

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of)	DOCKET TG-120033
)	
WASTE MANAGEMENT OF)	
WASHINGTON, INC. D/B/A WM)	ORDER 10
HEALTHCARE SOLUTIONS OF)	
WASHINGTON)	
)	FINAL ORDER DENYING
For an Extension of Certificate G-237)	PETITIONS FOR REVIEW OF
for a Certificate of Public Convenience)	ORDER 07 AND GRANTING
and Necessity to Operate Motor)	APPLICATION
Vehicles in Furnishing Solid Waste)	
Collection Service)	
.....)	

BACKGROUND

- 1 On December 30, 2011, Waste Management of Washington, Inc. (Waste Management or Company), filed with the Washington Utilities and Transportation Commission (Commission) an application for an extension of authority under its Certificate G-237.¹ The Company requests authority to provide solid waste collection service on a statewide basis for biomedical waste produced in Washington. Stericycle of Washington, Inc. (Stericycle) and other currently certificated companies operating within the additional territory Waste Management seeks to serve² filed protests against Waste Management’s application.

- 2 All parties submitted prefiled testimony in support of their respective positions. The Commission conducted evidentiary hearings on December 3-6, 2012, and the parties filed post-hearing opening and response briefs in January 2013.

¹ This certificate is held by Waste Management of Washington, Inc., d/b/a WM Healthcare Solutions of Washington.

² Washington Refuse and Recycling Association (WRRRA), Rubatino Refuse Removal, Inc. (Rubatino), Consolidated Disposal Services, Inc. (Consolidated), Murrey’s Disposal, Inc. (Murrey’s) and Pullman Disposal Services, Inc. (Pullman), filed jointly. We refer to these joint parties as the “WRRRA” or “WRRRA companies” for convenience.

3 On February 14, 2013, the Commission entered Order 07, Initial Order Granting Application (Initial Order or Order 07). Stericycle and WRRRA timely petitioned for administrative review of Order 07 seeking reversal of that order.³ Waste Management opposes the petitions.⁴ Staff filed an answer to the petitions but did not take a position on their merits.

4 Polly L. McNeil and Jessica Goldman, Summit Law Group, PLLC, Seattle, Washington, represent Waste Management. Stephen B. Johnson and Jared Van Kirk, Garvey Schubert Barer, Seattle, Washington, represent Stericycle. James K. Sells, Attorney at Law, Gig Harbor, Washington, and David Wiley, Williams Kastner, Seattle, Washington, represent WRRRA, Rubatino, Consolidated, Murrey's and Pullman. Steven W. Smith, Assistant Attorney General, represents Commission Staff (Staff).⁵

DISCUSSION AND DECISION

5 The Commission affirms and adopts Order 07, including its findings of fact and conclusions of law, as the Commission's own order, and we provide further discussion to address more fully the issues raised in the petitions for administrative review. Those issues include whether (1) Order 07 is contrary to the language and long-standing Commission interpretation of RCW 81.77.040 governing the circumstances in which the Commission may grant overlapping solid waste collection authority; and (2) Waste Management failed to provide sufficient evidence to support its application.⁶ We conclude based on our statutory interpretation and the record evidence that Order 07 properly reflects the intent of prior Commission decisions

³ Stericycle's Petition for Review of Initial Order Granting Application (Stericycle Petition); WRRRA Petition for Administrative Review of Initial Order No. 7 (WRRRA Petition).

⁴ Waste Management's Answer to Stericycle's Petition for Review of Initial Order Granting Application (WM Answer to Stericycle); Waste Management's Answer to Petition for Administrative Review of Initial Order No. 7 on Behalf of WRRRA (WM Answer to WRRRA).

⁵ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the presiding administrative law judge (ALJ) or the Commissioners make the decision. To assure fairness, the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

⁶ Neither Stericycle nor WRRRA seek review of the finding and conclusions in Order 07 related to Waste Management's financial and operational fitness or to the public convenience and necessity balancing test, and accordingly those issues are not before us.

determining when existing carriers will provide service to the satisfaction of the Commission, and that order is consistent with the statute, current conditions in the biomedical waste collection market, and the public interest. We also find that substantial evidence supports the Company's application.

RCW 81.77.040 Does Not Create a Legislative Presumption for Monopoly Service but Grants the Commission Discretion to Authorize the Appropriate Number of Biomedical Waste Collection Service Providers.

- 6 When a company seeks a certificate of public convenience and necessity to operate as a solid waste collection company in a territory that is already served by another certificated company, the Commission may “issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission.”⁷ According to Stericycle, “It has long been recognized that chapter 81.77 RCW establishes a legislative presumption in favor of exclusive service territories,”⁸ the purpose of which “is to protect existing certificate holders from competition” unless “the services offered by the incumbent carrier are flawed or deficient in some particular way.”⁹ WRRRA similarly contends that “an applicant in either a biomedical waste case or any solid waste case still must first demonstrate that the incumbent is not providing satisfactory service.”¹⁰
- 7 We do not construe the statutory language to be as confining as Stericycle and WRRRA argue. To issue a certificate to an additional service provider, the Commission must find that the existing “company *or companies* serving the territory will not provide service to the satisfaction of the commission.” (Emphasis added.) The legislature obviously contemplated that more than one company could serve a particular territory, and thus RCW 81.77.040 cannot be interpreted to establish a presumption of a single monopoly provider. A plain reading of the language, moreover, indicates that *any* lack of Commission satisfaction with how the incumbent company provides service – not just with “flawed” or “deficient” service – would justify authorizing an additional provider.
- 8 The legislature knew how to confine the Commission's inquiry to service quality provided by a single provider if it had intended to do so. The statutory provision

⁷ RCW 81.77.040.

⁸ Stericycle Petition ¶ 30 (emphasis in original).

⁹ *Id.* ¶ 32.

¹⁰ WRRRA Petition ¶ 9.

limiting competitive entry for ferry service, for example, states that the Commission may not grant a new entrant such authority “unless the existing certificate holder has failed or refused to furnish reasonable and adequate service.”¹¹ We interpret as intentional the difference in the comparable language in these two sections of RCW Chapter 81 and construe RCW 81.77.040 accordingly. The legislature did not create a “presumption” of monopoly or limit competitive entry to instances of service failures in that section. Rather, it has given the Commission discretion to determine the appropriate number of solid waste collection service providers who should be authorized to operate within a particular service territory consistent with the public interest.¹²

- 9 Stericycle and WRRRA nevertheless contend that the Commission has always stated a preference for monopoly provision of solid waste collection service¹³ in the absence of “a strong showing of serious, pervasive, and persistent service failures affecting a significant number or proportion of the customers in an application territory.”¹⁴ Stericycle also asserts that the Commission has repeatedly and recently reaffirmed this interpretation.¹⁵ More specifically for biomedical waste collection, the protestants argue that the Commission has consistently refused to grant competitive entry without “a factual showing that the services provided by existing certificated carriers are insufficient to meet the specialized needs of biomedical waste

¹¹ RCW 81.84.020.

¹² See *Pacific NW Transp. Servs. v. WUTC*, 91 Wn. App. 589, 597, 959 P.2d 160 (1998) (interpreting the same language in RCW 81.68.040 as not specifying how the Commission is to make the determination of whether the existing companies will not provide service to the satisfaction of the Commission).

¹³ Stericycle also states that “*Washington courts* and the Commission have consistently recognized” that RCW 81.77.040 reflects a strong legislative preference for monopoly provision of solid waste collection service. Stericycle Petition ¶ 31 (emphasis added). Stericycle’s sole citation of authority for that proposition is an unpublished decision by the Washington Court of Appeals. State court rules prohibit a party from citing as an authority an unpublished opinion of the Court of Appeals. GR 14.1. Although those rules do not prohibit us from considering unpublished opinions, we are disinclined to give any significant weight to opinions that the courts themselves will not consider. Thus we consider Stericycle’s characterization of Washington courts’ position on this issue as unsupported.

¹⁴ Stericycle Petition ¶ 46.

¹⁵ *Id.* ¶ 74.

generators.”¹⁶ Again, however, the Commission is not as constrained as Stericycle and WRRRA assert.

10 Stericycle in particular loses sight of the distinction between neighborhood solid waste collection, where monopoly service is generally in the public interest, and collection of biomedical waste, which lacks the same attributes of a “natural monopoly.” The Commission has long differentiated the regulatory approaches to each of these two types of service:

[T]he Commission believes that in the context of neighborhood solid waste collection, the statute contemplates an exclusive grant of authority as the best and most efficient way of serving all customers in a given service territory. In this general context, it is assumed that all or most people and businesses in a given territory are also customers needing garbage service. Under these circumstances, an exclusive grant of authority in a given service territory promotes service, efficiency, consistency and is generally in the public interest.

The collection of medical waste is quite a different situation. Customers are only a small percentage of the total business in any given territory. The applicants for medical waste authority wish to serve the entire state or large portions of the state. The entire operation more closely resembles that of a motor freight common carrier with statewide authority than that of a typical garbage company. . . . [W]hile sound policy and economic reasons exist in favor of exclusive authority for typical residential or commercial collection in a specific territory, those reasons are less compelling in this new, specialized area. The Commission is not ready to say that a grant of one application for statewide authority would preclude a grant of others, and will consider this element in future proceedings.¹⁷

¹⁶ *Id.* ¶ 47.

¹⁷ *In re Application GA-868 of Sureway Incineration, Inc.*, Order M.V.G. No. 1451 at 16-17 (Nov. 30, 1990); accord, e.g., *In re Ryder Distribution Resources, Inc.*, Order M.V.G. No. 1596 at 5-6 (Jan. 25, 1993); *In re Sureway Medical Services, Inc.*, Order M.V.G. No. 1663 at 9 (Nov. 9, 1993).

Accordingly, the Commission has observed that its “policy has historically encouraged competition” in the context of biomedical waste collection,¹⁸ while maintaining a single provider for neighborhood solid waste collection.¹⁹

11 We acknowledge that the Commission stated in the early 1990’s “that mere desire for a backup carrier in the event of possible discontinuance of, or deterioration in, existing service, or mere preference for competition, does not demonstrate a need for an additional carrier.”²⁰ Staff correctly points out, however, that “stare decisis plays a more limited role in the administrative agency context and, of course, administrative agencies can change their positions” subject to explaining the “reasons for a departure from prior conclusions.”²¹ Order 07 provides just such an explanation.²²

12 We further observe that the development of competition in former monopoly utility markets was only just beginning in Washington in the late 1980’s and early 1990’s. Due to a lack of experience with the impacts of allowing more than one company to provide service, the Commission was properly cautious and limited competitive entry to demonstrated instances in which multiple providers would serve consistent with the public interest. The Commission thus required that a new entrant in the biomedical waste collection market be willing and able to provide service that was not being

¹⁸ *Stericycle v. Waste Management*, Docket TG-110553, Order 02, Final Order on Cross-Motions for Dismissal and Summary Determination ¶ 37 at 16 (July 13, 2011).

¹⁹ WRRRA professes concern that Order 07 could be construed to justify re-examination of competitive entry into neighborhood solid waste collection service. We find no basis for such concern in the language or intent of Order 07 but clarify that in this proceeding, we address only how the Commission determines whether existing companies will provide service to the satisfaction of the Commission in the context of biomedical waste collection service.

²⁰ *In re Application GA-75968 of Sureway Medical Services, Inc.*, Order M.V.G. No. 1674 at 4-5 (Dec. 17, 1993).

²¹ Staff’s Answer to Petitions for Review ¶ 6. Stericycle, however, argues that the legislature effectively endorsed the Commission prior interpretation of RCW 81.77.040 when amending the statute in 2005 to add “or if the existing solid waste collection company does not object” without making any other changes. Stericycle Petition ¶ 75. We do not share Stericycle’s view that this amendment reflects a legislative “revisiting” of the Commission’s interpretation of the discretion granted in the statute, much less a restriction on the Commission’s ability to continue to exercise that discretion as it sees fit.

²² Stericycle also repeatedly criticizes Order 07 for departing from the legal analysis in Order 05. An interim order, however, is not binding on the presiding administrative law judge (ALJ) or on the Commission. Order 05 merely reflects the ALJ’s preliminary view of the Commission’s prior interpretation of RCW 81.77.040, and the Commission finds nothing irregular or improper in the initial order making a different determination following development of the evidentiary record and post-hearing briefing.

provided in the requested territory as determined by the needs of the customers of that specialized service.

- 13 Twenty years later, the Commission has greater experience and comfort with competition in certain utility markets. Biomedical waste collection “has evolved into a highly competitive industry as a result of the Commission interpreting RCW 81.77.040 consistently with the unique requirements and attributes of the service.”²³ Stericycle currently competes with another certificated company to provide such service throughout the vast majority of the state – including with Waste Management for the last two years in territory that includes 80 percent of the generators in Washington²⁴ – without any adverse impact on the companies’ economic viability or ability to provide service. To the contrary, Waste Management’s re-entry into the biomedical waste collection market in the Company’s existing solid waste collection service territory has resulted in demonstrated benefits to consumers without detriment to Stericycle’s revenues or customer count.²⁵
- 14 Under at least these circumstances, the Commission finds that its application of the statutory provisions authorizing additional entry into the biomedical waste collection market is not limited to circumstances of inadequate service. We conclude that an applicant can also demonstrate that the existing companies will not provide service to the satisfaction of the Commission by proving that (1) generators of biomedical waste have an unmet need for an effective competitive alternative to the incumbent service providers, and (2) the new entrant will enhance the effectiveness of competition in the marketplace.
- 15 We view this conclusion as less of a change to the Commission’s determinations two decades ago than as an adaptation of regulation to the realities of the market. Existing biomedical waste collection companies will not provide service to the satisfaction of the Commission if the consumers of that specialized service need, and an additional company can provide, an effective competitive alternative. We continue to adhere to the statement Stericycle quotes from the Commission’s 2010 report to the legislature that “[t]he rate and service regulations applicable to [ferry, garbage collection, and

²³ *In re Petition of Staff for a Declaratory Ruling*, Docket TG-970532, Declaratory Order at 11 (Aug. 14, 1998). Stericycle’s claim that RCW 81.77.040 protects monopoly providers from competition thus not only lacks support in the statutory language but ignores the reality of the industry.

²⁴ WM Answer to Stericycle ¶ 4.

²⁵ *E.g.*, Norton, Exh. No. JN-1T; *see* WM Answer to Stericycle ¶¶ 46-55 (summarizing evidence of competitive benefits); Waste Management Post-Hearing Brief ¶¶ 26-33 (same).

bus] industries are intended to provide a surrogate for the pricing discipline that would be exerted by a competitive marketplace.”²⁶ But where competition can or does exist, as in the biomedical waste collection industry, regulation should ensure that consumers reap the benefits of multiple service providers by encouraging an effectively competitive marketplace.²⁷ We will not use the statute to shield incumbent companies from the greater service option availability and pricing discipline that such a marketplace is intended to exert.

Substantial Record Evidence Supports Waste Management’s Application for Statewide Biomedical Waste Collection Authority.

16 Waste Management provided the testimony of eight generator witnesses, seven of whom testified to the need for a competitive alternative to the biomedical waste collection services they currently receive in the additional areas the Company proposes to serve.²⁸ Waste Management also presented un rebutted evidence that since resuming biomedical waste collection service within its current solid waste collection footprint, the Company has introduced new product options at lower prices, and Stericycle has responded by offering those same products and matching Waste Management’s prices.²⁹ This evidence demonstrates both an unmet consumer need for a competitive alternative to the existing service providers and that Waste Management has enhanced, and likely will continue to enhance, the effectiveness of competition in the biomedical waste collection market in Washington.

²⁶ Stericycle Petition ¶ 35 (quoting WUTC, *Appropriateness of Rate and Service Regulation of Commercial Ferries Operating on Lake Chelan: Report to the Legislature Pursuant to ESB 5894* at 11 (Jan. 14, 2010)).

²⁷ Stericycle and WRRRA criticize references in Order 07 to the circumstances and Commission policy on competition in the telecommunications and commercial ferry industries. Stericycle Petition ¶¶ 69-72 & 78-85; WRRRA Petition ¶¶ 20-27. Those references, however, simply illustrate that in circumstances where competition can be more effective than regulation, the Commission has allowed market forces to discipline utility service providers to the extent the Commission has the legislative authority to do so. The Commission bases its determination in this proceeding on its interpretation of the applicable statute and the record evidence, and thus we need not address the protestants’ views on the applicability of statutes and Commission decisions rendered in the context of other industries.

²⁸ Sell, Exh. No. JS-1T; Johnson, Exh. No. TJ-1T; Longhenry, Exh. No. JL-1T; Moore, Exh. No. RM-1T; Warner, Exh. No. DW-1T; Lycan, Exh. No. RL-1T; Patshkowski, Exh. No. CP-1T.

²⁹ *E.g.*, Norton, Exh. No. JN-1T; *see* WM Answer to Stericycle ¶¶ 46-55 (summarizing evidence of competitive benefits); Waste Management Post-Hearing Brief ¶¶ 26-33 (same).

- 17 Stericycle argues that this evidence is insufficient on several grounds: (1) “No generator testified that their preference for competition had any relationship to any specialized requirement associated with biomedical waste collection”;³⁰ (2) “only seven witnesses representing generators in the application territory (out of some 8,000 Washington biomedical waste generators) offered any testimony on the issue of competition and all simply expressed a generic preference for competition”;³¹ and (3) “the generator witnesses merely speculated about the perceived benefits of competition in a rate-regulated market without any basis in professional knowledge or experience.”³² None of these arguments undermine the sufficiency of Waste Management’s evidence.
- 18 The Commission has previously stated that “[t]he satisfactory nature of service by providers of specialized solid waste collection services is measured according to the specialized needs of customers.”³³ While these needs can be technical, other needs arise out of generators’ general business operations, including liability concerns and obtaining service from a single carrier statewide.³⁴ A need for an alternative service provider similarly can derive from a generator’s business experience, and Waste Management’s witnesses testified to that connection.³⁵ We give substantial weight to such testimony because generators are in the best position to evaluate the needs of their business, and we find no basis to depart from such deference simply because the need is for an alternative source of supply, rather than technical requirements.
- 19 Nor are we concerned that Waste Management presented testimony from “only” seven generator witnesses in the areas covered in the Company’s application. Most of those witnesses represent large entities or associations that have statewide operations or membership,³⁶ and the territory Waste Management proposes to serve represents

³⁰ Stericycle Petition ¶ 61.

³¹ *Id.* ¶ 63.

³² *Id.* ¶ 65.

³³ *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 11 (Jan. 25, 1993) (emphasis in original).

³⁴ *Id.* at 11-12.

³⁵ Sell, Exh. No. JS-1T & TR at 218:16-23; Johnson, Exh. No. TJ-1T & TR at 237:24 through 238:3; Longhenry, Exh. No. JL-1T; Moore, Exh. No. RM-1T & TR at 395:19 through 396:6; Warner, Exh. No. DW-1T; Lycan, Exh. No. RL-1T & TR at 438:18 through 439:4; Patshkowski, Exh. No. CP-1T & TR at 480:23 through 481:3.

³⁶ *See* Sell, Exh. No. JS-1T (Olympic Medical Center and clinics); Johnson, Exh. No. TJ-1T; Longhenry, Exh. No. JL-1T; Moore, Exh. No. RM-1T (PeaceHealth); Warner, Exh. No. DW-1T

just 20 percent of the generators in the state.³⁷ We find the number of witnesses and the nature of the organizations they represent to be sufficient to demonstrate a substantial need in the proposed service territory for a competitive alternative to the biomedical waste collection services that are presently available.³⁸

20 Finally, we do not find it necessary to require the generator witnesses to have advanced degrees or training in economics to opine on the potential benefits of effective competition for their organizations. All of Waste Management's generator witnesses are experienced business professionals who are responsible for contracting for biomedical waste collection and other services and as such, have a credible basis for testifying on the need for a competitive alternative.

21 Consumer need, however, is only part of the inquiry. Contrary to the fears that Stericycle and WRRRA profess, the Commission will not authorize additional competitors solely for the sake of competition. An applicant proposing to fill an unmet need must demonstrate that its service will, in fact, fill that need. In the case of a need for a competitive alternative, the applicant must provide substantial evidence to prove that its entry into the market will likely result in consumer benefits from more effective competition than currently exists.

22 Waste Management provided such evidence, which neither Stericycle nor WRRRA contests. Stericycle, however, claims that "the Initial Order's reliance on price competition to justify approving overlapping services is fundamentally inconsistent with the statutory scheme of chapter 81.77 RCW" and "is improper under at least

(Washington State Dental Association); Lycan, Exh. No. RL-1T (Pathology Associates Medical Laboratories); Patshkowski, Exh. No. CP-1T (Providence Medical Group).

³⁷ See WM Answer to Stericycle ¶ 4. Although we do not engage in the numbers game Stericycle proposes, we note that on a percentage basis, Waste Management presented more generator witnesses in support of its application than Stericycle presented when it sought statewide authority. See *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1761 at 16-19 (Aug. 9, 1995) (summarizing the testimony of 25 witnesses in support of the application, not all of whom established a need for the proposed service).

³⁸ We also do not agree that the generator witnesses were not sufficiently specific in expressing a desire for Waste Management to provide the needed competitive alternative. Generator testimony establishes the need for service, not necessarily the company that they believe will satisfy that need. Even were that not the case, the fact that these witnesses testified on behalf of Waste Management is a strong indication of their belief that the Company's expansion of services will meet their stated needs. Indeed, at least two of the witnesses testified that their organizations would switch their services to Waste Management if the Commission grants the application. Lycan, Exh. No. RL-1T at 4; Patshkowski, Exh. No. CP-1T at 4.

three lines of Commission precedent that the Initial Order does not challenge or even acknowledge.”³⁹ Stericycle misconstrues the findings and conclusions in Order 07.

23 We do not base our decision on any prices that Waste Management proposes to charge for biomedical waste collection service. Rather, the undisputed evidence that Stericycle lowered its prices in response to competition demonstrates that Waste Management’s activities in the biomedical waste market have exerted pricing discipline, one of the benefits of effective competition the generators seek.⁴⁰ This evidence, along with evidence that Stericycle began to offer additional service options to match Waste Management’s products, demonstrates that the Company is able and willing to provide an effective alternative to the existing service providers and thus to meet generators’ needs for such an alternative.⁴¹

24 We also disagree with the assertion that “chapter 81.77 RCW imposes direct regulation of carrier rates by the Commission as an alternative to price competition.”⁴² Stericycle obviously misunderstands the language it twice quotes and emphasizes from the Commission’s 2010 report to the legislature that regulation under Title 81 is “intended to provide a surrogate for the pricing discipline that would be exerted by a competitive marketplace.”⁴³ The Commission by necessity regulates pricing for regulated services where no competitive market exists to exert pricing discipline. In appropriate circumstances, however, the Commission encourages effective competition as a means of at least augmenting rate regulation with the pricing

³⁹ Stericycle Petition ¶ 90.

⁴⁰ Contrary to Stericycle’s characterization of the record evidence in paragraph 94 of its petition, most of the generator witnesses testified that their need for a competitive alternative is driven, at least in part, by a desire for better pricing for the services they receive. Sell, Exh. No. JS-1T at 3; Johnson, Exh. No. TJ-1T at 3; Moore, Exh. No. RM-1T at 4; Warner, Exh. No. DW-1T at 3; Lycan, Exh. No. RL-1T at 4; Patshkowski, Exh. No. CP-1T at 4.

⁴¹ Stericycle misses the point by complaining that this evidence was presented by a Company witness, rather than from generators. Generators testify concerning their needs. The applicant must provide testimony and its own evidence to establish the nature and effectiveness of the applicant’s service offerings intended to meet those needs. Waste Management thus properly relied on Company witnesses to demonstrate that it will provide an effective alternative to the existing service providers.

⁴² Stericycle Petition ¶ 91.

⁴³ *Id.* (quoting WUTC, *Appropriateness of Rate and Service Regulation of Commercial Ferries Operating on Lake Chelan: Report to the Legislature Pursuant to ESB 5894* at 11 (Jan. 14, 2010)) (emphasis added by Stericycle); *accord id.* ¶ 35.

constraints of market forces. Such an approach is fully consistent with RCW 81.77 in the context of biomedical waste collection.

25 WRRRA, on the other hand, contends that “as to the WRRRA Companies, not only was there no showing of unsatisfactory service, there was not even a concerted attempt to do so.”⁴⁴ The evidence of generator needs for a competitive alternative and Waste Management’s ability to fill that need is not specific to Stericycle but applies equally to all existing companies. As noted above, moreover, the generator witnesses include representatives of organizations with operations in multiple areas who also need a single provider for all of their locations statewide, which Waste Management proposes to provide.⁴⁵ The WRRRA Companies do not offer such service and thus will not provide service to the satisfaction of the Commission.

26 WRRRA asserts that “[t]here is no solid waste precedent of which the Protestants are aware which would somehow require a permit holder to propose to expand service outside its territory in order to meet the initial satisfactory service requirement.”⁴⁶ The Commission, however, has previously adopted just such a requirement:

The initial order also found that single carrier service is a reasonable shipper need, and that existing carriers failed to operate to the Commission’s satisfaction because, with limited local territories, they could not provide that service. The Commission Staff argues that we cannot find that a carrier will not serve to the Commission’s satisfaction when the carrier’s permit is limited against the service in question. Staff argues that such a finding would imply that the carrier must operate illegally in order to satisfy the Commission. We reject that interpretation.

Operation to the Commission’s satisfaction does not necessarily involve a moral element. *If limitations in the carrier’s permit preclude it from meeting public needs, the Commission cannot find service*

⁴⁴ WRRRA Petition ¶ 9.

⁴⁵ See Moore, Exh. No. RM-1T at 2-3 (PeaceHealth owns or contracts with multiple hospitals across the state and “prefers to have one statewide service provider for the sake of efficiency and cost”); Lycan, Exh. No. RL-1T at 3-4 (Pathology Associates Medical Laboratories “has approximately 60 laboratory facilities throughout the state of Washington” and “desires to have a single contact with one RMW service provider for the sake of efficiency, pricing, and customer service”).

⁴⁶ WRRRA Petition ¶ 10.

satisfactory. Finding lack of satisfaction does not cast the existing carrier as “bad”. *The carrier’s remedy is to stay abreast of its customers’ requirements and to seek authority to meet them*. If the reverse were true, the Commission would have to deny applications for needed service that no existing carrier can provide – a result that is inconsistent with the laws we are charged with implementing.⁴⁷

- 27 We continue to adhere to this interpretation. The record confirms that single carrier service on a region-wide or statewide basis is a biomedical waste generator need, and if an existing company will not provide that service, for whatever reason, that company will not provide service to the satisfaction of the Commission for purposes of authorizing an additional provider under RCW 81.77.040. The WRRRA Companies are not providing service outside of their local solid waste collection service territory and obviously cannot provide a competitive alternative to Stericycle’s provision of statewide single carrier service. Accordingly, the WRRRA Companies will not provide service to the satisfaction of the Commission in this regard.
- 28 Waste Management, on the other hand, proposes to expand its existing biomedical solid waste collection service to cover the entire state, and the Company is aware that along with the authority to provide this service statewide comes the *obligation* to serve statewide. Waste Management thus is pursuing the Commission-prescribed course of action “to stay abreast of its customers’ requirements and to seek authority to meet them.”⁴⁸ We will not lightly deny an existing company the opportunity to implement the very remedy we have established for ensuring the company will provide service to the satisfaction of the Commission, and we will not do so here.
- 29 We conclude, therefore, that Waste Management has produced substantial evidence sufficient to demonstrate that the existing certificated companies will not provide service to the satisfaction of the Commission in the areas the Company seeks to serve. Stericycle and WRRRA do not seek review of the other findings and conclusions in Order 07 that support granting the Company’s application. The Commission, therefore, grants the application.

⁴⁷ *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 12 (Jan. 25, 1993) (emphasis added).

⁴⁸ *Id.*

ORDER

THE COMMISSION ORDERS that

- 30 (1) The petitions for administrative review of Order 07 are DENIED.
- 31 (2) The application of Waste Management of Washington, Inc., for an extension of authority under Certificate G-237 to provide statewide biomedical waste collection service is GRANTED.

Dated at Olympia, Washington, and effective July 10, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.