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7 BEFORE THE WASHINGTON STATE
8 UTILITIES AND TRANSPORTATION COMMISSION

9 In Re Application of Waste
10 Management of Washington,
11 Inc. d/b/a WM Healthcare
Solutions of Washington

Docket TG-120033

“WRRRA PROTESTANTS” REPLY BRIEF

12 **COME NOW** Protestants Rubatino Refuse Removal, Inc.; Consolidated
13 Disposal Services, Inc; Murrey’s Disposal, Inc.; and Pullman Disposal Service,
14 Inc., collectively referred to as the “WRRRA Protestants” or “WRRRA,” and
15 respectfully submit the following in reply to Waste Management’s Post
16 Hearing Brief:

17 1) **SCOPE:** As in the initial briefing, WRRRA will leave the issue of
18 fitness for Protestant Stericycle to address. Both Waste Management and
19 Stericycle dealt with that issue in considerable depth in their opening briefs,
and it is a safe assumption that the same will be the case in their reply briefs.

20 Rather, WRRRA will respond to what appears to be the primary, if not the
21 only, issue raised by Waste Management relative to the WRRRA Protestants,
22 that being what, if any, economic harm would befall the Protestants if this
application were to be granted.¹

23
24 2) **ARGUMENT:** Waste Management’s exclusive reliance on the
25 issue of “economic viability” is misplaced, simply because while that may be a

26 ¹ see Waste Management’s Post Hearing Brief, pp. 22-26.

1 factor to consider, it is nowhere to be found in the statutory test, i.e. **RCW**
2 **81.77.040**. The statute clearly states that, among other things, a new
3 certificate will be granted in presently served territory “only” upon a finding
4 that the existing certificate holder “will not provide service to the satisfaction
5 of the Commission.” There is nothing in that, or any other, statute which
6 requires a showing of loss of economic viability by an existing certificate
holder defending its territory against an overlapping application.

7 This “test,” rather, is derived from Commission case law as a factor in
8 determining if the “public interest” requires an additional overlapping
9 certificate. But, as Waste Management correctly observes in its brief at
10 page 26, the Commission has observed that “. . . the proper test for public
11 interest is whether the entry of an additional carrier, who has demonstrated
12 public need for its services, will result in damage to carriers that causes a
13 reduction to unacceptable levels of available reasonably priced service to
14 consumers.” *In re Ryder Distribution Resources*, App. GA-75154, Order
MVG 1761, p. 14 (Aug. 1995) (emphasis added).

15 It is clear that this issue need not even be considered unless and until
16 the applicant “has demonstrated public need for its services.” A
17 demonstration of public need begins, and in this case ends, with the necessity
18 of a showing that the existing certificate holder “will not provide service to the
19 satisfaction of the Commission.” **RCW 81.77.040**. If that initial finding is not
20 made, there is no need to even address the “economic viability” issue. As
21 WRRRA has argued in its Post Hearing Brief, there was not one shred of
22 evidence at hearing that any of its four-member Protestants are not providing
23 service to the Commission’s satisfaction. Surely if that were the case, either
24 Commission staff or Waste Management, or both, would have presented it.
25 Neither did, simply because no such evidence exists.

26 At the risk of repetition, the apparent desire of a few large hospital
groups to have one service provider statewide is not evidence of unsatisfactory

1 service. Nor is it consistent with our state's regulatory system.² One can
2 assume that WalMart, K-Mart, etc. may want one hauler statewide as well
3 but, again, that is not the law, nor should it be. Our system of solid waste
4 regulation was not designed for the convenience of a very few multimillion
5 dollar health care conglomerates; it is for the provision of cost effective,
6 reliable, and regulated service for all consumers, and is working very well for
7 the many, without catering to the desires of the few.

8 Even if this was a primary "test" here, it would be difficult, if not
9 impossible, to prove. In this sort of limited, specialized market, the
10 incumbent certificate holder cannot know which, if any, of its customers
11 would switch to an applicant's service if authority were granted. It is the
12 ultimate "Catch 22;" in order to prove potential lost business, you have to wait
13 until the business is lost.

14 There is, however, one example of what is likely to happen if the
15 application is granted. In its Post Hearing Brief, at pages 22 and 23, Waste
16 Management states, with some amount of pride, that:

17 In the many years it has competed with Stericycle, Rubatino
18 [Rubatino Refuse Removal, Inc., a Protestant] has lost only one
19 customer to Stericycle.

20 What the brief neglects to add is that "one customer" is Providence Hospital in
21 Everett, the largest generator in the area. (Tr., Vol. VIII, pp. 814, 815; Ex. ER-
22 17, p. 4) This is an obvious example of what will happen if another
23 national/international company enters this market. There has been no
24 evidence that the object is to serve the small clinics, veterinarians, sole
25 practitioner physicians or dentists, small labs or small private nursing homes.
26 The targets are obviously large, multi-site hospitals, leaving the local hauler
the small, far less profitable customers, without much of a chance to compete
for the large, usually geographically concentrated, generators. Again, this is
nothing but "cream skimming," and should not be given the Commission's
stamp of approval. At the time, when Stericycle obtained its statewide permit,

² In any case, they do have that option as Stericycle, of course, has statewide authority.

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1 it was an entirely different situation, a situation which clearly no longer
2 exists.

3 **CONCLUSION:** The Commission apparently wants a degree of
4 competition in the medical waste market. That competition exists in each and
5 every area served by the WRRR Protestants. These Protestants provide safe,
6 reliable, cost effective service to generators, and have the resources, desire
7 and obligation to serve any and all such generators within their territories.
8 They already do so in competition with Stericycle. The addition of a third
9 service provider within these territories would be contrary to the very basis of
10 our regulatory system, and would effectively allow two national providers with
11 seemingly unlimited funding to compete for large, multi-site generators,
12 leaving the small, usually rural, generators to the local company, as neither
13 Waste Management nor, for that matter, Stericycle, has shown much interest
14 in serving these customers.

15 The Commission should neither encourage nor approve further
16 skimming of this particular batch of cream.

17 DATED this 25th day of January 2013.

18 
19 JAMES K. SELLS
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21 Attorney for "WRRR Protestants"

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 as indicated below, pursuant to WAC 480-07-150.

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DATED at Silverdale, Washington, this 25th day of January 2013.


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