

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 TG-120033

PETITION FOR ADMINISTRATIVE  
REVIEW OF INITIAL ORDER NO. 7  
ON BEHALF OF "THE WRRR  
COMPANIES" AND THE WRRR

1 COME NOW, pursuant to WAC 480-07-835(2), Protestants RUBATINO REFUSE  
REMOVAL, INC.; CONSOLIDATED DISPOSAL SERVICE, INC.; MURREY'S  
DISPOSAL, INC.; PULLMAN DISPOSAL SERVICE, INC. and WASHINGTON  
REFUSE AND RECYCLING ASSOCIATION (WRRR) ("WRRR Companies,"  
"WRRR"<sup>1</sup> and/or "Protestants") and respectfully petition the Washington Utilities and  
Transportation Commission for administrative review of Administrative Law Judge Greg  
Kopta's Initial Order No. 7 Granting Application, issued February 14, 2013.

I. OVERVIEW OF OBJECTIONS TO INITIAL ORDER

2 This Petition challenges not only the final grant of the Application, but is genuinely  
concerned with some of the reasoning used by Judge Kopta in reaching his decision. In  
that regard, the WRRR Companies/WRRR specifically take exception to the following  
Discussion and Decision portions of Initial Order No. 7:

(a) In Section 5, p. 2 which concludes that:

"... the existing certificated company or companies 'will not provide  
service to the satisfaction of the Commission'"

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<sup>1</sup> To clarify, the WRRR is a party here in its own right, but any arguments/comments herein are on behalf of both  
the WRRR Companies and the WRRR as party Protestants.

and therefore that the applicant had satisfied the requirements of RCW 81.77.040. Protestants will argue here, that at least as concerns the four “WRRRA Companies,” there was no such threshold showing.

- (b) In Section 7, p. 3, the ALJ overgeneralizes the testimony of some of the generator witnesses, as no generator witness testified as to any service problem with a WRRRA Company.
- (c) Section 10, pp. 3, 4 abruptly, and without legal or factual basis, discards over 20 years of Commission precedent that “. . . preference for competition does not demonstrate a need for an additional carrier.”
- (d) Section 11, p. 3 broadly and incorrectly analogizes solid waste service with other regulated industries such as telecommunications and commercial ferries. In doing so, it cites an Initial Order in a commercial ferry case that was not challenged and was never reviewed by the Commission itself, and does not constitute applicable precedent.<sup>2</sup> As will be discussed in more detail below, that matter is neither relevant nor applicable here.
- (e) Section 15, p. 5 again modifies over 20 years of Commission policy and precedent by apparently discarding the long-standing doctrine that a “desire for competition is insufficient to satisfy RCW 81.77.040,” substituting in its stead, a fluid, “moving target” subjective standard relating to “the benefits of competition.”
- (f) Section 16, p. 6 incorrectly equates “competition” with “statewide service,” as related to the WRRRA Companies who, of course, are not authorized to provide statewide service but do provide service within their respective certificated areas. Thus, if the Commission true “policy” for biomedical waste service is to favor competition, it already exists in these areas.
- (g) Section 21, p. 7 places reliance on a doctrine that to the WRRRA Companies’ knowledge does not exist, that Protestants somehow are required to prove that they would suffer substantial, irreparable and even “ruinous” financial harm if an Application were to be granted. Again, this equation circumvents the statutory test of RCW 81.77.040, which is the “satisfactory service” standard.
- (h) Section 22, p. 7 jettisons an evaluation of “cream skimming” (or “cherry picking”) as “irrelevant” to analysis of applications under RCW 81.77.040. Its premise that the local haulers do not serve any large hospitals (and that one, Rubatino, lost a large hospital to Stericycle) is actually an analogy in reverse. The loss of that large commercial account

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<sup>2</sup> *In re Application of Dutchman Marine, LLC, et al.*, Dockets TS 001774 and 002055 (Oct. 2001)

to the existing statewide provider, Stericycle, portends additional large account migration (“cherry picking”) in the future, should a second statewide license be granted. The Order then also suggests that the “cream skimming” impact of this application is unproven and, therefore, hypothetical. However, that issue has been an important factor in previous Commission solid waste applications. This is not an irrelevant issue; it is very pertinent and is one of the primary reasons we have a regulated solid waste industry which is to prevent just that type of preferential, selective (as opposed to universal) solid waste service.

## II. OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

3 Pursuant again to WAC 480-07-825, Protestants take specific exception in their Petition  
for Administrative Review to the following Findings of Fact and Conclusions of Law and  
propose alternative language as set forth thereafter:

4 Objection to Finding of Fact No. 4, Section 31, page 10 of Initial Order No. 7, which  
provides:

Waste Management of Washington, Inc. has demonstrated that the public’s need  
for a competitive alternative to the existing service providers outweighs those  
providers’ unsubstantiated claims of an adverse economic impact on their  
operations.

5 The parties also object to Conclusion of Law No. 2, Section 35, page 10 of Initial Order  
No. 7 in the following aspects:

(2) Waste Management of Washington, Inc., has satisfied the requirements in  
RCW 81.77.040 for obtaining a certificate of public convenience and  
necessity to provide bio-hazardous waste collection service on a statewide  
basis:

- (a) Based on the record evidence and the circumstances presented in the  
application, the existing companies will not provide service to the  
satisfaction of the Commission without the statewide competitive  
alternative Waste Management of Washington, Inc., would provide;
- (b) Granting the application will not significantly impact the needs of existing  
carriers for a customer base that is large enough for economic viability,  
considering their obligation to provide satisfactory service, and will  
enhance the public’s ability to obtain responsive service, and as a result,  
the public convenience and necessity requires the proposed service;

### III. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

6 The WRRRA Companies and the WRRRA, in objecting to Finding of Fact No. 4, propose the following be substituted in its stead:

- (4) **Waste Management of Washington, Inc. has not demonstrated that the public convenience and necessity requires a third provider of biomedical waste service in the certificated territories of Rubatino Refuse Removal, Inc., Consolidated Disposal Services, Inc., Murrey's Disposal, Inc. and Pullman Disposal Services, Inc. On this record, the Commission finds there has been no demonstration that current service in these territories is unsatisfactory or that the requirements of generator customers for alternative service at present in these four territories should result in overlap by a third provider or is otherwise required by the public convenience and necessity and consistent with the public interest.**

7 The WRRRA Companies and WRRRA, in objecting to portions of Conclusions of Law No. 2, recommend the following proposed Conclusion of Law be substituted:

- (2)(a-b) **As to the four limited geographic territories represented in the certificates of Rubatino Refuse Removal, Inc., Consolidated Disposal Services, Inc., Murrey's Disposal, Inc. and Pullman Disposal Services, Inc., Waste Management of Washington, Inc. has not satisfied the requirements of RCW 81.77.040 necessary to obtain a certificate of public convenience and necessity in the aforementioned certificated territories, and the Commission expressly finds the record evidence and facts presented in the current docket demonstrate that, at least as to these four existing companies, they are and will continue to provide biomedical waste collection service to the satisfaction of the Commission.**

### IV. ARGUMENT IN SUPPORT OF PETITION FOR ADMINISTRATIVE REVIEW

#### Part I

- A. The Threshold Satisfactory Service Test for Overlapping Service is Lost in Translation in the Initial Order.

8 The reader of the Initial Order is left wondering if there now remains any "threshold test" for solid waste entry and, if so, what it is. The Order seems to ignore not only long-standing Commission precedent, but a very clear and simply-stated statute,

RCW 81.77.040, which, of course, provides that overlapping authority be issued only if the current provider “will not provide service to the satisfaction of the Commission.” In the last of the *Superior Refuse* cases, *In re Application of Superior Refuse Removal Corp.*, Order M.V.G. 1639 (June 1993), the Commission specifically found:

The “satisfaction of the Commission requirement” is the threshold test for determining an application for overlapping solid waste authority. If the Commission resolves that issue in the existing certificate holder’s favor, it must deny the application.

... The Commission must apply the test in a manner consistent with the Legislature’s reluctance to permit overlapping solid waste authorities.<sup>3</sup>

9 Simply put, an applicant in either a biomedical waste case or any solid waste case still must first demonstrate that the incumbent is not providing satisfactory service. If that showing is not made, the application fails. Here, as to the WRRRA Companies, not only was there no showing of unsatisfactory service, there was not even a concerted attempt to do so. Not a single witness on behalf of Applicant essentially more than in passing mentioned any of these providers and not a single piece of evidence was offered by Applicant specifically critiquing their levels of service. Similarly, there was no cross-examination that even hinted at the sorts of circumstances that would constitute unsatisfactory service within their territories.<sup>4</sup> Instead, on evaluation, the administrative law judge seems to have been distracted by a novel threshold test which effectively preempts the necessary preliminary finding on satisfactory service through an evaluation the Commission has never recognized, i.e., that the test for grant of overlapping

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<sup>3</sup> *Superior* at 4, 5 (Emphasis added).

<sup>4</sup> A decided contrast to the original biomedical waste cases where the Commission found of the then existing biomedical waste service levels: “... the service as proposed by the applicant was not available, in any way, shape, or form, from any of these protestants during the relevant time.” Order M.V.G. No. 1452, *In re American Environmental Management Corp.*, App-GA-874 (Nov. 1990) at 8.

certificate authority involves whether a dilution of profit potential will occur.<sup>5</sup> Indeed, after the satisfactory service evaluation, as Protestants previously argued in their Reply Brief, the appropriate test for whether an application where public need has been demonstrated is consistent with the public interest, is whether a grant of overlapping authority will result in deterioration of available and reasonably-priced services to customers.<sup>6</sup>

10 There is also no solid waste precedent of which the Protestants are aware which would somehow require a permit holder to propose to expand service outside its territory in order to meet the initial satisfactory service requirement. Seemingly, the only possible way the Initial Order's test regarding satisfactory service could be met would be for all the WRRRA Companies to have sought to provide statewide service individually or in the aggregate. That simply is not the law nor has it ever been; but it could, at least by default, potentially become the law if this Initial Order is adopted, an inaccurate rendition highlighted by the Initial Order to be described in more detail in a previous Commission case, below.

11 Absent any specific findings and/or reference to record evidence outlining service failures, inadequate adherence to law and rule (fitness), or even isolated communicated critiques of service by existing customers, the WRRRA Companies contend there has been a total lack of showing in this proceeding that now three providers are required by the public convenience and necessity in the territories of the WRRRA providers. Thus, as a matter of law, Initial Order No. 7 fails to support its recommended grant of biomedical

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<sup>5</sup> See, § 18 of Initial Order, fn. 19 at 6.

<sup>6</sup> WRRRA Protestants Reply Brief at 2, citing Order M.V.G. No. 1761, *In re Ryder Distribution Service, Inc.* (Aug. 1995) at 14.

waste authority to overlap the four finite geographic territories in Western and Eastern Washington encompassed by their current certificates.

## Part II

B. The Initial Order's Alternating References to RCW 81.77.040 Entry Standards Merit Clarification Here.

12 Of equal importance in filing this Petition for Administrative Review by the WRRRA Companies is an effort to clarify, (analogous to a motion under WAC 480-07-835 for Final Orders), the Initial Order's discussion and decision on the criteria for overlapping service under RCW 81.77.040 and "service to the satisfaction of the Commission" under applicable law. As will be addressed below, the WRRRA Companies believe that some of the passages from Initial Order No. 7 can be read to revise the statute for *all* entrants, not just biomedical waste transporters, in an all-encompassing and inappropriate "revisiting" of Commission case law. The very real risk of taking such discussion out of context by future fact finders is amplified by the Initial Order's own rendition of an Order issued in a 2001 commercial ferry case, featured and cited in Section 11, footnote 9 of the Initial Order. That analysis serves as a stark warning to the WRRRA Companies that clarification and context are vital if subsequent pronouncements purportedly discarding established Commission case law and doctrines go unchallenged, particularly when occurring in an Initial Order whose reasoning is subsequently relied upon in later Initial Orders. The WRRRA Companies find substantial flaws in that practice not only because Initial Orders are expressly not precedent, but because of the risk such unchallenged findings may become "self-fulfilling prophecies" if not questioned when they occur.

1. Commission Standards on Biomedical Waste Transportation Entry Are Not Being Challenged.

13 To be clear, none of the WRRRA Companies here contest the Commission’s historic differentiation between biomedical waste collection entry standards and conventional solid waste service. Indeed, from the earliest case law pronouncements oft-cited in this record, including that of Order M.V.G. No. 1451, *In re Sure-Way Incineration, Inc.* (Nov. 1989), (whose policy distinctions were quoted at length at page 15 of the earlier Order dismissing the Complaint in Docket No. TG-110553, *In re Stericycle of Washington, Inc. v. Waste Management of Washington, Inc.*, (July, 2011)), the Commission has consistently analogized collection of medical waste as more akin to motor freight carrier service in serving large portions of the entire state and in which customers are only a small portion of the total business.<sup>7</sup> These standards’ entry and operational differentiations were echoed throughout the 1990’s, the most recent decade in which the Commission had a biomedical waste application before it until 2011.<sup>8</sup>

14 Yet while Initial Order No. 7 at times appears to attempt to limit its finding of need for an additional biomedical waste statewide provider (“... at least on this record and under the circumstances presented in this docket, the existing companies will not provide service to the satisfaction of the Commission”)<sup>9</sup>, it alternates that putative limitation with more sweeping language like, Section 15:

The record evidence and Commission policy favoring effective competition demonstrate that the Commission’s prior decisions that a desire for competition is insufficient to satisfy RCW 81.77.040 do not reflect the realities of the current

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<sup>7</sup> Order M.V.G. No. 1663, *In re Sureway Medical Services, Inc.* (Nov. 1993), includes a particularly succinct description of the traditional differentiation where it states “...[i]n subsequent adjudicative decisions, the Commission recognized that the objectives of Chapter 81.77 RCW are not necessarily best achieved by strict adherence to the same tests applied to grants of typical residential or commercial collection service. It has applied standards for grants of overlapping specialized biohazardous waste collection and disposal that are consistent with the nature of the service.” Order M.V.G. No. 1663 at 9.

<sup>8</sup> See, i.e., *In re Spartan Environmental, LLC*, Docket TG-112025, (withdrawn), (May, 2012) and the present application case.

<sup>9</sup> § 16, Initial Order No. 7 at 6.



marketplace. Accordingly, the Commission will not rely on those prior decisions to make the requisite demonstration in this case.

C. The Sweep of Initial Order No. 7 is Concerning.

15 To which “prior decisions” is the administrative law judge specifically here referring? Commission motor freight cases prior to preemption in August, 1994, auto transportation, commercial ferry or solid waste collection cases under RCW 81.77.040? If the latter, is he talking about traditional neighborhood solid waste or commercial solid waste collection cases that really start with Order M.V.G. No. 726, *In re Anthony J.D. Tommaso d/b/a Di Tommaso Bros. Garbage Service*, App. GA-449, (Feb. 1975) through Order M.V.G. No. 1719, *In re Brent Gagnon d/b/a West Waste and Recycling*, App. GA-76316 (Aug. 1994) and are typified in Order M.V.G. No. 1526 *In re Superior Refuse Removal Corporation* (Nov. 1991)? Or, is he again referring to biomedical waste entry cases from the 1990’s which continued to evolve the analysis of how generator requirements impacted traditional concepts of the public convenience and necessity, particularly when views about relative risks in the analysis of disposal options were essential to authorizing overlapping service. This includes the *Ryder Distribution* decisions, that culminated, (somewhat ironically here), in the grant of the original certificate to Stericycle of Washington, Inc.

16 Indeed, it is the failure to limit some of the panoramic, overbroad language in characterizations of the interpretation of entry in RCW 81.77.040 that is most troubling to the WRRRA Companies here. There are two distinct interpretive paths one can adopt in viewing some of the discussion in the Initial Order, and without any assurance of the Commission’s clarification that the scope of Initial Order No. 7, (i.e. Section 15), is

implicitly and expressly applicable to biomedical waste collection, these particular protestants strongly believe the Initial Order is contrary to existing law.

1. “Service to the Satisfaction of the Commission”

17 Order M.V.G. No. 1526, *In re Superior Refuse Removal Corporation*, App. GA-849 (Nov., 1991) remains (unless otherwise reversed by the Commission) as likely the most comprehensively articulated evaluation of “satisfactory service” under RCW 81.77.040 in solid waste collection certificate applications, specifically for traditional neighborhood and commercial solid waste collection. Indeed, *Superior Refuse* is particularly useful for its survey of case law under which existing service has been found unsatisfactory, (*see* Order M.V.G. No. 1526 at pp. 6, 7). Admittedly, nothing in Initial Order No. 7 expressly challenges the continuing viability of these long held standards nor the reference to the Legislature’s reluctance in enacting RCW 81.77 “to permit overlapping authorities in the collection and disposal of solid waste.”<sup>10</sup>

18 However, again, the scope of some selected passages from the Initial Order here, at least in isolation, do not suggest a continuing ratification of the *Superior Refuse* standards in solid waste cases, including particularly the language in selected portions of Initial Order No. 7. For example, the Order discusses “the benefits of competition” and evolving standards of service to the satisfaction of the Commission and “revisiting”<sup>11</sup> of those standards regarding competitive desires in a manner that expressly calls into question their continuing viability.

2. “The Benefits of Competition”

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<sup>10</sup> § 19, Order M.V.G. No. 1526, *In re Superior Removal Corporation*, App. GA-849 (Nov. 1991) at 5.

<sup>11</sup> § 10, Initial Order No. 7 at 4.

19 As to the “benefits of competition” standard that the Initial Order alludes to, there is also no reference in the Order as to whether that evolved standard is proposed to be broadly applied to Chapter 81.77 applications or, as could be inferred, only to the specialized biomedical waste collection arena which, as noted, is more comparable to RCW 81.80 circumstances.<sup>12</sup> This lack of clarity is of significant concern to the WRRRA Companies, as it very well could have a major impact on the industry as a whole, as well as upon regulatory policy making.

D. The Initial Order’s Reliance on *Dutchman Marine* for Either Overlapping Service Standards or in Establishing a ‘Ruinous Competition’ Standard is Misplaced.

20 In its Discussion Section, the Initial Order then wanders, at Section 11, into a passage highlighting the injection of competition into other exclusive markets and includes a reference to commercial ferry entry under RCW 81.84 and states ...

In the transportation sector, the Commission expressed in a commercial ferry case that it is not in the business of granting exclusive service territories and may grant authority absent a showing that any competition would be ‘ruinous.’<sup>13</sup>

21 There is probably no better example of the exception in Initial Order No. 7 swallowing the rule and potentially misconstruing Commission precedent in reaching its ultimate decision granting this application than the *Dutchman Marine* case, the reliance upon which is a mystery to the WRRRA Companies.

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<sup>12</sup> Indeed, that particular evaluative criterion is more synonymous with former motor freight carrier entry standards under previous RCW 81.80.070, where, in reviewing whether a proposed application was “required by the public convenience and necessity,” the Commission occasionally considered whether a proposed service would result in increased competition that, for instance, resulted in enhanced service levels to the public. (See, *In re United Truck Lines, Inc.* App. E-18895 (March, 1985)). While a similar analysis was even extended by the Commission into the auto transportation field under RCW 81.68, in Order M.V.C. No. 1809, *In re San Juan Airlines, Inc. d/b/a Shuttle Express*, Application D-2566 (Apr., 1989), based in part on a showing there that the existing providers had not responded to the operations of the applicant to serve the type and kind of customer successfully serviced by the applicant, there is no such service vacuum demonstrated on this record here and the Initial Order even appears to so find at § 9, p. 3 of the Initial Order No. 7.

<sup>13</sup> *In re the Applications of Dutchman Marine, LLC d/b/a Lake Washington Ferry Service; Seattle Harbor Tours Limited Partnership*, Dockets TS-001774 and TS-002055, Commission Decision and Order Affirming Initial Order Granting Applications with Conditions (October, 2001).

22 *Dutchman Marine* involved a consolidated application case for new, partially overlapping commercial ferry service on Lake Washington which was ultimately granted to both remaining applicants. That rather unusual decision where, for instance, one applicant essentially predicated its showing of need on the record through witnesses presented by the other applicant, also did **not** provide for overlap in a conventional sense: "... [o]ur grants of authority as to these overlapping routes are conditioned by requiring that to the extent one operator or the other obtains such additional authority as is required to initiate service... and actually initiates service, that route is thereafter not available to the other operator unless additional authority is sought from the Commission and is supported by a showing that the existing operator has failed or refused to furnish reasonable and adequate service."<sup>14</sup>

23 More importantly, all the above *Dutchman Marine* references and those in the quoted portion of Section 11 of the Order here on review were actually from *an Initial Order*, a month prior to the cited decision and cannot be presumed to be the rationale of the full Commission which, under RCW 34.05.464 and WAC 480-07-825(7), is simply rendered a final order if not reviewed. Neither applicant in *Dutchman Marine* filed a Petition for Administrative Review nor did any other party, including the Commission staff. The Commission also did not review the Order on its own motion. As such, WAC 480-07-825(7)(c) would presumably apply here where a short form Final Order is issued, meaning the reasoning in the Initial Order would lack any precedential value.<sup>15</sup>

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<sup>14</sup> § 70, Dockets TS-001774 and TS-002055, *In re Dutchman Marine et al.*, **Initial** Order Granting Application With Conditions (Sep., 2001) at 21.

<sup>15</sup> Ironically, in the 2011 Final Order on Cross Motions for Dismissal and Summary Determination in Docket TG-110553, *Stericycle of Washington, Inc. v. Waste Management of Washington, Inc.*, (July, 2011), the Commission had similarly observed in footnote 26 at 14: "... we note that the ALJ's statement was made in a different docket, for a different reason and on a less developed record than that before us here. In any event, initial orders are not in any

24 Yet despite that seemingly obvious limitation, Initial Order No. 7 also seems to suggest the administrative law judge in *Dutchman Marine* and the Commission here could now effectively disregard the statutory mandate against overlapping authority in RCW 81.84.020 and RCW 81.77.040, absent only a showing that the announced beneficial competition overlap would promote “ruinous competition.”

25 What Judge Moss in *Dutchman Marine* actually observed in that regard, however, is as follows:

The record in the proceeding supports granting the authorities requested in a fashion that will promote healthy competition in the development of commercial ferry service on Lake Washington while protecting against ruinous competition. To best ensure that both goals are met, it is necessary to condition the grant of such authorities. The Commission must simultaneously provide both applicants the flexibility they need to develop specific routes... yet guard against allowing more than one operator to serve any particular route. [Emphasis added].<sup>16</sup>

26 The WRRRA Companies simply do not find any expression by the administrative law judge there, let alone the full Commission in the *Dutchman Marine* case whatsoever that “it was not in the business of granting exclusive service territories and may grant overlapping authority absent a showing that competition would be ‘ruinous,’” as Initial Order No. 7 summarily concludes.

27 While no one can dispute that the Commission’s policy in the context of specialized medical waste collection has identified exceptions to RCW 81.77.040’s explicit limitations on overlap, to our knowledge, that again has never been extended to RCW 81.77.040 as a whole. The implication in the Initial Order relying on the obviously

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sense precedential and, even when they become final by operation of law, the Commission Standard Notice of Finality states that the ‘Commission does not endorse the order’s reasoning and conclusions.’” Even though a one and a half page Final Order adopting the September 19, 2001 Initial Order was issued in *Dutchman Marine*, there can be no doubt that the Commission did not review, on its own motion or more significantly on any Petition for Administrative Review, the reasoning and holdings in *Dutchman Marine*, and again, *Dutchman Marine* also did not authorize overlap on identical routes. It thus does not stand for the implicit proposition set forth in Section 11 of Initial Order No. 7.

<sup>16</sup> § 67, Initial Order 1, *Dutchman Marine*, Docket No. TS-001774 and TS-002055 (Sept., 2001) at 20.

unique *Dutchman Marine* Initial Order linkage should not be recognized as any support for the broad language in the Initial Order here that purports to “revisit” and sweep aside long-standing case law underpinning decades of Commission RCW 81.77.040 precedent in its wake.

#### V. SUMMARY ARGUMENT/PRAAYER FOR RELIEF

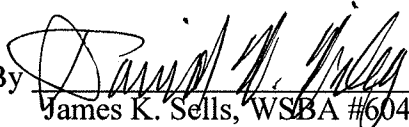
28 Admittedly, this case has been an unusually protracted time and resource-consuming proceeding, with an extraordinary number of prehearing motions, arguments, related complaint proceedings, discovery disputes and other issues requiring the attention of both the Administrative Law Division and the Commission staff culminating in a four-day hearing almost a year after the application was filed. However, the proposed outcome of the proceeding embodied in Initial Order No. 7 is significantly concerning and surprising to the WRRRA Companies for a variety of reasons noted in this Petition. First, it appears to overlook or otherwise misinterpret and misapply the traditional “service to the satisfaction of the Commission” test that is a consistent hallmark of application entry for evaluation under RCW 81.77.040. Instead, it relies on a revenue “dilution/ruinous competition/market benefit standard” in judging overlapping biomedical waste applications which Protestants believe improperly shifts the burden of proof and avoids the requisite analysis of proposed overlapping service until **after** a threshold determination of unsatisfactory service is established. Second, the overbroad editorial references to “rethinking, revisiting and reconsidering” decades-long case law evaluating the statutory criteria as against the evidence entered in the record of a solid waste collection case fails to contain that reinterpetive zeal solely to the biomedical and specialized waste fields. The Initial Order should, but does not reaffirm or even

acknowledge the continued efficacy of case law standards in the traditional regulated solid waste collection market. Finally, Initial Order No. 7 predicates its activist “market forces” reinterpretation of RCW 81.77 largely in reference to a case from the “transportation sector”<sup>17</sup> in behalf of overlapping service which, on closer examination, simply does not in any way yield the factual, legal or precedential support the Initial Order advocates.

29 In closing, the WRRRA Companies and the WRRRA urge this Commission to reject “triple overlap” of biomedical waste certificate authority in the four WRRRA Companies’ territories and to also reaffirm the continuing viability of the satisfactory service test in all solid waste certificate applications and the continuing limitation of and differentiation from biomedical waste entry standards that have evolved since November, 1990.

DATED this 28<sup>th</sup> day of March, 2013.

WILLIAMS, KASTNER & GIBBS PLLC

By   
James K. Sells, WSBA #6040  
[jamesells@comcast.net](mailto:jamesells@comcast.net)  
David W. Wiley, WSBA #08614  
[dwiley@williamskastner.com](mailto:dwiley@williamskastner.com)

Attorneys for Rubatino Refuse Removal, Inc.,  
Consolidated Disposal Services, Inc., Murrey’s  
Disposal, Inc. and Pullman Disposal Service,  
Inc. and the Washington Refuse and Recycling  
Association

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<sup>17</sup> § 11, Initial Order No. 7 at 4.

## CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2013, I caused to be served the original and four (4) copies of the foregoing document to the following address via first class mail, postage prepaid to:

Steven V. King, Acting Executive Director and Secretary  
Washington Utilities and Transportation Commission  
Attn.: Records Center  
P.O. Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to: [records@utc.wa.gov](mailto:records@utc.wa.gov) and an electronic copy via email and first class mail, postage prepaid, to:

***For Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington:***      ***For Stericycle of Washington, Inc.:***

Polly L. McNeill  
Jessica Goldman  
Summit Law Group  
315 Fifth Avenue S., Ste. 1000  
Seattle, WA 98101-2939  
Phone: 206.676.7040  
Email: [pollym@summitlaw.com](mailto:pollym@summitlaw.com)  
Email: [jessicag@summitlaw.com](mailto:jessicag@summitlaw.com)

Stephen B. Johnson  
Jared Van Kirk  
Garvey Schubert Barer  
1191 Second Avenue, Ste. 1800  
Seattle, WA 98101  
Phone: 206.464.3939  
Email: [sjohnson@gsblaw.com](mailto:sjohnson@gsblaw.com)  
Email: [jvankirk@gsblaw.com](mailto:jvankirk@gsblaw.com)

***For WUTC:***

Steven W. Smith  
Assistant Attorney General  
PO Box 40128  
Olympia, WA 98504-0128  
Phone: 360.664.1225  
Email: [ssmith@utc.wa.gov](mailto:ssmith@utc.wa.gov)

  
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Lyndsay Taylor