since the early 1990s at  
7 stable prices. This reflects cost control efforts responsive to the cost concerns of Washington  
8 healthcare providers.” JM-1T, 3:23-25.

9 83. Finally, Mr. Mero testified that “AWPHD is not aware of any service option or  
10 service feature proposed by Waste Management that is not already offered (or offered in an  
11 equivalent or better form) by Stericycle.” JM-1T, 4:15-17. Mr. Mero’s testimony is supported  
12 by his 12 years with AWPHD in which he and his staff are in regular contact with their  
13 members, including frequent phone calls, meetings, visits to member hospitals, and  
14 committees, to hear their concerns and respond to questions.<sup>18</sup>

15 10. Taya Briley, Washington Hospital Services.

16 84. Taya Briley is the President of Washington Hospital Services (WHS). WHS is a  
17 for-profit subsidiary of the Washington State Hospital Association (WSHA). WSHA  
18 represents the 97 hospitals throughout Washington. TB-1T, 1:17-19. Ms. Briley is also general  
19 counsel for WSHA. (776:2-8). Ms. Briley has been employed by WSHA for more than 13  
20 years and has been the President of WHS for over a year. (774:1-4, 775:14-776:1). “WHS  
21 works to ensure that WSHA’s members have access to the services they need to support their  
22

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23 <sup>18</sup> In addition, before submitting prefiled testimony, Mr. Mero sent an email to AWPHD’s  
24 members informing them of Waste Management’s application and asking if they had concerns  
25 about him providing the Association’s views on Stericycle’s performance and the implications  
26 of adding another biomedical waste service provider. (730:22-731:19). No member  
responded, including Lake Chelan Community Hospital and Olympic Medical Center, public  
hospital districts ostensibly supporting Waste Management’s application. (731:20-21). The  
administrator of Olympic Medical Center did not address the issue in three conversations with  
Mr. Mero following this email. (734:1-4).

1 operations and facilities at the best prices, including biomedical waste collection services.”  
2 TB-1T, 1:19-21. At the hearing Ms. Briley explained how WHS works to understand the needs  
3 of its members for hospital services and ensure that they get the services they need. (799:1-19).  
4 Ms. Briley’s testimony on behalf of WHS and its members about these needs and Stericycle’s  
5 services is supported by her and her staff’s regular communications with member hospitals,  
6 including correspondence, council meetings, visits to member hospitals, talking to member  
7 hospitals about the services they use, and listening to their concerns, including their needs for  
8 additional services.<sup>19</sup> (798:7-799:19).

9 85. Ms. Briley testified that “WHS continues to endorse Stericycle as a reliable and  
10 cost-effective provider of biomedical waste management and collection services.” TB-1T, 2:3-  
11 4. Ms. Briley testified that Stericycle is an “industry partner” of WHS, a relationship earned by  
12 providing good rates and services, as well as environmental stewardship, to member hospitals.  
13 (776:12-777:5). As part of this relationship, WHS has entered into to an endorsement contract  
14 in which it has agreed to promote Stericycle’s services to its members. JR-9. WHS plans to  
15 renew this contract because of Stericycle’s good rates, environmental practices, and reliable  
16 service to WHS’s membership, as well as Stericycle’s demonstration to WHS that it “can be  
17 highly responsive to needs that our hospitals have . . . .” (799:20-800:15). Finally, Ms. Briley  
18 testified that “WHS is unaware of any service option or service feature of Waste Management’s  
19 biomedical waste collection program that is not already offered (or offered in an equivalent or  
20 better form) by Stericycle . . . .” TB-1T, 5:11-15.

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25 <sup>19</sup> Ms. Briley also testified that prior to giving pre-filed testimony she sent an email to the board  
26 of directors of WHS asking them if she could provide testimony in response to Stericycle’s  
request and received responses in the affirmative or expressing no concern. (771:2-13).

1           11.   Stericycle meets the needs of generators in the application territory for  
2                    specialized biomedical waste services and thus provides service to the  
3                    satisfaction of the Commission.

4           86.   Waste Management has failed to prove that Stericycle’s services do not satisfy  
5 the specialized needs of customers in the territory in which Waste Management seeks authority.  
6 It was Waste Management’s burden to present through testimony of generators in the  
7 application territory evidence of unmet need – evidence strong enough to overcome the  
8 presumption in RCW 81.77 against overlapping service territories. The testimony of nine  
9 witnesses representing generators in the application territory (and even the one representing a  
10 generator outside the application territory, whose testimony is not relevant on this issue) has  
11 not identified any needs for specialized biomedical waste collection and disposal services that  
12 are not already met by Stericycle’s extensive service offerings.

13           87.   But Waste Management’s application is not doomed merely by lack of proof. A  
14 majority of the generator witnesses, including half of those proffered by Waste Management  
15 and all three witnesses representing broad associations of biomedical waste generators,  
16 affirmatively stated that they were not testifying that Stericycle’s services were unsatisfactory,  
17 that they had “no complaints” or “no problem” “at all” with Stericycle’s services, that they  
18 continued to use Stericycle despite having another option, and/or that Stericycle is a “good  
19 partner” and “reliable” service provider. The testimony from the Washington State Dental  
20 Association, Washington Health Services, Association of Washington Public Hospital Districts,  
21 and the PeaceHealth system disclaiming any complaint about Stericycle’s services and/or  
22 lauding their efficacy and reliability represents hundreds of biomedical waste generators  
23 throughout the application territory. Although the burden of proof remains on Waste  
24 Management, in fact the evidence affirmatively shows that Stericycle meets the biomedical  
25 waste collection and disposal needs of generators in the application territory.

26           88.   After a year preparing its case and out of the thousands of Stericycle customers  
in the application territory, Waste Management proffered five generator witnesses – only half

1 of the total number of generator witnesses – who complained about a handful of isolated  
2 customer service or service delivery problems. The hearing testimony contradicted and  
3 challenged the credibility of some of these complaints, revealed others to be based on the  
4 uninformed testimony of people who lacked responsibility for and knowledge of biomedical  
5 waste services, and revealed a strong tone of advocacy. Where there was some merit to the  
6 complaints – two billing errors, both resolved, one too slowly – Stericycle acknowledged the  
7 error. But where prefiled testimony attempted, intentionally or not, to incorrectly color a  
8 witness’ lack of involvement and lack of knowledge as Stericycle’s error, the cross-  
9 examination testimony revealed the prefiled testimony to be lacking merit.

10 89. As noted previously, the Commission Staff addressed these complaint  
11 allegations in its post-hearing brief, stating that the record contains “some evidence of  
12 deficiencies in the service provided by Stericycle,” but the Staff concluded that “Staff does not  
13 believe that these deficiencies, by themselves, are enough to support a finding that Stericycle  
14 will not provide service to the satisfaction of the Commission under RCW 81.77.040.” Staff  
15 Post-Hearing Brief, ¶26. While this statement gives too much credence to a lot of flawed  
16 testimony, the Staff’s ultimate conclusion is correct. Not one of these complaints was even  
17 perceived by the generator to be sufficiently serious to warrant a formal complaint to the  
18 Commission.<sup>20</sup> The complaints address isolated customer service or service delivery issues, not

19 <sup>20</sup> In its post hearing brief the Staff cites the testimony of Mr. Lycan in support of its  
20 statement that “[t]wo biomedical waste customer witnesses testified that they were not aware of  
21 having received [information about the Commission’s availability to review complaints] from  
22 Stericycle.” Staff Post-Hearing Brief, ¶27. But this commentary inaccurately implies that Mr.  
23 Lycan testified that Stericycle did not provide such information. Staff asked Mr. Lycan if  
24 Stericycle provided PAML with information about how to contact the UTC about problems  
25 with the service. Mr. Lycan did not simply say “no.” Rather, Mr. Lycan responded “I was  
26 never made aware of that. I never had a reason to look into that.” (448:6-11). This answer  
simply means that Mr. Lycan does not know anything about whether Stericycle provided this  
information and that he never looked into it. This answer is consistent with Mr. Lycan’s  
general lack of knowledge concerning PAML’s biomedical waste services and interactions with  
Stericycle; it cannot in any way support a finding that Stericycle did not, in fact, provide the  
information about the Commission’s availability to address service complaints.

The Staff also cited the testimony of Ms. Patshkowski for the same purpose. Again,  
however, Ms. Patshkowski’s testimony does not indicate that Stericycle did not provide

1 chronic or pervasive service failures. The issues raised are relatively minor and, generally,  
2 quickly corrected. The issues identified are very few in number considering that Stericycle  
3 provides services to over 7,700 customers annually, thousands in the application territory.  
4 After correctly excluding complaints based on flawed testimony, the evidence further  
5 demonstrates that Stericycle provides high-quality, responsive services.

6 90. The preference of many generator witnesses for competition “in general” is also  
7 not evidence of need and does not meet Waste Management’s burden of proof. *In re Sureway*  
8 *Medical Services, Inc.*, Order M.V.G. No. 1674, Hearing No., GA-75968 at 4-5 (Dec. 20,  
9 1993). In cross-examination testimony the generator witnesses agreed their desire for  
10 competition was generic, not a need for Waste Management’s services. The generator  
11 witnesses also speculated that competition would yield better services or prices, but  
12 Stericycle’s history of innovation and cost control without a statewide competitor prove that  
13 competition is not necessary to keep Stericycle’s services ahead of the curve and its prices well  
14 below inflation.

15 91. Waste Management has not proven that “the biomedical waste collection service  
16 currently provided in the territory Waste Management proposes to serve does not satisfy the  
17 specialized needs of customers in that area as the customers determine those needs . . . .” Order  
18 05, ¶11. Waste Management’s application for new authority must be denied under RCW  
19 81.77.040.

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21 information to Providence Medical Group facilities. It is undisputed that the facility managers,  
22 not Ms. Patshkowski, were responsible for managing the biomedical waste services. (465:1-5),  
23 JR-7T, 3:5-8. Indeed, Ms. Patshkowski made clear that when she responded to the Staff’s  
24 question about receiving information from Stericycle she was not speaking for the managers of  
25 the facilities. (489:16-23). She also testified that she was not aware that the clinics received a  
26 welcome packet of information from Stericycle and that all she really paid attention to was  
whether the service had been set up, her only responsibility. (489:24-490:4). As with Mr.  
Lycan, these answers are consistent with Ms. Patshkowski’s lack of responsibility and  
knowledge. Her testimony in no way establishes that Stericycle did not provide information  
about the Commission’s role in resolving service complaints.

1 **C. Waste Management Has Not Established That There is a Public Need For Its**  
2 **Services or that a Grant of its Application is in the Public Interest.**

3 1. The evidence establishes that Stericycle's robust biomedical waste services meet  
4 public need and offer every service feature Waste Management promotes in a  
5 superior fashion.

6 92. Stericycle provides extensive services to biomedical waste generators  
7 throughout the territory covered by Waste Management's application. As Michael Philpott,  
8 Stericycle's Regional Operations Director, has testified, among other services Stericycle offers  
9 customer training on biomedical waste handling and reduction, a wide range of different types  
10 and sizes of reusable biomedical waste containers, integrated shipping documentation and  
11 electronic tracking of waste from pick-up to disposal, customer reports, effective, non-  
12 incinerative treatment of waste by steam autoclave to render it non-infectious, and, through its  
13 "Biosystems" reusable sharps container service, Stericycle offers in-facility management and  
14 collection of sharps waste to minimize risk to generator employees as well as 100% reusable,  
15 puncture-proof plastic sharps containers that allow generators to reduce the amount of sharps  
16 waste sent to landfills by over 50%. *Supra*, ¶17. Stericycle has introduced many of these  
17 innovations in Washington notwithstanding the absence of statewide competition and all  
18 without raising its prices despite general inflation. MP-15T, 3:3-6:15.

19 93. Waste Management has not proven that its biomedical waste services will serve  
20 any service need differently or better than Stericycle's existing services. Waste Management's  
21 claim that its services meet generator needs differently than Stericycle's services relies entirely  
22 on the testimony of its chief biomedical waste salesperson, Jeff Norton. But Mr. Norton's  
23 testimony cannot establish public need and his testimony reveals that Waste Management  
24 offers nothing new or better than Stericycle. *In re Sureway Medical Services, Inc.*, Order  
25 M.V.G. No. 1674, Hearing No., GA-75968 at 5, n.3 (Dec. 20, 1993) ("The Commission  
26 requires that need be shown through the testimony of persons who require the service."); *see*  
*also In re SafeCo Safe Transport, Inc.*, Order M.V. No. 143916, Hearing No. P-73623 at 10

1 (Oct. 9, 1991) (In a motor carrier application case raising the issue of public need, disregarding  
2 the testimony of an applicant's employee concerning customer need and holding that "[a]n  
3 applicant may not present testimony about the needs of others for its own services.")

4 94. One area where Stericycle already provides exemplary service is in choice of  
5 biomedical waste containers. No generator in the application territory has testified that it lacks  
6 desired container options or that it dislikes Stericycle's containers. Nevertheless, in his prefiled  
7 testimony, Mr. Norton alleged that that Stericycle's Steritubs – one kind of several reusable  
8 plastic containers offered by Stericycle – were disliked by "most" of the customers that used  
9 them. JN-1T, 3:10-13. As a result, Mr. Norton testified, he "knew" that Rehrig hinged lid  
10 containers offered by Waste Management would be a great benefit to generators. JN-1T, 3:15-  
11 18. Contrary to Mr. Norton's testimony, however, not one generator witness testified about any  
12 issue with Stericycle's containers. There were simply no complaints. Moreover, not a single  
13 generator gave any testimony concerning the supposedly superior Rehrig containers. Mr.  
14 Norton's testimony cannot manufacture a generator need that generators have not expressed.  
15 Thus, there is no evidence that the Rehrig containers are in the public's interest.

16 95. Stericycle better serves generator needs by offering three different kinds of  
17 reusable containers, in eight different sizes, including Stericycle's proprietary Steritubs,  
18 Rubbermaid containers, and the Rehrig hinged lid containers.<sup>21</sup> MP-3, MP-15T, 5:13, 11:5-14.  
19 Mr. Philpott explained that in his experience it is more important to offer a range of different  
20 containers types and sizes than to try to offer a "perfect container." The customer can then  
21 select the container that best meets its needs. MP-15T, 10:14-18. Mr. Norton agrees, testifying  
22 that, in fact, no one container is perfect but, rather, a choice between several different kinds of  
23 containers is better. At Mr. Norton's deposition and at the hearing he expressly testified that

24 <sup>21</sup> Stericycle began offering the Rehrig containers in June, 2011, prior to the filing of Waste  
25 Management's application. MP-15T, 12:15-16, 20-23, MP-22, 2. These containers are  
26 currently on the tariff for counties where they were tested with hospitals, but there are sufficient  
stocks to quickly provide the containers anywhere need is expressed. MP-15T, 12:16-22, 13:9-  
14.



1 biomedical waste generators value having a choice between different kinds of containers.<sup>22</sup>  
2 (375:14-17), JN-7, 14:12-15. In addition, Mr. Norton agreed in his deposition that a  
3 biomedical waste service that offered a choice between a Rehrig container and several other  
4 choices of containers would be better than a service that only offered Rehrig containers. JN-7,  
5 102:8-20. Finally, although Mr. Norton agrees that no one container is perfect and that it is up  
6 to the generator, not Waste Management, to choose the container that best meets its needs, he  
7 conceded that Waste Management does not offer a choice of containers to customers. (377:14-  
8 18, 378:3-6, 514:11-12, 518:12-15). Stericycle's services, not Waste Management's, best meet  
9 generator need for a choice of containers because Stericycle offers generators a range of  
10 different kinds of biomedical waste containers and allows generators to choose which container  
11 types and sizes best meet their needs.

12 96. Stericycle also better serves the public interest through its "Biosystems"  
13 reusable sharps container program, which diverts over 50% of the sharps waste stream from the  
14 landfill, allowing generators to avoid the use of wasteful and costly disposable sharps  
15 containers. This service promotes environmental sustainability far better than Waste  
16 Management's services, which do not include any available alternative to using disposable  
17 sharps containers that are processed and discarded with other biomedical waste.

18 97. In his prefiled testimony Mr. Norton identified Waste Management's ecoFinity  
19 sharps recycling pilot program as a different service. JN-1T, 4:16-18. However, the ecoFinity  
20 service cannot serve the public interest because it is not available to Washington generators.  
21 Mr. Norton testified that ecoFinity is a pilot program at only one Washington hospital.  
22 (494:21-23). He further testified that ecoFinity is not available to any other facility and  
23 conceded that this was because the capacity to process ecoFinity sharps waste is limited.

24  
25 <sup>22</sup> At the hearing Mr. Norton initially denied that this was true, contradicting his deposition  
26 testimony, but upon impeachment agreed that choice of containers is valued by customers.  
(372:12-15, 3731-375:17).

1 (495:1-7). A service that is not available to Washington's generators and that cannot be  
2 provided due to limited processing capacity will not serve the public interest.

3 98. In addition, no generator testified that Stericycle's reusable sharps container  
4 service did not meet its needs and no generator testified about the ecoFinity program at all,  
5 much less a preference for that service. There is simply no generator testimony supporting a  
6 need for the ecoFinity service.

7 99. By Mr. Norton's own measure Stericycle's reusable sharps container service  
8 already provides Washington generators in the application territory an equivalent or superior  
9 benefit than the ecoFinity service could provide if it were it available. In his prefiled  
10 testimony, Mr. Norton stated that the ecoFinity pilot program "offers a more sustainable way to  
11 handle [sharps waste]." <sup>23</sup> JN-1T, 4:17-18. Mr. Norton explained that "more sustainable"  
12 meant more sustainable than the traditional practice of disposing of sharps waste and its  
13 containers in a landfill. (496:21-497:1). Mr. Norton did not testify that ecoFinity was more  
14 sustainable than Stericycle's service. (497:2-12). Indeed, since Stericycle's service also  
15 diverts a large portion of the same waste stream from a landfill, Mr. Norton agreed that it is  
16 also "sustainable." (497:18-498:5).

17 100. More than that, while Stericycle's service diverts over 50% of the sharps waste  
18 stream from landfills for complete reuse, Waste Management's ecoFinity program diverts, on  
19 average, only 22% (and as little as 8% in a given month) of the waste material to a further  
20 recycling process. MP-12, MP-15T, 5:12-19, 16:24-17:2, MP-17. Moreover, the ecoFinity  
21 program requires the sharps waste to be transported by truck to southern California, ground up  
22 after treatment, transported again to a different reclamation facility, processed in that facility to  
23 separate and pelletize the small amount of plastic materials reclaimed, and transported again to  
24 a sharps container manufacturer where some amount is recycled in the manufacture of new  
25

26 <sup>23</sup> The original text said "a more sustainable way to handle RMW," but at the hearing Mr. Norton clarified that ecoFinity only handles sharps waste. (495:15-496:8).

1 sharps containers. MP-13, 3 (describing the ecoFinity program), MP-15T, 17:6-15. All of  
2 these additional transportation and processing steps require the consumption of fossil fuel,  
3 electric power, and other resources that are not required by Stericycle's reuse program. By Mr.  
4 Norton's measure of "sustainable," and by any measure of environmental benefit, Stericycle's  
5 reusable sharps container program far outperforms Waste Management's and better serves the  
6 public interest.

7 101. In his prefiled testimony Mr. Norton also identifies Waste Management's Seattle  
8 processing facility as a difference, arguing that it is closer to most facilities generating  
9 biomedical waste in Washington and that reduced travel time will reduce emissions and "risk of  
10 liability." JN-1T, 5:15-20. First, the supposed benefit of a Seattle processing facility does not  
11 serve any need in the application territory. As discussed above, Emily Newcomer of the  
12 University of Washington's Seattle campus, who made a similar allegation, does not represent  
13 a generator in the territory Waste Management is applying to serve. Her belief that Seattle-  
14 based processing is beneficial to the University of Washington's Seattle campus does not  
15 establish a generator need relevant to this proceeding. *In re Sureway Medical Services, Inc.*,  
16 Order M.V.G. No. 1674, Hearing No., GA-75968 at 5, n.3 (Dec. 20, 1993) ("The Commission  
17 requires that need be shown through the testimony of persons who require the service."). None  
18 of the nine generator witnesses representing facilities in the application territory testified about  
19 the location of Waste Management's or Stericycle's processing facility. There is, therefore, no  
20 evidence that Waste Management's Seattle facility serves the interests of the public in the  
21 application territory.

22 102. Furthermore, granting Waste Management overlapping authority to serve the  
23 entire state with its Seattle facility would not minimize the number of trucks on the road or the  
24 miles traveled. Rather, as Ms. Newcomer acknowledged, granting Waste Management  
25 *overlapping* authority to provide service *in addition* to Stericycle would actually *increase* the  
26 number of trucks that are on the road. (549:3-14). These increased transportation miles would

1 *increase* emissions and would *increase* any risk of liability that Mr. Norton believes is  
2 associated with driving additional miles, regardless of where Waste Management processes its  
3 waste.<sup>24</sup> Even Mr. Norton admitted that he was not testifying that overall allowing Waste  
4 Management to serve in the remainder of the state would lead to reduced emissions and that it  
5 is possible that allowing two companies to serve every area of the state would increase  
6 emissions. (355:14-24). Absent any countervailing benefit, increased road transportation as a  
7 consequence of granting Waste Management's application will not serve the public's interest.

8         2.     The evidence establishes that the few customer complaints made against  
9             Stericycle in its 20 year history are consistent with high quality and responsive  
10            service and that Waste Management's record of customer complaints is not any  
11            better.

12         103.   Stericycle provides service to more than 7,700 customers in Washington and has  
13 an exemplary record of providing service to the generator public, service that is as good as or  
14 better than the service Waste Management would bring to generators if its application is  
15 granted. In Stericycle's 20 year history of service to Washington generators there have been  
16 only six complaints made to the Commission and only two of those complaints were upheld.  
17 MP-15T, 9:3-13, MP-20. Even in this proceeding, generator witnesses selected by Waste  
18 Management to support its application alleged only a small handful of isolated service  
19 complaints. The Commission Staff has correctly stated that "these deficiencies, by themselves,  
20 are enough to support a finding that Stericycle will not provide service to the satisfaction of the  
21 Commission under RCW 81.77.040." Staff Post-Hearing Brief, ¶26.

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22  
23 <sup>24</sup> Mr. Norton's testimony about the alleged risk of liability associated with transporting  
24 biomedical waste over highways is just as uninformed as Ms. Newcomer's similar testimony.  
25 Mr. Norton agrees that the risk his testimony refers to is the risk that someone would come into  
26 contact with waste and become infected after waste is released from a truck driving on a  
highway. (347:17-23, 357:20-22, 358:1-22). But, like Ms. Newcomer, Mr. Norton admits that  
he has not studied the risk of waste being released during highway transportation, has not read  
such a study, and has not studied the risk of someone coming into contact with waste released  
during transportation. (348:5-16).

1           104. In addition, there is no evidence that Waste Management can provide any better  
2 service. Waste Management's biomedical waste operations in areas where it already has  
3 authorization have only recently begun, are small and, hence, Waste Management has no real  
4 track record of complaints about biomedical waste collection that can be compared with  
5 Stericycle's. However, Waste Management has for many years provided general solid waste  
6 services to thousands of customers in Washington and in these larger, established operations  
7 have a record of extensive service complaints. Since 2001, hundreds of service complaints  
8 have been made to the Commission against Waste Management and hundreds have been  
9 upheld. MP-15T, 9:15-21, MP-21. Complaints that have been upheld by the commission  
10 include service lapses just like those alleged against Stericycle in this proceeding, including  
11 billing errors, customer service difficulties, and missed pick-ups. For example, Waste  
12 Management has failed to pick up waste as scheduled, sometimes over a period of weeks,  
13 months, and even years. MP-21, \*18, \*23, \*57, \*65, \*246.<sup>25</sup> Waste Management has  
14 continued to bill when it misplaced a customer payment (*id.* at \*4) and has made other billing  
15 errors (*id.* at \*75, \*94). There have been delays in initiating service (*id.* at \*7, \*14) and Waste  
16 Management has failed to adequately respond to customer complaints (*id.* at \*246, \*322). The  
17 evidence demonstrates that Stericycle's service has been exemplary, including only a tiny  
18 number of complaints over a 20-year period that are entirely consistent with the operations of a  
19 high quality service provider meeting the needs of thousands of customers. There is no  
20 evidence that Waste Management's services will better serve the public's interest if it is granted  
21 authority to expand its biomedical waste operations.

22  
23  
24  
25 <sup>25</sup> This exhibit is voluminous and has been provided to the Commission on CD. The page  
26 number references identified with a "\*" are references to the page of the electronic .pdf  
document provided on CD. The complaints referenced in the test are Consumer Complaint  
Nos. 67410, 68031, 68105, 69377, 70795, 77800, 79949, 81025, 83845, 93249, and 99577.

1           3.     Dividing rural markets between more than one service provider is not in the  
2                    public interest because it will increase the costs of service to these areas and put  
3                    rural generators at serious risk of increased prices or reduced services.

4           105.    The risk to generators in rural areas of dividing their markets between two (or  
5           three) service providers is not in the public interest and must be carefully avoided in this  
6           proceeding. Jeff Mero of the Association of Washington Public Hospital Districts reports that  
7           “AWPHD is particularly concerned that splitting the medical waste market in rural  
8           communities among multiple service providers may adversely affect rates or service levels to  
9           our member hospitals.” JN-1T, 4:20-22. “Serving rural areas involves high transportation  
10          costs. If the revenues earned from serving rural communities are split among multiple service  
11          providers, there is a risk that economics will force carriers to abandon service to rural  
12          communities entirely, reduce their service levels or raise their rates to offset their higher costs  
13          per revenue dollar earned from serving those communities.” JM-1T, 4:22-26.

14          106.    Mr. Mero is right to be concerned. Michael Weinstein, Waste Management’s  
15          Senior Pricing Manager, confirms that the more “stem miles” involved in reaching customers,  
16          the greater the costs of providing service to customers. (276:9-16). “Stem miles” are the miles  
17          that a collection truck must travel to reach a service area. Mr. Weinstein also explains that  
18          “stem mile” travel is generally a fixed cost of service. (273:13-274:2). This means that, in  
19          general, the cost of traveling to a service area does not vary, regardless of the number of  
20          customers served in that area. (274:3-9). Taking Port Angeles as an example, Mr. Weinstein  
21          agreed that the stem mile costs to serve customers in Port Angeles would not vary with the  
22          number of waste containers collected. (277:20-24). He agrees, therefore, that the cost of  
23          service to Port Angeles as a percentage of revenue would go up as the amount of business in  
24          that area went down. (278:7-11).

25          107.    In his prefiled testimony Christopher Dunn, Stericycle’s Regional Operations  
26          Manager, used this principle to identify likely effects of competition from Waste Management  
                in rural areas on service and pricing. Mr. Dunn stated that a larger proportion of the application

1 territory is comprised of rural areas than in the territory Waste Management already serves.  
2 CD-1T, 2:13-16. Thus, in general, collection routes to these areas tend to involve greater  
3 mileage and, hence, greater fixed costs. CD-1T, 2:23-3:9. Mr. Dunn concluded that if  
4 Stericycle loses business in the application territory to Waste Management, its costs of serving  
5 those areas will not fall in the same proportion as the lost revenue. CD-1T, 3:9-13. As a result,  
6 the cost of service to these more far-flung areas would rise as a percentage of revenue as  
7 revenue falls. Mr. Dunn testified that for this reason a significant loss of business in the  
8 application territory would require Stericycle to either reduce its costs of service to those areas  
9 or increase its rates of service to those areas. CD-1T, 5:3-9. This consequence is precisely  
10 what Mr. Mero fears, that as a result of dividing the medical waste market in rural areas served  
11 by his member hospitals, the competing carriers in those areas would be forced to reduce  
12 service or raise their rates. This result is not in the public interest.

13 **III. RELIEF REQUESTED**

14 108. For the foregoing reasons the Commission should deny Waste Management's  
15 application for overlapping biomedical waste collection authority.

16 DATED this 18<sup>th</sup> day of January, 2013.

17 Respectfully submitted,

18 GARVEY SCHUBERT BARER

19  
20 By 

21 Stephen B. Johnson, WSBA #6196  
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23 Attorneys for Protestant Stericycle of  
24 Washington, Inc.  
25  
26

1 **CERTIFICATE OF SERVICE**

2 I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of  
3 Washington that, on January 18, 2013, I caused to be served on the person(s) listed below in the  
4 manner shown a copy of PROTESTANT STERICYCLE OF WASHINGTON, INC.'S POST-  
5 HEARING BRIEF:

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7 Transportation Commission  
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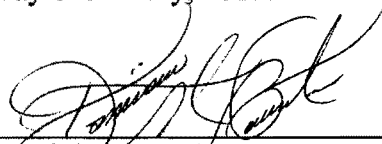
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- Via Legal Messenger
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8 Dated at Seattle, Washington this 18<sup>th</sup> day of January, 2013.

9   
10 \_\_\_\_\_  
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