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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
RESPONSE BRIEF

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

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1 **TABLE OF CONTENTS**

2 Page

3 I. INTRODUCTION 1

4 II. ARGUMENT AND AUTHORITY 1

5 A. Waste Management has Failed to Prove that Stericycle Will Not Provide
6 Service to the Satisfaction of the Commission as Required by RCW
81.77.040. 1

7 1. Waste Management has presented no proof that Stericycle’s
8 services do not meet the specialized needs of biomedical waste
9 generators in the application territory..... 1

10 2. Waste Management excuses complaints from its own customers
11 that are similar to the few complaints alleged by Stericycle’s
12 customers and, therefore, fails to prove that Stericycle will not
13 provide satisfactory service. 2

14 3. The complaints of a few generators are not pervasive, persistent,
15 or serious, and do not meet Waste Management’s burden of
16 proving that Stericycle will not provide satisfactory service. 3

17 4. The generator’s preference for generic competition, unrelated to
18 any biomedical waste service needs or features of Waste
19 Management’s services, cannot establish that Stericycle will not
20 provide satisfactory service as a matter of law..... 10

21 B. Waste Management has Failed to Prove that Granting its Application is
22 in the Public Interest. 14

23 C. The Commission Must Reject Waste Management’s Application for
24 Overlapping Biomedical Waste Authority. 15

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1 **I. INTRODUCTION**

2 1. Waste Management of Washington, Inc.'s ("Waste Management") post-hearing
3 brief demonstrates that it has failed to meet its burden of proving that Stericycle of Washington,
4 Inc. ("Stericycle") will not provide service to the satisfaction of the Commission in the
5 application territory. There is no evidence of any specialized service need not met by
6 Stericycle. The complaints of a few customers about Stericycle's services do not reflect service
7 issues that are pervasive, serious, or persistent. As the Commission Staff has concluded, these
8 complaints do not prove that Stericycle will not provide satisfactory service. A preference for
9 competition in a generic form advocated by generator witnesses cannot demonstrate that
10 Stericycle will provide unsatisfactory service. Waste Management's application for new,
11 overlapping authority must be denied.

12 **II. ARGUMENT AND AUTHORITY**

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

- 15 1. Waste Management has presented no proof that Stericycle's services do not
16 meet the specialized needs of biomedical waste generators in the application
17 territory.
- 18 2. Waste Management's post-hearing brief fails to identify any testimony from a
19 biomedical waste generator in the territory covered by Waste Management's application that a
20 specialized generator need is not being met by Stericycle's existing biomedical waste collection
21 and disposal services. This is not at all surprising since, as documented in Stericycle's post-
22 hearing brief, no witness representing a generator in the application territory testified to any
23 unmet specialized need. Stericycle Post-Hearing Brief, ¶¶15-19. To the contrary, the
24 testimony of a majority of the generator witnesses demonstrates affirmatively that Stericycle's
25 services do meet generator needs and that the generators have "no problem" and "no
26 complaints" about Stericycle's services. *Id.*, ¶¶18, 43-44, 52, 54-55, 75, 82-83, 85.

1 3. Waste Management’s application for overlapping authority may not be granted
2 absent proof of specialized service needs that are not met by Stericycle, and Waste
3 Management has utterly failed to meet that burden of proof. Order 05, ¶11 (ordering that
4 Waste Management’s proof must show that “the biomedical waste collection service currently
5 provided in the territory Waste Management proposes to serve does not satisfy the specialized
6 needs of customers in that area as the customers determine those needs”); *see also*
7 Stericycle Post-Hearing Brief, ¶¶6-9 (explaining Waste Management’s burden of proof).

8 2. Waste Management excuses complaints from its own customers that are similar
9 to the few complaints alleged by Stericycle’s customers and, therefore, fails to
10 prove that Stericycle will not provide satisfactory service.

11 4. Because it cannot prove that generators’ specialized service needs are not being
12 met by Stericycle, Waste Management instead skips to an argument that biomedical waste
13 generators are “not satisfied” with Stericycle’s services. WM Post-Hearing Brief, §I(A)(1).
14 For this argument, Waste Management relies on a handful of isolated complaints from some of
15 the generator witnesses about specific instances of alleged customer service or service delivery
16 errors. But Waste Management’s argument is two-faced and insufficient as a matter of law.

17 5. First, Waste Management relies entirely on a few customer complaints that are
18 similar to complaints it is quick to excuse in its own services in much greater quantities. In
19 advocating for its own fitness to provide biomedical waste services, Waste Management
20 acknowledges the hundreds of complaints that customers of its established solid waste business
21 have lodged with the Commission. *Id.*, ¶78. As discussed in Stericycle’s post-hearing brief,
22 these complaints against Waste Management involve the same kind of billing, customer
23 service, and pick-up errors alleged by five of the 10 generator witnesses in this proceeding with
24 respect to Stericycle. Stericycle Post-Hearing Brief, ¶¶34, 103-104. These service complaints
25 are not unique to biomedical waste customers and can, and do, arise in both universal and
26 specialized waste collection. Of the hundreds of complaints from its customers, Waste

1 Management argues that “[g]iven the volume of solid waste services it provides to residential
2 customers, it is not surprising that customers have on occasion complained to the UTC about
3 some aspect of Waste Management’s solid waste service.” WM Post-Hearing Brief, ¶78.

4 6. On this point Waste Management is correct. It is to be expected that providing
5 service to thousands of customers will generate a small and acceptable number of complaints
6 about customer service, missed pickups, billing errors, and other issues. This is especially true
7 where large service providers like Waste Management and Stericycle employ customer service
8 call centers and automated billing processes that help keep the costs of service delivery low, but
9 that allow for the possibility of occasional errors.

10 7. Despite Waste Management’s reasonable argument to excuse the complaints of
11 its own customers, it makes a small number of similar complaints from some of the testifying
12 generators the lynchpin of its argument that Stericycle does not provide satisfactory service.
13 This is, of course, hypocritical and logically inconsistent. These complaints are no more
14 “surprising” than the similar (if more voluminous) complaints against Waste Management
15 given the more than 7,700 biomedical waste generators served by Stericycle each year. Waste
16 Management provides no basis for arguing on the one hand that its record of service complaints
17 in its established business is merely the expected background noise of a busy service provider,
18 but on the other hand arguing that the handful of similar complaints against Stericycle is strong
19 evidence that Stericycle will not provide service to the satisfaction of the Commission.

20 3. The complaints of a few generators are not pervasive, persistent, or serious, and
21 do not meet Waste Management’s burden of proving that Stericycle will not
22 provide satisfactory service.

23 8. The complaints alleged by some of the generator witnesses and relied on by
24 Waste Management are exceedingly far from the threshold of proof required to establish
25 unsatisfactory service. Thus, the Commission Staff has concluded that although there is “some
26 evidence of deficiencies in the service provided by Stericycle,” “Staff does not believe that

1 these deficiencies, by themselves, are enough to support a finding that Stericycle will not
2 provide service to the satisfaction of the Commission under RCW 81.77.040.” Staff Post-
3 Hearing Brief, ¶26. This is the correct conclusion. Moreover, the Commission’s precedent
4 makes clear that the few complaints cited by Waste Management are nowhere near sufficient to
5 prove that Stericycle will not provide service to the satisfaction of the Commission.

6 9. The Commission has consistently required a strong showing of serious,
7 pervasive, and persistent service failures affecting a significant number or proportion of the
8 customers in an application territory in order to establish that an incumbent service provider
9 will not provide satisfactory service under RCW 81.77.040. *In re Superior Refuse Removal*
10 *Corp.*, Order M. V. G. No. 1526, App. No. GA-849 at 38-40 (Nov. 20, 1991) (finding that
11 service complaints were not “pervasive” and that the evidence did not “demonstrate that large
12 numbers of customers, or a substantial proportion of the customers, are experiencing
13 consistently serious problems with the quality of physical service provided by the existing
14 carrier.”); *In re Lawson Disposal, Inc.*, Order M. V. G. No. 1264, App. No. GA-824 at 5 (Jan.
15 20, 1987) (finding that service problems reflect unsatisfactory service where “[t]he complaints
16 are similar, they are consistent over time, and they represent a significant proportion of the
17 customer base.”); *see also In re R.S.T. Disposal Co.*, M.V.G. No. 1402, App. Nos. GA-845 and
18 GA-851 at p. 28 (July 28, 1989) (requiring a “strong showing” that the existing carrier will not
19 provide satisfactory service in the application territory).

20 10. Waste Management’s burden of proof is high. In *In re DiTommaso*, Order
21 M.V.G. No. 786, App. No. GA-508 (Sept. 1975), adopted by the Commission in Order M.V.G.
22 No. 795 (Nov. 1975), the Commission found unsatisfactory service where twenty witnesses
23 made similar complaints about unreliable service, frequently missed pickups, poor equipment,
24 inadequate response to complaints, problems establishing service, and difficulty correcting
25 billing errors. Service had deteriorated to the degree that generators were forced to haul their
26 own garbage and the health department was receiving complaints related to the existing service.

1 In *In re Lawson Disposal, Inc.*, Order M. V. G. No. 1264, App. No. GA-824 at 4-5 (Jan. 20,
2 1987) the Commission found unsatisfactory service where “a substantial portion” of the
3 customers made similar complaints about the lack of cleanliness around drop boxes and about
4 late pickups. *See also In re R.S.T. Disposal Co., Inc./Seattle Disposal Co.*, Order M. V. G. No.
5 1402, Cause Nos. GA-845, GA-851 at 37 (July 28, 1989) (citing repeated service failures,
6 repeated and knowing failures to establish service, and failure to correct violations despite
7 assurances to the Commission). By contrast, in *In re Superior Refuse Removal Corp.*, Order M.
8 V. G. No. 1526, App. No. GA-849 (Nov. 20, 1991), the Commission found insufficient
9 evidence to demonstrate unsatisfactory service where only a small number and proportion of
10 the existing carrier’s customers – 15 of 1,300 customers – made complaints about the service.
11 Although the complaints addressed issues that might otherwise demonstrate unsatisfactory
12 service – such as scattered garbage, dirty containers, missed on-call pickups, poor response to
13 complaints, and improper billing – The Commission noted that customers did not consistently
14 make the same complaints, the problems complained of were not pervasive, and three of the
15 applicant’s own witnesses testified that the existing services were satisfactory.

16 11. The complaints alleged by a few of the generator witnesses fall far short of the
17 proof the Commission has required to find unsatisfactory service and are far less substantial
18 than the complaints in *Superior Refuse Removal*, in which the Commission did not find
19 unsatisfactory service. First, the complaints were not pervasive and do not represent the
20 experience of either a large number of generators or a large proportion of the generators in the
21 application territory. As Waste Management’s post-hearing brief acknowledges, only five
22 generator witnesses alleged any kind of complaint, of which only four were witnesses
23 representing generators in the application territory. *See* WM Post-Hearing Brief, ¶¶5-9,
24 Stericycle Post-Hearing Brief, ¶¶32, 73-74 (establishing that Emily Newcomer does not
25 represent a generator in the application territory). Even ignoring cross-examination testimony
26 that undercuts several of these complaints, they are far short of the number of complaining

1 generators in *DiTommaso* and the substantial proportion of customers who raised complaints
2 in *Lawson Disposal*. They are far fewer than the 15 witnesses that complained in *Superior*
3 *Refuse Removal* out of 1,300 customers, which failed to establish unsatisfactory service. Waste
4 Management's four or five complaining witnesses are neither a large number nor a significant
5 proportion of Stericycle's 7,700 customers.

6 12. By contrast five witnesses – three of whom were Waste Management's
7 witnesses, as was the case in *Superior Refuse Removal* – gave testimony demonstrating that
8 Stericycle's services are reliable and/or that they had “no problems” and “no complaints” with
9 Stericycle's services.¹ Stericycle Post-Hearing Brief, ¶¶18, 43-44, 52, 54-55, 75, 82-83, 85.
10 The witnesses from the PeaceHealth system, Washington State Dental Association, Washington
11 Hospital Services, and Association of Washington Public Hospital Districts, represent
12 thousands of generators.

13 13. The specific complaints relied on by Waste Management are not consistent, are
14 relatively minor, and are not pervasive. Most of the complaints allege a variety of different
15 customer service problems that were largely situation-specific. Carla Patshkowski of
16 Providence Medical Group and Jean Longhenry of Wendel Family Dental Centre each alleged
17 a billing error related to the cancelation of service that was subsequently corrected by
18 Stericycle, although Stericycle acknowledges the long delay in resolving the error reported by
19 Ms. Patshkowski.² These billing errors were isolated events that Stericycle corrected and,
20 hence, were neither serious nor pervasive.³

21 _____
22 ¹ Ray Moore testified on behalf of the PeaceHealth system that Stericycle is a “good partner”
23 about which he has “no complaints” and which “perform[s] the services that they are paid to
24 do” (394:2-7); Danny Warner testified on behalf of the Washington State Dental Association
25 that he has “no problem” with Stericycle's services “at all.” (412:12-413:5); Emily Newcomer
26 from the University of Washington's Seattle campus testified that she has “no complaints”
about Stericycle's services (543:15:24, 545:24-546:11); Jeff Mero and Taya Briley of the
Association of Washington Public Hospital Districts and Washington Hospital Services
testified that Stericycle is “a reliable and cost-effective provider . . .”. JM-1T, ¶3, TB-1T, ¶3.

² Waste Management cited Ms. Longhenry's testimony that she “was constantly calling” to

1 14. Waste Management also relies on the allegations of Rodger Lycan of Pathology
2 Associates Medical Laboratories (PAML) that Stericycle stopped serving several clinics a few
3 days before the date he had initially targeted for the cancelation of service. This alleged early
4 termination of service was not serious since, as Waste Management acknowledges, it resulted
5 in service being stopped at only three facilities only two days before Mr. Lycan would have
6 preferred. WM Post-Hearing Brief, ¶5, n.13 (identifying service terminated at three facilities
7 on October 26, 2011 instead of October 28, 2011). It was not pervasive since Mr. Lycan
8 acknowledged that at least 80% of the facilities were transitioned as he expected and that the
9 early termination of service “was not like a wholesale abandonment.” (455:17-456:1).⁴
10 Moreover, it was neither pervasive nor persistent because the brief early termination of service
11 arose from a one-time cancelation of multiple facilities by a single customer.

12 15. Most important, however, these allegations cannot be given any weight because
13 Mr. Lycan’s cross-examination testimony revealed that he was simply not in a position to know
14 that Stericycle coordinated the final service dates directly with the PAML facilities and he did
15 not communicate with anyone about this coordination before testifying. Stericycle has amply
16 documented these facts in its post-hearing brief. Stericycle Post-Hearing Brief, ¶¶58-61.

17
18 correct the error and that it took “a lot of calls.” WM Post-Hearing Brief, ¶9. Waste
19 Management’s reliance on this testimony is misleading since Ms. Longhenry quickly
20 contradicted this testimony, admitting that she did not communicate with Stericycle about the
21 error but, instead, simply passed on the bills to another employee who did not provide
22 testimony. (318:2-5, 10-17).

23 ³ Ms. Patshkowski also testified that during the process of canceling service to many
24 Providence Medical Group facilities at her request, Stericycle briefly canceled service to an
25 additional location. WM Post-Hearing Brief, ¶6. Waste Management cites this testimony but
26 fails to cite her testimony that this additional cancelation did not cause a long interruption in
service, did not negatively impact the facility, and, consequently, was neither severe nor
pervasive. (479:23-480:2). Waste Management also cited Ms. Longhenry’s allegation that
Wendel Family Dental Centre was charged for containers that Stericycle did not pick up from
one of its facilities, but failed to cite her testimony that these charges were corrected by
Stericycle. (327:13-16).

⁴ Citations to the hearing transcript will be made using parenthetical references to transcript
page and line numbers.

1 16. Waste Management also relies on Mr. Lycan's and Ms. Patshkowski's
2 allegations that Stericycle did not consult with them about measures they could have taken to
3 reduce the cost of services to their individual facilities by altering container sizes or limiting
4 service frequency. WM Post-Hearing Brief, ¶¶5-6. Stericycle has already demonstrated,
5 however, that Mr. Lycan's testimony does not support Waste Management's argument because
6 he admitted that another employee was responsible for biomedical waste services and that he
7 does not know anything about communications between that employee and Stericycle
8 concerning Stericycle's offers to perform waste audits. Stericycle Post-Hearing Brief, ¶64.
9 Unrebutted testimony demonstrates that PAML did not take advantage of Stericycle's offer to
10 perform waste audits. *Id.* Waste Management's reliance on Ms. Patshkowski's testimony must
11 be discounted for a similar reason. She had no responsibility for Stericycle's service to
12 Providence Medical Group facilities, including selecting containers or collection schedules.
13 *Id.*, ¶¶68-69. These decisions were the responsibility of individual facility managers who
14 coordinated their needs directly with Stericycle. *Id.* Ms. Patshkowski was totally unaware of
15 Stericycle's offer to perform waste audits at all Providence Medical Group facilities.⁵ *Id.*,
16 ¶¶69-70.

17 17. Waste Management relies on the allegation of Julie Sell of Olympic Medical
18 Center that she did not have access to a Washington-based Stericycle representative, despite the
19 fact that Ms. Sell's cross-examination amply demonstrated that this was not true because Ms.
20

21 ⁵ Waste Management disingenuously argues that "Ms. Patshkowski was never assigned a
22 Stericycle representative" and was not consulted about "the most economical and appropriate
23 type of collection service," (WM Post-Hearing Brief, ¶6), when, in fact, the cited testimony
24 reveals that this was probably because the facility managers were the contacts with Stericycle.
25 (471:2-8, 487:21-488:4). Ms. Patshkowski's entire testimony reveals that she was a low-level
26 employee with very limited responsibility, solely for initiating biomedical waste service at new
facilities. Stericycle Post-Hearing Brief, ¶¶68-69. Her lack of a "Stericycle representative" or
"consultation" from Stericycle is due to her lack of responsibility on behalf of Providence
Medical Group, not any failure by Stericycle. Providence Medical Group had a group-wide
contact with Stericycle who was offered waste audits. *Id.*, ¶¶68-70.

1 Sell knew who Olympic Medical Center's Stericycle contact was and had communicated with
2 him about biomedical waste. *Id.*, ¶¶36-39.

3 18. In sum, the customer service complaints are relatively minor, are not common
4 across a large number or proportion of Stericycle's customers, and are not consistent among the
5 few complaining generators. As Waste Management recognizes, at least for its own services,
6 these isolated complaints are consistent with a well-run and high quality large service provider.

7 19. Only one complaint alleges a service delivery error, namely Ms. Sell's
8 allegation that Stericycle did not make a timely on-call pickup on three occasions at different
9 clinics. She did testify that these missed pickups were resolved by Stericycle. (214:7-8).
10 These missed pickups, which Ms. Sell did not describe with any specificity prior to the hearing
11 such that they could be investigated by Stericycle, all allegedly occurred in May, June, and July
12 2012 *after* Waste Management filed its application. As such they do not reflect Stericycle's
13 service in "[t]he appropriate test period," namely "the period prior to the filing of the
14 application for new authority." *In re Superior Refuse Removal Corp.*, Order M. V. G. No. 1335,
15 App. No. GA-849 at 5 (June 1, 1988). Even if these complaints are relevant, they are relatively
16 minor errors that have not been repeated and that are not widespread across Stericycle's 7,700
17 customers. Commission decisions have emphasized that only *frequent* missed pickups reflect
18 unsatisfactory service. *See In re Brem-Air Disposal, Inc.*, Order M.V.G. No. 837, App. No.
19 GA-575 (Aug. 1976); *In re R.S.T. Disposal Co., Inc./Seattle Disposal Co.*, Order M. V. G. No.
20 1402, Cause Nos. GA-845, GA-851 at 37 (July 28, 1989).

21 20. Waste Management's reliance on the testimony of Emily Newcomer of the
22 University of Washington's Seattle campus is misplaced because she does not represent a
23 generator in the application territory. Stericycle Post-Hearing Brief, ¶¶32, 73-74. Stericycle
24 has also demonstrated that Ms. Newcomer's belief that Waste Management's Seattle
25 processing facility reduces emissions and liability associated with the Seattle campus' service
26 does not support granting Waste Management's application. She admitted that granting new

1 overlapping authority would *increase* total transportation miles and, hence, any emissions and
2 liability that may be associated with transportation will increase. *Id.*, ¶76-77.⁶

3 21. Finally, Waste Management has presented absolutely no proof that its proposed
4 services will be of higher quality than Stericycle's. "In determining whether to authorize
5 overlapping authority, the Commission also considers whether the applicant's service history, if
6 any, is substantially better in character than the existing carrier's service history." *In re*
7 *Superior Refuse Removal Corp.*, Order M. V. G. No. 1526, App. No. GA-849 at 10, 22 (Nov.
8 20, 1991); *see also in re Superior Refuse Removal Corp.*, Order M. V. G. No. 1335, App. No.
9 GA-849 at 8-9 (June 1, 1988) (in rejecting an application for overlapping authority in which
10 "the evidence fails to show that the overall caliber of applicant's existing service to other
11 customers substantially exceeds that of the existing carrier . . ."). The hundreds of service
12 complaints against Waste Management reflecting similar kinds of customer service and service
13 delivery errors indicate that Waste Management makes the same sorts of errors alleged in this
14 proceeding with at least similar frequency and would provide service in the application territory
15 that is no more error-free than the high quality service that Stericycle already provides.

16 4. The generator's preference for generic competition, unrelated to any biomedical
17 waste service needs or features of Waste Management's services, cannot
18 establish that Stericycle will not provide satisfactory service as a matter of law.

19 22. Waste Management's only other argument that Stericycle does not provide
20 service to the satisfaction of the Commission is that many of the generator witnesses stated a
21 preference for competition. Waste Management is adamant that an alleged Commission policy

22 ⁶ Waste Management also alleges that Ms. Newcomer's speculation that she "think[s] the
23 turnaround, the response time from Stericycle was a lot slower than it was from Waste
24 Management" is a customer service complaint. (556:18-21); WM Post-Hearing Brief, ¶8. This
25 is wrong because Ms. Newcomer admitted that she was actually not involved in the inquiries at
26 issue, has not seen the correspondence at issue, and has not reviewed the dates or times when
questions were asked and answered. (555:21-556:2, 557:1-8). An email shows, contrary to
Waste Management's misreading, that Stericycle responded to an inquiry the same day. JR-7T,
5:13-22, JR-8. The final question left in the last email was answered by phone. 624:8-11.

1 in favor of competition in biomedical waste services elevates this general preference to proof
2 that Stericycle will not provide satisfactory service. *See* WM Post-Hearing Brief, ¶23. But this
3 position has already been rejected in this proceeding, and for good reason. Order 05 found that
4 “[n]one of the Commission’s decisions . . . can reasonably be interpreted to hold that a desire
5 for competitive alternatives, without more, is sufficient to find that incumbent providers will
6 not provide service to the satisfaction of the Commission.” Order 05, ¶10. The Commission
7 has also clearly stated its “consistent view that mere desire for a backup carrier in the event of
8 possible discontinuance of, or deterioration in, existing service, or mere preference for
9 competition, does not demonstrate a need for an additional carrier.” *In re Sureway Medical*
10 *Services, Inc.*, Order M.V.G. No. 1674, Hearing No., GA-75968 at 4-5 (Dec. 20, 1993). The
11 Commission has acknowledged in another medical waste application proceeding that “[t]he
12 legislature has determined that a monopoly-based system for solid waste collection is consistent
13 with the public interest.” *In re Medical Resource Recycling System*, M.V.G. No. 1633, App.
14 GA-76819 at 2 (May 28, 1993).⁷ Even if competition did have “value,” as Waste Management

15 _____
16 ⁷ Waste Management makes much of a single sentence in the Final Order in *Stericycle of*
17 *Washington, Inc. v. Waste Management of Washington, Inc.*, Docket No. TG-110553, Final
18 Order at pp. 14-15 (July 13, 2011), asserting that “the Commission has historically found that
19 promoting competition in this segment of the industry is in the public interest because, among
20 other things, it promotes higher quality of service in terms of protecting the public health and
21 safety.” WM Post-Hearing Brief, ¶23. However, Waste Management’s reliance on this
22 statement misunderstands the separate satisfactory service and public interest determinations
23 that the Commission is required to make. Whether existing certificate holders are providing
24 satisfactory service is a threshold issue that must be determined before the Commission may
25 consider the broader question of the “public interest.” Moreover, it is not correct that the
26 Commission takes on faith that competition is in the public interest. To the contrary, “[t]he
Commission recognizes that competition in the collection and disposal of biohazardous waste
may not necessarily benefit the public.” *In re Sure way Medical Services, Inc.*, Order M.V.G.
No. 1663, Docket No. GA-75968 at 16 (Nov. 19, 1993) (emphasis added). Waste Management
also relies on an earlier decision in which the Commission discussed in dicta whether the policy
arguments in favor of exclusive service territories would apply with equal force to specialized
services. WM Post-Hearing Brief, ¶23, n.88. However, the Commission’s clear statement that
a preference for competition does not demonstrate the need for an additional carrier takes
precedence over the earlier dicta.

1 argues, it is not a value recognized by Washington's legislature and it is not a relevant
2 consideration under RCW 81.77.040 to prove that the incumbent service provider does not
3 provide satisfactory service.

4 23. Little more needs to be said of the specific testimony relied on by Waste
5 Management. There is no dispute that none of the generators cited an unmet need for
6 specialized service as the basis for their preference for competition and that several of the
7 generators stated a preference for competition *despite* having "no problem" with or "no
8 complaints" about Stericycle's services. See Stericycle Post-Hearing Brief, ¶18. None of the
9 generators cited anything unique about Waste Management's proposed biomedical waste
10 services as the basis for their preference for competition.⁸ Indeed, as Stericycle demonstrated
11 in its post-hearing brief, the generator witnesses were *explicit* that their desire for competition
12 was generic – i.e. that the competitive alternative did not have to be Waste Management and,
13 therefore, that the preference for competition was not related to its services. Stericycle Post-
14 Hearing Brief, ¶20. The generators could not have been clearer that they do not prefer
15 competition because Waste Management fills a specialized service need or that it will provide
16 better service but, rather, because they simply want the perceived benefits of a competitive
17 marketplace instead of the regulated marketplace the legislature created in RCW 81.77.

18 24. Moreover, the generators' desire for a "market" price or a better price through
19 competition is irrelevant. The Commission has expressly held that the "level of rates is not a
20 proper inquiry in determining whether authority should be granted" *In re SnoKing*
21 *Garbage Co./R.S.T. Disposal Service, Inc.*, Order M. V. G. No. 1185, App. No. GA-788 at 6
22 (Nov. 6, 1984) (declining to consider the lower rates of an applicant for transfer of authority
23

24 ⁸ Waste Management also cites somewhat cryptic prefiled testimony of Mr. Moore stating that
25 competition will help mitigate PeaceHealth's risk of residual liability from the transportation
26 and handling of its waste. WM Post-Hearing Brief, ¶15. On cross-examination, however, Mr.
Moore clarified that this statement was only another way of expressing his belief that
competition would promote better service in general. (395:13-19).

1 because the transfer application “is not a proceeding under [RCW 81.28.230 to fix just and
2 reasonable rates] and it does not determine the propriety of any rate level.”); *see also R.S.T.*
3 *Disposal Co., Inc./Seattle Disposal Co.*, Order M. V. G. No. 1402, Cause Nos. GA-845, GA-
4 851 at 37 (July 28, 1989) (finding that a proposed order “correctly declined to consider rates as
5 an evaluative element” under RCW 81.77.040 because “the Commission has historically not
6 considered rates proposed by applicants because rates can be changed at any time.”). Thus,
7 Waste Management’s argument that generators are already benefiting from competition
8 through reduced rates for hinged-lid Rehrig containers, and its long discourse on the similarities
9 and differences between Waste Management’s and Stericycle’s rates for Rehrig containers, is
10 not relevant. WM Post-Hearing Brief, ¶¶26-35.

11 25. In addition, any generator complaint that Stericycle’s rates do not reflect a
12 “market” price or the “best” price is not relevant. For example, the complaints from Ms.
13 Patshkowski and Ms. Sell that they are dissatisfied with the 10 dollar minimum monthly fee in
14 Stericycle’s tariff cannot demonstrate that Stericycle’s services are unsatisfactory. WM Post-
15 Hearing Brief, ¶¶ 6-7. Likewise, the testimony of Mr. Lycan that he believes PAML could
16 obtain a 10 percent reduction in its costs by moving its service to Waste Management is also
17 irrelevant.⁹ WM Post-Hearing Brief, ¶14. That generators desire lower rates, or even that they
18 may benefit from lower rates if Waste Management’s application is granted, cannot be proof
19 that Stericycle will not provide service to the satisfaction of the Commission.

20 26. Finally, the generators’ preference for generic competition is not entitled to
21 weight because it is not based on the generators’ professional training and experience.
22 Specialized needs for biomedical waste services must be established by testimony from
23 “professional[s] in the body of knowledge at issue” “about the requirements of the service they

24 _____
25 ⁹ Waste Management’s criticisms of the association witnesses Jeff Mero and Taya Briley for
26 not understanding Stericycle or Waste Management’s rate structure are not valid criticisms
since rates are not relevant to this application proceeding. *See* WM Post-Hearing Brief, ¶¶20-
21.

1 need.” Order 05, ¶10 (quoting *In re Application GA-76820 of Medical Resource Recycling*
2 *System, Inc.*, Order M.V.G. No. 1707 at 4 (May 25, 1994)). The Commission gives such
3 generator testimony weight because biomedical waste generators, as healthcare providers, “are
4 in a unique position to evaluate the risks and benefits of collection and disposal service from
5 their own professional training and experience.” *In re Application GA-75154 of Ryder*
6 *Distribution Services, Inc.*, Order M.V.G. No. 1596 at 11 (Jan. 25, 1993) (emphasis added). A
7 preference for generic competition is just a preference for general market forces that will
8 supposedly lead to “better” or “cheaper” services; it is not a preference for any requirement of
9 specialized biomedical waste service. Stericycle has also amply demonstrated that the
10 generator witnesses promoting competition are not speaking from professional training or
11 experience. The generators admitted that they lack expertise related to the effects of
12 competition in a regulated medical waste market, that they have not studied these effects, that
13 their testimony is an “assumption,” “personal opinion,” or “advocacy,” and several generator
14 witnesses admitted the possibility that competition might lead to cost cutting and *lower* quality
15 services. Stericycle Post-Hearing Brief, ¶¶22, 50, n.7, 55, n.9, 65, 80, n.17. Since the
16 generators’ preference for generic competition does not address a requirement of specialized
17 biomedical waste service and is not based on professional training or experience, it is not
18 entitled to weight in deciding whether Stericycle will provide satisfactory service.

19 **B. Waste Management has Failed to Prove that Granting its Application is in the**
20 **Public Interest.**

21 27. Stericycle has already demonstrated that Waste Management’s proposed
22 biomedical waste services are not in the public interest for a number of reasons. Stericycle
23 Post-Hearing Brief, ¶¶33-35, 92-107.

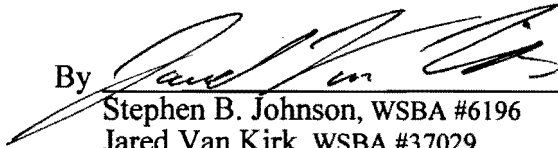
24 28. In addition, Stericycle shares the WRRRA Protestants’ concern that the public
25 interest is jeopardized by the risk of long-term subsidization of unprofitable biomedical waste
26 services. As the other Protestants aptly stated, Waste Management’s estimate that it could

1 become profitable by 2015 is no more than a guess. WRRRA Post-Hearing Brief, p.4-5. There
2 is a serious risk of continued subsidization by Waste Management's corporate parent or cross-
3 subsidization between Waste Management's lines of business in Washington after that date.¹⁰

4 **C. The Commission Must Reject Waste Management's Application for Overlapping**
5 **Biomedical Waste Authority.**

6 29. Because Waste Management has failed to meet its burden to prove that
7 Stericycle (and the other Protestants) will not provide service to the satisfaction of the
8 Commission in the application territory, Waste Management's application must be rejected
9 under RCW 81.77.040. For the reasons stated above and in Stericycle's post-hearing brief,
10 Waste Management's application is also not in the public interest.

11 Respectfully submitted,
12 GARVEY SCHUBERT BARER

13
14 By 
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17 Attorneys for Protestant Stericycle of
18 Washington, Inc.

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23
24 ¹⁰ Consequently, even in its existing service territory Waste Management could and should be
25 required to file reports with the Commission that separately detail the revenues, expenses, and
26 other pertinent information concerning its biomedical waste business. Waste Management
already testified keeps a separate general ledger for this line of business. WM Post-Hearing
Brief, ¶55.

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 25, 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-
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7 Transportation Commission
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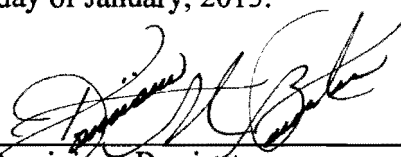
- 37 Via Legal Messenger
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