BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| 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 PETITION FOR ADMINISTRATIVE REVIEW OF INITIAL ORDER NO. 7 ON BEHALF OF “THE WRRA COMPANIES” AND THE WRRA** |

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# INTRODUCTION

1. Applicant Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington (“Waste Management”) requests that the Commission affirm the Initial Order Granting Application of Waste Management for extension of Waste Management’s authority to offer regulated biomedical waste services statewide and that the Commission deny the Petition for Administrative Review of Initial Order No. 7 on Behalf of “The WRRA Companies” and the WRRA (“WRRA Petition”).[[1]](#footnote-1) The concerns raised by the Washington Refuse and Recycling Association (“WRRA”) and the individual WRRA members (“WRRA Companies”) (collectively, the “WRRA Protestants”) regarding implications of the Initial Order on entry standards for traditional solid waste certificate rights are misplaced because it is a narrow decision granting an extension of authority for specialized biomedical waste collection services. And the objections in the WRRA Petition regarding overlap with the individual WRRA Companies’ certificate rights are unfounded because they are not supported by the evidence and are outweighed by the public’s need for responsive service.

# ARGUMENT

## Affirming the Initial Order Will Maintain the Statutory Purpose of RCW 81.77.040.

1. An extension of biomedical waste collection authority is warranted if the applicant demonstrates that (1) biomedical waste collection service currently provided in the territory sought does not satisfy the specialized needs of customers in that area as the customers determine those needs and (2) public convenience and necessity requires an additional carrier.[[2]](#footnote-2) The evidence presented in this case provides ample grounds for the Commission to grant Waste Management’s application for extension under both prongs of the statutory test.[[3]](#footnote-3)

### The Existing Certificate Holders Are Not Serving to the Satisfaction of the Commission.

1. The WRRA Petition is fraught with histrionics about how the Initial Order “seems to ignore” the statutory requirement for a threshold determination of whether the existing WRRA certificate holders are serving to the satisfaction of the Commission.[[4]](#footnote-4) But the Initial Order does not change the essential elements of the statutory test. It allows the Commission to base its satisfaction on standards appropriate to Waste Management’s incremental extension into the statewide biomedical waste collection as the service sector currently exists, and it does so in accordance with the statutory framework. Determining whether the Commission is satisfied with existing service is **still** a threshold determination, it is **still** an evidentiary element of proof, and it is **still** subject to the Commission’s discretion. Different policy considerations, however, justify exercising discretion to interpret the legal standards in the specific context of Waste Management’s application to extend authority for providing biomedical waste collection statewide.

#### The Initial Order Properly Addresses First Whether the Commission Is Satisfied with Existing Services.

1. Oblivious to the actual sequence of analysis presented in the Initial Order, the WRRA Protestants allege error for failing to address the Commission’s satisfaction as a preliminary inquiry. Nobody disagrees that this determination must be made before considering public convenience and necessity and before evaluating the applicant’s fitness. In fact, the Initial Order tackles this element before considering other factors. What the WRRA Protestants really disagree with, of course, rests on the conclusion drawn from the evidence presented, not from the analytic sequence taken.
2. The WRRA Protestants conclude that the Initial Order must have bypassed the necessary threshold inquiry because, in their view, the Commission may not exercise its discretion without “any specific findings and/or reference to record evidence outlining service failures, inadequate adherence to law and rule (fitness), or even isolated communicated critiques of service by existing customers….”[[5]](#footnote-5) This argument ignores the fact that the Commission’s inquiry can be based on factors other than obvious operational or regulatory infirmities.
3. The threshold test is obviously and easily satisfied if there are actual refusals of service, if there are regulatory violations, or if the service proposed is “not available in any way shape or form.”[[6]](#footnote-6) An applicant can easily meet the statutory requirement with proof of blatant deficiencies. In those instances, there is little call for the Commission to exercise very much discretion at all.
4. There are, however, more nuanced grounds for the Commission to find that existing medical waste certificate holders are not operating to its satisfaction. Contrary to the WRRA Protestants’ suggestion, the determination does not require a pejorative opinion.[[7]](#footnote-7) It does not have to be based on criticisms of the existing certificate holders’ operations. It can be based instead on changing and enhanced expectations of generators and the Commission.
5. In this case, the Commission has exercised its broad discretion to determine whether it is satisfied with the current level of biomedical waste collection service being provided by existing certificate holders by reference to more subtle shipper needs that are not being met.[[8]](#footnote-8) It has made the threshold determination not based on evidence of refusal to serve or regulatory violations or even consistent customer complaints. In consideration of the specific facts before it, the Commission has determined that without some modicum of controlled competition, existing conditions are not furthering the ultimate goal of ensuring that consumers have access to the biomedical waste collection services they require.
6. The WRRA Protestants disregard the nuances of analysis in the Initial Order because they disagree with the outcome. Instead they argue that the threshold question was ignored. However, the Initial Order correctly puts the Commission’s satisfaction with existing services first. The Initial Order properly measured existing services prior to considering public convenience and necessity, and before evaluating the applicant’s fitness.

#### The Initial Order’s Dissatisfaction with Incumbent Service Is Based on Factual Evidence.

1. Nor, contrary to the WRRA Protestants’ argument, does the Initial Order ignore the need for factual evidence demonstrating that the existing service providers are not capable of satisfying the generators’ and the Commission’s expectations. All parties agree that the Commission has acknowledged a need for competition in the biomedical waste collection market.[[9]](#footnote-9) In isolation, that precedent does not support a presumption or predisposition that would justify granting an application as a matter of law. Instead, an evidentiary hearing must be conducted to determine whether the generators’ and the Commission’s needs are being met, by weighing evidence of whether entry of an additional provider in a particular service territory would serve unmet customer needs consistent with the public interest.[[10]](#footnote-10)
2. Again, the WRRA Protestants are correct in asserting that RCW 81.77.050 requires an evidentiary hearing and that facts must support the Commission’s finding. And again, it is the outcome and not the logic that is the actual object of the WRRA Protestants’ consternation. The WRRA Protestants complain that not “a single witness” nor “a single piece of evidence” nor “any cross-examination” was offered to criticize the services being offered by the WRRA Companies. There was, however, ample evidence to support the Commission’s discretionary determination of the necessary preliminary finding on satisfactory service. It was based on the testimony of shippers who showed a very real and legitimate demand for an alternative statewide service provider. For example, Ray Moore, the Lead Contract Manager of Supply Chain for the PeaceHealth hospitals. Like other testifying generators, PeaceHealth desires to contract with “one statewide service provider for the sake of efficiency and cost.”[[11]](#footnote-11) Thus, despite the fact that three PeaceHealth hospitals are located in the WRRA Protestants’ territories,[[12]](#footnote-12) the WRRA Protestants cannot provide a viable alternative to Stericycle’s statewide monopoly. Without that need being met, none of the certificate holders can serve to the satisfaction of the Commission. Waste Management’s burden of proof was met not by operation of law, but by factual evidence.
3. Thus, the Initial Order adheres to the analytic required under RCW 81.77.040. The determination of whether existing service providers are meeting customer needs in satisfaction of the Commission’s expectations was firstly considered, and the conclusion that all of the existing services were unsatisfactory in furthering the Commission’s regulatory objectives was based on factual evidence.

### The Commission Should Reaffirm that Entry Standards for Biomedical Waste Transportation Are Different Than the Ones for Traditional Solid Waste Collection.

1. The WRRA Protestants express concern that certain statements in the section of this narrowly-tailored orderdiscussing whether existing biomedical waste service is being provided to the satisfaction of the Commission could be broadly applied to applications for traditional solid waste collection authority.[[13]](#footnote-13) Waste Management does not interpret the Initial Order as swallowing the general rule and believes the decision by its own terms applies only to the very limited factual situation presented, that is, to Waste Management’s extension of biomedical waste authority. The introductory paragraph of this section of the Initial Order specifically measures satisfactory service “by providers of specialized solid waste collection…,”[[14]](#footnote-14) and refers several times to “bio-hazardous” and “biomedical” waste collection.[[15]](#footnote-15) The holding is based “on this record and under the circumstances presented in this docket….”[[16]](#footnote-16) The WRRA Protestants are unduly fearful.
2. The only precedent interpreting RCW 81.77.040 that is cited in the section of the Initial Order considering satisfactory service consists of prior decisions in biomedical waste applications. Thus, when the Initial Order says, “[a]ccordingly, the Commission will not rely on those prior decisions to make the requisite demonstration in this case,” it is plainly referring to the *Sureway* case from 1993.[[17]](#footnote-17) The “benefits of competition” analysis that weighed into the outcome of the Initial Order is specifically focused on only biomedical waste collection and although some statements taken in isolation might suggest a broad application, the Initial Order cannot fairly be read in this manner.
3. However, to the extent there is any ambiguity about whether competition is grounds for meeting the threshold requirement under RCW 81.77.040 for entry into the conventional solid waste collection market, Waste Management supports the position of the WRRA Protestants. Waste Management, too, does not believe the same standards would or should apply. As the WRRA Protestants acknowledge, the Initial Order perpetuates the Commission’s historic differentiation between biomedical waste collection entry standards and conventional solid waste service.[[18]](#footnote-18) If the Commission determines in the context of administrative review to clarify that point, Waste Management certainly does not object to any such clarification.

## The Commission Properly Exercised Its Discretion to Utilize Controlled Competition as a Regulatory Tool.

1. In the section discussing the relevance of competition to Waste Management’s extension of authority to perform biomedical waste collection services, the Initial Order alludes to other markets and sectors that illustrate the evolution of the Commission’s perspective allowing for greater consumer choice without sacrificing the protections of economic regulation.[[19]](#footnote-19) The Commission’s views about the ability of controlled competition to supplement its regulatory oversight have advanced. On this point, the Initial Order is correct.
2. Although these references were illustrative only, the WRRA Protestants spend a great deal of energy knocking down the relevance of trends in other industry sectors. The WRRA Protestants are particularly bothered by the Initial Order’s citation to the *Dutchman Marine* decision involving commercial ferry certificates.[[20]](#footnote-20) Stericycle, too, argues about the applicability of the references, and in this section of its Answer, Waste Management presents its response to both sets of Protestants on this particular point.
3. The Protestants misinterpret the Initial Order and exaggerate the import of the illustrative examples. First, and perhaps most importantly, the Initial Order did not rest on precedent in the telecommunications or commercial ferry industries. The developments in those industries were referenced in dicta only as examples of controlled competition.
4. Furthermore, the Initial Order did not erroneously characterize the Commission’s evolving view about the potential for controlled competition to supplement its administrative oversight in those other regulated industries. The references were accurate and legitimate allusions to the Commission’s increasing willingness to supplement its authority with limited market forces.
5. Clearly, the Initial Order is not wrong when it notes that introduction of competition into former regulated telecommunications monopoly markets has resulted in consumer benefits. Without eliminating the need for agency oversight, the Commission’s ability to rely on competition to supplement regulation has nonetheless reduced the need for active oversight and proactive enforcement in the telecommunications sector. But the Initial Order does not suggest that biomedical waste should be treated the same and it certainly does not hold that entry into the solid waste market – for traditional *or* specialized services – is or should be subject to the same standards as those applied to telecommunications. The Initial Order is merely illustrating changes that have occurred in regulatory policy as it relates to using controlled competition in other industries.
6. Similarly, the Initial Order cites to a commercial ferry case for the proposition that controlled competition can be one of the Commission’s tools for ensuring that customer demands are met while regulatory goals are furthered. It does not, contrary to the alarmist interpretation taken by the WRRA Protestants, establish “ruinous competition” as a new standard for determining the point at which existing service becomes unsatisfactory to the Commission – not for traditional solid waste entry, not for specialized biomedical waste entry, and not even for commercial ferry entry. The Initial Order was merely describing the regulatory bounds imposed on controlled competition in the cited *Dutchman Marine* commercial ferry case.
7. In the *Dutchman Marine* case, concurrent applications for commercial ferry service on Lake Washington were granted, but the Commission conditioned the overlapping approvals on allowing the authority of each applicant to be perfected by the carrier that first commenced service, saying: “The result was a grant of authority to both applicants. This result enhances diversity of suppliers, affords incentives to begin service, and allows comprehensive service to the public.”[[21]](#footnote-21) Thus, the Commission struck the balance between its supervision of regulated activities and the benefit of limited competition.
8. The fact that the conditions imposed by the Commission on the overlapping authorities granted were intended to ensure that only one of the commercial ferries would be entitled to service once it was perfected is beside the point.[[22]](#footnote-22) The Initial Order does not suggest that *Dutchman Marine* controls the outcome of this proceeding; it is only cited as illustrating the potential for using controlled competition as a tool of regulation. In *Dutchman Marine*, the Commission decided to grant both applications but let competition determine who got which route. In this case, the Initial Order holds that competition is necessary to provide shippers with service that is responsive to their needs. The Commission has discretion to use the “tool” of controlled competition as it sees fit. In *Dutchman Marine*, it was used to incentivize efforts to commence service, and allow comprehensive service to the public. In this case, controlled competition is being used to ensure that statewide biomedical waste shippers have the ability to secure service that meets their specialized needs.
9. In the same paragraph that refers to the evolution of competition in the telecommunications industry and the *Dutchman Marine* decision, the Initial Order concludes, “Even in the context of bio-hazardous waste collection, the Commission has observed that its ‘policy has historically encouraged competition.’”[[23]](#footnote-23) The Commission has expressed its policy reasons for viewing a biomedical waste collection application through a different lens than traditional solid waste collection.[[24]](#footnote-24) In the context of this specialized service, the Commission has consistently maintained that different standards apply.[[25]](#footnote-25) There are good reasons for the Commission to consider using controlled competition to buttress its regulatory oversight of biomedical waste collection.
10. Conventional solid waste collection companies actively solicit regulatory oversight. The public convenience and necessity does not require competition to supplement the Commission’s regulatory policies for traditional haulers. Conventional companies like the WRRA Companies and Waste Management file frequent general rate requests, participate in workshops, provide comments on proposed rules, respond to formal and informal investigations, adjudicate filings, and regularly appear before the Commission in Open Meetings. Moreover, these conventional solid waste service providers file detailed Class A Annual Reports with the Commission.[[26]](#footnote-26)
11. In contrast, the single statewide biomedical waste collection company that exists today operates under the regulatory radar. Stericycle has never filed a general rate request. It has operated under its initial tariff rates since 1993, which remain unchanged today.[[27]](#footnote-27) In 2011, it filed a tariff revision to match product options and rates offered by Waste Management, changing its base tariff rates for the first time in two decades.[[28]](#footnote-28) Otherwise, it has appeared before the Commission only to defend its monopoly.[[29]](#footnote-29) Its annual reports contain only limited financial information.[[30]](#footnote-30) It ignores Commission rules requiring it to provide customers with a document describing the company’s services.[[31]](#footnote-31) It disregards the regulatory obligation of giving new customers a copy of the Commission’s consumer brochure or notifying customers annually of the Commission’s availability to address customer concerns.[[32]](#footnote-32) Apparently, Stericycle does not even inform customers that its services are regulated by the WUTC.[[33]](#footnote-33)
12. In regulating traditional solid waste collection companies, the Commission has no need for competition to supplement its oversight and further its goals of ensuring that consumers have access to collection services at fair, just and reasonable rates, terms and conditions. In the context of biomedical waste collection, however, the benefit of adding a modicum of controlled competition is obvious and justified.[[34]](#footnote-34) When the first applications for biomedical waste collection certificates were considered, and in the time following those initial approvals, the ability of multiple service providers to answer the public’s need for responsive service was assured. Since that time, however, Stericycle’s later-acquired iron-fisted monopoly on statewide services and the limited, regional service of the WRRA Protestants have not been responsive to the legitimate shipper needs. In and of itself, these service and regulatory deficiencies may not rise to the level of *per se* unsatisfactory service, but they evidence the need for controlled competition in the world of biomedical waste collection that is not warranted for traditional solid waste collection companies.

## The Public Need for Responsive Service Outweighs Any Negative Impacts of Waste Management’s Expansion Given the Absence of Persuasive Evidence of Negative Impact on the WRRA Protestants’ Economic Viability.

1. The WRRA Petition alleges an objection to Finding of Fact No. 4, in which the Initial Order stated that Waste Management successfully “demonstrated that the public’s need for a competitive alternative to the existing service providers outweighs those providers’ unsubstantiated claims of an adverse economic impact on their operations.”[[35]](#footnote-35) There is, however, neither argument presented in the WRRA Petition on this objection, nor reference to record evidence relied on to support the WRRA Protestants’ objection. Nonetheless, to the extent the Commission deems the issue to have been presented by the mere assertion of the objection, the Initial Order should be upheld.
2. In considering whether the public convenience and necessity requires the additional operations sought by Waste Management, the Initial Order properly considered whether the public’s needs for responsive service outweigh any negative impacts of the entry of an additional provider on the economic viability of existing carriers.[[36]](#footnote-36) The public need for granting Waste Management’s application was amply demonstrated by the shipper witnesses. Washington waste generators, including those with statewide facilities, currently have no meaningful competition available and it is therefore functionally impossible for the services of the incumbent certificate holders to satisfy the Commission.[[37]](#footnote-37)
3. In alluding to the *Dutchman Marine* decision, the Initial Order does not create a new standard for determining the satisfaction of the Commission by reference to “ruinous competition.” However, under analysis of the public convenience and necessity, the Initial Order properly balances the negative impacts of the entry of an additional provider on the economic viability of existing carriers with the public’s need for responsive service.[[38]](#footnote-38) The Initial Order does not require proof of “ruinous competition,” but it does demand **some** evidence that granting Waste Management’s expansion into the remaining territory will have a “significant impact on the economic viability of the existing companies.”[[39]](#footnote-39) And, once again, the WRRA Protestants obscure whatever arguments they have regarding the avowed objection to the finding made in the Initial Order with criticisms of the analytic approach. In this case, the Initial Order is proper, both in the analysis taken and in the conclusion made: the WRRA Companies failed to provide persuasive evidence that granting Waste Management’s application would affect the economic viability of their operations, negatively or positively.
4. The Commission considers the impact of competition on incumbent service providers purely as a proxy for gauging effective service to the public. Protecting the incumbents, in and of itself, is not a Commission goal. “Consistent with the state’s strong health and safety interest in assuring universal collection and securing service at fair rates, the Commission will consider whether a grant of competing authority would be detrimental to the public because it would jeopardize the viability of existing service.”[[40]](#footnote-40) The Commission has rejected “a test for denial that is measured by adverse effect upon existing carriers’ financial returns.” Rather, “the proper test for public interest [is] whether the entry of an additional carrier, who has demonstrated public need for its services, will result in damage to carriers that causes a reduction to unacceptable levels of available reasonably priced service to consumers*.*”[[41]](#footnote-41)
5. There is no material threat to the viability of any of the WRRA Companies nor is there any evidence that granting Waste Management’s application will cause a reduction of reasonably priced service to consumers – and the WRRA Protestants do not now argue otherwise. The balance must tip without contest in favor of the public’s need for competitive statewide service.
6. It is undisputed that each of the WRRA Companies successfully competed with two contemporaneous statewide RMW service providers, Stericycle and BFI, during the time of controlled competition in the 1990s.[[42]](#footnote-42)
7. Furthermore, the WRRA Companies did not provide persuasive evidence that having to compete with a second statewide provider now will materially threaten their “economic viability” or that competition from Waste Management will cause them to have a base of small, rural accounts.[[43]](#footnote-43) No evidence was offered at the hearing nor is any argument presented in the WRRA Petition as to why this would change in the face of competition from Waste Management.
8. For example, Rubatino Refuse Removal, Inc.’s president Edward Rubatino testified that he already lost the one major RMW generator in his area to Stericycle, leaving a balance of approximately 200 small customers, and that his RMW business already is unprofitable.[[44]](#footnote-44) Murrey’s Disposal, in turn, has never lost one of its large customers to Stericycle and, in fact, is not aware of having lost any customers to Stericycle.[[45]](#footnote-45) Yet, it is undisputed that Murrey’s Disposal is earning substantially more in net operating income than what it is entitled to earn under an acceptable operating ratio and could lose substantial business without creating any material risk to its economic viability.[[46]](#footnote-46) Consolidated Disposal Services already has lost to Stericycle its customers with multi-site locations,[[47]](#footnote-47) and it could lose 35% of its revenue and still be profitable.[[48]](#footnote-48) Pullman Disposal Service, Inc. already has a “very consistent” customer base comprised of small RMW generators and no hospitals,[[49]](#footnote-49) and has not lost any customers to Stericycle.[[50]](#footnote-50) No evidence is offered as to why this would change with competition from Waste Management.
9. In short, the WRRA Companies cannot offer a statewide alternative to Stericycle to satisfy the generators’ need – hence they cannot provide service to the satisfaction of the Commission – and they have not established that competition from Waste Management will create a material risk to their economic viability.

# CONCLUSION

1. The Commission should affirm the Initial Order Granting Application of Waste Management and deny the WRRA Petition. The Initial Order correctly applied the statutory test set forth in RCW 81.77.040 in approving Waste Management’s statewide extension. The Commission properly exercised its discretion to determine its satisfaction with currently-existing service offerings in responding to the legitimate needs of shippers for specialized biomedical waste collection services. The Initial Order does not establish a new or alarming standard for traditional solid waste. Although not necessary, the Commission nonetheless may choose to make the clarification sought by the WRRA Protestants in affirming the Initial Order. To the extent the WRRA Protestants object to the Initial Order granting overlap with the individual WRRA Companies’ certificate rights, that objection should be wholly denied, because the WRRA Petition failed to present any argument or provide evidence of negative impacts to the WRRA Protestants’ economic viability that would in any way outweigh the public’s need for responsive service.

DATED this 8th day of April, 2013.

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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.

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DATED at Seattle, Washington, this 8th day of April, 2013.

Deanna L. Schow

1. Waste Management concurrently has filed an Answer to Stericycle’s petition for administrative review and, to avoid duplication, Waste Management incorporates that Answer herein by this reference. [↑](#footnote-ref-1)
2. RCW 81.77.040; Order 05 ¶ 11. [↑](#footnote-ref-2)
3. The WRRA Protestants do not challenge the Initial Order’s finding in favor of Waste Management’s fitness. [↑](#footnote-ref-3)
4. WRRA Petition ¶ 8. [↑](#footnote-ref-4)
5. WRRA Petition ¶ 11. [↑](#footnote-ref-5)
6. *In re Am. Envt. Mgmt. Corp.*, App No. GA-874, Order M.V.G. No. 1452 at 8 (Nov. 30, 1990). [↑](#footnote-ref-6)
7. “The finding of failure of satisfactory service does not necessarily involve a moral judgment. A carrier may be found unsatisfactory despite providing excellent service to the public within the terms of its certificate if the service does not meet the reasonable requirements of shippers.” *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 2 (Jan. 25, 1993). [↑](#footnote-ref-7)
8. *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 service, such as service refusals, missed pickups or garbage strewn about.”). [↑](#footnote-ref-8)
9. To avoid duplication, Waste Management addresses this point further in its Answer to Stericycle’s Petition for Administrative Review. [↑](#footnote-ref-9)
10. Order 05 ¶ 9. [↑](#footnote-ref-10)
11. Ex. RM-1T at 3. [↑](#footnote-ref-11)
12. Hearing Tr. Vol. VI at 397:23-399:7 (Columbia Basin Hospital in Ephrata, in Protestant Consolidated Disposal Services, Inc.’s territory; Pullman Regional Hospital in Protestant Pullman Disposal Service’s territory; Samaritan Hospital in Moses Lake, in Protestant Consolidated’s territory). [↑](#footnote-ref-12)
13. WRRA Petition ¶¶ 12-19. [↑](#footnote-ref-13)
14. Order 07 ¶ 6 (emphasis in original). [↑](#footnote-ref-14)
15. *Id.* ¶ 15. [↑](#footnote-ref-15)
16. *Id.* ¶ 16. [↑](#footnote-ref-16)
17. *Id.* ¶ 15. [↑](#footnote-ref-17)
18. WRRA Petition ¶ 13. [↑](#footnote-ref-18)
19. Order 07 ¶¶ 11-12. [↑](#footnote-ref-19)
20. *In re Dutchman Marine, LLC and Seattle Harbor Tours, Ltd. P’ship*, Docket Nos. TS-001774 & TS-002055, First Supplemental Order – Initial Order Granting Applications with Conditions (Sep. 19, 2001) and Second Supplemental Order – Commission Decision and Order Affirming Initial Order Granting Applications with Conditions (Oct. 19, 2011). [↑](#footnote-ref-20)
21. *In re Dutchman Marine , LLC and Seattle Harbor Tours Ltd, P’ship*, Docket No. TS-001774 & TS-002055, Second Supplemental Order – Commission Decision and Order Affirming Initial Order Granting Applications with Conditions at 1 (Oct. 19, 2011). The argument by the WRRA Protestants regarding erroneous references to the initial order of *Dutchman Marine* is somewhat baffling. Admittedly, if an initial order becomes final by operation of law, then it has no precedential value. WAC 480-07-825(7). That does not appear to be what happened in the *Dutchman Marine* case. Under the WUTC rules, an initial order becomes final by agency action whenever “the Commissioners enter an order after the period available for petitions for administrative review and no such petition has been filed.…” WAC 480-07-820(b)(iii). In the *Dutchman Marine* case, the Second Supplemental Order recites that no timely petition was filed and the Order was entered over the signature of all three Commissioners. The Commissioners “affirmed and adopted” the initial order, which is also contemplated by rule for a final order. WAC 480-07-825(9). As noted by the WRRA Protestants, the Second Supplemental Order was not the Commission “Standard Notice of Finality,” and did not include the standard statement that the “Commission does not endorse the order’s reasoning and conclusions.” WRRA Petition n.15. Indeed, it includes a recitation that “This is a final order of the Commission.” Waste Management can only assume that citation to the analysis in the Dutchman Marine initial order is proper. The allegations of error on this point are mistaken – albeit irrelevant because the *Dutchman Marine* case was cited in the Initial Order for illustrative purposes and not for precedential authority. [↑](#footnote-ref-21)
22. Stericycle’s Petition for Review ¶ 83. [↑](#footnote-ref-22)
23. Initial Order ¶ 11 (quoting *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 16-17 ( Nov. 30, 1990) (“The Commission is not ready to say that grant of one application for statewide authority would preclude a grant of others, and will consider this element in future proceedings.”)). Stericycle would prefer the outcome in this case to rest on the Commission’s report to the legislature predicated by litigation involving ferry service on Lake Chelan rather than consider the Commission’s own, recent findings about the need for competition in biomedical waste collection services. Stericycle’s Petition ¶¶ 85-86 (“The only other source cited for the purposed Commission policy in favor of competition is a single sentence in a final order resolving motions for summary determination in *Stericycle v. Waste Management*,….”). It fails to mention that in that litigation that culminated in the ostensibly irrelevant and isolated statement, Stericycle itself urged the Commission to require that Waste Management perform statewide authority. *In re Pet’n of Stericycle of Wash., Inc.*, Docket TG-110287, Pet’n of Stericycle of Wash. ¶ 3 (Feb. 10, 2011) (requesting that the Commission “condition[] approval of any tariff filed by Waste Management for biomedical waste collection and transportation services on the successful prosecution by Waste Management of an application for statewide biomedical waste collection authority”). [↑](#footnote-ref-23)
24. *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) (The Commission “recognized that its regulation of this specialized service is underpinned by different policies than the ones applicable to traditional solid waste collection ….”). [↑](#footnote-ref-24)
25. To avoid duplication, Waste Management addresses this point further in its Answer to Stericycle’s Petition for Administrative Review. [↑](#footnote-ref-25)
26. *See* Ex. MAW-22. [↑](#footnote-ref-26)
27. It has filed twice to add new rates, but has not otherwise changed its basic rates. *See, e.g.,* Stericycle of Washington, Inc. Docket No. TG-011370 (December 1, 2001) (minimum charges) and Docket No. TG-081200 (August 11, 2008) (charges for incinerating pharmaceuticals). [↑](#footnote-ref-27)
28. Order ¶13; Stericycle of Wash., Inc., Docket No. TG-111023 (June 13, 2011). [↑](#footnote-ref-28)
29. WM Healthcare Solutions of WA – Tariff No. 2 (effective April 6, 2011), Docket TG‑110552 (The Commission allowed Waste Management’s tariff to go into effect by operation of law.); *Stericycle v. Waste Mgmt.*, Docket TG‑110553, Order 02 (July 13, 2011) (The Commission rejected Stericycle’s allegations that Waste Management had abandoned its biomedical waste authority under Certificate G 237, and its requests for the Commission to order Waste Management to get statewide authority from the Commission before allowing it to collect biomedical waste, and dismissed the complaint.); *Stericycle* *v. Waste Mgmt.*, Docket TG‑121597 (Complaint by Stericycle filed October 1, 2012, and now pending before the Commission.). [↑](#footnote-ref-29)
30. *See* Ex. MAW-9. [↑](#footnote-ref-30)
31. WAC 480‑70‑361(7)‑‑; Hearing Tr. Vol. VI at 448:1-11 (Lycan); *id.* at 484:19-486:19-23 (Patschkowski). [↑](#footnote-ref-31)
32. WAC 480‑70‑386(a)‑‑; Hearing Tr. Vol. VI at 448:1-11 (Lycan); *id.* at 484:19-486:19-23 (Patschkowski). [↑](#footnote-ref-32)
33. Hearing Tr. Vol. VI at 448:1-11 (Lycan); *id.* at 484:19-486:19-23 (Patschkowski). [↑](#footnote-ref-33)
34. Charles S. Phillips, Jr. The Regulation of Public Utilities, Ch. 12 (it is sound regulatory policy to favor the introduction of an element of competition where its operative effect will tend to promote the public interest); *see also* Nelson Lee Smith, The Federal Power Commission and Pipeline Markets: How Much Competition?, 68 Columbia Law Review 664 (1968). [↑](#footnote-ref-34)
35. Order 07 ¶ 31; WRRA Petition ¶ 4. [↑](#footnote-ref-35)
36. Order 05 ¶ 10. [↑](#footnote-ref-36)
37. *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1596 at 12 ( Jan. 25, 1993) (The Commission concluded that “single carrier service is a reasonable shipper need ….”). [↑](#footnote-ref-37)
38. Order 05 ¶ 11; Order 07 ¶¶ 17-22. [↑](#footnote-ref-38)
39. Order 07 ¶18. [↑](#footnote-ref-39)
40. *In re Sureway Med. Servs., Inc.*, App. No. GA-75968, Order M.V.G. No. 1663at 11 (Nov.19, 1993) (emphasis added). [↑](#footnote-ref-40)
41. *In re Ryder Distribution Resources, Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 14 (Aug. 11, 1995) (emphasis added). [↑](#footnote-ref-41)
42. Ex. MAW-4T at 15-19; Hearing Tr. Vol. VIII at 812:18-813:2. [↑](#footnote-ref-42)
43. Order 05 ¶ 11. [↑](#footnote-ref-43)
44. Hearing Tr. Vol. VIII at 813:3-7, 814:9-815:1, 816:24-817:5. [↑](#footnote-ref-44)
45. *Id.* at 823:15-825:19. Murrey’s Disposal is a subsidiary of Waste Connections, Inc., *id.* at 823:7-10, a publicly traded corporation (http://www.wasteconnections.com/company/about-us.aspx) “with, literally, billions of dollars to spend.” WRRA Protestants’ Post-Hearing Brf. at 5:9. [↑](#footnote-ref-45)
46. Ex. MAW-4T at 16-17; Ex. MAW-14. [↑](#footnote-ref-46)
47. Hearing Tr. Vol. VIII at 837:8-838:2. [↑](#footnote-ref-47)
48. Hearing Tr. Vol. VIII at 840:3-13. [↑](#footnote-ref-48)
49. Hearing Tr. Vol. VII at 708:4-14, 709:1-16. [↑](#footnote-ref-49)
50. *Id.* at 709:20-21. [↑](#footnote-ref-50)