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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of:

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

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

Docket No. TG-120033

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25 <http://www.wasterecyclingnews.com/article/20130108/NEWS01/130109953>6

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1 1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of
2 Washington (“Waste Management”) requests that the Commission award Waste Management’s
3 application for an extension of its existing territorial rights and grant the company statewide authority
4 to offer regulated biomedical waste (“RMW”) services. Waste Management has provided sufficient
5 evidence proving that public convenience and necessity support granting its extension. The company
6 presented proof that it is fit to perform RMW services in the territories it does not already serve. It
7 has demonstrated that the biomedical waste collection and disposal service currently provided in the
8 territory does not satisfy the specialized needs of customers in that area as the customers determine
9 those needs. Through the written and live testimony of witnesses, Waste Management has met its
10 burden of proof.

11 2. The purpose of the December 2012 evidentiary hearing was to determine three
12 statutory elements: (1) “The present service and the cost thereof for the contemplated area to be
13 served”; (2) “sentiment in the community contemplated to be served as to the necessity for such
14 service”; and (3) whether “the existing solid waste collection company or companies serving the
15 territory will not provide service to the satisfaction of the commission.”¹ Synthesizing these
16 statutory elements, the Presiding Officer ordered that Waste Management demonstrate “that (1) the
17 biomedical waste collection service currently provided in the territory Waste Management proposes
18 to serve does not satisfy the specialized needs of customers in that area as the customers determine
19 those needs, and (2) the public’s needs for responsive service outweighs any negative impacts of the
20 entry of an additional provider on the economic viability of existing carriers.”² Waste Management
21 amply established both of these conditions at the evidentiary hearing.

22 3. As directed,³ Waste Management established the remaining statutory elements
23 regarding its fitness through declarations filed prior to the evidentiary hearing. Waste Management
24 provided a description and analysis of the facilities needed, the estimated attendant costs, and the
25 assets it has and will continue to commit to provide to offer the requested service, sufficient to
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27 ¹ RCW 81.77.040.

28 ² Order 05 ¶ 11.

³ *Id.* ¶ 13.

1 provide reassurance that Waste Management will provide service to the satisfaction of its future
2 customers and the Commission.

3 I. ARGUMENT

4 A. The Present Biomedical Waste Collection Service Does Not Satisfy the Specialized Needs 5 of Customers.

6 4. The Commission exercises broad discretion in determining whether incumbent
7 certificate holders are providing satisfactory service to biomedical waste generators.⁴ The
8 Commission “does not second-guess the customers’ stated needs but defers to ‘persons who have
9 unique knowledge about the requirements of the service they need,’ and declines ‘to tell a
10 professional in the body of knowledge at issue that a service does or does not meet her or his
11 needs.’”⁵ The Commission does not examine for “reasonableness” or “legitimacy” the biomedical
12 waste generators’ stated needs.⁶ The testimony of the RMW generators in this proceeding
13 establishes that they are not satisfied with Protestant Stericycle of Washington, Inc.’s (“Stericycle”)
14 services, that they require a competitive statewide alternative to Stericycle which cannot be provided
15 by any of the small, regional Protestants, and that generators are presently enjoying quality of service
16 and pricing benefits as a result of the competition already offered by Waste Management in many
17 areas of the State of Washington. In inviting Waste Management to apply for statewide authority,
18 Stericycle previously advised the Commission that “Stericycle recognizes that the Commission may
19 welcome additional competition in biomedical waste collection and does not oppose fair competition
20 if in the public interest and initiated in accordance with the requirements of applicable law.”⁷

21 1. RMW Generators Are Not Satisfied With Stericycle’s Services.

22 5. Stericycle’s customers testified about Stericycle’s failure to satisfy their needs.
23 Rodger Lycan, Procurement Manager for Pathology Associates Medical Laboratories (“PAML”),

24 ⁴ See *Arco Prods. Co. v. Wash. Utils. & Transp. Comm’n*, 125 Wn.2d 805, 811-12, 888 P.2d 728 (1995).

25 ⁵ Order 05 ¶ 10 (quoting *In re Med. Res. Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 4 (May 25,
26 1994)); see also *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 13 (Nov.19, 1993) (“the
27 Commission gives considerable weight to the judgment of the biohazardous waste generators regarding the sufficiency of
28 existing service and their need for service alternatives”).

⁶ Order 05 ¶ 10.

⁷ *Stericycle v. Waste Mgmt.*, Docket No. TG-110553, Compl. & Pet’n of Stericycle of Wash., Inc. ¶ 7 (Mar. 21, 2011).

1 has been very dissatisfied with Stericycle's services.⁸ PAML is headquartered in Spokane and has
2 approximately 60 facilities throughout Washington which generate RMW.⁹ Stericycle has not
3 shown any interest in providing PAML with efficient or cost-effective service despite PAML's
4 express request to Stericycle to determine ways in which PAML could cut its RMW service costs.¹⁰
5 PAML "did not get a response from Stericycle in that regard and heard nothing about it until
6 [PAML] notified [Stericycle] that [PAML was] transitioning some facilities over to Waste
7 Management."¹¹ In contrast, since PAML signed up for RMW service with Waste Management in
8 2011, Waste Management employee Jeff Norton has worked closely with PAML to evaluate the
9 volume and nature of PAML's RMW and determine the most cost-effective delivery schedule and
10 container sizes. He advised PAML:

11 [D]uring the transition process that [Waste Management] could help us
12 beyond just the savings that Providence told us we would experience
13 whenever they contracted with Waste Management, that they could
14 save us money through going through and doing an audit of our
facilities, seeing if our containers are too large, if we are being picked
up too often¹²

15 PAML was also very dissatisfied with its treatment from Stericycle once PAML advised Stericycle
16 that PAML would be moving its facilities in the Certificate No. G-237 territory to Waste
17 Management. Despite PAML's direction that the final collection at these facilities should be
18 October 28, 2011, Stericycle immediately stopped providing service to some of the facilities, leaving
19 PAML in the untenable position of having RMW sitting uncollected until the Waste Management
20 contract later took effect.¹³ That caused hardship for PAML and a scramble to get service to PAML
21 facilities which lacked the ability to store the uncollected RMW.¹⁴

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23 ⁸ Ex. RL-1T.

24 ⁹ *Id.* at 3.

25 ¹⁰ *Id.*; Hearing Tr. Vol. VI at 438:14-439:18; *id.* at 451:2-10.

26 ¹¹ Hearing Tr. Vol. VI at 439:1-4; *id.* at 450:2-12.

27 ¹² *Id.* at 450:13-451:1.

28 ¹³ Ex. RL-1T at 3; *see also* RA-1T ¶ 11 (Stericycle stopped service at North Spokane PAML PSC, PAML Franklin Park Medical Center, and PAML Northpoint PSC, all in Spokane, on October 26, 2011, despite properly making the final collection on October 28, 2011 from PAML's YVFW Riverstone facility in Spokane).

¹⁴ Hearing Tr. Vol. VI at 448:12-21.

1 6. Carla Patshkowski, of the Providence Medical Group, testified of her major
2 dissatisfaction with Stericycle's services. Providence Medical Group has physician clinics and
3 family medicine centers in Chewelah, Colville and Spokane.¹⁵ Ms. Patshkowski was never assigned
4 a Stericycle sales representative and no one from Stericycle ever consulted with her regarding the
5 most economical and appropriate type of collection service for her facilities.¹⁶ Never having
6 received a list of Stericycle's service options and rates,¹⁷ it was only when she began discussions
7 with Waste Management in 2011 that she learned from Mr. Norton that she had a choice of different
8 size containers and different pick-up frequencies to obtain the most economical service.¹⁸
9 Mr. Norton audited Providence Medical Group's various facilities and determined the most
10 economical and efficient size of container and frequency of collection.¹⁹ Providence Medical Group
11 also objects to Stericycle's monthly fee in months where Stericycle has provided no collection
12 service, a fee which Waste Management does not charge.²⁰ Providence Medical Group's experience
13 with Stericycle's billing service has been even more aggravating. Once Providence Medical Group
14 terminated Stericycle's services in Waste Management's UTC territory, Stericycle continued billing
15 Providence Medical Group for eight months for the terminated service.²¹ Month after month of
16 complaints by Providence Medical Group yielded no resolution of Stericycle's improper billing.²²
17 The billing was only apparently corrected after Providence Medical Group was contacted by a
18 collection agency on behalf of Stericycle and Providence Medical Group's Chief Financial Officer
19 and Chief Operating Officer demanded that Stericycle cease the improper billing.²³ Stericycle also
20 responded to Providence Medical Group's termination of Stericycle services at some of its facilities
21 by improperly stopping service at the Chewelah facility which Providence Medical Group had
22

23 ¹⁵ Ex. CP-1T at 2.

24 ¹⁶ Hearing Tr. Vol. VI at 471:2-3; *id.* at 477:9-12; *id.* at 487:21-488:3.

25 ¹⁷ *Id.* at 383:23-485:1.

26 ¹⁸ *Id.* at 470:16-24; *id.* at 476:20-25; *id.* at 487:11-20.

27 ¹⁹ Ex. CP-1T at 3.

28 ²⁰ *Id.*; Ex. MP-27 at 5 n.4; Ex. MAW-25 at 7.

²¹ Ex. CP-1T at 3.

²² Hearing Tr. Vol. VI at 478:18-479:11.

1 directed would (and must, given no alternative) remain with Stericycle.²⁴ Stericycle never advised
2 Ms. Patshkowski that its services are regulated by the Commission.²⁵

3 7. Julie Sell, the Emergency Preparedness Coordinator for Olympic Medical Center,
4 testified of her dissatisfaction with Stericycle's services. Olympic Medical Center has a hospital and
5 seven clinics in Port Angeles and four clinics in Sequim.²⁶ Three times in the last seven months,
6 Stericycle has failed to make scheduled RMW collections from Olympic Medical Center facilities.²⁷
7 Ms. Sell has never been clear about who her Stericycle contact is.²⁸ Until very recently, Ms. Sell has
8 had to call Stericycle offices in Fresno, California and Chicago to rectify Stericycle's missed
9 collections.²⁹ It took the advent of the evidentiary hearing in this matter to trigger a phone call from
10 her apparent Stericycle representative James Ryan to inquire as to whether she was receiving
11 satisfactory service from Stericycle.³⁰ Stericycle's representatives never have taken responsibility
12 for missed pick-ups; rather, they have always assigned blame to Olympic Medical Center.³¹ Missed
13 pick-ups create safety issues for Olympic Medical Center's small facilities which lack the space to
14 store RMW waste.³² While there have been no missed pick-ups since October 2012, Ms. Sell
15 remains concerned about Stericycle's reliability.³³ The Olympic Medical Center also objects to
16 being charged a monthly fee by Stericycle in months where Stericycle does not collect any waste, a
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21 ²³ Ex. CP-1T at 3-4; Hearing Tr. Vol. VI at 488:10-489:6.

22 ²⁴ Hearing Tr. Vol. VI at 479:3-5.

23 ²⁵ *Id.* at 484:11-22.

24 ²⁶ Ex. JS-1T at 2.

25 ²⁷ Hearing Tr. Vol. V at 213:15-25.

26 ²⁸ *Id.* at 199:19-200:7, 207:18-19.

27 ²⁹ *Id.* at 225:21-226:16; *id.* at 210:13-211:3.

28 ³⁰ *Id.* at 225:15-20.

³¹ *Id.* at 226:17-21.

³² *Id.* at 226:22-25.

³³ *Id.* at 215:24-216:4.

1 fee which Waste Management does not charge.³⁴ In addition, Stericycle has charged Olympic
2 Medical Center an energy surcharge which is not authorized by its tariff.³⁵

3 8. Emily Newcomer, Seattle Operations Manager for the University of Washington's
4 Recycling and Solid Waste Program, testified that she prefers Waste Management over Stericycle
5 because Waste Management's Seattle processing facility is much closer to the Seattle campus than
6 Stericycle's Lewis County processing facility.³⁶ Based on her experience and basic commonsense, it
7 is her opinion that local processing by Waste Management offers her program environmental and
8 emission reduction benefits as well as reducing the University's liability associated with the
9 untreated RMW through less transportation time.³⁷ Moreover, the University of Washington has
10 found Stericycle's customer service to be cumbersome.³⁸ An example is found in the redacted email
11 exchange offered by Stericycle as "a perfect example of how having a local account representative []
12 improves customer service."³⁹ To the contrary, that email demonstrates that after multiple
13 exchanges between the University and Stericycle, the University's basic question regarding the
14 amount of cover Stericycle uses still remained unanswered.⁴⁰ Similarly, when the University's
15 Infectious Waste Committee requested equivalent information about treatment protocols from
16 Stericycle and Waste Management, "the response time from Stericycle was a lot slower than it was
17 from Waste Management."⁴¹

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20 ³⁴ *Id.* at 217:7-9; Ex. MP-27 at 5 n.4; Ex. MAW-25 at 7.

21 ³⁵ Hearing Tr. Vol. V at 217:10-218:4; Ex. MP-27. As revealed last week by New York's Attorney General in regard to
22 his \$2.4 million settlement with Stericycle, Inc., the company is guilty of this unlawful practice in other states. Jeremy
23 Carroll, *Lawsuit: Stericycle Systematically Overcharged Governmental Agencies*, WASTE & RECYCLING (Jan. 10, 2013,
24 5:19 PM), <http://www.wasterecyclingnews.com/article/20130108/NEWS01/130109953>.

25 ³⁶ Ex. EN-1T at 3-4.

26 ³⁷ *Id.*; Hearing Tr. Vol. VII at 549:17-24; *id.* at 551:2-552:17; *id.* at 554:4-8. In prior cases, RMW generators have
27 expressed the same need. *In re Med. Res. Recycling Sys.*, App. No. GA-76820, Order M.V.G. No. 1707 at 6 (May 25,
28 1994) (shipper "believes there is too much potential liability in having the waste ... transported across the state"); *id.*
(another shipper witness "prefers a local disposal site" and expressed similar concerns regarding "the distance the waste is
transported by BFI").

³⁸ Ex. EN-1T at 4.

³⁹ Ex. JR-1T ¶ 16.

⁴⁰ Ex. JR-8.

⁴¹ Hearing Tr. Vol. VII at 556:14-21.

1 9. Wendel Family Dental Centre (“Wendel”) has experienced significant problems with
2 Stericycle’s incorrect billing system. Wendel operates three dental offices in Vancouver. Jean
3 Longhenry, Wendel’s Facilities Manager, testified that she “was constantly calling to correct the
4 billing” she received from Stericycle and it took “a lot of calls” to get Stericycle to correct the
5 erroneous billing.⁴² Stericycle acknowledges these billing errors.⁴³ Furthermore, when Wendel
6 cancelled its service with Stericycle, Stericycle refused to come collect the Stericycle containers left
7 at Wendel’s facility and charged Wendel for those containers.⁴⁴

8 10. RMW generators have experienced a range of significant service failures from
9 Stericycle.

10 **2. RMW Generators Require a Competitive Statewide Alternative.**

11 11. The waste generators from all over the State of Washington who testified at the
12 hearing unanimously expressed their need for an alternative to Stericycle which cannot, alone, be
13 provided by any of the small, regional Protestants, Consolidated Disposal Services, Inc.
14 (“Consolidated”), Murrey’s Disposal Co., Inc. (“Murrey’s”), Pullman Disposal Service (“Pullman
15 Disposal”), or Rubatino Refuse Removal, Inc. (“Rubatino”). Ms. Longhenry, the Facilities Manager
16 of Wendel Family Dental Centre in Vancouver testified that, due to their dissatisfaction with
17 Stericycle’s billing system, her dental offices desire an alternative to Stericycle to ensure they obtain
18 consistently good service.⁴⁵ None of the regional Protestants offers RMW service in Vancouver.⁴⁶

19 12. Ms. Patshkowski testified that as a result of Providence Medical Group’s
20 unacceptable experience with Stericycle, Providence Medical Group desires competition and a
21 choice in the RMW services market to ensure that it gets the best possible service and pricing and
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25 ⁴² Ex. JL-1T at 3; Hearing Tr. Vol. VI at 316:7-12.

26 ⁴³ Ex. RA-1T ¶ 14.

27 ⁴⁴ Hearing Tr. Vol. VI at 326:20-327:19.

28 ⁴⁵ Ex. JL-1T at 3.

⁴⁶ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

1 that its sensitive waste is properly handled.⁴⁷ None of the regional Protestants offers RMW service
2 in Chewelah, Colville or Spokane.⁴⁸

3 13. Terry Johnson, the Director of Plant Engineering for Chelan Community Hospital,
4 testified to a need for a competitive alternative to ensure the highest quality service, leverage to
5 obtain a true market price, and a backup service provider in the event of a work stoppage or natural
6 disaster.⁴⁹ Until the week before the evidentiary hearing, Chelan Community Hospital did not have
7 an account representative at Stericycle with whom Mr. Johnson could communicate about service
8 issues.⁵⁰ None of the regional Protestants offers RMW service in Chelan.⁵¹

9 14. Mr. Lycan, of PAML, attested to his company's need for a competitive choice to
10 ensure the best quality of customer service and the most competitive pricing for all of his statewide
11 facilities and for a single contract with one RMW service provider for PAML's statewide needs.⁵²
12 Moreover, none of the regional Protestants offers RMW service to PAML's headquarters in
13 Spokane.⁵³ In moving his business to Waste Management, PAML could obtain a ten percent
14 reduction in its RMW costs.⁵⁴

15 15. Ray Moore, the Lead Contract Manager of Supply Chain for PeaceHealth, testified
16 that the PeaceHealth hospitals require a statewide biomedical waste service alternative to provide
17 PeaceHealth with the leverage to obtain the best possible pricing and service, which will help
18 mitigate PeaceHealth's risk of residual liability arising from the transportation and handling of its
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21 ⁴⁷ Ex. CP-1T at 4; Hearing Tr. Vol. VI at 480:23-481:3.

22 ⁴⁸ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

23 ⁴⁹ Ex. TJ-1T at 3; Hearing Tr. Vol. V at 239:19-20.

24 ⁵⁰ Hearing Tr. Vol. V at 236:5-10, 237:6-10.

25 ⁵¹ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

26 ⁵² Ex. RL-1T at 3-4. An RMW generator which testified in Stericycle's favor in a prior proceeding before the
27 Commission attested to the same need. *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761
28 at 17 (Aug. 11, 1995) ("express[ing] a desire to use the same medical waste collection company for all its facilities").
Moreover, the Commission has held "that single carrier service is a reasonable shipper need, and that existing carriers
failed to operate to the Commission's satisfaction because, with limited local territories, they could not provide that
service." *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 12 (Jan. 25, 1993).

⁵³ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

⁵⁴ Hearing Tr. Vol. VI at 452:20-453:19.

1 RMW by third parties.⁵⁵ PeaceHealth is presently served by Stericycle under a contract obtained by
2 Premier, a group purchasing organization of which PeaceHealth is a member. Vendors which are
3 awarded contracts through Premier pay Premier contracting fees.⁵⁶ Several of the PeaceHealth
4 hospitals are located in areas also served by the small, regional Protestants which cannot offer
5 PeaceHealth the statewide contract it desires: Columbia Basin Hospital in Ephrata (service is also
6 available from Consolidated), Pullman Regional Hospital (service is also available from Pullman
7 Disposal), and Samaritan Hospital in Moses Lake (service is also available from Consolidated).⁵⁷
8 Like PAML, PeaceHealth desires to contract with “one statewide service provider for the sake of
9 efficiency and cost.”⁵⁸

10 16. Ms. Newcomer testified that the University of Washington also requires an alternative
11 service option because such competition will yield true market prices for RMW services and will
12 allow the University leverage to ensure that it gets responsive service.⁵⁹ She rejects Stericycle’s
13 suggestion that competition between Waste Management and Stericycle would result in a reduction
14 in the quality of service.⁶⁰ The University’s Infectious Waste Committee is presently considering
15 competing service proposals from both Stericycle and Waste Management.⁶¹ None of the regional
16 Protestants offers RMW service in Seattle.⁶²

17 17. Ms. Sell, of the Olympic Medical Center, testified to the need of her hospital and
18 clinics for a competitive RMW service alternative to ensure they get the highest quality service at the
19 best price. At present, with Stericycle as its only option, Olympic Medical Center has no ability to
20 exert any effective leverage over Stericycle.⁶³ None of the regional Protestants offers RMW service
21

22 ⁵⁵ Ex. RM-1T at 4.

23 ⁵⁶ Hearing Tr. Vol. VI at 401:2-5.

24 ⁵⁷ *Id.* at 397:23-399:7.

25 ⁵⁸ Ex. RM-1T at 3.

26 ⁵⁹ Ex. EN-1T at 4; Hearing Tr. Vol. VII at 558:19-24.

27 ⁶⁰ Hearing Tr. Vol. VII at 559:4-12.

28 ⁶¹ *Id.* at 561:12-562:2.

⁶² Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

⁶³ Ex. JS-1T at 3.

1 in Port Angeles or Sequim.⁶⁴ Given the lack of competition, Ms. Sell is not confident that she is
2 getting charged a market price by Stericycle.⁶⁵

3 18. Dr. Danny Warner, President of the Washington State Dental Association (“WSDA”)
4 and owner of Warner Dentistry in Vancouver, testified that he and the over 4,000 dentists
5 represented by the WSDA require an alternative for RMW service to ensure they receive the best
6 possible service, the best possible price, and that sensitive waste with attendant risks of liability will
7 be properly transported, treated and disposed.⁶⁶ None of the regional Protestants offers RMW
8 service in Vancouver or many other parts of the state where WSDA members are located.⁶⁷

9 19. Not a single RMW generator testified against the overwhelming need for an
10 alternative statewide service provider. Rather, Stericycle offered the testimony of two lobbyists for
11 Washington hospitals who “take no position on the pending application of Waste Management.”⁶⁸

12 20. Jeff Mero offered testimony as Executive Director of the Association of Washington
13 Public Hospital Districts (“AWPHD”). He recognized that “some Washington hospitals and other
14 healthcare providers have expressed the desire for a choice of medical waste service providers and a
15 belief that competition among providers will enable them to obtain more responsive service and
16 better prices.”⁶⁹ That includes AWPHD members Lake Chelan Community Hospital and Olympic
17 Medical Center, both of which offered testimony in support of Waste Management’s application.⁷⁰
18 Mr. Mero admitted that he knows nothing about Stericycle’s price structure and had no knowledge
19 regarding whether the prices Stericycle charges his members are competitive.⁷¹ He was not aware
20 that Stericycle had amended its tariff in 2011 to offer Rehrig containers in response to Waste
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23 ⁶⁴ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

24 ⁶⁵ Hearing Tr. Vol. V at 216:22-217:2.

25 ⁶⁶ Ex. DW-1T at 2-3.

26 ⁶⁷ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

27 ⁶⁸ Ex. JM-1T ¶ 11; Ex. TB-1T ¶ 11.

28 ⁶⁹ Ex. JM-1T ¶ 11.

⁷⁰ Ex. TJ-1T; Ex. JS-1T; Hearing Tr. Vol. VIII at 733:6-16.

⁷¹ Hearing Tr. Vol. VIII at 748:10-22; *id.* at 749:25-750:2.

1 Management's offering the same service.⁷² Although Mr. Mero submitted written testimony that
2 AWPHD is concerned that offering generators a choice may adversely affect rates or service levels
3 to member hospitals,⁷³ he readily admitted in his live testimony that he was not aware of any adverse
4 effect on either rates or service levels in the year and a half in which Waste Management has been
5 competing with Stericycle in large parts of the State of Washington.⁷⁴

6 21. Stericycle also offered the limited testimony of Taya Briley as President of
7 Washington Hospital Services ("WHS"). WHS is a for-profit entity financed by Stericycle.⁷⁵ Under
8 a marketing agreement between Stericycle and WHS, WHS has helped sell Stericycle's services to
9 Washington hospitals in exchange for a payment from Stericycle of \$47,500 in 2012 and equivalent
10 sums in prior years.⁷⁶ Ms. Briley is in the process of negotiating a renewal of that contract and is
11 requesting an increase in the annual payment from Stericycle.⁷⁷ She is waiting to hear back from
12 Stericycle in response to her requested payment increase.⁷⁸ She recognized "that some Washington
13 hospitals and other healthcare providers have expressed the desire for a choice of medical waste
14 service providers and a belief that competition among providers will enable them to obtain more
15 responsive service and better prices."⁷⁹ WHS member hospitals testifying included PeaceHealth,
16 whose president is the chairman of WHS's board of directors.⁸⁰ In her live testimony, Ms. Briley
17 explained that WHS would like the Commission to "use its expertise in determining what the best
18 way of proceeding is in determining whether competition will be the best way to produce good
19 service and fair pricing."⁸¹ She admits that she has never looked at Waste Management's tariff rates
20 and neither she nor anyone at WHS has compared Stericycle's and Waste Management's tariff

21
22 ⁷² *Id.* at 750:25-751:4.

23 ⁷³ Ex. JM-1T ¶ 12.

24 ⁷⁴ Hearing Tr. Vol. VIII at 751:12-17.

25 ⁷⁵ *Id.* at 770:8-12.

26 ⁷⁶ Ex. JR-9.

27 ⁷⁷ Hearing Tr. Vol. VIII at 792:19-793:13.

28 ⁷⁸ *Id.* at 793:10-13.

⁷⁹ Ex. TB-1T ¶ 11.

⁸⁰ Ex. RM-1T; Hearing Tr. Vol. VIII at 771:17-772:11.

⁸¹ Hearing Tr. Vol. VIII at 789:16-20.

1 rates.⁸² Despite her ostensible neutrality and her acknowledgment that WHS “are not experts in
2 this,”⁸³ Ms. Briley posits that alternative RMW service providers “may affect the profitability of the
3 carriers.”⁸⁴ However, she is not aware of any adverse effect on rates or service levels in the year and
4 a half in which Waste Management has been competing directly with Stericycle.⁸⁵ Moreover, she is
5 aware that some WHS member hospitals are dissatisfied with Stericycle’s tariff pricing.⁸⁶

6 22. The generator testimony received in this matter is very much in keeping with the prior
7 testimony of RMW generators before the Commission. In 1990, for example, Brien Stafford, past
8 chairman of the board of Overlake Hospital, “maintained that competition should exist and there
9 should be more than one licensed infectious waste hauler in the state.... Mr. Stafford argued for the
10 ability to choose among competing vendors, on a level playing field, to obtain the best possible
11 service.”⁸⁷

12 23. The Commission too has recognized the value of statewide competition in the RMW
13 market. It has “found that promoting competition in this segment of the industry is in the public
14 interest because, among other things, it promotes higher quality of service in terms of protecting the
15 public health and safety.”⁸⁸ The Commission also has acknowledged that, contrary to regular solid
16 waste collection, “[a]pplicants for [RMW] service usually wish to serve the entire state or large
17 portions of the state.”⁸⁹ The RMW service market “has evolved into a highly competitive industry
18 as a result of the Commission interpreting RCW 81.77.040 consistently with the unique
19 requirements and attributes of the service.”⁹⁰ Consequently, “the Commission has granted
20 overlapping authority for the provision of biomedical waste services, including at one time
21

22 ⁸² *Id.* at 779:14-780:2.

23 ⁸³ *Id.* at 787:20-24.

24 ⁸⁴ Ex. TB-1T ¶ 12.

25 ⁸⁵ Hearing Tr. Vol. VIII at 788:8-17.

26 ⁸⁶ *Id.* at 808:6-19.

27 ⁸⁷ *In re Am. Env'tl. Mgmt. Corp.*, App. No. GA-874, Order M.V.G. No. 1452 (Nov. 30, 1990).

28 ⁸⁸ *Stericycle v. Waste Mgmt.*, Docket No. TG-110553, Order No. 02 at 14-15 (Jul. 13, 2011); *see also In re Sure-Way Incineration, Inc.* App. No. GA-868, Order M.V.G. No. 1451 at 16 (Nov. 30, 1990).

⁸⁹ *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 9 (Nov. 19, 1993).

⁹⁰ *In re Pet'n of Comm'n Staff for Declaratory Ruling*, Docket No. TG-970532, Declaratory Order at 10 (Aug. 14, 1998).

1 statewide authority to two companies. Thus, Commission policy has historically encouraged
2 competition in the provision of biomedical waste services.”⁹¹

3 24. Even Stericycle, in a closely-related matter before the Commission, specifically
4 requested that the Commission require Waste Management to petition for statewide authority.⁹²
5 Stericycle argued that limiting Waste Management’s RMW collection authority to only its G-237
6 territory would “pose an imminent threat of further harm to Stericycle and to biomedical waste
7 generators throughout the state that depend on Stericycle for service, particularly those generators in
8 the more rural areas of the state beyond the service territories included in Waste Management’s G-
9 237.”⁹³

10 25. Washington’s RMW generators require a competitive alternative to Stericycle,
11 including an alternative service provider in the many parts of the state served only by Stericycle and
12 an alternative statewide service provider for those large generators with facilities throughout the
13 state, including in areas presently served by Consolidated, Murrey’s, Pullman Disposal, and
14 Rubatino.⁹⁴

15 **3. Competition from Waste Management Is Presently Benefiting RMW Generators.**

16 26. Contrary to the unsubstantiated concerns which the lobbyists Mr. Mero and Ms.
17 Briley conjured in their written testimony, competition from Waste Management already has caused
18 a marked improvement in Stericycle’s service quality and prices. Waste Management’s Account
19 Development Manager Jeff Norton worked for Stericycle from 1998 through 2008.⁹⁵ While he
20 worked for Stericycle, many Stericycle customers complained to him about Stericycle’s proprietary
21

22 ⁹¹ *Stericycle v. Waste Mgmt.*, Docket No. TG-110553, Order No. 02 at 15-16 (Jul. 13, 2011).

23 ⁹² *In re Pet’n of Stericycle of Wash., Inc.*, Docket No. TG-110287, Pet’n of Stericycle of Wash. ¶ 3 (Feb. 10, 2011)
(requesting that the Commission “condition[] approval of any tariff filed by Waste Management for biomedical waste
24 collection and transportation services on the successful prosecution by Waste Management of an application for statewide
biomedical waste collection authority”).

25 ⁹³ *In re Pet’n of Stericycle of Wash., Inc.*, Docket No. TG-110287, Comments of Stericycle of Wash. ¶ 20 (Mar. 4, 2011).

26 ⁹⁴ The witnesses who testified at the hearing generate RMW throughout the state and amply established the need for a
27 statewide alternative to Stericycle. *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 13
(Aug. 11, 1995) (“A showing of statewide need for the service does not require an individual witness for each village,
28 town, city or county – so long as sufficient illustrations are represented throughout the territory to support a finding that
need exists within the entire territory.”).

⁹⁵ Ex. JN-1T at 2.

1 “Steritubs” because they stick together when they nest, customers in some cases could not pry them
2 apart, and the lids rarely fit properly.⁹⁶ At the time, Mr. Norton repeatedly reported these complaints
3 to Stericycle’s District Manager Mike Philpott.⁹⁷ Mr. Philpott testified that he was aware Stericycle
4 customers did not like the Steritubs because the lids crack and can be difficult to snap on.⁹⁸
5 However, he advised Mr. Norton that Stericycle had too much capital invested in the Steritubs and
6 would not change the containers.⁹⁹

7 27. Based on the complaints of Stericycle customers, when Waste Management re-
8 entered the RMW market in 2011, it offered containers manufactured by Rehrig Pacific Company
9 (“Rehrig”) with a hinged lid. The Rehrig containers nest without trouble, the attached lids close
10 easily, and the containers stack evenly and minimize the storage space needed.¹⁰⁰ Mr. Norton began
11 discussing the availability of Rehrig containers with Stericycle customers,¹⁰¹ and on March 30, 2011,
12 Waste Management filed its RMW tariff with the Commission.¹⁰² Waste Management’s tariff
13 included 31-gallon and 43-gallon Rehrig containers.¹⁰³ The tariff’s straightforward pricing is based
14 on a price per gallon which decreases as the number of gallons collected increases:¹⁰⁴

<u>Gallons</u>	<u>Price per gallon</u>
50 or less	\$ 1.45
51-100	\$ 1.10
101-200	\$ 0.80
201-400	\$ 0.60
401-600	\$ 0.48
601-800	\$ 0.36
801-1,000	\$ 0.30
1,001-2,000	\$ 0.28
2,001 +	\$ 0.25

22 ⁹⁶ *Id.* at 3.

23 ⁹⁷ *Id.*

24 ⁹⁸ Hearing Tr. Vol. VII at 573:3-7.

25 ⁹⁹ Ex. JN-1T at 3. Mr. Philpott cannot disavow these statements today because he cannot recall what his response was to
26 Mr. Norton. Hearing Tr. Vol. VII at 573:8-16.

27 ¹⁰⁰ Ex. JN-1T at 3.

28 ¹⁰¹ *Id.*

¹⁰² Ex. MAW-25.

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.* at 7.

1 These rates became effective on April 6, 2011.¹⁰⁵

2 28. In 2011, Mr. Philpott learned from his salespeople that Waste Management was
3 offering Rehrig containers to Stericycle customers.¹⁰⁶ He testified that as of that time, Stericycle had
4 not offered Rehrig containers or containers with hinged lids in Washington.¹⁰⁷ Rehrig containers
5 also had not been offered anywhere else in Stericycle, Inc.'s western division which includes
6 Oregon, Idaho, Montana, northern California, part of Nevada, part of Wyoming, Alaska, and
7 Hawaii.¹⁰⁸ As Mr. Philpott testified, Stericycle decided to offer Rehrig containers in Washington in
8 2011 because Waste Management was offering those containers to Stericycle customers.¹⁰⁹

9 29. On June 2, 2011 – more than two months after Waste Management filed its tariff rates
10 – Stericycle filed an amendment to its RMW tariff.¹¹⁰ The only changes Stericycle made to its
11 preexisting tariff concerned the addition of the Rehrig containers.¹¹¹ Stericycle added one column of
12 prices for its new 31-gallon Rehrig container, a second column of prices for its new 43-gallon Rehrig
13 container, and a note stating that the Rehrig containers “are only available to generators located in” a
14 limited list of Washington counties.¹¹² This is the only time since 1999, when Mr. Philpott joined
15 Stericycle, that Stericycle has offered a container to only a limited part of the State of Washington.¹¹³
16 Mr. Philpott, under whose name Stericycle filed its tariff with the Commission, claims to have no
17 idea how Stericycle came up with the pricing for the Rehrig containers.¹¹⁴

18 30. Notwithstanding his professed ignorance on the subject, the source of Stericycle's
19 amended prices is self evident: they came directly from Waste Management's tariff. Stericycle's
20 more cumbersome tariff structure sets forth prices for each size of container based on the quantity of

21
22 ¹⁰⁵ *Id.*

23 ¹⁰⁶ Hearing Tr. Vol. VII at 574:4-7.

24 ¹⁰⁷ *Id.* at 573:17-19; *id.* at 574:8-12.

25 ¹⁰⁸ *Id.* at 573:20-574:3.

26 ¹⁰⁹ *Id.* at 574:22-575:13.

27 ¹¹⁰ Ex. MP-18 at 7-10.

28 ¹¹¹ *Id.* at 5-6; Hearing Tr. Vol. VII at 579:10-20; *id.* at 584:25-585:10; Ex. MP-3.

¹¹² Ex. MP-18 at 5 & n.3; Hearing Tr. Vol. VII at 583:15-19; *id.* at 585:11-22.

¹¹³ Hearing Tr. Vol. VII at 583:20-584:12.

¹¹⁴ *Id.* at 581:3-582:1; *id.* at 583:7-14.

1 containers collected.¹¹⁵ To compute the total gallons of waste at each price point, one must multiply
 2 the number of gallons in the container by the number of containers.¹¹⁶ So, for example, the total
 3 gallons of waste are reflected below in the highlighted additions to Stericycle's tariff with the two
 4 "(N)" columns denoting the two new Rehrig containers and the other columns denoting the
 5 containers and prices Stericycle offered from before 2011:¹¹⁷

Container Quantity	Small/Medium (21 gallon) Container	(N) Medium/Large (31 gallon) Container	(N) Large (43 gallon) Container	Large (48 gallon) Container
1	21 35.16	31 50.22	43 67.94	48 75.67
2	42 33.66	62 46.19	86 52.46	96 58.32
3	63 28.94	93 38.13	129 43.00	144 48.20
4	84 26.16	124 33.48	172 36.98	192 41.45

11 31. To compute the price per gallon at each price point, one must (1) multiply the price
 12 by the number of containers, and (2) divide that number by the total number of gallons at that price
 13 point.¹¹⁸ So, for example, the price per gallon for two of the pre-existing 21-gallon containers is
 14 computed as follows:

15 (1) \$33.66 x 2 containers = \$67.32

16 (2) \$67.32 ÷ 42 gallons = \$1.60 per gallon¹¹⁹

17 The prices per gallon are reflected below in the highlighted additions to Stericycle's tariff:¹²⁰

Container Quantity	Small/Medium (21 gallon) Container	(N) Medium/Large (31 gallon) Container	(N) Large (43 gallon) Container	Large (48 gallon) Container
1	21 35.16 \$1.67	31 50.22 \$1.62	43 67.94 \$1.58	48 75.67 \$1.58
2	42 33.66 \$1.60	62 46.19 \$1.49	86 52.46 \$1.22	96 58.32 \$1.22
3	63 28.94 \$1.37	93 38.13 \$1.23	129 43.00 \$1.00	144 48.20 \$1.00
4	84 26.16 \$1.25	124 33.48 \$1.08	172 36.98 \$0.86	192 41.45 \$0.86

24 ¹¹⁵ Ex. MP-18 at 5-6.

25 ¹¹⁶ Hearing Tr. Vol. VII at 585:23-587:1.

26 ¹¹⁷ Ex. MP-27 at 5.

27 ¹¹⁸ Hearing Tr. Vol. VII at 587:2-12.

28 ¹¹⁹ Ex. MP-27 at 5.

¹²⁰ *Id.*

1 Under Stericycle's pricing scheme, the price-per-gallon for one container is highest at the smallest
2 size container (21 gallons): \$1.67.¹²¹ The price-per-gallon goes down slightly for a single container
3 of the next larger size container (31 gallons): \$1.62.¹²² And, the price-per-gallon goes down slightly
4 more for one container of the next larger size container (43 gallons): \$1.58.¹²³ The price-per-gallon
5 remains the same for one container of the largest size container (48 gallons): \$1.58.¹²⁴ For two
6 containers, this pattern repeats: the price-per-gallon is highest at the smallest size container, goes
7 down slightly at the next larger size container, goes down slightly more for the next larger size, and
8 remains the same for the largest size container: \$1.60, \$1.49, \$1.22, and \$1.22.¹²⁵ For three
9 containers, Stericycle's pricing pattern repeats.¹²⁶ And the same is true for four containers.¹²⁷

10 32. Once Stericycle's tariff gets to the pricing for five containers and more, Stericycle
11 stops its pre-existing pattern and begins to precisely replicate Waste Management's lower pricing,
12 but only for the Rehrig containers offered to compete with Waste Management.¹²⁸ For example,
13 Waste Management charges \$0.60 per-gallon when the total gallons are between 201 and 400
14 gallons. Precisely as with Waste Management's pricing, where the total gallons are between 201 and
15 400 gallons, Stericycle now charges \$0.60 per gallon for the Rehrigs. However, contrary to its prior
16 pattern where the price-per-gallon of the largest container (48 gallons) remained the same as the next
17 smaller size container (43 gallons), once Stericycle begins to mimic Waste Management's pricing,
18 Stericycle's price-per-gallon goes up for its largest container to Stericycle's preexisting price (as
19 reflected on the next page in grey highlighting), thus making it less expensive for generators to use
20 Stericycle's new Rehrigs than to use Stericycle's proprietary Steritubs.¹²⁹ And, so, Stericycle
21

22 ¹²¹ Hearing Tr. Vol. VII at 600:21-25.

23 ¹²² *Id.* at 601:1-9; *id.* at 602:4-6.

24 ¹²³ *Id.* at 601:10-15; *id.* at 602:7-11.

25 ¹²⁴ *Id.* at 601:16-602:3; *id.* at 602:12-14.

26 ¹²⁵ *Id.* at 602:19-603:18.

27 ¹²⁶ *Id.* at 603:19-24.

28 ¹²⁷ *Id.* at 603:25-604:3.

¹²⁸ *Id.* at 604:12-20.

¹²⁹ *Id.* at 604:17-23.

continues to precisely match Waste Management's lower prices, but only for the Rehrigs.¹³⁰ Here, again, are Waste Management's prices filed in March 2011, followed by Stericycle's tariff prices which Stericycle filed two months later (the highlighting is added to reflect Stericycle's precisely matching prices):¹³¹

WASTE MANAGEMENT'S 3/30/11 TARIFF

<u>Gallons</u>	<u>Price per gallon</u>
50 or less	\$ 1.45
51-100	\$ 1.10
101-200	\$ 0.80
201-400	\$ 0.60
401-600	\$ 0.48
601-800	\$ 0.36
801-1,000	\$ 0.30
1,001-2,000	\$ 0.28
2,001 +	\$ 0.25

STERICYCLE'S 6/6/11 TARIFF

Container Quantity	Small/Medium (21 gallon) Container			(N) Medium/Large (31 gallon) Container			(N) Large (43 gallon) Container			Large (48 gallon) Container		
5	105	22.73	\$1.08	155	30.07	\$0.97	215	25.80	\$0.60	240	38.08	\$0.79
6	126	20.80	\$0.99	186	27.28	\$0.88	258	25.80	\$0.60	288	35.19	\$0.73
7	147	19.30	\$0.92	217	18.60	\$0.60	301	25.80	\$0.60	336	32.78	\$0.68
8	168	18.44	\$0.88	248	18.60	\$0.60	344	25.80	\$0.60	384	31.33	\$0.65
9	189	17.37	\$0.83	279	18.60	\$0.60	387	25.80	\$0.60	432	29.88	\$0.62
10	210	16.51	\$0.79	310	18.60	\$0.60	430	20.64	\$0.48	480	28.44	\$0.59
11	231	16.08	\$0.77	341	18.60	\$0.60	473	20.64	\$0.48	528	26.99	\$0.56
12	252	15.44	\$0.74	372	18.60	\$0.60	516	20.64	\$0.48	576	25.55	\$0.53
13	273	15.01	\$0.71	403	14.88	\$0.48	559	20.64	\$0.48	624	24.58	\$0.51
14	294	14.36	\$0.68	434	14.88	\$0.48	602	15.48	\$0.36	672	23.14	\$0.48
15	315	14.15	\$0.67	465	14.88	\$0.48	645	15.48	\$0.36	720	22.17	\$0.46
16	336	13.72	\$0.65	496	14.88	\$0.48	688	15.48	\$0.36	768	18.32	\$0.38
17	357	13.29	\$0.63	527	14.88	\$0.48	731	15.48	\$0.36	816	17.83	\$0.37
18	378	13.08	\$0.62	558	14.88	\$0.48	774	15.48	\$0.36	864	17.35	\$0.36
19	399	12.86	\$0.61	589	14.88	\$0.48	817	12.90	\$0.30	912	16.39	\$0.34
20	420	12.44	\$0.59	620	11.16	\$0.36	860	12.90	\$0.30	960	15.91	\$0.33
21	441	12.01	\$0.57	651	11.16	\$0.36	903	12.90	\$0.30	1008	15.91	\$0.33
22	462	11.79	\$0.56	682	11.16	\$0.36	946	12.90	\$0.30	1056	15.91	\$0.33
23	483	11.58	\$0.55	713	11.16	\$0.36	989	12.90	\$0.30	1104	15.91	\$0.33
24	504	11.36	\$0.54	744	11.16	\$0.36	1032	12.04	\$0.28	1152	15.91	\$0.33
25	525	10.93	\$0.52	775	11.16	\$0.36	1075	12.04	\$0.28	1200	15.91	\$0.33
26	546	10.72	\$0.51	806	9.30	\$0.30	1118	12.04	\$0.28	1248	15.91	\$0.33

¹³⁰ *Id.* at 380:18-20.

¹³¹ Ex. MAW-25 at 7 (highlighting added).

1 And so on¹³²

2 33. Undisputedly, Stericycle sought to use its natural response to competition from Waste
3 Management to retain customers. Sacred Heart Medical Center in Spokane determined that it would
4 move its business to Waste Management in 2011 to obtain the preferred Rehrig containers.¹³³ Ron
5 Adams, of Stericycle, attempted to convince Sacred Heart not to make the change by advising the
6 hospital that Stericycle was offering the same containers at the same price as Waste Management.¹³⁴
7 While those efforts were not successful with Sacred Heart, they were with Virginia Mason Medical
8 Center. Waste Management's tariff rates for its Rehrig containers offered Virginia Mason a ten to
9 fifteen percent savings over the equivalent pricing offered under Stericycle's pre-existing tariff rates.
10 However, when Stericycle filed its lower Rehrig rates in 2011 to match Waste Management's rates,
11 Virginia Mason elected to remain with Stericycle.¹³⁵

12 34. The recent service level and price competition between Stericycle and Waste
13 Management is in keeping with Washington's historical competitive RMW services market. In
14 1995, when "BFI was offering statewide collection for disposal of medical waste," the Commission
15 granted authority to a second statewide RMW service provider: Stericycle.¹³⁶ Two years later, BFI
16 and Stericycle continued to compete with each other statewide and "they also compete[d] with
17 carriers in limited services areas."¹³⁷ In 1998, BFI and Stericycle were still competing with each
18 other to provide RMW services as well as competing with 75 companies providing regional RMW
19 services.¹³⁸

20
21
22
23 ¹³² Ex. MP-27 at 5-6 (highlighting and italicized sums added).

24 ¹³³ Hearing Tr. Vol. VI at 378:17-21; *id.* at 453:14-17.

25 ¹³⁴ *Id.* at 379:13-19; *id.* at 515:6-15.

26 ¹³⁵ *Id.* at 516:21-517:10.

27 ¹³⁶ *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 4 (Aug. 11, 1995).

28 ¹³⁷ *In re Pet'n of Comm'n Staff for Declaratory Ruling*, Docket No. TG-970532, Declaratory Order at 5 (Oct. 29, 1997).

¹³⁸ *In re Pet'n of Comm'n Staff for Declaratory Ruling*, Docket No. TG-970532, Declaratory Order ¶¶ 4-5 (Aug. 14, 1998).

1 35. The Commission looks to, and provides for, the stated needs of Washington’s RMW
2 generators.¹³⁹ Those generators unequivocally have spoken: they require a competitive statewide
3 alternative to Stericycle. Moreover, there can be no dispute that generators already are experiencing
4 the benefits of better service and pricing from Stericycle in response to direct competition from
5 Waste Management.

6 **B. The Public’s Need for Responsive Service Outweighs Any Negative Impacts on the**
7 **Economic Viability of Existing Carriers.**

8 36. While Waste Management must show that “the public’s need for [its] service
9 outweighs any negative impacts of the entry of an additional provider on the economic viability of
10 existing carriers,”¹⁴⁰ it is Protestants who must demonstrate in the first instance that competition
11 from Waste Management will threaten their “economic viability.”¹⁴¹ Protestants have failed to make
12 that showing and, furthermore, Waste Management has proven that any lesser negative impacts to
13 Protestants are outweighed by the public’s need for a competitive statewide RMW service option.

14 **1. The Protestants Have Not Demonstrated Any Material Threat to Their Economic**
15 **Viability.**

16 **a. Stericycle.**

17 37. Stericycle has forthrightly acknowledged that statewide competition from Waste
18 Management does not threaten its economic viability. In an early brief in this matter, Stericycle
19 affirmed that it “makes no claim that Waste Management’s entry into the market in the territory
20 covered by the application would drive Stericycle out of business.”¹⁴² Thereafter, when Waste
21 Management moved to compel production of Stericycle’s financial information so that Waste
22

23 ¹³⁹ Order 05 ¶ 10 (quoting *In re Medical Res. Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 4
24 (May 25, 1994)).

25 ¹⁴⁰ *Id.* ¶ 11 (emphasis added).

26 ¹⁴¹ *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 15 (Jan. 25, 1993) (“Although the
27 existing carriers cited reductions in service and in revenues from the onset of competition, none indicated that its ability to
28 provide the collection of biohazardous wastes, or the public’s ability to receive that service, is seriously endangered.”)
(emphasis added); *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 17 (Nov. 19, 1993)
(incumbent “BFI has not shown that the rural areas where it presently is the only service provider cannot support more
than one specialized biohazardous waste collector”) (emphasis added).

¹⁴² Stericycle’s Opp’n to Waste Mgmt.’s Mot. to Compel. Disc. ¶ 7 (Aug. 6, 2012).

1 Management could rebut any claim by Stericycle of financial harm,¹⁴³ the Presiding Officer denied
2 the requested relief because Stericycle was not “putting at issue in this docket its profitability.”¹⁴⁴

3 38. The only evidence proffered by Stericycle at the hearing regarding the financial
4 impact from statewide competition with Waste Management was the limited testimony of
5 Christopher Dunn and nothing he said remotely supports any notion that Stericycle’s economic
6 viability is threatened (materially or otherwise) by competition from Waste Management. To start
7 with, Mr. Dunn has no idea what Stericycle’s profit margin presently is for its Washington
8 operations.¹⁴⁵ He does not know what Stericycle’s costs per stop are in Waste Management’s
9 existing territory or in the “new territory.”¹⁴⁶ He does not know how many customers Stericycle has
10 in the “new territory.”¹⁴⁷ He does not know at what rate Stericycle’s revenues would decline in the
11 “new territory” if Stericycle had to compete there with Waste Management like it does elsewhere in
12 Washington.¹⁴⁸ He does not know how much business Stericycle would need to lose to Waste
13 Management to become unprofitable.¹⁴⁹

14 39. Moreover, what Mr. Dunn does know, demonstrates that statewide competition from
15 Waste Management would not threaten Stericycle’s economic viability. He readily acknowledges
16 that it is possible for Stericycle to compete with Waste Manage statewide and still have a sufficient
17 profit margin without requiring Stericycle to raise its rates or decrease its service levels.¹⁵⁰ He
18 admits that Stericycle’s revenues increased from 2010 to 2011, the first year it competed with Waste
19 Management.¹⁵¹ He recognizes that Stericycle has added new customers in 2012 while it competed
20

21 ¹⁴³ Waste Mgmt.’s Mot. to Compel Discovery from Stericycle ¶ 8 (Jul. 31, 2012).

22 ¹⁴⁴ Decl. of Polly L. McNeill, Ex. 1 at 41:18-42:13 (Nov. 21, 2012).

23 ¹⁴⁵ Hearing Tr. Vol. VII at 661:3-9. Remarkably, Michael Philpott also does not know what Stericycle’s profit margin is
24 for its Washington services nor does he know the amount of Stericycle’s Washington’s profits and losses. *Id.* at 608:11-
19.

25 ¹⁴⁶ *Id.* at 701:1-15.

26 ¹⁴⁷ *Id.* at 697:1-6.

27 ¹⁴⁸ *Id.* at 674:7-15.

28 ¹⁴⁹ *Id.* at 674:2-6.

¹⁵⁰ *Id.* at 674:16-23.

¹⁵¹ *Id.* at 669:7-10.

1 with Waste Management in much of the state.¹⁵² He admits that Port Angeles (the one hypothetical
2 route he considered) was previously served by two statewide service providers, BFI and
3 Stericycle.¹⁵³ He concedes that the “new territory” bears many similarities to Waste Management’s
4 existing territory, there are major metropolitan areas in the new territory, including Bellevue,
5 Tacoma, and Olympia, and Waste Management’s present territory includes rural and dispersed areas,
6 such as Granite Falls, Ellensburg, and parts of Kitsap County.¹⁵⁴

7 40. The following undisputed evidence also demonstrates that Stericycle’s viability will
8 not be imperiled if it must compete with Waste Management statewide. Stericycle’s revenues grew
9 from \$12,348,092 in 2010, when it faced no competition from Waste Management, to \$13,709,428
10 in 2011, during which it competed with Waste Management for nine months for customers
11 throughout Waste Management’s territory (which represents the majority of Washington’s
12 RMW).¹⁵⁵ Thus, Stericycle’s revenue grew by 11% from 2010 to 2011. Moreover, Stericycle added
13 330 customers in 2011 and its revenue per customer increased from \$1,673 in 2010 to \$1,777 in
14 2011.¹⁵⁶ Stericycle did not dispute Waste Management’s projection that by 2015, Washington’s
15 RMW market will expand by at least an additional \$1.7 million as a result of an aging population
16 and the implementation of the Affordable Care Act.¹⁵⁷ Stericycle also did not dispute Waste
17 Management’s projection that by 2015, Stericycle will still have more than two thirds of the RMW
18 market and that Stericycle will achieve annual 2015 revenues of approximately \$14 million, more
19 than Stericycle’s present annual revenues.¹⁵⁸

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23 ¹⁵² *Id.* at 669:11-14.

24 ¹⁵³ *Id.* at 672:4-6.

25 ¹⁵⁴ *Id.* at 697:19-698:22; *id.* at 699:3-8.

26 ¹⁵⁵ Stericycle has admitted that “there is no dispute that [Waste Management’s] territory encompass[es] 80% of the State’s
27 generated biomedical waste.” *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket No. TG-110553, Reply in
28 Supp. of Stericycle’s Mot. for Summ. Determination at 11 n.7 (June 1, 2011).

¹⁵⁶ Ex. MAW-1T at 4; Ex. MAW-3.

¹⁵⁷ Ex. MAW-16T ¶ 9; Ex. MAW-15. The other Protestants also did not dispute or rebut this projection.

¹⁵⁸ Ex. MAW-16T ¶ 9.

1 41. Finally, lest we forget, it was Stericycle which previously argued that it would face
2 “imminent threat of future harm” that would “threaten[] the viability of Stericycle’s statewide
3 services” if Waste Management were not required to obtain statewide authority.¹⁵⁹

4 **b. Pullman Disposal.**

5 42. Pullman Disposal has failed to demonstrate that competition from Waste
6 Management will materially threaten Pullman Disposal’s viability. The company has collected
7 RMW since the early to mid-1990s when it competed successfully with two statewide RMW service
8 providers.¹⁶⁰ Its 14 customers have been “very consistent” since the beginning, although it has
9 experienced some growth.¹⁶¹ Despite competition from Stericycle for many years, Pullman Disposal
10 has not lost any customers to Stericycle.¹⁶² In fact, Pullman Disposal transports the RMW it collects
11 to Stericycle for treatment and disposal.¹⁶³ In 2011, the company enjoyed total revenues of
12 approximately \$3.7 million.¹⁶⁴ Of those revenues, only \$9,465 – as is typical for the company –
13 came from its RMW business.¹⁶⁵ The one vehicle used to collect the RMW is fully depreciated.¹⁶⁶

14 **c. Rubatino.**

15 43. Likewise, Rubatino did not show that competition from Waste Management poses a
16 material threat to Rubatino’s viability. This company has been providing RMW service
17 continuously since 1988 and also has competed successfully with two statewide RMW service
18 providers, Stericycle and BFI.¹⁶⁷ It serves approximately 200 customers – generally small generators
19 – and has been growing.¹⁶⁸ In the many years it has competed with Stericycle, Rubatino has lost
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21 _____
22 ¹⁵⁹ *In re Pet’n of Stericycle of Wash., Inc.*, Docket No. TG-110287, Comments of Stericycle of Wash. ¶ 20 (Mar. 4, 2011).

23 ¹⁶⁰ Ex. MAW-4T at 18.

24 ¹⁶¹ Hearing Tr. Vol. VII at 707:21-708:14; *id.* at 710:25-711:20; Ex. DF-1T at 3:8.

25 ¹⁶² Hearing Tr. Vol. VII at 708:20-24.

26 ¹⁶³ Ex. DF-1T at 4:4-7.

27 ¹⁶⁴ Hearing Tr. Vol. VII at 711:22-25.

28 ¹⁶⁵ *Id.* at 710:16-24; *id.* at 712:7-12.

¹⁶⁶ *Id.* at 715:7-14.

¹⁶⁷ Hearing Tr. Vol. VIII at 812:18-813:2; Ex. MAW-4T at 19.

¹⁶⁸ Hearing Tr. Vol. VIII at 813:3-4; *id.* at 813:12-15; Ex. ER-1T at 4:19-21.

1 only one customer to Stericycle.¹⁶⁹ Rubatino had revenues of \$18.407 million in 2011.¹⁷⁰ Of these,
2 approximately \$100,000 came from the RMW business, which is typical for Rubatino.¹⁷¹ Although
3 Rubatino's written testimony states that its rates are "compensable," Ed Rubatino admitted in live
4 testimony that his RMW business has not been profitable for about two years and that his company
5 has never revised its RMW rates since beginning those services.¹⁷² Consequently, while it is evident
6 that Rubatino is a financially robust company with no danger posed to its viability, it also is evident
7 that it has not been operating a profitable RMW business. It is not profitable now, and there is no
8 evidence that it will be profitable in the future, without regard to Waste Management's entry into the
9 market.

10 **d. Consolidated.**

11 44. Consolidated also has failed to demonstrate that there is a material risk to its viability
12 if Waste Management is granted statewide authority. Consolidated has been providing RMW
13 services since before 1998 when it too competed successfully with two statewide RMW service
14 providers, Stericycle and BFI.¹⁷³ It has consistently maintained approximately 69 customers for the
15 past eight years.¹⁷⁴ During the decade in which Consolidated has competed with Stericycle,
16 Consolidated has lost only two customers to Stericycle and each of those customers had affiliated
17 facilities serviced by Stericycle outside Consolidated's limited service territory.¹⁷⁵ Moreover,
18 Consolidated presently delivers the RMW it collects to Stericycle for processing and disposal.¹⁷⁶
19 Consolidated had revenues of \$7.584 million in 2011.¹⁷⁷ As is typical, Consolidated had RMW
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22 ¹⁶⁹ Hearing Tr. Vol. VIII at 814:9-815:1.

23 ¹⁷⁰ *Id.* at 815:17-816:2.

24 ¹⁷¹ *Id.* at 815:11-16.

25 ¹⁷² *Id.* at 816:8-17; *id.* at 816:24-817:5.

26 ¹⁷³ Ex. MAW-4T at 15.

27 ¹⁷⁴ Hearing Tr. Vol. VIII at 836:19-837:3; Ex. MW-1T at 3:8.

28 ¹⁷⁵ Hearing Tr. Vol. VIII at 837:8-838:2.

¹⁷⁶ Ex. MW-1T at 4:2-4.

¹⁷⁷ Hearing Tr. Vol. VIII at 839:1-5.

1 service revenues of \$112,545 that year.¹⁷⁸ Consolidated's RMW business is profitable and, based on
2 its own testimony, would remain so even if the company lost 35% of its RMW revenues.¹⁷⁹

3 **e. Murrey's.**

4 45. Finally, Murrey's has failed to demonstrate any material risk to its viability if Waste
5 Management's application is granted. Murrey's has been providing RMW service since 1998 when
6 it, like the other regional Protestants, successfully competed with two statewide RMW service
7 providers, Stericycle and BFI.¹⁸⁰ The company has about 130 RMW customers and has not lost any
8 of its large customers to Stericycle.¹⁸¹ It had 2011 revenues of \$27,583 million, approximately
9 \$120,000 of which came from its RMW business.¹⁸² Not only is Murrey's RMW business profitable
10 today,¹⁸³ but it is undisputed that in 2011 (the most recent year for which it provided financial data)
11 it earned approximately \$26,048 more in net operating income than what it is entitled to earn under
12 an acceptable operating ratio of 93.99%.¹⁸⁴ Consequently, it also is undisputed that Murrey's is
13 presently earning an exceedingly good margin and could lose business and still earn an acceptable
14 margin.¹⁸⁵

15 46. None of the Protestants have demonstrated any material threat to their economic
16 viability.

17 **2. Any Lesser Impact to Protestants Is Outweighed by the Public's Need for**
18 **Competitive Statewide Service.**

19 47. The Commission considers the impact of competition on incumbent service providers
20 less because of any interest in ensuring a profit to the incumbents and more as a proxy for ensuring
21 that the public interest is served. "Consistent with the state's strong health and safety interest in
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23 ¹⁷⁸ *Id.* at 838:8-25.

24 ¹⁷⁹ *Id.* at 839:21-23; *id.* at 840:3-13.

25 ¹⁸⁰ Ex. MAW-4T at 16-17.

26 ¹⁸¹ Hearing Tr. Vol. VIII at 823:15-23; *id.* at 826:16-18.

27 ¹⁸² *Id.* at 826:19-21; *id.* at 827:7-13.

28 ¹⁸³ *Id.* at 828:3-5.

¹⁸⁴ Ex. MAW-4T at 16-17; Ex. MAW-14.

¹⁸⁵ Ex. MAW-4T at 16.

1 assuring universal collection and securing service at fair rates, the Commission will consider
2 whether a grant of competing authority would be detrimental to the public because it would
3 jeopardize the viability of existing service.”¹⁸⁶ The Commission has rejected “a test for denial that is
4 measured by adverse effect upon existing carriers’ financial returns.” Rather, “the proper test for
5 public interest [is] whether the entry of an additional carrier, who has demonstrated public need for
6 its services, will result in damage to carriers that causes a reduction to unacceptable levels of
7 available reasonably priced service to consumers.”¹⁸⁷

8 48. There is no material threat to the viability of any of the Protestants nor is there any
9 evidence that granting Waste Management’s application will cause a reduction of reasonably priced
10 service to consumers – in fact, the opposite has been proven. The balance must tip without contest
11 in favor of the public’s need for competitive statewide service.

12 **C. Waste Management Is Fit to Provide Statewide Service.**

13 49. By statute, the inquiry into an applicant’s financial, operational and regulatory fitness
14 is reserved to the Commission and its staff.¹⁸⁸ This inquiry is intended to protect the public by
15 guarding against issuance of solid waste certificates to unreliable, unstable companies. In keeping
16 with this statutory goal, the standard for establishing fitness in an application for authority depends
17 on the particular application, and the Commission may determine what an applicant needs to prove
18 to satisfy its goals of overseeing “the public interest.”¹⁸⁹ Waste Management has amply established
19 its fitness through the Declarations of Michael Weinstein, Jeff Norton, Jeff Daub and Michael
20 McInerney.¹⁹⁰

21 **1. Waste Management Is Financially Fit.**

22 50. In considering the financial fitness of a biomedical waste service provider new to the
23 Commission and to the State of Washington, the Commission explained that “[t]he type of detailed
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25 ¹⁸⁶ *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 11 (Nov.19, 1993) (emphasis added).

26 ¹⁸⁷ *In re Ryder Distribution Resources, Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 14 (Aug. 11, 1995)
(emphasis added).

27 ¹⁸⁸ RCW 81.77.040; Order 03 ¶¶ 16-17.

28 ¹⁸⁹ RCW 80.01.040(2).

¹⁹⁰ Exs. MAW-16T, MAW-17 thru MAW-24, JN-4T, JN-5, JN-6, JD-1T, JD-2 thru JD-23, & MM-1T.

1 financial information necessary in a rate case is not required in an application for authority.”¹⁹¹ The
2 Commission seeks only

3 to determine whether an applicant has enough money to start and
4 maintain operations, whether it has a source of funds to allow it to
5 operate through the start up phase of business (when it most likely will
6 not be profitable), whether it can provide consistent service to its
7 customers and can continue to meet those customers’ needs by
8 acquiring additional equipment and personnel if necessary The
9 Commission needs enough information to be reasonably certain that
10 the company will not go out of business, leaving its customers
11 stranded. Finally, the Commission does need information about an
12 applicant’s cost of providing the proposed service in order to
13 determine ... whether the applicant’s finances will allow it to provide
14 the proposed service.¹⁹²

15 51. The Commission does not require proof that proposed operations are certain to be
16 profitable.¹⁹³ Rather, the applicant need only demonstrate “that it could finance statewide operations
17 for a reasonable period, until they either become profitable or demonstrate that they lack
18 feasibility.”¹⁹⁴ It was under this lenient standard that Stericycle, an entity not previously regulated
19 by the Commission, was granted statewide authority in 1995.¹⁹⁵ In that proceeding, WRRR
20 complained that Stericycle’s

21 financial information is not sufficiently specific and [] it consists
22 principally of testimony regarding its existing operations on temporary
23 authority, serving “about 205 of the most profitable accounts ... in the
24 most densely populated corridor” of the state. Protestant contends that
25 applicant’s pro forma operating statement fails to consider declining
26 revenues per account and customer attrition. It contends that the
27 applicant’s operating history in another territory, where it does serve
28 customers in rural settings, cannot establish financial feasibility for a
service based on different customer and regulatory requirements.¹⁹⁶

23 ¹⁹¹ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order M.V.G. No. 1451 at 9 (Nov. 30, 1990).

24 ¹⁹² *Id.*

25 ¹⁹³ *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 19 (Nov. 19, 1993).

26 ¹⁹⁴ *Id.*; *In re Ryder Distribution Res., Inc.*, App. No. GA-7514, Order M.V.G. No. 1761 at 9 (Aug. 11, 1995) (“An
27 applicant need not demonstrate profitability of proposed operations as a prerequisite to entry. Rather, applicants have
28 been required to show that they have assets sufficient to begin and sustain operations for a reasonable period of time so
that profitability can be determined.”).

¹⁹⁵ *In re Stericycle of Wash., Inc.*, App. No. GA-77539, Order M.V.G. No. 1761 at 9 (Aug. 11, 1995).

¹⁹⁶ *Id.*

1 52. The Commission rejected WRRRA’s complaints and took pains to emphasize that
2 “[t]his is not a rate case, in which precise historical evidence is required and future projections must
3 often be known and measurable to be considered.”¹⁹⁷ Waste Management has provided a detailed
4 description of the cost of the facilities it will use in the plant for biomedical waste collection and
5 disposal in the additional territory. Waste Management has been providing solid waste services in
6 Washington for more than 40 years. It presently provides solid waste services to approximately
7 583,000 customers throughout its Certificate No. G-237 territory. Waste Management has
8 approximately 1,400 employees. Its G-237 gross revenues in 2011 were \$122,000,000.¹⁹⁸

9 53. In 2011, Waste Management had revenues of \$115,240 from its RMW services.
10 Waste Management’s 2011 expenses associated with its RMW services were \$610,922. Of these,
11 \$283,707 were fixed costs, primarily comprised of insurance and safety expenses, depreciation
12 expenses, office and administration, license fees, and management fees. Waste Management had
13 variable expenses from its RMW business of \$327,285 for 2011. Variable expenses, which go up or
14 down dependent on the size of the customer base, included drivers’ wages and benefits, truck
15 operating costs, repair and maintenance expenses, disposal and processing fees, selling and
16 advertising costs, and taxes. After accounting for federal income tax expense, in 2011 Waste
17 Management had a net loss of \$322,239 from its RMW services. By the end of 2011, Waste
18 Management had 178 RMW customers.¹⁹⁹

19 54. For the first eight months of 2012, Waste Management had revenues of \$326,219
20 from its RMW services. Waste Management’s expenses associated with those RMW services were
21 \$799,783. Of these, \$291,088 were fixed costs. Waste Management’s RMW business had variable
22 expenses of \$508,695 for the first eight months of 2012. After accounting for federal income tax
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25 ¹⁹⁷ *Id.* The Commission approved Sureway’s application because it “has substantial assets of its own and has access to
26 additional funding, if needed, from banks and its parent” and its “projections of future market share and the cost of
27 providing service in areas outside its existing territory are necessarily estimates but are not purely speculative.” *In re*
Sureway Med. Servs., Inc., App. No. GA-75968, Order M.V.G. No. 1663 at 18-19 (Nov. 19, 1993).

28 ¹⁹⁸ Ex. MAW-16T ¶ 1.

¹⁹⁹ *Id.* ¶ 2; Ex. MAW-17.

1 expense, Waste Management had a net loss of \$307,817 from its RMW services in the first eight
2 months of 2012. By the end of August 2012, Waste Management had 187 RMW customers.²⁰⁰

3 55. The present value of the costs associated with the facilities and equipment utilized to
4 perform RMW services is accounted for on its own separate general ledger that rolls up into the
5 corporate entity known as Waste Management of Washington, Inc. This corporate entity maintains
6 35 separate general ledgers for the various operations it has in Washington State to assure that the
7 costs of each operation are accounted for correctly and are not subsidized by another operation. The
8 costs incurred for Waste Management's RMW business for the eight months ending in August 2012,
9 show Waste Management's actual labor costs, process costs from WM Healthcare Processing (an
10 operating division of Waste Management), container costs, truck rental costs, truck operating and
11 maintenance costs and associated business taxes and other administrative fees and overhead. The
12 processing cost charged to RMW is inclusive of the amortization of the capital investment in WM
13 Healthcare Processing which is presently \$1,732,000.²⁰¹ Waste Management has projected the costs
14 and revenues for its RMW business from January 2013 until statewide authority is assumed to have
15 been granted in June 2013, thereafter until this business is assumed to achieve profitability in June
16 2015, and continuing until the end of 2015.²⁰²

17 56. For the year 2012, Waste Management's revenues have increased at an average rate
18 of approximately 4% per month. If statewide authority is granted in mid-2013, Waste Management
19 projects that this historic monthly growth rate will increase to 10% per month based on the
20 anticipated RMW business, which will come to Waste Management from existing customers who
21 have additional facilities outside Waste Management's present territory and based on the anticipated
22 RMW business which has been promised by generators who have statewide operations serviced by
23 incumbent service providers and who will move all of their business to Waste Management if this
24 application is approved. Waste Management projects that after one and a half years of 10% monthly
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27 ²⁰⁰ Ex. MAW-16T; Ex. MAW-18.

28 ²⁰¹ Ex. MAW-16T ¶ 4; Ex. MAW-18.

²⁰² Ex. MAW-16T ¶ 5; Ex. MAW-19.

1 growth, Waste Management's monthly growth rate will decline somewhat due to market saturation,
2 beginning in January 2015.²⁰³

3 57. As a reference point, in 2011, Stericycle had nearly \$14 million in annual revenue
4 from its Washington business. In 2001, Stericycle's annual revenue was \$6.6 million. This
5 represents an average annual growth rate of nearly 8% with effectively little to no competition.²⁰⁴

6 58. Waste Management projects that the fuel and labor costs will increase, but not at the
7 same percent as associated revenues due to economies of scale, as Waste Management's routes
8 become denser (and serve more customers). Waste Management projects 1.33% monthly increase in
9 fuel and labor costs when revenue growth is anticipated to be 4% per month, and when revenue
10 growth is at 10% per month, Waste Management projects fuel and labor cost growth of 3.33% per
11 month. Waste Management has projected an additional 30% growth in costs for an additional truck
12 and an additional employee every three months. Waste Management has assumed that its processing
13 fees will be \$0.24 per pound and as such, this fee will represent approximately 40% of Waste
14 Management's tariffed RMW revenue at the end of 2015 when Waste Management projects the
15 operations will achieve a margin between six and seven percent. This percentage is similar to that of
16 Stericycle. By the end of 2015, Waste Management projects that Waste Management's labor costs
17 will be approximately 20% of its tariffed RMW revenue, again similar to those of Stericycle.²⁰⁵

18 59. By mid-2015, Waste Management projects that it will become profitable and will
19 have secured approximately one third of the market. Some of this market share will come from
20 Stericycle. Waste Management projects that in 2015 the Washington RMW services market
21 reasonably can exceed \$20 million. Waste Management projects that by 2015, the market will
22 expand by at least an additional \$1.7 million as a result of an aging population and the
23 implementation of the Affordable Care Act.²⁰⁶

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26 ²⁰³ Ex. MAW-16T ¶ 6; Ex. MAW-19.

27 ²⁰⁴ Ex. MAW-16T ¶ 7; Ex. MAW-20.

28 ²⁰⁵ Ex. MAW-16T ¶ 8; MAW-19; MAW-20.

²⁰⁶ Ex. MAW-16T ¶ 9; MAW-19; MAW-21.

1 60. In order to establish a meaningful alternative to Stericycle's dominance in the
2 marketplace, Waste Management was compelled to file a tariff similar to the rates currently charged
3 by Stericycle. Waste Management believes that these rates will be compensatory after start-up much
4 in the same way these rates are assumed to be compensatory for Stericycle. Waste Management's
5 projection that it will achieve profitability for its RMW business by mid-2015 based on the tariff
6 rates confirms that the tariff rates are compensatory, allowing Waste Management a reasonable rate
7 of return in the six to nine percent range.²⁰⁷

8 61. Waste Management has ample assets to expend on the plant for biomedical waste
9 collection and disposal in the additional territory. In 2011, Waste Management operated 622
10 commercial motor vehicles and employed 852 commercial vehicle drivers. It had total solid waste
11 operating revenues of \$334,451,354 and net income of \$16,034,533. In 2011, Waste Management
12 served 1,420,098 Washington customers. Waste Management had 2011 total assets of \$413,671,588
13 of which \$1,757,265 are assets related to the collection and processing of RMW.²⁰⁸

14 WMI is a Fortune 200 company with operations in nearly every state in the United States and
15 nearly every province in Canada. WMI had 2011 revenues of \$13.4 billion and assets totaling \$22.6
16 billion. Through the first six months of 2012, WMI had revenue of \$6.8 billion and assets of \$22.7
17 billion. As it has done to date, WMI will support an expansion in the number of employees and
18 vehicles necessary for Waste Management to provide statewide RMW service until Waste
19 Management achieves profitability.²⁰⁹

20 **2. Waste Management Is Operationally Fit.**

21 62. Operational fitness, in turn, is an inquiry to determine whether the applicant has the
22 physical ability to provide the proposed service.²¹⁰ The statute requires consideration of whether the
23 applicant has the facilities, assets and personnel necessary to provide the requested service.²¹¹ Thus,
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25 ²⁰⁷ Ex. MAW-16T ¶ 10; Ex. MAW-19.

26 ²⁰⁸ Ex. MAW-16T ¶ 11; Ex. MAW-22.

27 ²⁰⁹ Ex. MAW-16T ¶ 12; Ex. JD-2; Ex. MAW-23.

28 ²¹⁰ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 13 (Nov. 30, 1990).

²¹¹ RCW 81.77.040.

1 in considering Sureway's application for RMW authority, the Commission held that Sureway had
2 satisfied this standard because its "principals have experience conducting a statewide operation,"
3 they have "lined up future customers," and they "have demonstrated that they can attract new
4 customers even in a competitive environment."²¹²

5 63. Waste Management is a wholly-owned subsidiary of Waste Management Holdings,
6 Inc. which, itself, is a wholly-owned subsidiary of WMI. WMI is based in Houston, Texas, and is a
7 leading provider of comprehensive waste management services in North America. It is also a
8 leading developer, operator and owner of waste-to-energy and landfill gas-to-energy facilities in the
9 United States. As of December 2011, WMI served nearly 20 million residential, commercial,
10 industrial, and municipal customers through a network of 390 collection operations, 287 transfer
11 stations, 271 landfill disposal sites, 17 waste-to-energy plants, 107 recycling facilities and 131
12 beneficial-use landfill gas projects. WMI has been in business since 1894.²¹³

13 64. Waste Management's offices are located in Kirkland. WM Healthcare Solutions of
14 Washington is an operating division of Waste Management which is responsible for Waste
15 Management's RMW services. WM Healthcare Solutions of Washington is not a separate entity.
16 WM Healthcare Solutions of Washington uses a billing and record keeping system which allows for
17 bar code tracking, manifesting, record retention, and billing of RMW by weight and/or volume.
18 Waste Management's accounting staff, in conjunction with accounting staff from national corporate
19 headquarters in Houston, Texas, manage the billing of Washington RMW customers. WM
20 Healthcare Solutions of Washington has dedicated, toll-free numbers to respond to customer service
21 issues. These phone numbers are answered 24 hours a day, seven days a week.²¹⁴ Presently, there
22 are 14 Waste Management employees who are involved with providing Waste Management's RMW
23 services in Washington.²¹⁵

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26 ²¹² *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 18-19 (Nov. 19, 1993).

27 ²¹³ Ex. JD-1T ¶ 4; Ex. JD-2; Ex. MM-1T ¶ 3.

28 ²¹⁴ Ex. JC-1T ¶ 5.

²¹⁵ *Id.* ¶ 7.

1 65. As discussed earlier, Waste Management supplies its RMW customers with Rehrig
2 reusable, plastic tubs with attached lids and 30-gallon cardboard boxes. Waste Management also
3 provides customers with linear, low-density polyethylene red bags with “Regulated Medical Waste”
4 printed in black ink with a six-inch biohazard symbol. These bags are certified by their
5 manufacturers as meeting federal standards. Each container is lined with a red bag prior to the
6 generator depositing medical waste into the container. The generator is required to close the bag
7 with a Department of Transportation-approved knot and close the lid prior to collection by Waste
8 Management. Boxes must be used for “incinerate only” materials, and reusable tubs or boxes may
9 be used for materials to be autoclaved.²¹⁶

10 66. Waste Management provides to its employees who handle RMW training in the
11 following subjects: the regulatory definition of RMW, United States Department of Transportation
12 medical waste collection and transportation regulations and guidelines, Waste Management’s
13 requirements for acceptance, tracking and documentation of RMW, Occupational Safety and Health
14 Administration blood borne pathogen regulations, personal protective equipment, spill control, and
15 emergency response. All new Waste Management employees who handle RMW receive this
16 training. Employees receive further training at any time that their job functions change. In addition,
17 employees receive training annually regarding blood borne pathogen regulations and they receive
18 training every two years regarding United States Department of Transportation regulations.²¹⁷

19 67. Waste Management’s Medical Waste Acceptance Protocol sets forth the types of
20 RMW Waste Management will accept and how the customer must segregate, package, and label the
21 waste for collection by Waste Management. The Protocol is provided to, and must be signed by,
22 each customer.²¹⁸

23 68. Waste Management requires that the customer’s name be placed on each container of
24 RMW collected by Waste Management. Waste Management employees affix a bar code to the
25 outside of each box or container of RMW. Before transporting RMW from customer premises,
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27 ²¹⁶ *Id.* ¶ 8.

28 ²¹⁷ *Id.* ¶ 9; Ex. JD-3.

²¹⁸ Ex. JD-1T ¶ 10; Ex. JD-4.

1 Waste Management employees visually ensure that the waste is properly labeled, complete Waste
2 Management's tracking documentation, and verify that the waste tracking documentation is
3 accurate.²¹⁹

4 69. Waste Management scans the bar code on each container at the point of collection.
5 At that time, the generator signs a tracking document and retains a copy of the tracking document.
6 Two other copies of the signed tracking document accompany the waste on the collection truck.
7 Once the waste is received at Waste Management's processing plant, it is scanned for radiation,
8 weighed, and bar code scanned again. Generator information, the number of containers, and the
9 weight of the waste are uploaded into Waste Management's billing system.²²⁰

10 70. Waste Management schedules the collection of RMW based on customer need,
11 geography, and day. On-call service is available when customers' containers are not accessible at
12 the time of a scheduled pick-up or when the customer requests on-call service.²²¹

13 71. Waste Management marks its vehicles in compliance with United States Department
14 of Transportation regulations including Waste Management's name, its toll-free phone number, the
15 international biohazard symbol, the Department of Transportation-issued identification number, the
16 Seattle-King County Public Health annual inspection sticker, and the UTC G Certificate number.
17 Waste Management vehicles used to transport RMW contain spill kits. The company requires its
18 employees who handle RMW to wear protective equipment including safety glasses, safety toe and
19 hard soled safety shoes, water resistant safety boots, puncture/cut resistant gloves, face shields,
20 chemically resistant aprons, and respirators as needed.²²²

21 72. Waste Management employees daily clean all areas, equipment, and tools which
22 become contaminated or potentially contaminated by untreated RMW. They decontaminate floors
23 and work surfaces at the end of each shift. Reusable containers are decontaminated before being
24

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26 ²¹⁹ Ex. JD-1T ¶ 11; Ex. JD-5.

27 ²²⁰ Ex. JD-1T ¶ 12.

28 ²²¹ *Id.* ¶ 13.

²²² *Id.* ¶ 14; Ex. JD-6.

1 returned to customers. Employees decontaminate the cargo area of trailers and trucks before the
2 vehicle may leave a plant or station.²²³

3 73. Waste Management has a commercial general liability policy with Ace American
4 Insurance Company with a general liability aggregate limit of \$6,000,000 and a limit of \$5,000,000
5 per occurrence, and a limit of \$1,000,000 for automobile liability, above a self-insured retention
6 limit of \$5,000,000. Waste Management also has umbrella coverage from ACE Property & Casualty
7 Insurance Co. with occurrence and aggregate limits of \$15,000,000 and excess auto liability
8 coverage of \$9,000,000.²²⁴

9 74. Waste Management transports all RMW to be autoclaved to its Seattle Biomedical
10 Waste Treatment Facility. Autoclaving involves subjecting the waste to steam under pressure in a
11 vessel at intervals. The autoclaved waste is rendered sterile. In 2011, Waste Management processed
12 317,197.10 pounds of RMW at its Seattle facility. Following autoclaving, Waste Management
13 transports the treated, sterilized RMW for final disposal to its Greater Wenatchee Landfill in
14 Wenatchee or to Waste Management Disposal Service of Oregon, Inc.'s Columbia Ridge Landfill in
15 Arlington, Oregon.²²⁵ Waste Management transports all pathological and residual chemotherapy
16 waste to be incinerated at the Marion County Solid Waste-to-Energy Facility in Brooks, Oregon.²²⁶
17 Waste Management incinerates cardboard boxes and box liners after use. After each use, Waste
18 Management sanitizes and reuses its tubs.²²⁷

19 75. Waste Management has obtained all requisite permits for its RMW operations,
20 including a Solid Waste Facility Permit from the King County Department of Public Health,
21 authorization from the City of Spokane's Solid Waste Management Department, a Solid Waste
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25 ²²³ Ex. JD-1T ¶ 15.

26 ²²⁴ *Id.* ¶ 16; Ex. JD-7; Ex. JD-8.

27 ²²⁵ Ex. JD-1T ¶ 17; Ex. JD-9.

28 ²²⁶ Ex. JD-1T ¶ 18; Ex. JD-11.

²²⁷ Ex. JD-1T ¶ 19.

1 Handling Permit for Vehicles from the King County Department of Public Health, and a Water
2 Discharge Authorization from the King County Wastewater Treatment Division.²²⁸

3 76. If statewide service is authorized, Waste Management is prepared and able to obtain
4 additional equipment and personnel as necessary to undertake the planned growth. Waste
5 Management will require one additional Class A driver to provide RMW services when the RMW
6 revenue increases by approximately 30% and, thereafter, each time there is an additional 30%
7 increase in the RMW revenue. Class A drivers are readily available for hire.²²⁹ Waste Management
8 will also require an additional truck at each of those revenue intervals and trucks are readily
9 available for purchase or lease.²³⁰ Waste Management will not require additional tub tippers, boilers
10 or autoclaves as Waste Management's present equipment is operated at 25% of capacity. Waste
11 Management's current daily processing volume for RMW is 3.5 tons on a five-day work week. The
12 autoclave can process 12 tons per 24-hour period. Based on plant space and autoclave capacity,
13 Waste Management expects that if statewide authority is granted in mid-2013, it can operate with its
14 existing equipment until at least mid-2015. In addition, Waste Management has two back-up
15 autoclaves available at the Seattle processing plant site which can be used to process RMW.²³¹

16 **3. Waste Management Has Demonstrated Its Regulatory Fitness.**

17 77. In reviewing "regulatory fitness," the Commission considers whether the applicant
18 has "show[n] a willingness and ability to comply with the rules and law present in a regulated
19 environment."²³² "Violations of the law or Commission rules do not foreclose the applicant from
20 establishing its fitness, especially where the applicant has discontinued unauthorized practices and
21 has come into compliance."²³³ "An applicant's assurances of future compliance, when combined
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23

24 ²²⁸ *Id.* ¶¶ 22-25; Ex. JD-14; Ex. JD-15; Ex. JD-16; Ex. JD-17.

25 ²²⁹ Ex. JD-1T ¶ 33.

26 ²³⁰ *Id.* ¶ 34.

27 ²³¹ *Id.* ¶¶ 33-36; Ex. MM-1T ¶5.

28 ²³² *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 11 (Nov. 19, 1993).

²³³ *In re Am. Env'tl. Mgmt. Corp.*, App. No. GA-874, Order M.V.G. No. 1452 at 5 (Nov. 30, 1990).

1 with objective manifestations of intent to comply, may establish an applicant's fitness
2 notwithstanding past violations."²³⁴

3 78. It is undisputed that Waste Management has not violated any statutes or Commission
4 rules in providing RMW services.²³⁵ Given the volume of solid waste services it provides to
5 residential customers, it is not surprising that customers have on occasion complained to the UTC
6 about some aspect of Waste Management's solid waste service. It is notable that in the last 12 years,
7 the UTC has upheld the propriety of Waste Management's conduct in 60% of those complaints.
8 Waste Management has timely and properly addressed the remaining complaints in accordance with
9 UTC direction.²³⁶ Waste Management is fully committed to working with the Commission and its
10 staff to ensure that the public interest is served as Waste Management has for many, many years in
11 serving its solid waste customers. Waste Management is not a new, untested entrant into the
12 biomedical waste market. Rather, this applicant has a long regulatory history with the Commission.
13 It has been providing certificated waste collection services throughout vast areas of the State of
14 Washington for decades and, for the last year and a half, Waste Management has been successfully
15 providing biomedical waste collection services throughout the large Certificate No. G-237 territory.
16 Waste Management is a financially healthy corporation with substantial resources to ensure no
17 Washington medical waste customer will be stranded due to Waste Management closing its doors.

18 II. CONCLUSION

19 79. Waste Management has proven that the RMW collection service currently provided in
20 Washington by Protestants does not satisfy the specialized needs of Washington's waste generators,
21 that its entry into the market is no threat to Protestants' economic viability, that the public's needs
22 for responsive service outweigh any negative impacts on Protestants, and that Waste Management is
23 fit to provide RMW services statewide.²³⁷ Waste Management has demonstrably cleared the hurdle
24 for Commission approval. To deny approval would be tantamount to setting an insurmountably high
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26 ²³⁴ *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 7 (Nov. 19, 1993).

27 ²³⁵ Ex. JD-1T ¶ 28.

28 ²³⁶ Ex. MAW-16T ¶¶ 13-28.

²³⁷ Order 05 ¶ 11.

1 threshold that may, in effect, forever preclude meaningful statewide competition for RMW services.

2 Waste Management respectfully requests that its application be granted.

3 DATED this 18th day of January, 2013.

4 SUMMIT LAW GROUP PLLC

5
6 By



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Washington, Inc.*

CERTIFICATE OF SERVICE

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

Table with 2 columns: Recipient Information and Service Method Selection. Rows include Washington Utilities and Transportation Commission, Gregory J. Kopta, Fronda Woods, Stephen B. Johnson, and James K. Sells.

DATED at Seattle, Washington, this 18th day of January, 2013.

Handwritten signature of Deanna L. Schow

Deanna L. Schow