

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

STERICYCLE OF WASHINGTON,)	DOCKET TG-121597
INC.,)	
)	ORDER 01
Complainant,)	
)	
v.)	PREHEARING CONFERENCE
)	ORDER; NOTICE OF STATUS
WASTE MANAGEMENT OF)	CONFERENCE
WASHINGTON, INC., d/b/a WM)	(Set for February 8, 2013,
HEALTHCARE SOLUTIONS OF)	at 10:00 a.m.)
WASHINGTON,)	
)	
Respondent.)	
.....)	

- 1 **NATURE OF PROCEEDING.** These proceedings arise out of a complaint and petition for declaratory relief filed on October 3, 2012, with the Washington Utilities and Transportation Commission (Commission) by Stericycle of Washington, Inc. (Stericycle) against Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington (Waste Management). Stericycle’s first claim alleges that Waste Management is soliciting biomedical waste collection business from Washington generators by offering discounts on Waste Management’s recycling or other services or otherwise offering unlawful rebates on biomedical waste tariff rates. Stericycle’s second claim alleges that Waste Management is misclassifying its ecoFinity sharps waste program as recycling in order to unlawfully provide biomedical waste collection services both inside and outside its authorized territory at rates lower than or different from its tariff filed with the Commission.

- 2 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington, on Wednesday, November 28, 2012, before Administrative Law Judge (ALJ) Adam E. Torem.

- 3 **APPEARANCES.** Stephen B. Johnson and Jared Van Kirk, Seattle, WA, represent Stericycle. Polly L. McNeill and Jessica L. Goldman, Seattle, WA, represent Waste Management. Fronda Woods, Assistant Attorney General, Olympia, WA, represents

the Commission's regulatory staff (Staff).¹ Contact information for the parties' representatives is attached to this order as Appendix A.

4 **PETITIONS FOR INTERVENTION.** No party sought to intervene in this docket. However, on November 27, 2012, James K. Sells, representing the Washington Refuse and Recycling Association (WRRRA), filed a notice requesting that the WRRRA be considered an interested party in this matter. In accordance with WAC 480-07-340(1)(c), the WRRRA is designated an interested party and shall receive copies of all documents served by the Commission in this case.² Contact information for the WRRRA's representative is included in Appendix A.

5 **LATE ANSWER TO COMPLAINT.** On November 5, 2012, Waste Management filed a request for a continuance to file a late answer to Stericycle's complaint. No party opposes Waste Management's request and allowing a late answer does not prejudice the parties or the Commission. The Commission accepts and will consider Waste Management's answer to Stericycle's complaint.

6 **MOTION PRACTICE.** On November 8, 2012, Stericycle filed a motion for summary determination addressing a portion of the claims raised in its complaint. On November 28, 2012, Waste Management responded to Stericycle's motion and also filed a cross motion for summary determination and dismissal. Stericycle expects to file a response to Waste Management's motion to dismiss on or before December 19, 2012. Waste Management indicated its intent to file a follow-on dispositive motion if the Commission does not grant its pending motion to dismiss.

7 The parties agreed that the Commission should resolve the above-noted pending motions for summary determination before developing an extended case calendar or setting an evidentiary hearing in this matter. After discussion with the parties, the Commission agrees to the following procedural schedule:

Monday, December 24, 2012	Commission to confirm or cancel oral argument on pending motions
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Friday, December 28, 2012 at 10:00 a.m.	Oral argument on pending motions (if needed)
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¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

² The WRRRA asked to receive these documents in electronic form only.

Friday, January 4, 2013

Commission to enter order ruling on
pending motions

Friday, February 8, 2013
at 10:00 a.m.

Status Conference

8 **DISCOVERY.** After consultation with the parties, the Commission determines that this case does not currently require discovery. Any party may raise the need to conduct discovery at a later date.

9 **NOTICE OF STATUS CONFERENCE.** The Commission will hold a status conference in this matter on **Friday, February 8, 2013, at 10:00 a.m.**, in the Commission's Headquarters, Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Commission's conference bridge line (360-664-3846) will also be available to the parties for this status conference.

10 The purpose of the status conference is to further develop the procedural schedule in this docket, address any additional motions filed by the parties and, as appropriate, to address the need for discovery in the case.

11 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an **original plus 6 copies** of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

12 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

13 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to <records@utc.wa.gov >. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

- 14 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus 6 paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding ALJ (atorem@utc.wa.gov) as well as to the parties to the proceeding.
- 15 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited resources but can provide dispute resolution services in some cases, if requested. If the parties wish to explore those services, they should contact Administrative Law Judge Greg Kopta, Director, Administrative Law Division, at 360-664-1355.
- 16 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective November 29, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES
DOCKET TG-121597

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Stericycle of Washington, Inc.	20320 80 th Avenue S. Kent, WA 98032			
	Stephen B. Johnson Garvey Schubert Barer 1191 Second Avenue Suite 1800 Seattle, WA 98101	206-816-1309	206-464-0125	sjohnson@gsblaw.com
	Jared Van Kirk	206-816-1372		jvankirk@gsblaw.com
Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington	Michael A. Weinstein 720 4 th Avenue, Suite 400 Kirkland, WA 98033			mweinstein@wm.com akenefick@wm.com
	Jessica Goldman Summit Law Group 315 Fifth Avenue S Suite 1000 Seattle, WA 98101-2939	206-676-7062	206-676-7063	jessicag@summitlaw.com
	Polly L. McNeill	206- 676-7040	206- 676-7041	pollym@summitlaw.com
Commission Staff	Frona Woods Assistant Attorney General 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	fwoods@utc.wa.gov
Interested Party Washington Refuse & Recycling Association (WRA)	James K. Sells Attorney at Law PMB 22 3110 Judson Street Gig Harbor, WA 98335	360-981-0168		jamesells@comcast.net cheryls@rsulaw.com