

**MEMORANDUM**

August 8, 2013

TO: Chairman Danner  
Commissioner Goltz  
Commissioner Jones  
Steve King  
Mark Vasconi  
Greg Kopta (w/attachments)  
Sally Brown (w/attachments)  
Marilyn Meehan  
Gene Eckhardt

FROM: Lisa Wyse, Records Center

SUBJECT: Stericycle of Washington, Inc., a Washington Corporation v.  
Washington Utilities and Transportation Commission, an Agency of  
the State of Washington  
(TG-120033)  
Petition for Judicial Review of Agency Action  
Thurston County Case No. 13-2-01696-3

A Petition for Judicial Review of Agency Action has been filed in Thurston County Superior Court on August 8, 2013, by Stephen B. Johnson, representing Petitioner listed above. The petition was received by the Commission on August 8, 2013.

Please contact the Records Center if you would like copies of the attachments.

1  EXPEDITE  
2  No hearing set  
3  Hearing is set  
4 Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Judge/Calendar: \_\_\_\_\_

AUG - 8 2013

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 IN AND FOR THE COUNTY OF THURSTON

10 STERICYCLE OF WASHINGTON, INC. a  
Washington Corporation,

11 Plaintiff,

12 v.

13 WASHINGTON UTILITIES AND  
14 TRANSPORTATION COMMISSION, AN  
AGENCY OF THE STATE OF  
15 WASHINGTON,

16 Defendant.

NO. 13-2-01696-3

**PETITION FOR JUDICIAL REVIEW  
OF AGENCY ACTION**

17  
18 **1. NAME AND ADDRESS OF PETITIONER**

19 Stericycle of Washington, Inc.  
20 20320 80th Avenue S.  
Kent, WA 98032

21 **2. NAME AND ADDRESS OF PETITIONER'S ATTORNEY**

22 Stephen B. Johnson  
23 Jared Van Kirk  
24 Garvey Schubert Barer  
1191 Second Avenue, Suite 1800  
25 Seattle, WA 98101  
26

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PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION - 1

**GARVEY SCHUBERT BARER**  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS  
eighteenth floor  
1191 second avenue  
seattle, washington 98101-2939  
206 464 3939

1     **3.     NAME AND ADDRESS OF AGENCY WHOSE ACTION IS AT ISSUE**

2     Washington Utilities and Transportation Commission  
3     1300 S. Evergreen Park Dr. SW  
4     Olympia, WA 98504-7250

4     **4.     AGENCY ACTION AT ISSUE**

5             4.1     Petitioner seeks judicial review of a Final Order of the Washington Utilities and  
6     Transportation Commission (“WUTC” or the “Commission”) in the adjudicative proceeding *In*  
7     *the Matter of the Application of Waste Management of Washington, Inc. for an Extension of*  
8     *Certificate G-237 for a Certificate of Public Convenience and Necessity to Operate Motor*  
9     *Vehicles Furnishing Solid Waste Collection Service*, WUTC Docket No. TG-120033. A copy  
10    of the Final Order of the WUTC is attached as Exhibit A. A copy of the Initial Order of an  
11    Administrative Law Judge that was affirmed and adopted by the WUTC in its Final Order is  
12    attached as Exhibit B.

13    **5.     IDENTIFICATION OF OTHER PARTIES**

14             5.1     The regulatory staff of the WUTC (“Commission Staff”), by and through Steven  
15    W. Smith, Office of the Attorney General, Utilities and Transportation Division, was a party to  
16    the adjudicative proceeding.

17             5.2     Waste Management of Washington, Inc. (“Waste Management”), by and  
18    through, Polly L. McNeill and Jessica Goldman of Summit Law Group, was a party to the  
19    adjudicative proceeding.

20             5.3     The Washington Refuse and Recycling Association and its members Rubatino  
21    Refuse Removal, Inc., Consolidated Disposal Services, Inc., Murrey’s Disposal, Inc., and  
22    Pullman Disposal Services, Inc. (collectively, the “WRRRA parties”), by and through James K.  
23    Sell, Attorney at Law, and David W. Wiley, Williams Kastner & Gibbs PLLC, were parties to  
24    the adjudicative proceeding.

25    **6.     JURISDICTION AND VENUE**

26             6.1     Jurisdiction and venue is proper in this Court pursuant to RCW 34.05.514(1).

1           6.2     The WUTC's Final Order was served on July 10, 2013. This Petition for  
2 Judicial Review is timely under RCW 34.05.542(2).

3           6.3     Petitioner is aggrieved and adversely affected by the WUTC's Final Order, and  
4 has standing to submit this Petition for Judicial Review under RCW 34.05.530.

5     **7.     FACTS ENTITLING PETITIONER TO JUDICIAL REVIEW**

6           7.1     Petitioner is a solid waste collection company providing specialized biomedical  
7 waste collection and transportation services. Petitioner has authority to provide these services  
8 statewide under Certificate of Public Convenience and Necessity G-244.

9           7.2     Petitioner obtained Certificate G-244 from the WUTC in 1995 and since that  
10 time has provided continuous service at Commission-approved rates throughout Washington  
11 State to hospitals, clinics and other healthcare providers that generate biomedical waste that  
12 must be safely collected, transported, treated, and disposed of.

13          7.3     Chapter 81.77 RCW, enacted by the Washington legislature in 1961, establishes  
14 a comprehensive regulatory scheme governing the collection and transportation of solid waste  
15 for disposal. Biomedical waste is a category of solid waste and biomedical waste collection  
16 and transportation is regulated under 81.77 RCW along with more traditional commercial and  
17 residential solid waste services.

18          7.4     Chapter 81.77 RCW requires the WUTC to regulate entry into the business of  
19 solid waste collection and transportation, to fix and alter the rates charged for solid waste  
20 services, to regulate the accounts, service, and safety of solid waste services, and to regulate all  
21 other matters affecting the relationship between solid waste collection companies and the  
22 public that they serve.

23          7.5     RCW 81.77.040 is the source of the WUTC's authority to authorize new solid  
24 waste collection and transportation services by issuing certificates of public convenience and  
25 necessity. A certificate of public convenience and necessity is a traditional device for granting  
26

1 exclusive operating rights to public utilities where the law recognizes that restrictions on  
2 competition are in the public interest.

3 7.6 RCW 81.77.040 limits the WUTC's ability to issue certificates of public  
4 convenience and necessity in circumstances where an applicant seeks certificate authority to  
5 provide services that compete with an existing certificate holder, providing:

6 When an applicant requests a certificate to operate in a territory  
7 already served by a certificate holder under this chapter, the  
8 commission may, after notice and an opportunity for a hearing,  
9 issue the certificate only if the existing solid waste collection  
10 company or companies serving the territory will not provide  
11 service to the satisfaction of the commission or if the existing  
12 solid waste collection company does not object.

13 7.7 The WUTC has repeatedly acknowledged that the "service to the satisfaction of  
14 the Commission" requirement of RCW 81.77.040 states the Washington legislature's strong  
15 preference for regulated monopoly service in the collection of solid waste. In a 2010 report to  
16 the legislature, the WUTC acknowledged that such requirements provide "considerable  
17 protection from competition as long as [existing certificate holders] continue to provide  
18 satisfactory service and comply with regulations" and that in such provisions, specifically  
19 including 81.77 RCW, "the legislature has made a judgment that the public's interest in reliable  
20 and affordable service is best served by a single, economically regulated provider whose  
21 owners can make the sizable investments needed to initiate and maintain service without the  
22 threat of having customers drawn away by a competing provider." *Washington Utilities and  
23 Transportation Commission, Appropriateness of Rate and Service Regulation of Commercial  
24 Ferries Operating on Lake Chelan: Report to the Legislature Pursuant to ESB 5894*, p. 11 (Jan.  
25 14, 2010).<sup>1</sup>

26 7.8 Waste Management is the holder of Certificate G-237, which prior to the Final  
Order at issue authorized Waste Management to provide general solid waste collection and  
transportation services, including biomedical waste collection and transportation services, in

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<sup>1</sup> Available at: <http://www.utc.wa.gov/regulatedIndustries/transportation/commercialFerries/Pages/default.aspx>

1 limited territories within several Washington counties, particularly those counties along the I-5  
2 corridor in western Washington and certain limited areas of eastern Washington with larger  
3 urban centers. A map found on the WUTC's website showing Waste Management's original  
4 service territory is attached as Exhibit C.

5 7.9 On December 30, 2011, Waste Management filed an application with the  
6 WUTC for new certificate authority to provide solid waste collection services limited to  
7 biomedical waste collection and transportation services in the remaining portions of  
8 Washington that Waste Management was not already authorized to serve under Certificate G-  
9 237 (the "Application"), particularly including the more rural areas of both eastern and western  
10 Washington.

11 7.10 Pursuant to RCW 81.77.040, Petitioner and the WRRRA parties protested this  
12 application, objecting that those parties already provided biomedical waste collection and  
13 transportation services in the new territory for which Waste Management was requesting  
14 certificate authority (the "Application Territory") and that that those parties provided and  
15 would continue to provide biomedical waste services to the satisfaction of the Commission.  
16 Petitioner provides biomedical waste collection services in the entire territory that Waste  
17 Management's application sought authority to serve.

18 7.11 The WUTC initiated an adjudicative proceeding on Waste Management's  
19 application and the protests filed by Petitioner and the WRRRA parties.

20 7.12 The first order issued by Administrative Law Judge Gregory J. Kopta (the  
21 "ALJ"), Prehearing Conference Order 01, required the parties to submit briefing on "the legal  
22 issue of the interpretation of the provision in RCW 81.77.040 that the Commission may issue a  
23 certificate for a service territory served by another certificate holder 'only if the existing solid  
24 waste collection company or companies serving the territory will not provide service to the  
25 satisfaction of the commission.'" All parties to the adjudicative proceeding filed briefing in  
26 response to the ALJ's order.

1           7.13    In Order 05, Interim Order on Prehearing Issues, the ALJ addressed the  
2 interpretation of RCW 81.77.040 that would be applied in the adjudicative proceeding.  
3 Consistent with WUTC precedent, Order 05 rejected arguments from Waste Management that a  
4 desire by generators of biomedical waste for a competitive alternative to an existing service  
5 provider could be sufficient to find that the existing service provider will not provide service to  
6 the satisfaction of the Commission under RCW 81.77.040.

7           7.14    Instead, consistent with past WUTC precedent, the ALJ held that the “service to  
8 the satisfaction of the Commission” provision in RCW 81.77.040 meant that “[t]he  
9 Commission may approve Waste Management’s application, therefore, only if [Waste  
10 Management] demonstrates that . . . the biomedical waste collection service currently provided  
11 in the territory Waste Management proposes to serve does not satisfy the specialized needs of  
12 customers in that area as the customers determine those needs . . .” and that “Waste  
13 Management must demonstrate that the biomedical waste collection and disposal service  
14 currently provided in the territory the Company proposes to serve does not satisfy the  
15 specialized needs of customers in that area as the customers determine those needs.”

16           7.15    The ALJ held in Order 05 that the evidentiary hearing would focus on the  
17 “service to the satisfaction of the Commission” requirement of RCW 81.77.040 that he had  
18 interpreted in Order 05, as well as balancing any need for a new service provider against the  
19 negative impacts of an additional provider on the economic viability of existing carriers.

20           7.16    An evidentiary hearing was conducted December 3-6, 2012, at which the  
21 testimony of 10 witnesses representing biomedical waste generators or associations of  
22 biomedical waste generators was presented. Guided by the WUTC’s precedent and Order 05’s  
23 interpretation of the “service to the satisfaction of the Commission” requirement of RCW  
24 81.77.040, Petitioner’s evidence and examination of generator witnesses focused on whether  
25 Petitioner’s existing biomedical waste services met the specialized needs of biomedical waste  
26 generators.

1           7.17 At the hearing, none of the 10 witnesses representing biomedical waste  
2 generators identified any specialized need that Petitioner or the WRRRA parties failed to meet.  
3 Most witnesses representing biomedical waste generators affirmatively denied any complaint  
4 about Petitioner’s biomedical waste services. Even though the witnesses representing  
5 biomedical waste generators acknowledged that Petitioner’s biomedical waste services satisfied  
6 their specialized service needs, several of these witnesses expressed a general preference for an  
7 additional competitive alternative to Petitioner’s services. None of the generator witnesses  
8 testified to a need for any particular or different service offered by Waste Management.

9           7.18 Following this hearing and post-hearing briefing by the parties, on February 14,  
10 2013 the ALJ issued an Initial Order granting Waste Management’s application for new  
11 certificate authority to provide biomedical waste collection and transportation services in  
12 competition with the existing services of Petitioner and the WRRRA parties.

13           7.19 Contrary to RCW 81.77.040, WUTC precedent, and the mandate of Order 05,  
14 the Initial Order did not make a factual finding or state a legal conclusion that Stericycle’s  
15 biomedical waste collection and transportation services failed to meet the specialized needs of  
16 biomedical waste generators in the territory covered by Waste Management’s application.

17           7.20 Instead, the Initial Order ignored the WUTC’s consistent prior interpretation of  
18 RCW 81.77.040, including the ALJ’s interpretation of that statute in Order 05, and “revisited”  
19 that precedent, holding for the first time that a generalized preference for competition could  
20 support a finding that an existing service provider will not provide service to the satisfaction of  
21 the Commission.

22           7.21 The Initial Order found that Petitioner and the WRRRA parties will not provide  
23 service to the satisfaction of the Commission because eight of the witnesses for biomedical  
24 waste generators expressed a general preference for competition in biomedical waste collection  
25 and transportation. The Initial Order also noted that Waste Management offered a different  
26 style of waste container (denoted a different “product option” in the Initial Order) at lower



1 prices in the territory it was already authorized to serve and that Petitioner had matched that  
2 offering. No witnesses representing biomedical waste generators testified to a need or desire  
3 for the kind of waste collection container offered by Waste Management or for service at the  
4 prices at which that container was offered by Waste Management within its existing service  
5 territory.

6 7.22 The ALJ did not provide notice to any party that he was considering departing  
7 from the interpretation of RCW 81.77.040 stated in Order 05 or his instruction in Order 05 that  
8 the hearing would focus on whether the existing service providers met the specialized needs of  
9 biomedical waste generators, as he interpreted the “service to the satisfaction of the  
10 Commission” requirement in Order 05. The ALJ did not provide notice that he was  
11 reconsidering the WUTC’s existing interpretation of RCW 81.77.040 that held generator  
12 preference for competition is not relevant or sufficient to demonstrate that an existing service  
13 provider would not provide service to the satisfaction of the Commission. The ALJ did not  
14 provide notice he was reconsidering the WUTC’s existing interpretation of RCW 81.77.040 in  
15 precedent holding that the price at which an applicant for new certificate authority proposes to  
16 offer its services is not relevant to the issue of whether an existing service provider will provide  
17 service to the satisfaction of the Commission.

18 7.23 The Initial Order made no specific findings of fact in support of its changes to  
19 existing WUTC precedent or the decision to grant Waste Management’s application, instead  
20 making only conclusory findings that “Waste Management of Washington, Inc., has  
21 demonstrated the consumer need for, and positive results from, its expansion into the statewide  
22 bio-hazardous collection services market” and “Waste Management of Washington, Inc., has  
23 demonstrated that the public’s need for a competitive alternative to the existing service  
24 providers outweighs those providers’ unsubstantiated claims of an adverse economic impact on  
25 their operations.”  
26

1           7.24   Petitioner and the WRRRA parties petitioned for administrative review of the  
2 Initial Order. Following briefing by all parties, on June 10, 2013 the WUTC issued a Final  
3 Order granting Waste Management’s application for new certificate authority.

4           7.25   The Final Order affirms and adopts the Initial Order, including its conclusory  
5 findings of fact and conclusions of law, and also engages in additional discussion intended to  
6 support the new interpretation of RCW 81.77.040 and the conclusion that existing service  
7 providers will not provide service to the satisfaction of the Commission under this new  
8 interpretation. Like the Initial Order, the Final Order did not make any finding or state any  
9 conclusion that Petitioner’s existing biomedical waste services did not meet the specialized  
10 service needs of biomedical waste generators.

11           7.26   The Final Order interprets the “service to the satisfaction of the Commission”  
12 requirement of RCW 81.77.040 as no longer requiring any showing of a deficiency in existing  
13 solid waste collection and transportation services. Instead, the Final Order asserts that RCW  
14 81.77.040 provides essentially unlimited discretion to the WUTC to authorize additional  
15 competing solid waste collection services solely on the basis of a preference for greater  
16 competition by solid waste generators. The Final Order states that in RCW 81.77.040 the  
17 legislature simply gave “the Commission discretion to determine the appropriate number of  
18 solid waste collection service providers who should be authorized to operate within a particular  
19 service territory consistent with the public interest.” This interpretation is at odds with the  
20 unambiguous language of RCW 81.77.040 and disregards the regulatory scheme of chapter  
21 81.77 RCW, governing solid waste collection and transportation services.

22           7.27   The WUTC justifies its new interpretation of RCW 81.77.040 with conclusory  
23 assertions about changes to conditions in the biomedical waste market and its experience with  
24 greater competition in other, unidentified utilities markets. Neither of these justifications is  
25 based on any evidence in the record. The WUTC gave the parties no notice that it would be  
26

1 considering asserted facts outside the record to support its new interpretation of RCW  
2 81.77.040.

3 7.28 The WUTC also failed to consider evidence that its new interpretation of RCW  
4 81.77.040, permitting competition to divide the market, could adversely affect the availability  
5 of solid waste collection services, especially in the extensive rural areas within the Application  
6 Territory. The WUTC failed to give reasons or find facts supporting its departure from the  
7 legislature's judgment that "the public's interest in reliable and affordable service is best served  
8 by a single, economically regulated provider whose owners can make the sizable investments  
9 needed to initiate and maintain service without the threat of having customers drawn away by a  
10 competing provider." The Final Order also upsets the reliance of Petitioner and all solid waste  
11 collection companies on the protection afforded by RCW 81.77.040 in exchange for their  
12 investment in providing important services that the legislature deemed critical to the public  
13 interest.

14 7.29 In the Final Order, the WUTC articulated for the first time a new adjudicative  
15 standard that it applied to Waste Management's application after rejecting its consistent prior  
16 interpretation of RCW 81.77.040, under which a preference for competition by generators of  
17 solid waste could not support a finding of unsatisfactory service. The WUTC concluded in the  
18 Final Order that "an applicant can . . . demonstrate that the existing companies will not provide  
19 service to the satisfaction of the Commission by proving that (1) generators of biomedical  
20 waste have an unmet need for an effective competitive alternative to the incumbent service  
21 providers, and (2) the new entrant will enhance the effectiveness of competition in the  
22 marketplace."

23 7.30 The WUTC stated that that generators of biomedical waste expressed a need for  
24 an "effective competitive alternative," based on the testimony of witnesses representing  
25 biomedical waste generators expressing a generic desire for a competitive alternative to  
26 Petitioner and the WRRRA parties.

1           7.31    Petitioner has been prejudiced by the WUTC's errors of law and unsupported  
2 findings and conclusions in the Initial and Final Orders. Until the Final Order, Petitioner  
3 enjoyed the right under RCW 81.77.040 to operate without additional competition so long as it  
4 provided services fully meeting the specialized needs of biomedical waste generators at  
5 Commission-approved rates. By permitting increased competition in the Application Territory,  
6 the Final Order will adversely affect Petitioner's revenues and profits from its statewide  
7 biomedical waste collection, transportation, and disposal services. The WUTC was required by  
8 statute to consider Petitioner's interests in the adjudicative proceeding, but failed to do so  
9 consistent with the law. A judgment by this court setting aside the WUTC's unlawful Final  
10 Order and ordering the WUTC to deny Waste Management's Application for new certificate  
11 authority will substantially redress the prejudice caused to Petitioner.

12   **8.       EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13           8.1    The Final Order at issue is the final decision of the WUTC, subject to review by  
14 this Court under RCW 34.05.534.

15   **9.       REASONS RELIEF SHOULD BE GRANTED**

16           9.1    The WUTC's Final Order is based on an erroneous interpretation and  
17 application of the law. The WUTC's interpretation of chapter 81.77 RCW and RCW 81.77.040  
18 conflicts with plain language, history, and intent of those statutes.

19           9.2    The WUTC's Final Order is inconsistent with established WUTC precedent and  
20 the WUTC has failed to find adequate facts or state adequate reasons to demonstrate a rational  
21 basis for this inconsistency. The WUTC reversed its consistent prior interpretation of chapter  
22 81.77 RCW and RCW 81.77.040 without evidentiary support in the record and without stating  
23 a rational basis for doing so.

24           9.3    The findings and conclusions in the WUTC's Final Order are not supported by  
25 substantial evidence in the record. The WUTC reversed established WUTC interpretation of  
26 81.77 RCW and RCW 81.77.040 and other WUTC precedent based on assumptions and

1 assertions that are not supported by record evidence. The WUTC's statements that biomedical  
2 waste generators "need" an "effective competitive alternative" and that Waste Management  
3 will "enhance the effectiveness of competition" are not supported by record evidence and are  
4 based on a failure to consider all evidence in the record. The WUTC's conclusory findings of  
5 fact (adopted from the Initial Order) that "Waste Management of Washington, Inc., has  
6 demonstrated the consumer need for, and positive results from, its expansion into the statewide  
7 bio-hazardous collection services market" and "Waste Management of Washington, Inc., has  
8 demonstrated that the public's need for a competitive alternative to the existing service  
9 providers outweighs those providers' unsubstantiated claims of an adverse economic impact on  
10 their operations" are not supported by substantial evidence in the record.

11 9.4 The WUTC engaged in an unlawful decision-making process, acted outside its  
12 statutory authority and failed to follow procedures required by law. The WUTC violated  
13 Petitioner's statutory and constitutional notice, hearing, and due process rights. The WUTC  
14 changed its consistent prior interpretation of RCW 81.77.040 without prior notice after the  
15 evidentiary hearing below had concluded, thus depriving Petitioner of notice and an  
16 opportunity to be heard on the evidentiary matters relevant to the WUTC's decision as required  
17 by RCW 81.77.040 and the Administrative Procedure Act, chapter 34.05 RCW. The ALJ  
18 identified the legal standard applicable to the hearing in Order 05, directing the parties that the  
19 hearing would be guided by that legal standard, and then abandoned that legal standard without  
20 notice and after the evidentiary hearing had concluded, depriving Petitioner of the opportunity  
21 to present evidence relevant to the new legal standard. This unlawful procedure was ratified by  
22 the WUTC in the Final Order. Similarly, the WUTC did not disclose its new "effective  
23 competitive alternative" standard until it issued the Final Order, depriving Petitioner of notice  
24 and the opportunity to present evidence and examine witnesses in light of this new legal  
25 standard. To the extent the WUTC wished to change its consistent prior interpretation of RCW  
26 81.77.040, it was required to do so through public rulemaking.



CERTIFICATE OF SERVICE

I, Vickie L. Owen, certify under penalty of perjury under the laws of the State of Washington that, on August 8, 2013, I caused to be served on the person(s) listed below in the manner shown a copy of the Petition for Judicial Review of Agency Action:

Steven V. King, Executive Director and Secretary 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

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Via Facsimile
Via FedEx
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- Via Facsimile
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Association  
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- Via Certified Mail
- Via Email

Rubatino Refuse Removal Inc.  
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Everett, WA 98206

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- Via Certified Mail
- Via Email



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Consolidated Disposal Services, Inc.  
c/o Michael R. Dietrich, Registered  
Agent  
2370 Basin SW  
Ephrata, WA 98823-1154

- Via Legal Messenger
- Via Facsimile
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- Via Email

Murrey's Disposal Company, Inc.  
c/o Corporation Service Company,  
Registered Agent  
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Tumwater, WA 98501

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- Via Facsimile
- Via Certified Mail
- Via Email

Pullman Disposal Service, Inc.  
c/o William N. Felsted, Registered  
Agent  
135 NW Harold  
Pullman, WA 99163-0619

- Via Legal Messenger
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- Via Email

Dated at Seattle, Washington this 8<sup>th</sup> day of August, 2013.



\_\_\_\_\_  
Vickie L. Owen  
vowen@gsblaw.com

EXHIBIT A

JUL 10 2013

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RECEIVED

JUL 11 2013

GARVEY ROBERT  
CLERK

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.<sup>1</sup> 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 serve<sup>2</sup> 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.

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

<sup>2</sup> 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.<sup>3</sup> Waste Management opposes the petitions.<sup>4</sup> 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).<sup>5</sup>

#### 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.<sup>6</sup> We conclude based on our statutory interpretation and the record evidence that Order 07 properly reflects the intent of prior Commission decisions

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

<sup>4</sup> 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).

<sup>5</sup> 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.

<sup>6</sup> 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.”<sup>7</sup> According to Stericycle, “It has long been recognized that chapter 81.77 RCW establishes a legislative presumption in favor of exclusive service territories,”<sup>8</sup> 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.”<sup>9</sup> 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.”<sup>10</sup>

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

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<sup>7</sup> RCW 81.77.040.

<sup>8</sup> Stericycle Petition ¶ 30 (emphasis in original).

<sup>9</sup> *Id.* ¶ 32.

<sup>10</sup> 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.”<sup>11</sup> 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.<sup>12</sup>

- 9 Stericycle and WRRRA nevertheless contend that the Commission has always stated a preference for monopoly provision of solid waste collection service<sup>13</sup> 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.”<sup>14</sup> Stericycle also asserts that the Commission has repeatedly and recently reaffirmed this interpretation.<sup>15</sup> 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

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<sup>11</sup> RCW 81.84.020.

<sup>12</sup> 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).

<sup>13</sup> 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.

<sup>14</sup> Stericycle Petition ¶ 46.

<sup>15</sup> *Id.* ¶ 74.

generators.”<sup>16</sup> 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.<sup>17</sup>

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<sup>16</sup> *Id.* ¶ 47.

<sup>17</sup> *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,<sup>18</sup> while maintaining a single provider for neighborhood solid waste collection.<sup>19</sup>

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.”<sup>20</sup> 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.”<sup>21</sup> Order 07 provides just such an explanation.<sup>22</sup>

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

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<sup>18</sup> *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).

<sup>19</sup> 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.

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

<sup>21</sup> 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.

<sup>22</sup> 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.”<sup>23</sup> 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 Washington<sup>24</sup> – 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.<sup>25</sup>

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

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<sup>23</sup> *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.

<sup>24</sup> WM Answer to Stericycle ¶ 4.

<sup>25</sup> *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.”<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.

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<sup>26</sup> 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)).

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> 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”;<sup>30</sup> (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”;<sup>31</sup> 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.”<sup>32</sup> 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.”<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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,<sup>36</sup> and the territory Waste Management proposes to serve represents

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<sup>30</sup> Stericycle Petition ¶ 61.

<sup>31</sup> *Id.* ¶ 63.

<sup>32</sup> *Id.* ¶ 65.

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

<sup>34</sup> *Id.* at 11-12.

<sup>35</sup> 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.

<sup>36</sup> *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.<sup>37</sup> 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.<sup>38</sup>
- 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

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

<sup>37</sup> 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).

<sup>38</sup> 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.”<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>
- 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.”<sup>42</sup> 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.”<sup>43</sup> 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

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<sup>39</sup> Stericycle Petition ¶ 90.

<sup>40</sup> 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.

<sup>41</sup> 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.

<sup>42</sup> Stericycle Petition ¶ 91.

<sup>43</sup> *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.”<sup>44</sup> 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.<sup>45</sup> 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.”<sup>46</sup> 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*

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<sup>44</sup> WRRRA Petition ¶ 9.

<sup>45</sup> 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”).

<sup>46</sup> 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.<sup>47</sup>

- 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.”<sup>48</sup> 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.

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

<sup>48</sup> *Id.*

**ORDER**

THE COMMISSION ORDERS that

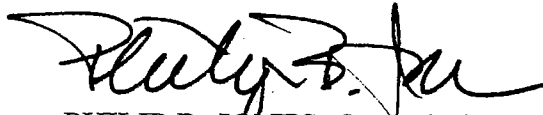
- 30 (1) The petitions for administrative review of Order 07 are DENIED.
- 31 (2) The application of Waste Management of Washington, Inc., for an extension of authority under Certificate G-237 to provide statewide biomedical waste collection service is GRANTED.

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

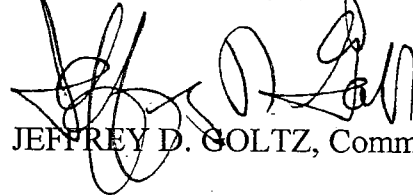
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



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.

**EXHIBIT B**

**SERVICE DATE**

**FEB 14 2013**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**RECEIVED**

**FEB 15 2013**

**GARVEY SCHUBERT  
BARER**

In the Matter of the Application of	)	DOCKET TG-120033
	)	
WASTE MANAGEMENT OF	)	
WASHINGTON, INC. D/B/A WM	)	ORDER 07
HEALTHCARE SOLUTIONS OF	)	
WASHINGTON	)	
	)	INITIAL ORDER GRANTING
For an Extension of Certificate G-237	)	APPLICATION
for a Certificate of Public Convenience	)	
and Necessity to Operate Motor	)	
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.<sup>1</sup> The Company requests authority to provide solid waste collection service for bio-hazardous wastes produced in Washington. Stericycle of Washington, Inc. (Stericycle) and other currently certificated companies operating with the territory Waste Management seeks to serve<sup>2</sup> filed protests against Waste Management's application.
- 2 On October 1, 2012, Waste Management filed declarations and testimony in support of its application. Stericycle and WRRRA also filed testimony in support of their positions. Waste Management and Stericycle filed response testimony on November 16, 2012.

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

<sup>2</sup> 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 The Commission conducted evidentiary hearings on December 3-6, 2012. The parties filed opening briefs by January 18, 2013, and response briefs on January 25, 2013.
- 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, represents WRRRA, Rubatino, Consolidated, Murrey's and Pullman. Steven W. Smith, Assistant Attorney General, represents Commission Staff (Staff).<sup>3</sup>

### DISCUSSION AND DECISION

- 5 The Commission determines whether to grant an application for a certificate of public convenience and necessity to operate as a solid waste collection company based on the requirements in RCW 81.77.040. When, as here, a company seeks to operate in a territory that is already served by another certificated company, the Commission may grant the application only upon finding: (1) the existing certificated company or companies "will not provide service to the satisfaction of the commission"; (2) the public convenience and necessity require the additional operations the applicant proposes; and (3) the applicant has the financial and operational fitness to provide the proposed service. The Commission finds that Waste Management has satisfied each of these statutory requirements and grants the application.

#### **Existing Service to the Satisfaction of the Commission**

- 6 "When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, 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."<sup>4</sup> Prior Commission decisions state that "[t]he satisfactory nature of service by providers of specialized

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<sup>3</sup> 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.

<sup>4</sup> RCW 81.77.040.

solid waste collection services is measured according to the specialized needs of customers.”<sup>5</sup>

- 7 Waste Management provided the testimony of eight generator witnesses, all of whom testified to the need for a competitive alternative to the biomedical waste collection services they currently receive.<sup>6</sup> Three of those witnesses also testified that they had billing or customer service issues with Stericycle,<sup>7</sup> the only existing company with statewide authority to provide bio-hazardous waste collection service. Waste Management contends that this evidence demonstrates that Stericycle and the other existing companies will not provide service to the satisfaction of the Commission.
- 8 Stericycle and WRRRA disagree, arguing that the Commission has consistently held in prior cases that a desire for competition, standing alone, does not demonstrate that incumbent providers will not provide service to the satisfaction of the Commission. ~~Stericycle and Staff also contend that the Stericycle billing and customer service~~ issues Waste Management presented do not rise to the level of unsatisfactory service for purposes of the statute.
- 9 The Commission concurs with Stericycle and Staff that the billing and customer service issues that three of the generator witnesses describe do not support Waste Management's contentions. Billing errors and disputes over service dates are not unique to biomedical waste collection and thus do not reflect any specialized customer need. The generators' complaints here, moreover, while a matter of concern, do not reflect a pattern of poor service or systemic inadequacies that would support a finding that Stericycle will not provide service to the satisfaction of the Commission.
- 10 We also acknowledge that in decisions from the early 1990's, the Commission stated its "view 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

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<sup>5</sup> *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 11 (Jan. 25, 1993) (emphasis in original).

<sup>6</sup> 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; Newcomer, Exh. No. EN-1T.

<sup>7</sup> Sell, Exh. No. JS-1T; Lycan, Exh. No. RL-1T; Patshkowski, Exh. No. CP-1T.

demonstrate a need for an additional carrier.”<sup>8</sup> The Commission has not revisited the issue since that time. We do so now.

11 Much has changed in the last 20 years. The introduction of competition into former regulated monopoly markets, such as the market for local telecommunications services, has resulted in consumer benefits from a choice of service providers and a corresponding reduced need for Commission regulation. In the transportation sector, the Commission expressed in a commercial ferry case that it is not in the business of granting exclusive service territories and may grant overlapping authority absent a showing that competition would be “ruinous.”<sup>9</sup> Even in the context of bio-hazardous waste collection, the Commission has observed that its “policy has historically encouraged competition.”<sup>10</sup>

12 The public, as well as the Commission, has come to demand greater consumer choice. ~~Eight generator witnesses in this case testified to the need for more options among~~ service providers. Most of those witnesses represent entities that have statewide operations,<sup>11</sup> and they must obtain service from Stericycle if, as one witness testified, the entity “prefers to have one statewide provider for the sake of efficiency and cost.”<sup>12</sup> The Commission has recognized that “single carrier service is a reasonable shipper need,”<sup>13</sup> but that need is not necessarily limited to having one option for statewide service. One generator with statewide operations prefers to obtain service

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<sup>8</sup> *Stericycle v. Waste Management*, Docket TG-110533, Order 02 Final Order on Cross-Motions for Dismissal and Summary Determination ¶ 37 (July 13, 2011).

<sup>9</sup> *In re the Applications of Dutchman Marine, LLC d/b/a Lake Washington Ferry Service, for Authority to Provide Commercial Ferry Service; and Seattle Harbor Tours Limited Partnership, for Authority to Provide Commercial Ferry Service*, Dockets TS-001774 & TS-002055, Second Supplemental Order - Commission Decision and Order Affirming Initial Order Granting Applications with Conditions (Oct. 19, 2001).

<sup>10</sup> *In re Application GA-75968 of Sureway Medical Services, Inc.*, Order M.V.G. No. 1674 at 4-5 (Dec. 20, 1993).

<sup>11</sup> See Sell, Exh. No. JS-1T; Johnson, Exh. No. TJ-1T; Longhenry, Exh. No. JL-1T; Moore, Exh. No. RM-1T (PeaceHealth); Warner, Exh. No. DW-1T; Lycan, Exh. No. RL-1T (Pathology Associates Medical Laboratories); Patshkowski, Exh. No. CP-1T (Providence Medical Group); Newcomer, Exh. No. EN-1T (University of Washington).

<sup>12</sup> Moore, Exh. No. RM-1T at 3:19-20; accord Lycan, Exh. No. RL-1T at 4:2-3 (“PAML desires to have a single contract with one RMW service provider for the sake of efficiency, pricing, and customer service.”).

<sup>13</sup> *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 12 (Jan. 25, 1993).

from Waste Management but can only do so where the Company currently operates. Despite the need for a single provider, this generator uses Waste Management where it can and obtains service from Stericycle in all other areas of the state, but the generator will move all of its services to Waste Management if the Company receives statewide authority.<sup>14</sup> Consumers should not be forced to choose between using a preferred carrier and the benefits of having a single statewide provider.

13 The record also reflects the benefits of a competitive market. Waste Management presented compelling evidence that in the short time since it resumed bio-hazardous waste collection service in its solid waste collection service territory in competition with Stericycle, the Company has introduced product options at lower prices, which Stericycle has matched.<sup>15</sup> This evidence accords with the Commission's experience with competition in formerly monopoly markets and further supports the generator witness testimony of the need for a choice among service providers in this area.

14 Stericycle dismisses Waste Management's testimony and exhibits on this issue as "not relevant"<sup>16</sup> to the inquiry required under RCW 81.77.040 and as "not entitled to weight because it is not based on the generators' professional training and experience."<sup>17</sup> No professional training is necessary to recognize the benefits of competition or to support the need for more consumer choice. Nor is this evidence irrelevant to whether existing companies will provide service to the satisfaction of the Commission. The Commission will find companies' service satisfactory only to the extent that the service provided furthers the Commission's ultimate goal of ensuring that consumers have access to that service at fair, just, and reasonable rates, terms, and conditions.

15 The record evidence and Commission policy favoring effective competition demonstrate that the Commission's prior decisions that a desire for competition is insufficient to satisfy RCW 81.77.040 do not reflect the realities of the current marketplace. Accordingly, the Commission will not rely on those prior decisions to make the requisite determination in this case.

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<sup>14</sup> Lycan, Exh. No. RL-1T at 4:4-6.

<sup>15</sup> *E.g.*, Norton, Exh. No. JN-1T; *see* Waste Management Post-Hearing Brief ¶¶ 26-33 (summarizing the evidence of competitive benefits).

<sup>16</sup> Stericycle Response Brief ¶ 24.

<sup>17</sup> *Id.* ¶ 26.

- 16 Waste Management has demonstrated the need for, and positive results from, its entry into the statewide bio-hazardous collection services market. At least on this record and under the circumstances presented in this docket, the existing companies will not provide service to the satisfaction of the Commission without the statewide competitive alternative the Company would provide. Waste Management, therefore, has met its burden under RCW 81.77.040 with respect to this issue.

### Public Convenience and Necessity

- 17 “In determining whether the public convenience and necessity require an additional carrier, the Commission must balance needs of existing carriers for a customer base that is large enough for economic viability, considering their obligation to provide satisfactory service, with the public’s need for responsive service.”<sup>18</sup> The balance in this case supports Waste Management’s application.

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- 18 The record evidence does not demonstrate that granting Waste Management statewide authority to collect bio-hazardous waste would have any significant impact on the economic viability of the existing companies. To the contrary, Stericycle represented from the beginning of this proceeding that its concern was profitability, not economic viability:

[O]ur position is not that Stericycle is going to be driven out of business by Waste Management, let’s be clear about that. It’s not that they will lose – that the territory involved here will lose a service provider. It’s that by cutting revenues, the cost per unit of revenue and cost per unit of waste will be – will increase, and of course the revenues would decrease. The question is whether that creates a feasible profit potential for Waste Management or for Stericycle.<sup>19</sup>

- 19 Even with respect to profit potential, Stericycle produced no credible evidence that competing with Waste Management on a statewide basis would have a significant impact on Stericycle’s profitability. Stericycle’s sole witness on this subject has no training or experience in accounting or financial analysis,<sup>20</sup> and he testified only in general terms concerning the decreased revenues that could result from possible loss

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<sup>18</sup> *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 15 (Jan. 25, 1993).

<sup>19</sup> TR at 38:10-19 (Aug. 8, 2012).

<sup>20</sup> Dunn, TR at 656-57 (Dec. 5, 2012).

of business, without any demonstrable applicability to Stericycle's actual operations or Waste Management's market projections.<sup>21</sup>

20 Waste Management, on the other hand, provided substantial, un rebutted evidence that Stericycle's revenues, customer base, and revenue per customer have *increased* since it began competing with Waste Management within the Company's existing solid waste collection service territory.<sup>22</sup> Stericycle cannot plausibly contend on this record that the entry of Waste Management into the statewide market for bio-hazardous waste collection will have any negative impact on Stericycle's ability to provide satisfactory service.

21 The WRRRA companies similarly have not provided any evidence that granting Waste Management's application would pose a significant risk to their economic viability. Their witnesses provided only basic financial statements for their bio-hazardous waste collection operations and vague general statements that the entry of a third provider into their territories could adversely affect their rates or ability to provide service.<sup>23</sup> Such unsubstantiated fears do not rise to the level of demonstrating that authorizing Waste Management to operate statewide would threaten the existing providers' economic viability.

22 WRRRA nevertheless contends that Waste Management's potential customer "targets are obviously large, multi-site hospitals, leaving the local hauler the small, far less profitable customers, without much of a chance to compete for the large, usually geographically concentrated, generators."<sup>24</sup> The Commission has previously rejected

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<sup>21</sup> See Dunn, Exh. No. CD-1T.

<sup>22</sup> Weinstein, Exh No. MAW-1T at 4:13-19.

<sup>23</sup> See Gingrich, Exh No. MG-1T at 4 ("The addition of a third provider would further dilute the market, which most likely would lead to price competition with regular tariff revisions becoming necessary to compete."); Wash, Exh. No. MW-1T at 4 ("the addition of a third competitor could, and probably would, diminish our customer count to the point we would have to seek to raise rates or even withdraw from providing the service"); Felsted, Exh. No. DF-1T at 4 ("If we were to lose any portion of that [customer] base, we may well be placed in a situation where we would have to seek a rate increase, or even be forced to abandon our medical waste service"); Rubatino, Exh. No. ER-1T at 5 ("We believe that should a third provider have authority within our certificated area, the market would become further diluted and a 'three-way' competition would eventually lead to higher rates for the generator and have an adverse effect upon our ability to continue to provide the service at what we believe are fair and compensable rates.").

<sup>24</sup> WRRRA Protestants Reply Brief at 3:21-23.

this argument as irrelevant.<sup>25</sup> The record, moreover, contains no evidence that the WRRRA companies currently serve any large, multi-site hospitals. To the contrary, one WRRRA company witness testified that it does not serve any hospitals,<sup>26</sup> and another company witness testified that it already lost the only such customer to Stericycle and that major customers “are not generally in our area.”<sup>27</sup> WRRRA has not factually supported its theoretical “cream-skimming” concerns.

- 23 Ample record evidence supports Waste Management’s position that the expansion of its bio-hazardous operations statewide will enhance the public’s ability to obtain responsive service. As discussed above, the Company’s recent resumption of bio-hazardous collection service within its existing footprint has already resulted in more service options and lower prices for customers in those areas,<sup>28</sup> and eight generator witnesses testified to the need for a competitive alternative to the existing statewide service provider.<sup>29</sup> Waste Management, therefore, has satisfied its burden to prove that the public convenience and necessity require the service the Company proposes to offer.

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#### **Financial and Operational Fitness**

- 24 The statute requires the Commission to base its determination to issue a certificate of public convenience and necessity on several factors, including but not limited to “an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal”; “the assets on hand . . . that will be expended on the purported plant”; and the “prior experience, if any, in such field by the petitioner.”<sup>30</sup> Waste Management provided declarations of three witnesses to address these factors who

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<sup>25</sup> *In re Application GA-75154 of Ryder Distribution Services, Inc.*, Order M.V.G. No. 1596 at 8-9 (Jan. 25, 1993). As the Commission observed in that case, all “[r]egulated solid waste collection companies must provide universal waste collection without discrimination” or “unreasonable preferences.” *Id.* at 9. Waste Management has acknowledged that requirement and committed to serve all customers who request its service. TR at 334:20-23 (Weinstein).

<sup>26</sup> Felsted, TR at 709:1-2 (Dec. 5, 2012).

<sup>27</sup> Rubatino, TR at 814:9-14 (Dec. 6, 2012).

<sup>28</sup> *Supra* ¶ 12.

<sup>29</sup> *Supra* ¶ 8.

<sup>30</sup> RCW 81.77.040.

described in detail the Company's technical and operational fitness to provide the proposed service.<sup>31</sup>

- 25 Staff reviewed this evidence and concluded that Waste Management has demonstrated the requisite financial and operational fitness.<sup>32</sup> Neither Stericycle nor WRRRA address these issues except to express concerns about the limited time frame of Waste Management's profitability projections and the Company's subsidization by a large corporate parent. Staff responds that Waste Management provided testimony that the Company will continue to absorb losses until its proposed service is profitable and that support from a well-capitalized parent merely provides credible evidence that Waste Management has sufficient financing to demonstrate financial fitness.
- 26 The Commission concurs with Staff that Waste Management has demonstrated that the Company has the financial and operational fitness to provide statewide bio-hazardous waste collection service. ~~The Protestants' stated concerns do not alter that~~ conclusion. Profitability projections are necessarily based on speculation within a relatively short time period, and the availability of future funding from a corporate parent until a company's operations are profitable provides the Commission with greater confidence in the company's financial fitness. Waste Management has satisfied its burden to prove this statutory requirement.

### FINDINGS OF FACT

- 27 Having discussed above in detail the evidence received in this proceeding concerning all material matters, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 28 (1) The Commission is an agency of the state of Washington, authorized by Titles 80 and 81 RCW to regulate in the public interest the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities, including solid waste companies.

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<sup>31</sup> Weinstein, Exh. Nos. MAW-16T through 23; Norton, Exh. Nos. JN-4T through 6; Daub, Exh. Nos. JD-1T through 23; McInerney, Exh. No. MM-1T.

<sup>32</sup> Staff's Post-Hearing Brief ¶¶ 9-25.



- 29 (2) Waste Management of Washington, Inc., is a solid waste company that, *inter alia*, provides bio-hazardous solid waste collection service within its existing service territory in the state of Washington.
- 30 (3) Waste Management of Washington, Inc., has demonstrated the consumer need for, and positive results from, its expansion into the statewide bio-hazardous collection services market.
- 31 (4) Waste Management of Washington, Inc., has demonstrated that the public's need for a competitive alternative to the existing service providers outweighs those providers' unsubstantiated claims of an adverse economic impact on their operations.
- 32 (5) Waste Management of Washington, Inc., has demonstrated that it has the financial and operational fitness to provide statewide bio-hazardous waste collection service.
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#### CONCLUSIONS OF LAW

- 33 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 34 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 35 (2) Waste Management of Washington, Inc., has satisfied the requirements in RCW 81.77.040 for obtaining a certificate of public convenience and necessity to provide bio-hazardous waste collection service on a statewide basis:
- (a) Based on the record evidence and the circumstances presented in the application, the existing companies will not provide service to the satisfaction of the Commission without the statewide competitive alternative Waste Management of Washington, Inc., would provide;
  - (b) Granting the application will not significantly impact the needs of existing carriers for a customer base that is large enough for economic viability, considering their obligation to provide satisfactory service, and will enhance the public's ability to obtain responsive service, and as a result, the public convenience and necessity requires the proposed service;

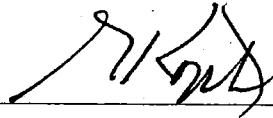
(c) Waste Management of Washington, Inc., has the financial and operational fitness to provide the services proposed in the application.

**ORDER**

36 THE COMMISSION ORDERS that the application of Waste Management of Washington, Inc., for an extension of authority under Certificate G-237 to provide statewide bio-hazardous waste collection service is GRANTED.

Dated at Olympia, Washington, February 14, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



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GREGORY J. KOPTA  
Administrative Law Judge

## NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and would like it to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a Petition for Administrative Review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an Answer to a Petition (Answer) within (10) days after service of the Petition.

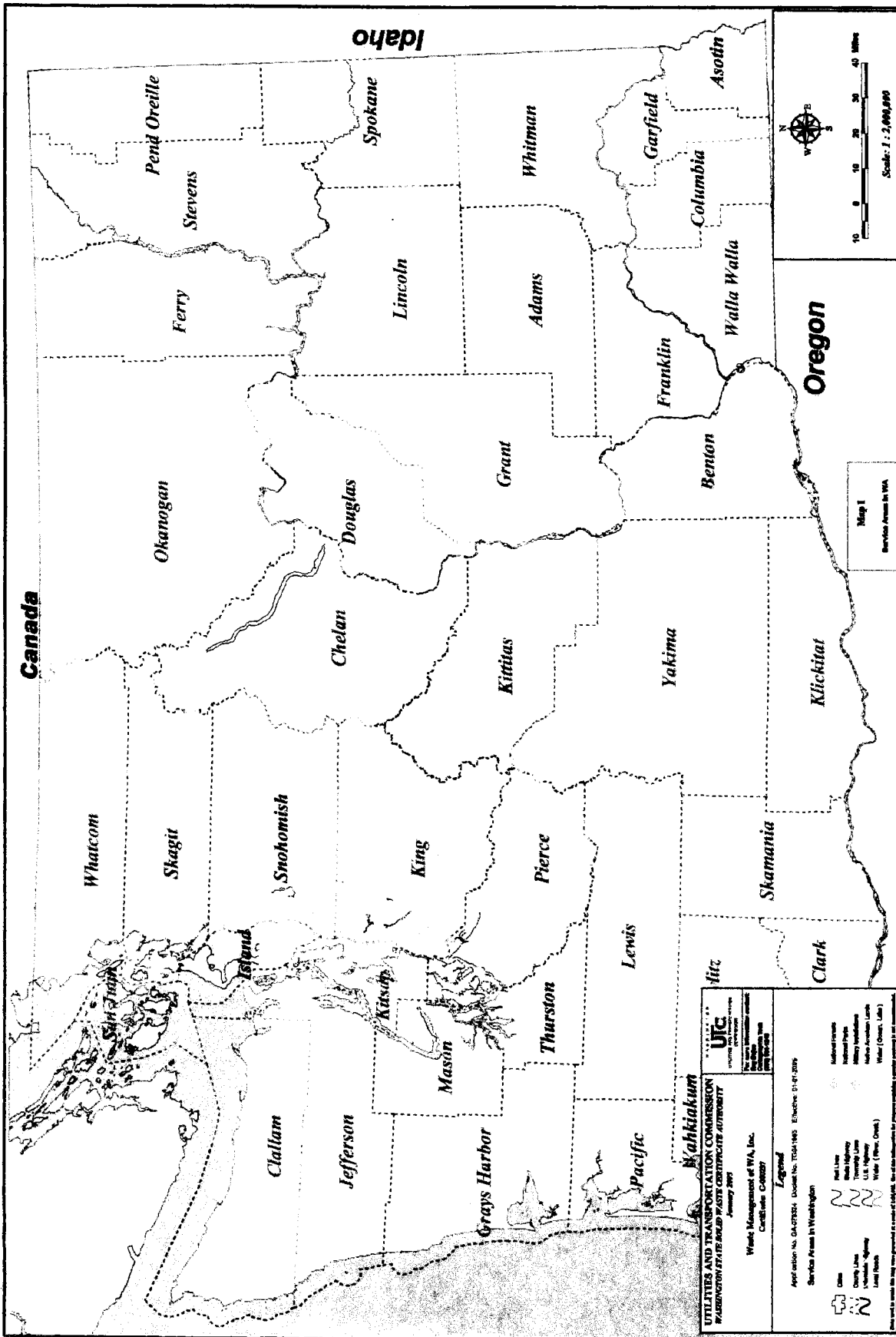
WAC 480-07-830 states that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to such a petition unless the Commission requests answers by written notice.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final either by operation of law or on administrative review.

You must serve on each party of record one copy of any Petition or Answer filed with the Commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and seven (7) copies of your Petition or Answer by mail delivery to:

Attn: Steven V. King, Acting Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

EXHIBIT C



**UIC**  
 UTILITIES AND TRANSPORTATION COMMISSION  
 WASHINGTON STATE AGED PASSENGER CERTIFICATE AUTHORITY  
 January 2007

Work Management of WA, Inc.  
 10000 1st Avenue, NE  
 Everett, WA 98203  
 (360) 835-6000  
 www.wa.gov

**Legend**

App. No. DA07024 Issue No. T04-190 Effective 01-01-2009  
 Service Area in Washington

City  
 County Line  
 Interstate Highway  
 U.S. Highway  
 Water (Ocean, Lake)  
 Water (River, Creek)  
 National Forest  
 National Park  
 Military Installation  
 Indian Reservation  
 Water (Other, Lake)

Scale: 1:2,000,000  
 0 10 20 30 40 Miles

Map 1  
 Service Areas in WA

SUPERIOR COURT OF WASHINGTON  
FOR THURSTON COUNTY

Stericycle of Washington Inc.  
Plaintiff/Petitioner,

vs.

Washington Utilities and Transportation  
Commission  
Defendant/Respondent

NO. 13-2-01696-3

NOTICE OF ASSIGNMENT/ (NTAS)  
NOTICE OF SCHEDULING CONFERENCE

TO: THURSTON COUNTY CLERK  
ATTORNEYS/LITIGANTS

PLEASE TAKE NOTICE:

1. That the above-noted case is assigned to:

**The Honorable Erik Price**

2. That the Scheduling Conference is scheduled for 9:00 a.m November 08, 2013.

Dated this 8th day of August, 2013.

*All parties should be familiar with Local Civil Rule 3(f) which requires in part that parties or lead counsel attend and that the parties or counsel shall communicate with each other concerning the case schedule order before the scheduling conference.*

THURSTON COUNTY SUPERIOR COURT  
2000 LAKERIDGE DRIVE SW  
OLYMPIA WA 98502  
(360) 786 - 5560

NOTICE OF ASSIGNMENT/  
NOTICE OF SCHEDULING CONFERENCE