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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

**WASTE MANAGEMENT'S ANSWER
TO STERICYCLE'S PETITION FOR
REVIEW OF INITIAL ORDER
GRANTING APPLICATION**

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1
2 **I. INTRODUCTION**

3 1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions
4 of Washington (“Waste Management”) requests that the Commission affirm the Initial Order
5 Granting Application of Waste Management for extension of Waste Management’s authority to
6 offer regulated biomedical waste (“RMW”) services statewide and that the Commission deny
7 Protestant Stericycle of Washington, Inc.’s petition for administrative review.¹ The Initial Order
8 properly recognized and deferred to the undisputed evidence that the incumbent RMW service
9 currently provided outside of Waste Management’s certificated territory does not satisfy the
10 specialized needs of RMW customers.²

11 2. In RCW 81.77.040, the Legislature created a regulatory mechanism which calls for
12 the Commission to exercise its broad discretion and specialized expertise in determining whether
13 existing RMW service is satisfactory. Exercising that discretion and judgment, the Commission
14 has for many years recognized that RMW and the RMW market are different in key respects from
15 standard garbage collection and, consequently, the Commission has evaluated its satisfaction with
16 incumbent RMW service differently than with incumbent garbage collection. In keeping with the
17 Commission’s precedent, the Presiding Officer ruled prior to the evidentiary hearing that the
18 testimony of RMW generators as to their needs would be determinative of Waste Management’s
19 application for an extension of its authority. Based on the subsequent unanimous testimony of
20 generators of their need for a statewide service alternative and the benefits generators already are
21 experiencing from Waste Management’s competition with Stericycle, the Initial Order properly
22 approved Waste Management’s Application.

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¹ Waste Management concurrently has filed an Answer to the WRRRA Protestants’ petition for administrative review
26 and, to avoid duplication, Waste Management incorporates that Answer herein by this reference.

27 ² Because Stericycle’s Petition for Review did not challenge the Initial Order’s holding that statewide competition
from Waste Management does not pose any threat to Stericycle’s viability or the Initial Order’s holding that Waste
Management proved its fitness to perform RMW service, Initial Order ¶¶ 17-26, 31-32, 35(b)-(c), those issues are not
addressed herein.

1 **II. STATEMENT OF FACTS**

2 3. In November 1990, the Commission approved American Environmental
3 Management Corp.’s (“AEMC”) application for statewide authority to transport RMW.³ AEMC
4 was later acquired by BFI.⁴ Despite statewide RMW collection services provided by BFI, along
5 with RMW services offered by other haulers in more limited territories in Washington (including
6 each of the WRRRA Protestants in this proceeding),⁵ Stericycle applied for statewide authority to
7 perform these same services. In 1995, following four years of administrative litigation by
8 Stericycle and its affiliates to obtain such authority, the Commission granted Stericycle authority
9 to serve as the second, overlapping statewide hauler, and, in the case of the WRRRA Protestants’
10 territories, the third available service provider.⁶ Two years later, BFI and Stericycle continued to
11 compete with each other statewide and “they also compete[d] with carriers in limited services
12 areas.”⁷ In 1998, BFI and Stericycle were still competing with each other to provide RMW
13 services, as well as competing with 75 companies providing regional RMW services.⁸ Since then,
14 Stericycle has acquired control of all other UTC certificates specifically authorizing specialized
15 RMW collection in Washington.⁹

16 4. Waste Management holds general solid waste authority under Certificate No. G-237,
17 and has provided solid waste collection services subject to the Commission’s oversight and
18 approval for decades.¹⁰ Waste Management’s authorized service area under Certificate No. G-237
19 covers major portions of the State of Washington in King, Pierce, Snohomish, Island, Kitsap,
20 Mason, Whatcom, Benton, Chelan, Douglas, Grant, Okanogan, Lincoln, Kittitas, Spokane and
21

22 ³ *In re Am. Env’t. Mgmt. Corp.*, App No. GA-874, Order M.V.G. No. 1452 (Nov. 30, 1990).

23 ⁴ *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 20 (Aug. 11, 1995).

24 ⁵ *Id.* at 4.

25 ⁶ *Id.*

26 ⁷ *In re Pet’n of Comm’n Staff for Declaratory Ruling*, Docket No. TG-970532, Declaratory Order at 5 (Oct. 29, 1997).

27 ⁸ *In re Pet’n of Comm’n Staff for Declaratory Ruling*, Docket No. TG-970532, Declaratory Order ¶¶ 4-5 (Aug. 14, 1998).

⁹ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mot for Dismissal & Summ. Determination at 16-17 n.32 (July 13, 2011).

¹⁰ Ex. JD-13.

1 Skagit Counties.¹¹ Pursuant to Certificate No. G-237 and the tariff Waste Management filed in
2 April 2011,¹² Waste Management provides RMW collection service throughout the Certificate
3 No. G-237 territory.¹³ According to Stericycle, Waste Management's territory presently
4 encompasses sources for 80% of Washington's RMW.¹⁴ In all of this territory, Waste Management
5 is presently in competition with Stericycle and, additionally, it competes with Protestant Murrey's
6 Disposal in a portion of Murrey's Pierce County territory, and with Protestant Rubatino Refuse
7 Removal in annexation territories around Everett.¹⁵

8 5. Despite the existing choice in RMW service providers in much of the State,
9 numerous RMW generators still have only one option for the collection of such waste: Stericycle.
10 There are 22 counties where Stericycle is the only authorized RMW hauler.¹⁶ In major portions of
11 nine other counties and the cities of Bellingham and Moses Lake, Stericycle also is the only game
12 in town.¹⁷ At least 52 Washington hospitals, large and small, have no choice of service provider
13 other than Stericycle.¹⁸ There are at least eight hospital groups with hospitals both inside the

14
15 ¹¹ *Id.*

16 ¹² Waste Mgmt. of Wash., Inc., Initial Tariff No. 2 for Collection of Biomedical Waste, Docket No. TG-110552 (Apr.
6, 2011); *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mot. for
Dismissal & Summ. Determination (July 13, 2011).

17 ¹³ Ex. JD-1T § II; Ex. JN-4T ¶ 5.

18 ¹⁴ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Reply in Supp. of Stericycle's Mot. for
Summ. Determination at 11 n.7 (June 1, 2011).

19 ¹⁵ Ex. MP-18; Ex. ER-2; Ex. MG-2.

20 ¹⁶ These counties are: Okanogan, Ferry, Stevens, Pend Oreille, Asotin, Garfield, Columbia, Walla Walla, Franklin,
Yakima, Klickitat, Skamania, Clark, Cowlitz, Wahkiakum, Pacific, Lewis, Thurston, Grays Harbor, Jefferson,
21 Clallam, and San Juan. See Ex. MAW-25; Ex. MP-18; Ex. MP-19; Ex. MP-26; Ex. ER-2; Ex. MW-2; Ex. DF-2;
Ex. MG-2.

22 ¹⁷ These counties are: Whatcom, Chelan, Lincoln, Spokane, Whitman, Adams, Benton, Mason, and Island. See
Ex. MAW-25; Ex. MP-18; Ex. MP-19; Ex. MP-26; Ex. ER-2; Ex. MW-2; Ex. DF-2; Ex. MG-2.

23 ¹⁸ These hospitals include Lourdes Medical Center in Pasco, Madigan Army Medical Center in Fort Lewis, Grays
Harbor Community Hospital in Aberdeen, Island Hospital in Anacortes, Okanogan Douglas District Hospital in
24 Brewster, Forks Community Hospital, Mark Reed Hospital in McCleary, Morton General Hospital in Cowlitz,
Garfield District Hospital in Pomeroy, Jefferson General Hospital in Port Townsend, United General Hospital in Sedro
25 Woolley, Snoqualmie Valley Hospital, Willapa Harbor Hospital in South Bend, Sunnyside Community Hospital,
Yakima Valley Memorial Hospital, Mid Valley Hospital in Omak, Allenmore Hospital in Tacoma, Mary Bridge
26 Children's Hospital and Health Center in Tacoma, Tacoma General Hospital, US Navy Hospital in Oak Harbor,
Overlake Hospital Medical Center in Bellevue, Saint Joseph Hospital in Bellingham, Lake Chelan Community
27 Hospital, Whidbey General Hospital in Coupeville, Lincoln Hospital in Davenport, Coulee Community Hospital, Saint
Joseph Medical Center in Longview, Samaritan Hospital in Moses Lake, Newport Community Hospital, Odessa
Memorial Hospital, Quincy Valley Medical Center, Ferry County Memorial Hospital in Republic, East Adams Rural

1 Certificate No. G-237 territory – where there presently is competition between Waste Management
2 and Stericycle – and in the remaining territory – where only Stericycle may collect RMW.¹⁹ Those
3 multi-site facilities which logically wish to contract with a single Washington RMW collection
4 service currently have one choice: Stericycle.

5 6. In the Application here at issue, Waste Management has requested permission to
6 expand its services to provide RMW collection service in the territories where the incremental
7 remainder of Washington’s RMW is generated. Approval of this Application would again provide
8 Washington RMW generators with a statewide service alternative.

9 7. The Initial Order found the generators’ many complaints about Stericycle’s service
10 to be “a matter of concern.”²⁰ Rodger Lycan is the Procurement Manager for Pathology
11 Associates Medical Laboratories (“PAML”) which is headquartered in Spokane and has
12 approximately 60 facilities throughout Washington which generate RMW.²¹ He testified that:

13 In PAML’s experience, Stericycle does not have much interest in
14 offering competitive prices or in reducing its costs. Once Waste
15 Management filed its RMW tariff, PAML moved its RMW business
16 in the Waste Management territory to Waste Management because
17 Waste Management’s pricing was better and because Waste
18 Management was committed to providing PAML with only the
19 service which PAML requires, and not more at a higher price tag.
20 PAML provided Stericycle with advance notice that it would be
21 terminating certain Stericycle accounts to move that business to
22 Waste Management. Upon receiving that notice, Stericycle stopped
23 providing PAML service immediately despite the fact that PAML’s
24 notice period had not expired. This left PAML in the untenable

25 Hospital in Ritzville, Mason General Hospital in Shelton, North Valley Hospital in Tonasket, Centralia Hospital, Saint
26 Joseph’s Hospital in Chewelah, Whitman Hospital in Colfax, Mount Carmel Hospital in Colville, Saint Peter Hospital
27 in Olympia, Swedish Hospital-Edmonds, Olympic Memorial Hospital in Port Angeles, Fairfax Hospital in Kirkland,
28 VA Puget Sound-American Lake in Lakewood, VA Southwest Washington in Vancouver, Saint Elizabeths Hospital-
29 Enumclaw, Saint Anthony Hospital in Gig Harbor, Saint Clare Hospital in Lakewood, Saint Joseph Medical Center in
30 Tacoma, Capital Medical Center in Olympia, Toppenish Community Hospital, and Yakima Regional Medical Center.
31 Decl. of Jeff Norton in Supp. of Waste Mgmt’s Opening Brf. on Prelim Legal Issue ¶ 3 (June 14, 2012).

32 ¹⁹ These hospital groups include the US Navy, Peace Health, Providence, Swedish, Universal Health Services,
33 Veterans Administration, Catholic Healthcare Initiatives, and Capella Health. *Id.* ¶ 4.

34 ²⁰ Initial Order ¶ 9.

35 ²¹ Ex. RL-1T at 3.

1 position of having facilities with RMW sitting uncollected until the
2 Waste Management contract later took effect.²²

3 The uncollected RMW caused hardship for PAML.²³ PAML “immediately started scrambling to
4 try and figure out how [they] could get service to that as they no longer had storage for any more
5 sharps.”²⁴ PAML was not aware that the Commission regulated Stericycle and Stericycle did not
6 advise PAML that it could contact the Commission to address problems with Stericycle’s
7 service.²⁵

8 8. Carla Patshkowski of Providence Medical Group testified as to her facilities’
9 unsatisfactory service from Stericycle. Providence Medical Group owns and operates physician
10 clinics and family medicine centers in Chewelah, Colville, and Spokane.²⁶ Providence Medical
11 Group did not have a Stericycle sales representative, and when RMW service would be initiated at
12 a new Providence Medical Group facility, Stericycle would deliver “quite large containers”
13 without advising Providence Medical Group that more appropriate smaller (less expensive)
14 containers and less frequent (and less expensive) service was available.²⁷ Only when Providence
15 Medical Group began services with Waste Management did Ms. Patschkowski learn from her
16 Waste Management sales representative that smaller containers and less frequent service were
17 available.²⁸ Providence Medical Group also was:

18 [D]issatisfied with Stericycle’s services because Stericycle charged
19 (and still charges) a minimum monthly fee even when there is no
20 RMW waste collected Moreover, once Providence Medical
21 Group terminated Stericycle’s services in Waste Management’s UTC
territory, Stericycle continued billing Providence Medical Group for
eight months for services in the Waste Management territory. Month

22 ²² Ex. RL-1T at 3. Stericycle’s contention that “[n]o generator testified that its general desire for a more competitive
23 market was driven by the minor rate differences identified by Waste Management’s witness” is absurd since the
difference was significantly more than “minor” and there was plenty of testimony to this effect. Stericycle’s Pet’n for
Review ¶ 94.

24 ²³ Hearing Tr. Vol. VI at 448:12-21.

25 ²⁴ *Id.* at 448:19-21.

26 ²⁵ *Id.* at 448:1-8.

27 ²⁶ Ex. CP-1T at 2.

28 ²⁷ Hearing Tr. Vol. VI at 470:16-471:3, 471:12-472:2, 477:9-12, 484:23-485:1; Ex. CP-1T at 3-4.

²⁸ Hearing Tr. Vol. VI at 487:11-20.

1 after month of complaints yielded no resolution of Stericycle's
2 improper billing and the billing was only corrected after Providence
3 Medical Group's Chief Financial Officer and Chief Operating
Officer got involved.²⁹

4 Stericycle overbilled for its services at all of Providence Medical Group's facilities.³⁰ On top of
5 Stericycle's overbilling at facilities which Providence Medical Group had moved to Waste
6 Management, Stericycle "closed the account for Chewelah, which is the one that [Providence
7 Medical Group] wanted to stay open."³¹ Ms. Patshkowski was not aware that the UTC regulates
8 Stericycle and, during the long billing dispute, Stericycle never informed Providence Medical
9 Group that it could contact the UTC for assistance in resolving the dispute.³² Having failed to
10 advise its customers of their rights to oversight and support from the Commission, it is plain that
11 the Commission could not provide the "comprehensive regulation" touted now by Stericycle.³³

12 9. Julie Sell, the Emergency Preparedness Coordinator for Olympic Medical Center,
13 testified that her hospital and clinics in Port Angeles and Sequim have:

14 [B]een dissatisfied with Stericycle's process for scheduling
15 collection. Olympic Medical Center has no local Stericycle contact
16 to arrange for scheduling but must make arrangements with
17 employees of Stericycle's corporate parent on the east coast. This
18 commonly results in the need to make follow up requests before
19 Stericycle will make a requested collection. On a couple occasions,
20 Stericycle did not make the requested RMW collection which
21 created a significant problem and concern for Olympic Medical
22 Center as it had to maintain the RMW on site.³⁴

23 Until the week before the evidentiary hearing, Olympic Medical Center had never received a call
24 from a Stericycle sales representative to determine if Olympic Medical Center was receiving
25 satisfactory and appropriate RMW service from Stericycle.³⁵ When Ms. Sell has complained to
26
27

28 ²⁹ Ex. CP-1T at 3-4.

29 ³⁰ Hearing Tr. Vol. VI at 478:14-18.

30 ³¹ *Id.* at 479:3-5.

31 ³² *Id.* at 484:11-22, 485:2-6.

32 ³³ Stericycle's Pet'n for Review ¶¶ 2, 25.

33 ³⁴ Ex. JS-1T at 3.

34 ³⁵ Hearing Tr. Vol. V at 225:15-19.

1 Stericycle about missed pick-ups, Stericycle has not taken responsibility for the service failures,
2 but has, instead, always blamed Olympic Medical Center.³⁶ Stericycle’s missed pick-ups create
3 safety concerns for Olympic Medical Center because some of their clinics have very limited space
4 to continue storing the RMW.³⁷ Olympic Medical Group also objects to Stericycle’s mandatory
5 monthly fee even in those months where there is no collection service needed.³⁸

6 10. Other generators also testified as to their lack of satisfaction with Stericycle’s
7 services. As was the case with Olympic Medical Center, Stericycle only advised Lake Chelan
8 Community Hospital of its Stericycle account representative the week before the evidentiary
9 hearing.³⁹ Jean Longhenry, Facilities Manager of Wendel Family Dental Centre in Vancouver,
10 testified that her facilities “have experienced on-going, monthly errors in Stericycle’s bills.”⁴⁰ She
11 “was constantly calling to correct the billing on [the statements]. They finally got things taken
12 care of, but not until after a lot of calls.”⁴¹

13 III. ARGUMENT

14 A. The Commission Has Broad Discretion to Determine Whether Existing RMW Service 15 Is Satisfactory.

16 11. RCW 81.77.040 provides that:

17 When an applicant requests a certificate to operate in a territory
18 already served by a certificate holder under this chapter, the
19 commission may, after notice and an opportunity for a hearing, issue
20 the certificate only if the existing solid waste collection company or
21 companies serving the territory will not provide service to the
22 satisfaction of the commission or if the existing solid waste
23 collection company does not object.

24 (Emphasis added). The statute does not set forth the specific standard or elements the Commission
25 is to consider in determining whether it finds the incumbent service satisfactory. In considering
26 the equivalent “satisfaction of the Commission” standard in RCW 81.68.040 governing intrastate
27

28 ³⁶ *Id.* at 226:17-21.

29 ³⁷ *Id.* at 226:22-25.

30 ³⁸ *Id.* at 217:7-9, 227:23-22:14.

31 ³⁹ *Id.* at 237:6-10.

32 ⁴⁰ Ex. JL-1T at 3.

1 transportation of passengers for compensation,⁴² the Court of Appeals has recognized that “[t]he
2 statute does not specify how the Commission is to make that determination.”⁴³ Hence, the
3 Commission, in the exercise of its broad discretion, must determine the proper standard to apply.

4 12. The Supreme Court requires that great deference be afforded to the Commission’s
5 determination of issues reserved to its discretion by statute. In *Arco Products Co. v. Washington*
6 *Utilities and Transportation Commission*~~Error! Bookmark not defined.~~, the Court considered
7 RCW 80.28.200’s provision that:

8 [T]he commission shall have the power ... to determine whether or
9 not [a refund ordered by the Federal Energy Regulatory
10 Commission] should be passed on, in whole or in part, to the
11 consumers of such company and to order such company to pass such
refund on to its consumers, in the manner and to the extent
determined just and reasonable by the commission.⁴⁴

12 The Court held that the statute “unambiguously gives the WUTC the authority and discretion to
13 determine whether and how to allocate the refund.”⁴⁵ Because the Legislature did not define what
14 it meant by “just and reasonable” and the Commission “has a special expertise in the area of
15 regulated utilities,” the Court must show “a great deal of deference” to the Commission’s
16

17
18 ⁴¹ Hearing Tr. Vol. V at 316:7-12.

19 ⁴² In 1995, RCW 81.68.040 provided in relevant part: “The commission shall have power, after hearing, when the
20 applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only
when the existing auto transportation company or companies serving such territory will not provide the same to the
satisfaction of the commission” *Pac. Nw. Transp. Servs., Inc. v. Wash. Utils. & Transp. Comm’n*, 91 Wn. App.
21 589, 590, 959 P.2d 160 (1998) (quoting RCW 81.68.040; emphasis added). Today, the language of that statute hews
22 even closer to that found in RCW 81.77.040 and retains the identical “satisfaction of the commission” requirement
without further direction regarding application of the standard.

23 ⁴³ *Id.* at 597. In contrast, other regulations requiring service to the satisfaction of a government agency specifically
24 define the standard the agency is to apply. *See, e.g.*, RCW 50.04.140 (“Services performed by an individual for
25 remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of
the commissioner that: [stating three-part test]”) (emphasis added); WAC 296-128-012 (“An employer shall
26 substantiate any deviation from payment on an hourly basis to the satisfaction of the department by using the
following formula or an alternative formula that, at a minimum, compensates hours worked in excess of forty hours
per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours
projected to be worked.”) (emphasis added).

27 ⁴⁴ RCW 80.28.200, *quoted in Arco Prods. Co. v. Wash. Utils. & Transp. Comm’n*, 125 Wn.2d 805, 811, 888 P.2d 728
(1995) (emphasis added).

⁴⁵ *Id.* at 811.

1 determination of what is “just and reasonable.”⁴⁶ Moreover, the statute requires that the
2 determination of justness and reasonableness be made “by the commission.”⁴⁷

3 Thus, the statute itself clearly states who is to determine what is “just
4 and reasonable” – it is the Commission, not the courts. For this
5 reason also, we defer to the WUTC’s determination of whether the
allocation of the refund is “just and reasonable.”⁴⁸

6 The courts will not disturb the Commission’s discretionary decisions absent a clear showing of
7 abuse.⁴⁹

8 13. Therefore, it is for the Commission to make the discretionary determination as to
9 whether an incumbent certificate holder will or will not provide satisfactory service under RCW
10 81.77.040. Stericycle argues that the “to the satisfaction of the commission” language in RCW
11 81.77.040 “strictly limit[ed]”⁵⁰ the Commission’s concededly “broad authority and discretion to
12 issue certificates of public convenience and necessity”.⁵¹ The Supreme Court has held precisely to
13 the contrary.

14 **B. The Commission Historically Has Evaluated Its Satisfaction With Incumbent RMW**
15 **Service Differently Than it Has Evaluated Its Satisfaction With Incumbent Garbage**
16 **Collectors.**

17 14. As Stericycle concedes,⁵² the Commission consistently has recognized that the
18 unique issues posed by RMW collection and transportation require regulation distinct from

19 ⁴⁶ *Id.* Stericycle recognizes that “Washington’s courts are bound to give the Commission’s interpretation of the law
substantial weight.” *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Stericycle’s Mot.
20 for Summ. Determination ¶ 31 (May 6, 2011).

21 ⁴⁷ *Arco Prods.*, 125 Wn.2d at 811 (quoting RCW 80.28.200; emphasis by the Supreme Court).

22 ⁴⁸ *Id.* at 811-12; *accord US West Commc’ns, Inc. v. Wash. Utils. & Transp. Comm’n*, 134 Wn.2d 74, 86, 105, 949
P.2d 1337 (1997).

23 ⁴⁹ *Arco Prods.*, 125 Wn.2d at 812.

24 ⁵⁰ Stericycle’s Pet’n for Review ¶ 28.

25 ⁵¹ *Id.* ¶ 27.

26 ⁵² *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Stericycle’s Mot. for Summ.
27 Determination at 20 (May 6, 2011) (“The Commission has long recognized that biomedical waste is a specialized
service that presents unique considerations for generators, the public and the Commission. This has produced a body
of law that treats biomedical waste collection under unique standards, rather than as an indistinguishable part of solid
waste collection under a G-certificate.”); Stericycle’s Pet’n for Review ¶ 49 (acknowledging that “*Sure-Way*
Incineration marks this shift in the Commission’s ‘satisfactory service’ analysis from a focus on the service failures
of existing solid waste carriers to a focus in the biomedical waste context on whether existing biomedical carriers’
services are meeting the specialized needs of biomedical waste generators.”) (emphasis original).

1 standard universal garbage collection. In 1990, the Commission explained that “in the context of
2 neighborhood solid waste collection,” RCW 81.77.040

3 contemplates an exclusive grant of authority as the best and most
4 efficient way of serving all customers in a given territory. In this
5 general context, it is assumed that all or most people and businesses
6 in a given territory are also customers needing garbage service.
7 Under these circumstances, an exclusive grant of authority in a given
8 territory promotes service, efficiency, consistency and is generally in
9 the public interest.

10 The collection of medical waste is quite a different situation.
11 Customers are only a small percentage of the total business in any
12 given territory. The applicants for medical waste authority wish to
13 serve the entire state or large portions of the state. The entire
14 operation more closely resembles that of a motor freight common
15 carrier with statewide authority than that of a typical garbage
16 company. The Commission is at this point unconvinced that any
17 single carrier presently authorized to serve in the state of
18 Washington could provide a level of service, on its own, which
19 would satisfy the Commission and meet the needs of the waste
20 generators. Therefore, while sound policy and economic reasons
21 exist in favor of exclusive authority for typical residential or
22 commercial collection in a specific territory, those reasons are less
23 compelling in this new, specialized area. The Commission is not
24 ready to say that a grant of one application for statewide authority
25 would preclude a grant of others, and will consider this element in
26 future proceedings.⁵³

27 So, the Commission recognized that the very market for RMW services was different in structure
and nature from that of the typical garbage company which collected solid waste from each house
on a street. While noting the distinct issues raised for generators of RMW, the Commission in
1990 was faced with only one qualified transporter of such waste, AEMC.⁵⁴

⁵³ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 16-17 (Nov. 30, 1990) (citations omitted; emphasis added). Even in the case of universal garbage collection service, the Court of Appeals has confirmed that RCW 81.77.040 does not express a legislative intent to foster monopolies. *Superior Refuse Removal, Inc. v. Wash. Utils. & Transp. Comm’n*, 81 Wn. App. 43, 52-53, 913 P.2d 818 (1996). The statutory test of “to the satisfaction of the commission” is not synonymous with a finding that another carrier already provided solid waste collection service in the relevant territory. Rather, the Commission must determine if the service provided is, indeed, satisfactory. *Id.* Moreover, RCW 81.77.040, itself, does not state any “presumption in favor of exclusive service territories.” Stericycle’s Pet’n for Review ¶ 30.

⁵⁴ *In re Am. Envtl. Mgmt. Corp.*, App. No. GA-874, Order M.V.G. No. 1452 at 6 (Nov. 30, 1990).

1 15. In 1992, Stericycle, over the objections of statewide biomedical waste hauler
2 AEMC and of certificated solid waste haulers which were then providing RMW collection services
3 in their various territories, requested that the Commission grant temporary authority for Ryder
4 Distribution Systems to provide RMW collection services for Stericycle in 17 Washington
5 counties. The Commission rejected the protestants' claims that granting Stericycle's request
6 would "strike a fatal blow to the statutory plan for solid waste collection regulation."⁵⁵

7 16. The following year, in considering Stericycle's request that Ryder be granted
8 permanent authority to transport RMW for Stericycle, the Commission again emphasized the
9 difference between RMW and universal garbage collection. The law "treats solid waste collection
10 as a natural monopoly with efficiencies and public benefit gained through exclusive service."⁵⁶
11 However, the special handling needs of hazardous wastes had challenged "the usefulness of
12 universal collection" of such wastes.⁵⁷ "The toxic nature of the substances, and required
13 specialized collection and disposal, are such that the tests developed for grants of universal service
14 many not be directly relevant to needs for collection of certain kinds of waste."⁵⁸

15 17. In late 1993, in considering Sureway Medical Services' application for authority to
16 transport RMW, the Commission again explained that to accomplish the statutory goal of
17 providing proper collection services to all waste generators in the state, RMW collection must be
18 regulated distinctly from universal garbage collection.

19 The Commission has consistently applied a stringent test for an
20 overlapping grant of neighborhood garbage collection service, in
21 light of the statutory statements of policy in Chapter 81.77.

22 The Commission views specialized hazardous waste collection
23 service as different from traditional neighborhood collection service.
24 Beginning in the 1970s, the Commission recognized a public need
25 for specialized carriers who will provide universal collection of
wastes requiring specialized services, such as hazardous waste, in
specified service territories. In subsequent adjudicative decisions,

26 ⁵⁵ *In re Ryder Distrib. Sys., Inc.*, App. No. GA-75563, Order M.V.G. No. 1536 at 6 (Jan. 30, 1992).

27 ⁵⁶ *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 5 (Jan. 25, 1993).

⁵⁷ *Id.* at 6.

⁵⁸ *Id.*

1 the Commission recognized that the objectives of Chapter 81.77
2 RCW are not necessarily best achieved by strict adherence to the
3 same tests applied to grants of typical residential or commercial
4 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.⁵⁹

5 18. Furthermore, the Commission recognized that the special nature of the RMW
6 market means that applicants for such service – like Stericycle and Waste Management – “usually
7 wish to serve the entire state or large portions of the state. The needs of specialized market
8 segments are an important factor in evaluating the adequacy of existing service.”⁶⁰

9 19. Consequently,

10 [t]he Commission continues to believe that the objectives of RCW
11 81.77.040 are not necessarily best achieved for specialized services
12 by the tests applied to determine grants of neighborhood garbage
13 collection service, particularly when the service territory is large or
14 is the entire state. In evaluating applications for overlapping
15 specialized biomedical waste authority, the Commission will
continue to follow the approach set out in Sure-Way Incineration and
Ryder. It will apply provisions of Chapter 81.77 RCW consistently
with the unique requirements and attributes of the specialized
service.

16 In evaluating whether existing companies will provide service to the
17 satisfaction of the Commission, the Commission will not limit its
18 consideration to evidence of service failures of the sort that usually
19 are significant in neighborhood garbage collection service, such as
20 service refusals, missed pickups or garbage strewn about. Rather, it
will broaden the satisfactory service inquiry to include need-related
sufficiency of service considerations – whether the existing service
reasonably serves the needs of the specialized market.⁶¹

21 Consistent with the nature of this specialized market, the Commission gives considerable weight to
22 the judgments of RMW generators regarding the sufficiency of the existing service options and
23 their need for alternatives.⁶²

25 ⁵⁹ *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 9 (Nov. 19, 1993) (citation
26 omitted).

27 ⁶⁰ *Id.* n.10.

⁶¹ *Id.* at 10-11 (emphasis added).

⁶² *Id.* at 13.

1 20. The statutory goal of providing proper collection services to all garbage generators
2 in the state is effectuated by authorizing within a given territory a single collection service with a
3 large enough base to ensure economic viability. In the case of RMW collection, however,
4 economic viability has not been jeopardized by allowing waste generators a choice of haulers.
5 Thus, in 1993, based on existing competition, the Commission rejected BFI's contention that
6 granting Sureway a competing RMW certificate would "cripple" BFI.⁶³ "BFI has been competing
7 with Sureway and its predecessors in the Seattle area since the Commission granted BFI's
8 predecessor, American Environmental, authority in 1990. Granting this application should have
9 little effect on the viability of BFI's operations in that portion of the state."⁶⁴ As to areas where
10 BFI was then the only service provider, the Commission imposed on incumbent BFI the burden of
11 showing that these areas "cannot support more than one specialized biohazardous waste collector"
12 and held that BFI had failed to make the requisite showing.⁶⁵ So, the Commission approved a
13 second RMW transporter for most areas of the State.

14 21. The following year, the Commission again recognized that biomedical waste
15 service is different than universal garbage collection and, thus, the former "is evaluated differently
16 when looking at performance to the Commission's satisfaction"⁶⁶

17 22. In 1995, despite acknowledging the obvious fact that "carriers in an environment of
18 controlled competition may not be able to make as much money as carriers with a monopoly
19 franchise," the Commission granted Stericycle leave to become a second, overlapping statewide
20 provider of biomedical waste collection services in Washington.⁶⁷ The Commission held that
21 "[w]hile competition may operate in a limited market to reduce available business to uneconomic
22 levels, it is also true that competition can bring benefits to consumers," including an increase in the
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25 ⁶³ *Id.* at 16-17.

26 ⁶⁴ *Id.* at 17.

27 ⁶⁵ *Id.*

⁶⁶ *In re Med. Res. Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 2 (May 25, 1994).

⁶⁷ *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 13 (Aug. 11, 1995).

1 range of services offered.⁶⁸ Moreover, the Commission noted that granting Stericycle's
2 application would not render the incumbent statewide RMW service provider "insolvent,"⁶⁹ and
3 economic damage to the incumbent is only relevant to the degree the incumbent establishes that
4 the competition will "cause[] a reduction to unacceptable levels of available reasonably priced
5 services to consumers."⁷⁰

6 23. When the Commission next addressed biomedical waste in 1997 in a declaratory
7 action brought by Commission Staff, it again recognized in an initial order that RMW collection
8 services did not operate as the regulated garbage collection monopolies. "Although the industry
9 historically has been characterized by monopoly service in a given territory, the Commission has
10 granted overlapping authority for this specialized service. One result of the granting of
11 overlapping authority is competition among carriers, a situation which did not occur in the industry
12 prior to the 1990s."⁷¹ The order noted that the Commission has interpreted RCW 81.77.040's
13 requirements "consistently with the unique requirements and attributes of [RMW] service," and
14 granted statewide authority concurrently to two carriers, first AEMC and then Stericycle.⁷² In
15 addition to the competition among the two statewide RMW haulers, the Commission recognized
16 that there was also competition from 75 haulers providing RMW collection service in limited
17 service areas.⁷³ Hence, the Commission favorably concluded that in 1997 there was "competition
18 in the market for provision of services of transportation and disposal of biomedical waste."⁷⁴ In
19 that proceeding, Stericycle had no difficulty recognizing that the Commission, in licensing haulers,
20 views RMW generators and collection companies as "unique."⁷⁵

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22 ⁶⁸ *Id.* at 13-14.

23 ⁶⁹ *Id.* at 13.

24 ⁷⁰ *Id.* at 14.

25 ⁷¹ *In re Pet'n of Comm'n Staff for a Decl. Ruling*, Docket No. TG-970532, Decl. Order at 3 (Oct. 29, 1997) (n. omitted).

26 ⁷² *Id.* at 3 n.1.

27 ⁷³ *Id.* at 5.

⁷⁴ *Id.*

⁷⁵ *Id.* at 11.

1 24. In the Commission’s final order in the declaratory action, it reiterated the different
2 statutory treatment of universal garbage haulers and RMW collectors.

3 The Commission has recognized the specialized nature of
4 biomedical waste collection in granting authority to provide such
5 service. Although the solid waste industry historically has been
6 characterized by monopoly service in a given territory, the
7 Commission has granted overlapping authority for this specialized
8 service. RCW 81.77.040 provides that the Commission may grant
9 solid waste authority only if the service is required by the public
10 convenience and necessity. The statute also expresses a preference
11 for monopoly service in the collection of solid waste, allowing the
12 Commission to grant new authority in already-served territory only if
it finds that the existing certificate holder will not provide
satisfactory service. In applications for specialized biomedical waste
authority, the Commission has interpreted the statutory requirements
consistently with the unique requirements and attributes of the
service, giving considerable weight to testimony of waste generators
regarding their service requirements.⁷⁶

13 The Commission emphasized that biomedical waste collection “has evolved into a highly
14 competitive industry as a result of the Commission interpreting RCW 81.77.040 consistently with
15 the unique requirements and attributes of the service.”⁷⁷

16 25. To the degree there was any possible doubt regarding the Commission’s belief that
17 competition is proper and beneficial in the RMW market, in 2011 the Commission explained:
18 “[T]he Commission has historically found that promoting competition in this segment of the
19 industry is in the public interest because, among other things, it promotes higher quality of service
20 in terms of protecting the public health and safety.”⁷⁸ The Commission “recognized that its
21 regulation of this specialized service is underpinned by different policies than the ones applicable
22 to traditional solid waste collection”⁷⁹ “[W]hile the solid waste industry in general is

23 _____
24 ⁷⁶ *In re Pet’n of Comm’n Staff for a Decl. Ruling*, Docket No. TG-970532, Decl. Order at 9 (Aug. 14, 1998).

25 ⁷⁷ *Id.* at 10.

26 ⁷⁸ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mot. for
27 Dismissal & Summ. Determination at 14-15 (July 13, 2011). Commission Staff has reiterated in this proceeding that
“[h]istorically, the Commission has encouraged competition in the provision of biomedical waste collection services
because it promotes a higher quality of service” *In re Application of Waste Mgmt.*, Docket TG-120033, Comm’n
Staff’s Initial Brf. on Prelim. Legal Issue ¶ 15 (June 14, 2012).

⁷⁹ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mot. for
Dismissal & Summ. Determination at 15 (July 13, 2011).

1 characterized by monopoly service providers in given territories, the Commission has granted
2 overlapping authority for the provision of biomedical waste services, including at one time
3 statewide authority to two companies. Thus, Commission policy has historically encouraged
4 competition in the provision of biomedical waste services.”⁸⁰ Notwithstanding – and, in fact,
5 because of – Stericycle’s present “dominance” in providing RMW service, the Commission
6 emphasized its desire to make opportunities “readily available” for traditional solid waste
7 collection companies to compete with Stericycle.⁸¹ So, the Commission rejected “significant
8 barriers to entry” to this “highly competitive industry.”⁸² The oft-repeated contention in
9 Stericycle’s Petition for Review that the Commission recognizes a “statutory preference for
10 exclusive [RMW] service territories”⁸³ is untenable.

11 26. Stericycle has acknowledged that “the Commission has consistently considered
12 biomedical waste authority under different standards than general solid waste – notwithstanding
13 that the two are governed by the same statutory provisions”⁸⁴ Moreover, prior to Waste
14 Management filing the pending Application, Stericycle “recognize[d] that the Commission may
15 welcome additional competition in biomedical waste collection,” and declared that it did not
16 oppose fair competition.⁸⁵ Indeed, in 2011, Stericycle predicted “drastic service cut-backs and/or
17 rate increases on healthcare facilities in rural counties and small towns” if Waste Management
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23 ⁸⁰ *Id.* at 15-16. How Stericycle can say that the Initial Order “invent[ed] a Commission policy favoring competition”
is anyone’s guess. Stericycle’s Pet’n for Review ¶ 78.

24 ⁸¹ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mot. for
Dismissal & Summ. Determination at 16 (July 13, 2011).

25 ⁸² *Id.*

26 ⁸³ Stericycle’s Pet’n for Review ¶¶ 31, 37, 38, 56, 57, 59.

27 ⁸⁴ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Reply in Supp. of Stericycle’s Mot. for
Summ. Determination at 4 (June 1, 2011).

⁸⁵ *In re Stericycle of Wash., Inc.*, Docket No. TG-110553, Compl. & Pet’n of Stericycle ¶ 7 (Mar. 21, 2011).

1 were not required to obtain statewide authority.⁸⁶ In Stericycle’s words, “[a]ny other result would
2 ensure that the potential benefits of increased competition are unsustainable.”⁸⁷

3 **C. Based on Commission Precedent, Order 05 Held That RMW Generators’ Needs**
4 **Would Dictate the Result in This Proceeding Absent Proof That Competition Would**
5 **Put Any Incumbent Out of Business.**

6 27. Upon the filing of Waste Management’s Application for an extension of its RMW
7 authority, the Presiding Officer requested that the parties submit briefs regarding

8 the legal issue of whether RCW 81.77.040 authorizes the
9 Commission to grant a solid waste company a certificate for a
10 service territory served by another certificate holder only if the
11 applicant demonstrates that the service it proposes to provide is
12 different than, or superior to, the services the incumbent provider
13 offers or that the incumbent provider is otherwise unwilling or
14 unable to provide the service the applicant proposes to offer.⁸⁸

15 Following substantial briefing on this issue by Stericycle, Waste Management, the WRRR
16 Protestants, and Commission Staff, and three months before the evidentiary hearing, the Presiding
17 Officer ruled on this legal question in Order 05. Order 05 rejected the arguments of both
18 Stericycle and Waste Management in concluding that

19 Commission precedent does not support a presumption or
20 predisposition for either monopoly service territories or competition
21 for the provision of biomedical waste collection and disposal
22 services. Rather, the Commission weighs the evidence presented to
23 determine whether entry of an additional provider in a particular
24 service territory would serve unmet customer needs consistent with
25 the public interest.⁸⁹

26 28. This conclusion derives from the Commission’s decisions regarding overlapping
27 RMW authority.

28 ⁸⁶ *Id.* ¶ 11; see also *In re Pet’n of Stericycle of Wash., Inc.*, Docket TG-110287, Pet’n of Stericycle of Wash. ¶ 3 (Feb.
29 10, 2011) (requesting that the Commission “condition[] approval of any tariff filed by Waste Management for
30 biomedical waste collection and transportation services on the successful prosecution by Waste Management of an
31 application for statewide biomedical waste collection authority”).

32 ⁸⁷ *In re Stericycle of Wash., Inc.*, Docket No. TG-110553, Compl. & Pet’n of Stericycle at 8 n.3 (Mar. 21, 2011).

33 ⁸⁸ Order 05 ¶ 2 (Sep. 5, 2012) (quotation marks omitted).

34 ⁸⁹ *Id.* ¶ 9.

1 [T]he Commission has analyzed the competitive issues under two
2 different factors in RCW 81.77.040: (1) whether the existing solid
3 waste company or companies “will not provide service to the
4 satisfaction of the commission”; and (2) whether the public
5 convenience and necessity require the additional operations the
6 applicant proposes. Staff correctly characterizes the Commission’s
7 inquiry under the first factor as focused on customer needs. Prior
8 Commission decisions consistently state that “[t]he satisfactory
9 nature of service by providers of specialized solid waste collection
10 services is measured according to the specialized needs of
11 customers.” With respect to the second factor, those cases also
12 establish that “[i]n determining whether the public convenience and
13 necessity require an additional carrier, the Commission must balance
14 needs of existing carriers for a customer base that is large enough for
15 economic viability, considering their obligation to provide
16 satisfactory service, with the public’s need for responsive service.”⁹⁰

11 Order 05 emphasized the Commission’s deference to the customers’ stated needs in the context of
12 RMW service. The Order rejected Stericycle’s arguments that the Commission must determine if
13 RMW generator’s stated needs are “reasonable” or “legitimate.”⁹¹ To the contrary, Order 05
14 affirmed that the Commission “defers” to RMW customers and “does not second-guess these
15 customers’ stated needs.”⁹²

16 29. On the basis of Commission precedent, Order 05 set forth the standard that would
17 govern this proceeding.

18 The Commission may approve Waste Management’s application,
19 therefore, only if the Company demonstrates that (1) the biomedical
20 waste collection service currently provided in the territory Waste
21 Management proposes to serve does not satisfy the specialized needs
22 of customers in that area as the customers determine those needs,
23 and (2) the public’s need for responsive service outweighs any

23 ⁹⁰ *Id.* ¶ 8 (quoting *In re Ryder Distrib. Services, Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 11, 15 (Jan. 25,
24 1993) (emphasis original; internal nn. omitted).

25 ⁹¹ *Id.* ¶ 10.

26 ⁹² *Id.* As Commission Staff explained, “[i]n the area of biomedical waste, the Commission has focused on the needs of
27 *customers*, not the applicant or incumbent. Testimony from biomedical waste generators about their needs is the most
persuasive evidence on the issue of ‘provid[ing] service to the satisfaction of the commission.’ RCW 81.77.040
authorizes the Commission to grant a certificate for biomedical waste collection authority in an area already serviced
by other providers if the applicant demonstrates, through such testimony, that incumbent providers are not meeting the
specialized needs of customers.” *In re Application of Waste Mgmt.*, Docket TG-120033, Comm’n Staff’s Initial Brf.
on Prelim. Legal Issue ¶ 10 (June 14, 2012) (emphasis original).

1 negative impacts of the entry of an additional provider on the
2 economic viability of existing carriers.⁹³

3 Stericycle concedes that “[t]his is an accurate statement of the law.”⁹⁴ Thus, Order 05 rejected
4 Waste Management’s argument that the absence of competition in RMW services could not satisfy
5 the Commission as a matter of law, without evidence of the RMW customers’ stated needs for
6 competition. Conversely, Order 05 rejected Stericycle’s contention that only proof of Stericycle’s
7 service failures and not proof that generators need a competitive alternative could suffice to
8 establish that the incumbent service was not “to the satisfaction of the commission.”⁹⁵

9 30. It is the latter point which now opportunely escapes Stericycle. In quoting Order
10 05, Stericycle substitutes with ellipses the language which rejected Stericycle’s argument that only
11 the generators’ “reasonable” dissatisfaction with the incumbent’s service failures could justify
12 granting Waste Management’s application. Stericycle quotes Order 05 as follows:

13 “Contrary to the position[] ... Waste Management [has] taken,
14 Commission precedent does not support a presumption or
15 predisposition for ... competition for the provision of biomedical
16 waste collection and disposal services.”⁹⁶

17 Here is the complete quote:

18 Contrary to the positions Stericycle and Waste Management have
19 taken, Commission precedent does not support a presumption or
20 predisposition for either monopoly service territories or competition
21 for the provision of biomedical waste collection and disposal
22 services.⁹⁷

23 So, Order 05 made plain that the Commission would judge an RMW application based on the
24 evidence of generator need presented and not on any legal presumption and that the Commission
25 would defer to the generators’ views of their needs presented at the evidentiary hearing.

26 Waste Management nevertheless quotes language in past decisions
27 that suggests that the Commission favors competition in the market
for collection of biomedical waste. None of the Commission’s

28 ⁹³ Order 05 ¶ 11 (emphasis added).

29 ⁹⁴ Stericycle’s Pet’n for Review ¶ 58.

30 ⁹⁵ Order 05 ¶¶ 9-10.

31 ⁹⁶ Stericycle’s Petition for Review at 6:1-2.

32 ⁹⁷ Order 05 ¶ 9 (emphasis added to indicate omissions).

1 decisions, however, can reasonably be interpreted to hold that a
2 desire for competitive alternatives, without more, is sufficient to find
3 that incumbent providers will not provide service to the satisfaction
4 of the Commission. At the same time, those decisions do not
5 support Stericycle's or WRRRA's arguments that the Commission
6 considers only "reasonable" or "legitimate" needs of biomedical
7 waste generators in determining whether the incumbents' existing
8 service is satisfactory. The Commission does not second-guess the
9 customers' stated needs but defers to "persons who have unique
10 knowledge about the requirements of the service they need," and
11 declines "to tell a professional in the body of knowledge at issue that
12 a service does or does not meet her or his needs."⁹⁸

13 31. In short, the Commission will defer to the evidence of RMW generators' needs,
14 whatever that may be, including evidence of the generators' need for a competitive service
15 alternative. Stericycle hangs its objection to this basic rule on Stericycle's flawed view of RCW
16 81.77.040: "If generator desire for competition were sufficient to demonstrate unsatisfactory
17 service without regard to any deficiency in the services of existing certificate holders, the
18 legislative preference for exclusive service territories would be entirely negated."⁹⁹ As set forth in
19 Order 05, "Commission precedent does not support a presumption or predisposition for ...
20 monopoly service territories ... for the provision of biomedical waste collection and disposal
21 services."¹⁰⁰

22 **D. The Initial Order Correctly Held That the Generators' Unanimous Need for a
23 Statewide Service Alternative Is a Need Which the Commission Will Recognize.**

24 32. Following the evidentiary hearing, the Presiding Officer issued the Initial Order
25 Granting Application which applied the concededly "accurate statement of the law" set forth in
26 Order 05.¹⁰¹ The Initial Order applied the Commission's long-recognized tenet that, in the case of

27 ⁹⁸ *Id.* ¶ 10 (quoting *In re Med. Resource Recycling Sys., Inc.*, App. No. GA-76820, Order M.V.G. No. 1707 at 4 (May 25, 1994)). Stericycle misconstrues Order 05's reference to "a desire for competitive alternatives" to mean that "generator desire for a competitive alternative is insufficient to demonstrate that an existing service provider will not provide service to the satisfaction of the Commission." Stericycle's Pet'n for Review ¶ 22 (emphasis added). However, it is plain that the referenced "desire" is that of the Commission "in past decisions," described in the preceding sentence. Order 05 ¶ 10. Order 05 makes abundantly clear that evidence of the generators' unmet need for competition will establish that incumbent service is not to the satisfaction of the Commission.

⁹⁹ Stericycle's Pet'n for Rev. ¶ 56.

¹⁰⁰ Order 05 ¶ 9 (emphasis added).

¹⁰¹ Stericycle's Pet'n for Review ¶ 58.

1 RMW, the satisfactory nature of the service “is measured according to the specialized needs of
2 customers.”¹⁰² Moreover, the Initial Order recognized that Commission “policy has historically
3 encouraged competition” in the RMW service market,¹⁰³ a policy which the Commission
4 unmistakably affirmed in 2011 when it upheld “the importance of competition in this line of
5 business, as consistently recognized by the Commission since the inception of such specialized
6 services more than two decades ago.”¹⁰⁴ The Initial Order noted that while twenty years ago in the
7 *Sureway* case, it had been the Commission’s “view that mere desire for a backup carrier in the
8 event of possible discontinuance of, or deterioration in, existing service, or mere preference for
9 competition, does not demonstrate a need for an additional carrier,”¹⁰⁵ the Commission has not
10 revisited this precise issue since.¹⁰⁶ Based on the generators’ unanimous testimony in this
11 proceeding requesting a statewide service alternative and the beneficial changes in Stericycle’s
12 services which already have resulted from competition with Waste Management in large parts of
13 the state, the Initial Order correctly held that the Commission would recognize the generators’
14 need for a statewide alternative to Stericycle.¹⁰⁷

15 **1. RMW Generators Require a Statewide Alternative.**

16 33. Stericycle pleads an untenable entitlement to retain its iron grip on Washington’s
17 RMW market. In doing so, Stericycle must disregard what it concedes “is an accurate statement of
18 the law,”¹⁰⁸ namely, that RCW 81.77.040’s “service to the satisfaction of the commission” is

19 _____
20 ¹⁰² Initial Order ¶ 6 (quoting *In re Ryder Distribution Servs., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 11 (Jan. 25, 1993)).

21 ¹⁰³ *Id.* ¶ 11 & n. 10 (quoting *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order
22 on Cross-Motions for Dismissal & Summ. Determination ¶ 37 (July 13, 2011)). The Initial Order’s citations in its
23 footnotes 8 and 10 were inadvertently reversed.

24 ¹⁰⁴ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Motions for
25 Dismissal & Summ. Determination ¶ 38 (July 13, 2011).

26 ¹⁰⁵ Initial Order ¶ 10 & n. 8 (quoting *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1674 at
27 4-5 (Dec. 20, 1993)). The Initial Order’s citations in its footnotes 8 and 10 were inadvertently reversed.

¹⁰⁶ *Id.* ¶ 10.

¹⁰⁷ To avoid duplication, Waste Management addresses in its Answer to the WRRRA Protestants’ Petition for
Administrative Review the various Protestants’ misapprehension and confusion about the Initial Order’s citation to *In*
re Dutchman Marine, LLC., Dockets TS-001774 & TS-002055, Second Supplemental Order – Commission Decision
and Order Affirming Initial Order Granting Applications with Conditions (Oct. 19, 2011).

¹⁰⁸ Stericycle’s Pet’n for Review ¶ 58.

1 dictated by the needs of RMW customers “as the customers determine those needs.”¹⁰⁹ The waste
2 generators from all over the State of Washington who testified at the hearing unanimously
3 expressed their need for an alternative to Stericycle which cannot be provided by any of the small,
4 regional Protestants.¹¹⁰

5 34. Jean Longhenry of Wendel Family Dental Centre testified that, due to their
6 dissatisfaction with Stericycle’s billing system, her dental offices desire an alternative to Stericycle
7 to ensure they obtain consistently good service.¹¹¹ None of the WRRRA Protestants offers RMW
8 service in Vancouver.¹¹²

9 35. Carla Patshkowski testified that as a result of Providence Medical Group’s
10 unacceptable experience with Stericycle, her facilities desire a choice in the RMW services market
11 to ensure that they get the best possible service and pricing and that their sensitive waste is
12 properly handled.¹¹³ Providence Medical Group’s desire for an alternative to Stericycle was based
13 on its “dealings with both companies.”¹¹⁴ None of the WRRRA Protestants offers RMW service in
14 Chewelah, Colville or Spokane where Providence Medical Group’s physician clinics and family
15 medicine centers are located.¹¹⁵

16 36. Terry Johnson, the Director of Plant Engineering for Chelan Community Hospital,
17 testified to a need for a competitive alternative to ensure the highest quality service, leverage to
18 obtain a true market price, and a backup service provider in the event of a work stoppage or natural
19 disaster.¹¹⁶ “Having a single source for such a critical service increases the risk assessment in the
20

21 ¹⁰⁹ Order 05 ¶ 11.

22 ¹¹⁰ “A showing of statewide need for the service does not require an individual witness for each village, town, city, or
23 county – so long as sufficient illustrations are presented throughout the territory to support a finding that need exists
24 within the entire territory.” *In re Ryder Distrib. Res., Inc.*, App. GA-75154, Order M.V.G. No. 1761 at 13 (Aug. 11,
1995).

25 ¹¹¹ Ex. JL-1T at 3.

26 ¹¹² Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

27 ¹¹³ Ex. CP-1T at 4; Hearing Tr. Vol. VI at 480:23-481:3.

¹¹⁴ Hearing Tr. Vol. VI at 481:1-3.

¹¹⁵ Ex. CP-1T at 2; Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

¹¹⁶ Ex. TJ-1T at 3; Hearing Tr. Vol. V at 239:19-20.

1 event of a major catastrophe like a forest fire closing roads or an earthquake.”¹¹⁷ For this reason,
2 the Department of Health requires redundant utility systems for the hospital.¹¹⁸ “Just about every
3 system I have in this facility is redundant. We have to have a backup for a backup or a battery or
4 something like that. When I have only one provider for a certain service, it’s a weakness.”¹¹⁹
5 None of the WRRRA Protestants offers RMW service in Chelan.¹²⁰

6 37. Rodger Lycan of PAML attested to his company’s need for a competitive choice to
7 ensure the best quality of customer service and the most competitive pricing for all of his statewide
8 facilities and for a single contract with one RMW service provider for PAML’s statewide needs.¹²¹
9 PAML did not get quality service from Stericycle. Stericycle ignored PAML’s request for
10 assistance reducing PAML’s RMW costs “until [PAML] notified [Stericycle] that we were
11 transitioning some of our facilities over to Waste Management.”¹²² In contrast, as soon as Waste
12 Management began providing service to some of the PAML facilities, Waste Management worked
13 with Mr. Lycan to audit the facilities and determine if Stericycle’s service was too frequent and its
14 containers too large for the PAML facilities’ actual needs.¹²³ In moving his business to Waste
15 Management, PAML could obtain a ten percent reduction in its RMW costs.¹²⁴ None of the
16 WRRRA Protestants offers RMW service to PAML’s headquarters in Spokane.¹²⁵

17 38. Ray Moore, the Lead Contract Manager of Supply Chain for PeaceHealth, testified
18 that the PeaceHealth hospitals require a statewide RMW service alternative to provide PeaceHealth
19 with the leverage to obtain the best possible service and pricing, which will help mitigate
20 PeaceHealth’s risk of residual liability arising from the transportation and handling of its RMW by
21

22 ¹¹⁷ Ex. TJ-1T at 3.

23 ¹¹⁸ Hearing Tr. Vol. V at 24121-24.

24 ¹¹⁹ *Id.* at 237:24-238:3.

25 ¹²⁰ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

26 ¹²¹ Ex. RL-1T at 3-4.

27 ¹²² Hearing Tr. Vol. VI at 438:18-439:4.

¹²³ *Id.* at 450:13-451:1.

¹²⁴ *Id.* at 452:20-453:19.

¹²⁵ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

1 third parties.¹²⁶ 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.¹²⁷ 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 Protestant Consolidated Disposal Services, Inc. (“Consolidated”)), Pullman
7 Regional Hospital (service is also available from Protestant Pullman Disposal Service), and
8 Samaritan Hospital in Moses Lake (service is also available from Consolidated).¹²⁸ Like PAML,
9 PeaceHealth desires to contract with “one statewide service provider for the sake of efficiency and
10 cost.”¹²⁹ For PeaceHealth, “[c]hoice and competition allow flexibility to meet whatever needs
11 there are [and] helps strengthen what different companies will bring to the table.”¹³⁰ PeaceHealth
12 also requires a hauler which can provide service at all of PeaceHealth’s Washington facilities.
13 However, in Washington PeaceHealth has no choice.

14 Washington is the one [state] that’s keeping us from having choice –
15 we only have Stericycle. We have one choice to service all of our
16 members and aggregates. For us a good business model for quality
17 control and for cost containment, it’s best to have everybody using
standardized services and products to the greatest extent we can. So
for us, Stericycle has a monopoly,¹³¹

18 39. Emily Newcomer, Seattle Operations Manager for the University of Washington’s
19 Recycling and Solid Waste Program, testified that the University of Washington also requires an
20 alternative service option because such competition will yield true market prices for RMW
21 services and will allow the University leverage to ensure that it gets responsive service.¹³² She
22 rejected Stericycle’s suggestion that competition between Waste Management and Stericycle

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¹²⁶ Ex. RM-1T at 4.

24 ¹²⁷ Hearing Tr. Vol. VI at 401:2-5.

25 ¹²⁸ *Id.* at 397:23-399:7.

26 ¹²⁹ Ex. RM-1T at 3.

27 ¹³⁰ Hearing Tr. Vol. VI at 395:19-22.

¹³¹ *Id.* at 395:23-396:6.

¹³² Ex. EN-1T at 4; Hearing Tr. Vol. VII at 558:19-24.

1 would result in a reduction in the quality of service.¹³³ The University’s Infectious Waste
2 Committee presently is considering competing service proposals from both Stericycle and Waste
3 Management.¹³⁴ None of the WRRRA Protestants offers RMW service in Seattle.¹³⁵

4 40. Julie Sell, the Emergency Preparedness Coordinator for Olympic Medical Center,
5 testified to the need of her hospital and clinics in Port Angeles and Sequim for a competitive RMW
6 service to ensure they get the highest quality service at the best price. However, her primary
7 concern is not pricing but obtaining good quality service.¹³⁶ At present, with Stericycle as its only
8 option, Olympic Medical Center has no ability to exert any effective leverage over Stericycle.¹³⁷
9 None of the WRRRA Protestants offers RMW service in Port Angeles or Sequim.¹³⁸

10 41. Dr. Danny Warner, President of the Washington State Dental Association
11 (“WSDA”) and owner of Warner Dentistry in Vancouver, testified that he and over 4,000 dentists
12 represented by the WSDA require an alternative for RMW service to ensure they receive the best
13 possible service, the best possible price, and that sensitive waste with attendant risks of liability
14 will be properly transported, treated and disposed.¹³⁹ None of the WRRRA Protestants offers RMW
15 service in Vancouver or many other parts of the state where WSDA members are located.¹⁴⁰

16 42. Not a single RMW generator testified against the overwhelming need for an
17 alternative statewide service provider. Rather, Stericycle offered the testimony of two lobbyists
18 for Washington hospitals who “take no position on the pending application of Waste
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23 ¹³³ Hearing Tr. Vol. VII at 559:4-12.

24 ¹³⁴ *Id.* at 561:12-562:2.

25 ¹³⁵ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

26 ¹³⁶ Hearing Tr. Vol. V at 218:16-23.

27 ¹³⁷ Ex. JS-1T at 3.

¹³⁸ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

¹³⁹ Ex. DW-1T at 2-3.

¹⁴⁰ Ex. MW-1T at 2; Ex. MG-1T at 2; Ex. DF-1T at 2; Ex. ER-2.

1 Management.”¹⁴¹ Incongruously, throughout its Petition, Stericycle refers to these two lobbyists
2 who are employed by organizations which do not generate any RMW as “generator” witnesses.¹⁴²

3 43. Jeff Mero offered testimony as Executive Director of the Association of
4 Washington Public Hospital Districts (“AWPHD”). He recognized that “some Washington
5 hospitals and other healthcare providers have expressed the desire for a choice of medical waste
6 service providers and a belief that competition among providers will enable them to obtain more
7 responsive service and better prices.”¹⁴³ That includes AWPHD members Lake Chelan
8 Community Hospital and Olympic Medical Center, both of which offered testimony in support of
9 Waste Management’s application.¹⁴⁴ Mr. Mero admitted that he knows nothing about Stericycle’s
10 price structure and had no knowledge regarding whether the prices Stericycle charges his members
11 are competitive.¹⁴⁵ He was not aware that, as described more fully below, Stericycle amended its
12 tariff in 2011 to offer new containers in response to Waste Management’s offering the same
13 services.¹⁴⁶ Although Mr. Mero submitted written testimony that AWPHD is concerned that
14 offering generators a choice may adversely affect rates or service levels to member hospitals,¹⁴⁷ he
15 readily admitted in his live testimony that he was not aware of any adverse effects on either rates
16 or service levels in the year and a half in which Waste Management had been competing with
17 Stericycle in large parts of the State of Washington.¹⁴⁸

18 44. Stericycle also offered the limited testimony of Taya Briley as President of
19 Washington Hospital Services (“WHS”).¹⁴⁹ WHS is a for-profit entity financed by Stericycle.¹⁵⁰

20 _____
21 ¹⁴¹ Ex. JM-1T ¶ 11; Ex. TB-1T ¶ 11.

22 ¹⁴² See, e.g., Stericycle’s Pet’n for Review at 7:6 (describing “10 generator witnesses,” although there were eight
23 generators and two lobbyists).

24 ¹⁴³ Ex. JM-1T ¶ 11.

25 ¹⁴⁴ Ex. TJ-1T; Ex. JS-1T; Hearing Tr. Vol. VIII at 733:6-16.

26 ¹⁴⁵ Hearing Tr. Vol. VIII at 748:10-22; *id.* at 749:25-750:2.

27 ¹⁴⁶ *Id.* at 750:25-751:4.

¹⁴⁷ Ex. JM-1T ¶ 12.

¹⁴⁸ Hearing Tr. Vol. VIII at 751:12-17.

¹⁴⁹ The majority of her testimony was stricken because she lacked personal knowledge and the testimony was not
supported. *Id.* at 787:2-9, 802:9-803:3.

¹⁵⁰ *Id.* at 770:8-12.

1 Under a marketing agreement between Stericycle and WHS, WHS has helped sell Stericycle’s
2 services to Washington hospitals in exchange for a payment from Stericycle of \$47,500 in 2012,
3 and equivalent sums in prior years.¹⁵¹ At the time of the evidentiary hearing, Ms. Briley was in the
4 process of negotiating a renewal of that contract and was requesting an increase in the annual
5 payment from Stericycle.¹⁵² When she testified, she was waiting to hear back from Stericycle in
6 response to her requested payment increase.¹⁵³ She recognized “that some Washington hospitals
7 and other healthcare providers have expressed their desire for a choice of medical waste service
8 providers and a belief that competition among providers will enable them to obtain more
9 responsive service and better prices.”¹⁵⁴ WHS member hospitals testifying included PeaceHealth,
10 whose president is the chairman of WHS’s board of directors.¹⁵⁵ In her live testimony, Ms. Briley
11 explained that WHS would like the Commission to “use its expertise in determining what the best
12 way of proceeding is in determining whether competition will be the best way to produce good
13 service and fair pricing.”¹⁵⁶ She admits that she has never looked at Waste Management’s tariff
14 rates, and neither she nor anyone at WHS has compared Stericycle’s and Waste Management’s
15 tariff rates.¹⁵⁷ Despite her ostensible neutrality and her acknowledgment that WHS “are not
16 experts in this,”¹⁵⁸ Ms. Briley posited that alternative RMW service providers “may affect the
17 profitability of the carriers.”¹⁵⁹ However, she is not aware of any adverse effect on rates or service
18 levels in the year and a half in which Waste Management had been competing directly with
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20
21

22 ¹⁵¹ Ex. JR-9.

23 ¹⁵² Hearing Tr. Vol. VIII at 792:19-793:13.

24 ¹⁵³ *Id.* at 793:10-13.

25 ¹⁵⁴ Ex. TB-1T ¶ 11.

26 ¹⁵⁵ Ex. RM-1T; Hearing Tr. Vol. VIII at 771:17-772:11.

27 ¹⁵⁶ Hearing Tr. Vol. VIII at 789:16-20 (emphasis added).

¹⁵⁷ *Id.* at 779:14-780:2.

¹⁵⁸ *Id.* at 787:20-24.

¹⁵⁹ Ex. TB-1T ¶ 12.

1 Stericycle.¹⁶⁰ Moreover, she is aware that some WHS member hospitals are dissatisfied with
2 Stericycle's tariff pricing.¹⁶¹

3 45. Washington's RMW generators require a competitive alternative to Stericycle,
4 including an alternative service provider in the many parts of the state served only by Stericycle
5 and an alternative statewide service provider for those large generators with facilities throughout
6 the state, including in areas presently served by the WRRRA Protestants. As the Commission has
7 previously held in addressing Stericycle's application for authority, "single carrier service is a
8 reasonable shipper need, and [] existing carriers failed to operate to the Commission's satisfaction
9 because, with limited local territories, they could not provide that service."¹⁶² The Initial Order
10 acknowledged this precedent upholding the need for single carrier service and held "that need is
11 not necessarily limited to having one option for statewide service."¹⁶³ The Initial Order properly
12 recognized the generators' stated needs.¹⁶⁴

13 **2. Competition from Waste Management Is Presently Benefiting RMW**
14 **Generators.**

15 46. Contrary to the unsubstantiated concerns which the lobbyists Mr. Mero and Ms.
16 Briley conjured in their written testimony, competition from Waste Management already has
17 caused a marked improvement in Stericycle's service quality and prices. Waste Management's
18

19 _____
20 ¹⁶⁰ Hearing Tr. Vol. VIII at 788:8-17.

21 ¹⁶¹ *Id.* at 808:6-19.

22 ¹⁶² *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 12 (Jan. 25, 1993); *see also In re*
23 *Ryder Distrib. Sys., Inc.*, App. No. GA-75563, Order M.V.G. No. 1536 at 4 (Jan. 30, 1992) (rejecting claim that
24 Stericycle simply had a preference for Ryder where "the existing carriers cannot perform collection service in all of
25 the requested territory, but only parts of it"); *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No.
26 1761 at 17 (Aug. 11, 1995) (Stericycle's shipper "expressed a desire to use the same medical waste collection
27 company for all its facilities").

¹⁶³ Initial Order ¶ 12.

¹⁶⁴ Stericycle assails the Initial Order because the hypothetical need of "some miniscule number of generators" would
be sufficient to obtain overlapping authority. Stericycle's Pet'n for Review ¶ 41. Of course, Stericycle does not
contend that the unrebutted generator testimony presented by Waste Management was remotely close to "miniscule."
As the Initial Order recognized, many of the testifying generators "represent entities that have statewide operations,"
Initial Order ¶ 12, and there were witnesses from wide-ranging parts of the state, and from urban and rural
communities. Whether approval of overlapping authority would ever be proper in the face of only "miniscule"
evidence is not a question facing the Commission in this proceeding.

1 Account Development Manager Jeff Norton worked for Stericycle from 1998 through 2008.¹⁶⁵
2 While he worked for Stericycle, many Stericycle customers complained to him about Stericycle’s
3 proprietary “Steritubs” because they stick together when they nest, customers in some cases could
4 not pry them apart, and the lids rarely fit properly.¹⁶⁶ At the time, Mr. Norton repeatedly reported
5 these complaints to Stericycle’s District Manager Mike Philpott.¹⁶⁷ Mr. Philpott testified that he
6 was aware Stericycle customers did not like the Steritubs because the lids crack and can be
7 difficult to snap on.¹⁶⁸ However, he advised Mr. Norton that Stericycle had too much capital
8 invested in the Steritubs and would not change the containers.¹⁶⁹

9 47. Based on the complaints of Stericycle customers, when Waste Management re-
10 entered the RMW market in the Certificate No. G-237 territory in 2011, it offered containers
11 manufactured by Rehrig Pacific Company (“Rehrig”) with a hinged lid. The Rehrig containers
12 nest without trouble, the attached lids close easily, and the containers stack evenly and minimize
13 the storage space needed.¹⁷⁰ Mr. Norton began discussing the availability of Rehrig containers
14 with Stericycle customers¹⁷¹ and on March 30, 2011, Waste Management filed its RMW tariff
15 with the Commission.¹⁷² Waste Management’s tariff included 31-gallon and 43-gallon Rehrig
16 containers.¹⁷³ The tariff’s straightforward pricing is based on a price per gallon which decreases
17 as the number of gallons collected increases:¹⁷⁴

21 ¹⁶⁵ Ex. JN-1T at 2.

22 ¹⁶⁶ *Id.* at 3.

23 ¹⁶⁷ *Id.*

24 ¹⁶⁸ Hearing Tr. Vol. VII at 573:3-7.

25 ¹⁶⁹ Ex. JN-1T at 3. Mr. Philpott cannot disavow these statements today because he cannot recall what his response was
26 to Mr. Norton. Hearing Tr. Vol. VII at 573:8-16.

27 ¹⁷⁰ Ex. JN-1T at 3.

¹⁷¹ *Id.*

¹⁷² Ex. MAW-25.

¹⁷³ *Id.* at 5.

¹⁷⁴ *Id.* at 7.

<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

7 These rates became effective on April 6, 2011.¹⁷⁵

8 48. In 2011, Mr. Philpott learned from his salespeople that Waste Management was
9 offering Rehrig containers to Stericycle customers.¹⁷⁶ He testified that as of that time, Stericycle
10 had not offered Rehrig containers or containers with hinged lids in Washington.¹⁷⁷ Rehrig
11 containers also had not been offered anywhere else in Stericycle, Inc.’s western division which
12 includes Oregon, Idaho, Montana, northern California, part of Nevada, part of Wyoming, Alaska,
13 and Hawaii.¹⁷⁸ As Mr. Philpott testified, Stericycle decided to offer Rehrig containers in
14 Washington in 2011 because Waste Management was offering those containers to Stericycle
15 customers.¹⁷⁹

16 49. On June 2, 2011 – more than two months after Waste Management filed its tariff
17 rates – Stericycle filed an amendment to its RMW tariff.¹⁸⁰ The only changes Stericycle made to
18 its preexisting tariff concerned the addition of Rehrig containers.¹⁸¹ This was, in fact, the first
19 time in nearly 20 years of RMW service that Stericycle changed any of its prices.¹⁸² Stericycle
20 added one column of prices for its new 31-gallon Rehrig container, a second column of prices for
21 its new 43-gallon Rehrig container, and a note stating that the Rehrig containers “are only
22

23 ¹⁷⁵ *Id.*

24 ¹⁷⁶ Hearing Tr. Vol. VII at 574:4-7.

25 ¹⁷⁷ *Id.* at 573:17-19; *id.* at 574:8-12.

26 ¹⁷⁸ *Id.* at 573:20-574:3.

27 ¹⁷⁹ *Id.* at 574:22-575:13.

¹⁸⁰ Ex. MP-18 at 7-10.

¹⁸¹ *Id.* at 5-6; Hearing Tr. Vol. VII at 579:10-20; *id.* at 584:25-585:10; Ex. MP-3.

¹⁸² Compare Ex. MP-19 at 26 (tariff prices filed Nov. 30, 1993) with Ex. MP-18 at 5 (tariff prices filed June 6, 2011).

1 available to generators located in” a limited list of Washington counties.¹⁸³ This is the only time
 2 since 1999, when Mr. Philpott joined Stericycle, that Stericycle has offered a container to only a
 3 limited part of the State of Washington,¹⁸⁴ coincidentally, no doubt, the one where Waste
 4 Management offers RMW services. Mr. Philpott, under whose name Stericycle filed its tariff
 5 with the Commission, claims to have no idea how Stericycle came up with the pricing for the
 6 Rehrig containers.¹⁸⁵

7 50. Notwithstanding his professed ignorance on the subject, the source of Stericycle’s
 8 amended prices is self evident: they came directly from Waste Management’s tariff. Stericycle’s
 9 more cumbersome tariff structure sets forth prices for each size of container based on the quantity
 10 of containers collected.¹⁸⁶ To compute the total gallons of waste at each price point, one must
 11 multiply the number of gallons in the container by the number of containers.¹⁸⁷ So, for example,
 12 the total gallons of waste are reflected below in the highlighted additions to Stericycle’s tariff,
 13 with the two “(N)” columns denoting the two new Rehrig containers and the other columns
 14 denoting the containers and prices Stericycle offered from before 2011:¹⁸⁸

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

20 51. To compute the price per gallon at each price point, one must (1) multiply the price
 21 by the number of containers and (2) divide that number by the total number of gallons at that price

24 ¹⁸³ Ex. MP-18 at 5 & n.3; Hearing Tr. Vol. VII at 583:15-19; *id.* at 585:11-22.

25 ¹⁸⁴ Hearing Tr. Vol. VII at 583:20-584:12.

26 ¹⁸⁵ *Id.* at 581:3-582:1; *id.* at 583:7-14.

27 ¹⁸⁶ Ex. MP-18 at 5-6.

¹⁸⁷ Hearing Tr. Vol. VII at 585:23-587:1.

¹⁸⁸ Ex. MP-27 at 5.

1 point.¹⁸⁹ So, for example, the price per gallon for two of the pre-existing 21-gallon containers is
2 computed as follows:

3 (1) $\$33.66 \times 2 \text{ containers} = \67.32

4 (2) $\$67.32 \div 42 \text{ gallons} = \$1.60 \text{ per gallon.}^{190}$

5 The prices per gallon are reflected below in the highlighted additions to Stericycle's tariff.¹⁹¹

6

7

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

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10

11 Under Stericycle's pricing scheme, the price-per-gallon for one container is highest at the smallest
12 size container (21 gallons): \$1.67.¹⁹² The price-per-gallon goes down slightly for a single
13 container of the next larger size container (31 gallons): \$1.62.¹⁹³ And, the price-per-gallon goes
14 down slightly more for one container of the next larger size container (43 gallons): \$1.58.¹⁹⁴ The
15 price-per-gallon remains the same for one container of the largest size container (48 gallons):
16 \$1.58.¹⁹⁵ For two containers, this pattern repeats: the price-per-gallon is highest at the smallest
17 size container, goes down slightly at the next larger size container, goes down slightly more for
18 the next larger size, and remains the same for the largest size container: \$1.60, \$1.49, \$1.22, and
19 \$1.22.¹⁹⁶ For three containers, Stericycle's pricing pattern repeats.¹⁹⁷ And the same is true for
20 four containers.¹⁹⁸

21 ¹⁸⁹ Hearing Tr. Vol. VII at 587:2-12.

22 ¹⁹⁰ Ex. MP-27 at 5.

23 ¹⁹¹ *Id.*

24 ¹⁹² Hearing Tr. Vol. VII at 600:21-25.

25 ¹⁹³ *Id.* at 601:1-9; *id.* at 602:4-6.

26 ¹⁹⁴ *Id.* at 601:10-15; *id.* at 602:7-11.

27 ¹⁹⁵ *Id.* at 601:16-602:3; *id.* at 602:12-14.

¹⁹⁶ *Id.* at 602:19-603:18.

¹⁹⁷ *Id.* at 603:19-24.

¹⁹⁸ *Id.* at 603:25-604:3.

52. Once Stericycle's tariff gets to the pricing for five containers and more, Stericycle stops its pre-existing pattern and begins to precisely replicate Waste Management's lower pricing, but only for the Rehrig containers offered to compete with Waste Management.¹⁹⁹ For example, Waste Management charges \$0.60 per-gallon when the total gallons are between 201 and 400 gallons. Precisely as with Waste Management's pricing, where the total gallons are between 201 and 400 gallons, Stericycle now charges \$0.60 per gallon for the Rehrigs. However, contrary to its prior pattern where the price-per-gallon of the largest container (48 gallons) remained the same as the next smaller size container (43 gallons), once Stericycle began to mimic Waste Management's pricing, Stericycle's price-per-gallon went up for its largest container to Stericycle's preexisting price (as reflected below in grey highlighting), thus making it less expensive for generators to use Stericycle's new Rehrigs than to use Stericycle's proprietary Steritubs.²⁰⁰ And, so, Stericycle's new tariff continued to precisely match Waste Management's lower prices, but only for the Rehrigs.²⁰¹ 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):²⁰²

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

¹⁹⁹ *Id.* at 604:12-20.

²⁰⁰ *Id.* at 604:17-23.

²⁰¹ *Id.* at 380:18-20.

²⁰² Ex. MAW-25 at 7 (highlighting added).

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

And so on²⁰³

53. Undisputedly, Stericycle sought to use its natural response to competition from Waste Management – improving its services and its prices – to retain customers. Sacred Heart Medical Center in Spokane determined that it would move its business to Waste Management in 2011 to obtain the preferred Rehrig containers.²⁰⁴ Ron Adams, of Stericycle, attempted to convince Sacred Heart not to make the change by advising the hospital that Stericycle was offering the same containers at the same price as Waste Management.²⁰⁵ While those efforts were not successful with Sacred Heart, they were with Virginia Mason Medical Center. Waste Management’s tariff rates for its Rehrig containers offered Virginia Mason a ten to fifteen percent savings over the equivalent pricing offered under Stericycle’s pre-existing tariff rates. However,

²⁰³ Ex. MP-27 at 5-6 (highlighting and italicized sums added).

²⁰⁴ Hearing Tr. Vol. VI at 378:17-21; *id.* at 453:14-17.

²⁰⁵ *Id.* at 379:13-19; *id.* at 515:6-15.

1 when Stericycle filed its lower Rehrig rates in 2011 to match Waste Management’s rates, Virginia
2 Mason elected to remain with Stericycle.²⁰⁶

3 54. Stericycle also responded favorably in other ways to competition from Waste
4 Management. For example, only after this Application was filed did Stericycle assign a dedicated
5 sales representative to customers Olympic Medical Center and Lake Chelan Community
6 Hospital.²⁰⁷ Similarly, Stericycle ignored generator PAML’s request for assistance reducing
7 PAML’s RMW costs “until [PAML] notified [Stericycle] that [it was] transitioning some of [its]
8 facilities over to Waste Management.”²⁰⁸

9 55. It is undisputed that generators already are experiencing the benefits of better
10 service and pricing from Stericycle in response to direct competition from Waste Management.
11 The Initial Order held that this evidence was “compelling”²⁰⁹ and established “that in the short
12 time since it resumed bio-hazardous waste collection service in its solid waste collection service
13 territory in competition with Stericycle, [Waste Management] had introduced product options at
14 lower prices, which Stericycle had matched.”²¹⁰ Ignoring the critical language at the end of the
15 preceding sentence, Stericycle contends that the Initial Order inappropriately looked at, and
16 considered, Waste Management’s better pricing in determining if Stericycle’s services satisfy the
17 Commission.²¹¹ The evidence that Stericycle amended its tariff prices for the first time in two
18 decades only because Waste Management had offered a new service desired by generators,²¹²

19 _____
20 ²⁰⁶ *Id.* at 516:21-517:10.

21 ²⁰⁷ Hearing Tr. Vol. V at 225:15-19, 237:6-10.

22 ²⁰⁸ Hearing Tr. Vol. VI at 438:18-439:11.

23 ²⁰⁹ Neither of the two lobbyists offered by Stericycle had any knowledge of the changes Stericycle had made in its
24 service offerings or prices in response to competition from Waste Management, and they also were not aware of any
25 cutback in Stericycle’s services during the year and a half Stericycle already had competed with Waste Management.
26 Hearing Tr. Vol. VIII at 750:25-751:17; *id.* at 778:2-779:13; *id.* at 788:8-25.

27 ²¹⁰ Initial Order ¶ 13 (emphasis added).

²¹¹ Stericycle’s Pet’n for Review § III.E; *id.* ¶ 97 (the Initial Order found Stericycle’s services unsatisfactory “simply
because a prospective service provider seeking entre to the market is willing to charge a penny less for certain
services”).

²¹² Stericycle’s contention that its rates “are set by the Commission,” *id.* ¶ 91, is misleading. Stericycle set its own
prices in a tariff which it filed with the Commission many years ago. Until faced with competition from Waste
Management, the original Stericycle tariff rates were never amended by Stericycle or audited by the Commission. *See*
Ex. MP-19; Ex. MP-18. Since 1993, it has never filed a general rate request. Unlike the case with general solid waste

1 along with the other evidence of Stericycle's improvements in customer service in the face of
2 direct competition from Waste Management, establish that RMW generators are obtaining better
3 quality service from Stericycle as a result of Stericycle's response to direct competition from
4 Waste Management. The Initial Order did not base its decision on a mere comparison of
5 Stericycle's and Waste Management's prices and Stericycle completely ignores the evidence of its
6 own improved service quality, irrespective of pricing.

7 **3. Stericycle's Arguments for Ignoring the Generators' Stated Needs Are**
8 **Meritless.**

9 56. Stericycle faults the Initial Order's recognition of the generators' stated needs for
10 three reasons, none of which has merit.

11 57. *First*, Stericycle complains that the Initial Order took a view different from that
12 taken in the *Sureway* case 20 years ago.²¹³ As set forth above, RCW 81.77.040 delegated to the
13 Commission the authority and duty to exercise its discretion in determining whether incumbent
14 service is presently satisfactory.²¹⁴ Nothing in the statute required the Commission to conclude in
15 1993 that an RMW generator's desire for a competitive service option was insufficient to
16 demonstrate that incumbent service was not "to the satisfaction of the Commission." By the same
17 token, nothing in the statute prohibits the Commission from recognizing the importance and
18 necessity of a service alternative in today's RMW market.²¹⁵

19
20
21 service, where Commission auditors have the benefit of regular rate requests filed by haulers, nothing has "provide[d]
22 a surrogate for the pricing discipline that would be exerted over Stericycle by a competitive marketplace" since
23 Stericycle acquired its statewide competition. Stericycle's Pet'n for Review ¶ 91 (quotation marks & citation omitted).
24 Of course, the Commission's role is to provide economic regulation and does not determine or dictate what services
25 are to be offered. RCW 81.77.030. It was only actual competition from Waste Management which caused Stericycle
26 to expand its services and add a competitive rate to its tariff.

27 ²¹³ Stericycle's Pet'n for Review ¶ 60.

²¹⁴ See *supra* § III.A.

²¹⁵ For this very reason, there was nothing improper about the Commission's determination in *Sureway* that it would
apply a different and more nuanced test when considering an application for overlapping RMW service. *In re Sureway*
Med. Servs., Inc., App. No. GA-75968, Order M.V.G. No. 1663 at 10-11 (Nov. 19, 1993) ("In evaluating whether
existing companies will provide service to the satisfaction of the Commission, the Commission will not limit its
consideration to evidence of service failures of the sort that usually are significant in neighborhood garbage
collection").

1 58. Furthermore, as the Initial Order recognized, “[m]uch has changed in the last 20
2 years,”²¹⁶ including a substantial body of Commission RMW decisions and the evolution of a more
3 sophisticated RMW market. In 1995, after *Sureway* was decided, the Commission granted the
4 application of a second, overlapping statewide RMW service provider, namely, Stericycle.²¹⁷
5 Washington’s RMW generators – including each of the generators on whose behalf testimony was
6 offered in this proceeding – had the benefit of two alternative statewide RMW service providers
7 for more than five years (until Stericycle acquired the competition).²¹⁸ In 1997, the Commission
8 favorably noted that, unlike the monopoly service in garbage collection, the RMW market now
9 enjoyed “competition in the market for provision of services of transportation and disposal of
10 biomedical waste.”²¹⁹ In 1998, the Commission reiterated that, notwithstanding the monopoly
11 service model for general solid waste, “[i]n applications for specialized biomedical waste
12 authority, the Commission has interpreted the statutory requirements consistently with the unique
13 requirements and attributes of the service, giving considerable weight to testimony of waste
14 generators regarding their service requirements,”²²⁰ and, consequently, the RMW services market
15 “has evolved into a highly competitive industry.”²²¹ To the degree that any message may be
16 derived from the Legislature’s 2005 amendment to RCW 81.77.040 which, as Stericycle explains,
17 “did nothing to alter the substantive terms of that provision,”²²² it must be that the Legislature had
18 no quarrel with the Commission’s most recent RMW cases which fostered and recognized a
19 “highly competitive [RMW] industry.”²²³ Then, in 2011 the Commission reaffirmed that it “has
20

21 ²¹⁶ Initial Order ¶ 11.

22 ²¹⁷ *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 13 (Aug. 11, 1995).

23 ²¹⁸ *In re Pet’n of Comm’n Staff for Declaratory Ruling*, Docket No. TG-970532, Declaratory Order ¶¶ 4-5 (Aug. 14,
1998).

24 ²¹⁹ *In re Pet’n of Comm’n Staff for a Decl. Ruling*, Docket No. TG-970532, Decl. Order at 3 (Oct. 29, 1997) (n.
omitted).

25 ²²⁰ *In re Pet’n of Comm’n Staff for a Decl. Ruling*, Docket No. TG-970532, Decl. Order at 9 (Aug. 14, 1998).

26 ²²¹ *Id.* at 10.

27 ²²² Stericycle’s Pet’n for Review ¶ 75.

²²³ *In re Pet’n of Comm’n Staff for a Decl. Ruling*, Docket No. TG-970532, Decl. Order at 10 (Aug. 14, 1998); see
Green River Comty. Coll. v. Higher Educ. Pers. Bd., 95 Wn.2d 108, 118, 622 P.2d 826 (1980), modified in
nonrelevant part, 95 Wn.2d 962, 633 P.2d 1324 (1981) (“[A] contemporaneous construction by the department
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1 historically found that promoting competition in this segment of the industry is in the public
2 interest because, among other things, it promotes higher quality of service in terms of protecting
3 the public health and safety.”²²⁴ In addition, the unanimous generator testimony here as to the
4 need for a competitive service option²²⁵ coupled with the actual improvement in Stericycle’s
5 service quality since it began competing with Waste Management in much of the state²²⁶ further
6 confirm that the Initial Order’s exercise of discretion in favor of a competitive statewide
7 alternative today is fully justified.

8 59. *Second*, Stericycle urges the Commission to disregard the generators’ need for a
9 competitive statewide alternative because “these generators supported competition in only the most
10 generic sense.”²²⁷ Apparently, Stericycle’s complaint with a so-called “generic” need for
11 competition is that the generators’ need could be met by Waste Management or another, qualified
12 statewide provider of RMW services.²²⁸ Stericycle points to no authority which rebuffs a
13 generator’s stated need simply because there are hypothetical, unnamed entities, other than the
14 applicant, which also could provide the required service. As Stericycle is quick to point out, the
15 “service to the satisfaction of the Commission” inquiry evaluates the sufficiency of the
16 incumbent’s services, not the precise alternative offered by the applicant.²²⁹ The generators
17 testified that they wanted a comprehensive, statewide alternative to Stericycle because Stericycle
18 has provided poor customer service,²³⁰ because Stericycle has failed to ensure that its customers

19 charged with administering an ambiguous statute is even more persuasive if the Legislature not only fails to repudiate
20 the construction, but also amends the statute in some other particular without disturbing the administrative
21 interpretation.”).

22 ²²⁴ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mot. for
Dismissal & Summ. Determination at 14-15 (July 13, 2011).

23 ²²⁵ Initial Order ¶ 12 (“The public, as well as the Commission, has come to demand greater consumer choice.”).

24 ²²⁶ *Id.* ¶ 13 (“Waste Management presented compelling evidence that in the short time since it resumed bio-hazardous
waste collection services in its solid waste collection service territory in competition with Stericycle, the Company has
introduced product options at lower prices, which Stericycle has matched.”) (emphasis added).

25 ²²⁷ Stericycle’s Pet’n for Review ¶ 19.

26 ²²⁸ *Id.* ¶ 20 (testimony “was entirely generic and not specific to Waste Management’s proposed services”).

27 ²²⁹ *Id.* ¶ 45 (“The applicant’s proposed services and putative advantages of those services are not part of the threshold
‘satisfactory service’ determination.”). Only then does the Commission proceed to determine the bona fides of the
applicant.

²³⁰ *See supra* ¶¶ 7-10 & § III.D.1.

1 are getting the most cost effective service,²³¹ and because Stericycle's customers, like the
2 Commission, recognize that "competition in this segment of the industry is in the public interest
3 because, among other things, it promotes higher quality of service in terms of protecting the public
4 health and safety."²³² Generators' experience with the improved quality of Stericycle's service
5 since it began competing with Waste Management amply supports the generators' need for a
6 statewide, competitive alternative to Stericycle.²³³ And, in any event, it is undisputed that there is
7 no RMW service provider other than Waste Management which can provide competitive statewide
8 service. Twenty years ago, the Commission had a reasonable expectation of statewide
9 competition. Today, it is faced with the reality of an arrogant monopoly flying under the
10 regulatory radar.

11 60. *Finally*, Stericycle assails its customers' need for a statewide alternative because
12 Stericycle does not believe its customers have the relevant "expertise, analysis or experience."²³⁴
13 It is absurd that Stericycle, which itself failed to properly assess the effects of competition at the
14 evidentiary hearing and could not satisfy its burden of proof on this point,²³⁵ now casts aspersions
15 on its customers for not retaining accountants or economists to support their third-party testimony.
16 Of course, the Commission has never stated such a requirement.

17 The Commission will give considerable weight to the judgment of
18 biohazardous waste generators regarding the sufficiency of the
19 existing service, because they are professionally involved in health
20 care, and are in a unique position to evaluate the risks and benefits of
21 collection and disposal services based upon their professional
22 training and expertise²³⁶

23 ²³¹ *See id.*

24 ²³² *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mots. For
25 Dismissal & Summ. Determination ¶ 36 (July 13, 2011); *see also supra* § III.D.1.

26 ²³³ In previously rejecting Stericycle's arguments against the benefits of competition in the RMW service market, the
27 Commission also has noted that "Stericycle's dominance in providing this specialized service statewide adds to the
inappropriateness of its position." *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final
Order on Cross-Mots. For Dismissal & Summ. Determination ¶ 39 (July 13, 2011).

²³⁴ Stericycle's Pet'n for Review ¶ 20.

²³⁵ Hearing Tr. Vol. VII at 694:4-14.

²³⁶ *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1674 at 4 (Dec. 20, 1993); *accord In re
Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 11 (Jan. 25, 1993).

1 Each of the generators who testified is charged with managing RMW for the generators on whose
2 behalf he or she testified, and each is qualified based on his or her experience with Stericycle’s
3 services, with the benefits of other competitive services, with the nature of the waste at hand and
4 its attendant liability, and with the generators’ need for high quality, cost-effective RMW
5 service.²³⁷ For example, Ray Moore has worked in supply chain at PeaceHealth for 21 years and
6 currently is the lead contract manager for supply chain for the entire hospital system.²³⁸ His team
7 is “responsible for all contracts that relate to supplies and related services. [He has] a team of
8 seven individuals that report to [him]. And then [he is] personally, in addition [to] overseeing [his]
9 staff, [he is] directly responsible for all pharmaceutical and purchased services,”²³⁹ including
10 RMW services.²⁴⁰ Moreover, the generators’ testimony as to the benefits they will obtain from a
11 competitive service alternative is not merely “assumed”²⁴¹ given that it is amply confirmed by the
12 fact that actual competition from Waste Management already has caused Stericycle to provide
13 improved services at better prices in those parts of the state in which Stericycle faces competition
14 from Waste Management.²⁴² In short, many of Stericycle’s customers have “identified
15 deficiencies in Stericycle’s services that they believe[] competition would cure.”²⁴³

16 61. The Initial Order properly recognized the generator need for a statewide alternative
17 to Stericycle based on the generators’ testimony of expected future benefits as well as the benefits
18 they already are experiencing as a result of Stericycle’s need to compete with Waste Management
19 in much of the state.

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23 _____
²³⁷ Ex. TJ-1T; Ex. JL-1T; Ex. RL-1T; Ex. RM-1T; Ex. EN-1T; Ex. CP-1T; Ex. JS-1T; Ex. DW-1T.

24 ²³⁸ Hearing Tr. Vol. VI at 384:23-25.

25 ²³⁹ *Id.* at 385:20-25.

26 ²⁴⁰ *Id.* at 386:1-8.

27 ²⁴¹ Stericycle’s Pet’n for Review ¶ 66.

²⁴² *See supra* § III.D.2.

²⁴³ Stericycle’s Pet’n for Review ¶ 67; *see supra* ¶¶ 7-10 & § III.D.1.

1 **E. The Purpose of RCW 81.77.040 Is Not to Protect Stericycle’s Monopoly.**

2 62. Throughout this proceeding, Stericycle has persisted in its flawed view that the
3 statute’s aim is “to protect existing certificate holders from competition.”²⁴⁴ As Commission
4 Staff explains: “In the area of biomedical waste, the Commission has focused on the needs of
5 *customers*, not the applicant or incumbent.”²⁴⁵ The Commission considers the impact of
6 competition on incumbent service providers not because of any interest in ensuring the
7 incumbent’s stranglehold on the market but as a proxy for ensuring that the public interest is
8 served.²⁴⁶ “Consistent with the state’s strong health and safety interest in assuring universal
9 collection and securing service at fair rates, the Commission will consider whether a grant of
10 competing authority would be detrimental to the public because it would jeopardize the viability
11 of existing service.”²⁴⁷ The Commission has rejected “a test for denial that is measured by
12 adverse effect upon existing carriers’ financial returns.” Rather, “the proper test for public
13 interest [is] whether the entry of an additional carrier, who has demonstrated public need for its
14 services, will result in damages to carriers that causes a reduction to unacceptable levels of
15 available reasonably priced service to consumers.”²⁴⁸

16 63. Stericycle’s self-serving view of RCW 81.77.040 leads it to assert that the
17 generators’ uniform stated need for an alternative statewide service provider – to ensure quality
18 service and fair pricing²⁴⁹ – cannot be one of the “specialized needs” described in Order 05
19 because that need is not one which “the incumbent service providers had failed to meet” and does
20 not identify “any feature of Waste Management’s proposed services not already matched by
21
22

23 ²⁴⁴ Stericycle’s Pet’n for Review ¶ 32.

24 ²⁴⁵ *In re Application of Waste Mgmt.*, Docket TG-120033, Comm’n Staff’s Initial Brf. on Prelim. Legal Issue ¶ 10
(June 14, 2012) (emphasis original).

25 ²⁴⁶ Notably, Stericycle has not challenged the Initial Order’s finding that granting Waste Management’s application
would not have “any significant impact on the economic viability of the existing companies.” Initial Order ¶ 18.

26 ²⁴⁷ *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663 at 11 (Nov. 19, 1993) (emphasis
added).

27 ²⁴⁸ *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. No. 1761 at 14 (Aug. 11, 1995) (emphasis
added).

1 equivalent or better services offered by Stericycle and the WRRRA Protestants.”²⁵⁰ But that is not
2 the test for determining “service to the satisfaction of the commission.” Order 05 – which
3 Stericycle concedes was an “accurate statement of the law”²⁵¹ – rejected Stericycle’s argument
4 that “[t]o prevail on its application, Waste Management must prove that the reasonable needs of
5 biomedical waste generators are not being met by existing carriers and that unique features of
6 Waste Management’s proposed services will meet those needs.”²⁵² Rather, the “Commission
7 weighs the evidence presented to determine whether entry of an additional provider in a particular
8 service territory would serve unmet customer needs”²⁵³ The ample, undisputed evidence
9 presented at the hearing demonstrates that the RMW generators have an unmet need for a
10 statewide service alternative.

11 64. None of the other statutes to which Stericycle cites applies to this RMW
12 proceeding or supports Stericycle’s incumbent-protective view. For example, RCW 81.84.020,
13 regulating commercial ferries, sets forth a different standard for an application for overlapping
14 authority. Contrary to the unbounded “satisfaction of the commission” standard in the solid waste
15 statute, the commercial ferry statute allows for overlapping authority only upon a finding that the
16 incumbent service provider “has failed or refused to furnish reasonable and adequate service.”²⁵⁴

18 ²⁴⁹ While Stericycle focuses only on the generators’ desire for truly competitive pricing, the generators equally desire
19 the improved service quality and options which will come – and presently are coming – from Stericycle’s need to
20 compete with Waste Management.

21 ²⁵⁰ Stericycle’s Pet’n for Review ¶ 15. Stericycle alternatively contends that the Commission may only grant
22 overlapping RMW authority upon concluding that the incumbent’s services “are flawed or deficient in some particular
23 way.” *Id.* ¶ 32. Neither the statute nor any of the Commission’s decisions require a finding of “flawed or deficient”
24 incumbent services. The customers’ stated needs trump even incumbent service which is not, in and of itself, “flawed
25 or deficient.” *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 2 (Jan. 25, 1993) (“The
26 finding of failure of satisfactory service does not necessarily involve a moral judgment. A carrier may be found
27 unsatisfactory despite providing excellent service to the public within the terms of its certificate if the services does
not meet the reasonable requirements of shippers.”); *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order
M.V.G. No. 1674 at 4 (Dec. 20, 1993) (“The applicant in *Ryder* made a very persuasive demonstration that existing
companies, although providing ‘satisfactory’ physical service, were not providing service that sufficiently met the
specialized requirements of the customers.”).

²⁵¹ Stericycle’s Pet’n for Review ¶ 58.

²⁵² Order 05 ¶ 5 (quoting Stericycle’s Opening Memorandum).

²⁵³ *Id.* ¶ 9.

²⁵⁴ RCW 81.84.020(1).

1 RCW 81.77.040 and the Commission's significant body of cases analyzing that particular
2 standard determine the way here.


3 **IV. CONCLUSION**

4 65. Understandably, Stericycle – Washington's second, but now only, statewide RMW
5 hauler – wishes to avoid statewide competition from Waste Management. But it is the generators'
6 needs, not Stericycle's, which are determinative here. The generators have spoken with one voice
7 in stating their need for an alternative statewide service provider. RCW 81.77.040 assigns to the
8 Commission the broad discretion to protect the public and the Commission has wisely focused on
9 that goal in concluding that both the nature of RMW and of the RMW market are different from
10 neighborhood garbage collection and akin to motor freight common carriers. To accomplish the
11 Commission's goal of ensuring quality and competitively priced RMW services to the public, the
12 Initial Order follows Commission precedent which dictates that a more nuanced approach which
13 defers to the generators' stated needs is necessary in the RMW services market.

14 66. Waste Management requests that the Commission affirm the Initial Order and
15 grant Waste Management's Application to provide RMW service in the remaining portions of the
16 state which today have only one statewide service provider.

17 DATED this 8th day of April, 2013.

18 SUMMIT LAW GROUP PLLC

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20 By 

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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.

1 2 3 4 5 6	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360-664-1160 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Federal Express <input checked="" type="checkbox"/> Via Email
7 8 9	Gregory J. Kopta Administrative Law Judge Washington Utilities and Transportation Commission gkopta@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
10 11 12	Steven W. Smith Assistant Attorney General PO Box 40128 Olympia, WA 98504 (360) 664-1225 ssmith@utc.wa.gov kgross@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
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1 DATED at Seattle, Washington, this 8th day of April, 2013.

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3 Deanna L. Schow
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