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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STERICYCLE OF WASHINGTON, INC.,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC., d/b/a WM
HEALTHCARE SOLUTIONS OF
WASHINGTON,

Respondent.

Docket No. TG-121597

COMPLAINANT STERICYCLE OF
WASHINGTON, INC.'S OPPOSITION TO
WASTE MANAGEMENT'S MOTION TO
DISMISS

1
2 **I. Introduction.**

3 1. Stericycle of Washington, Inc. (“Stericycle”), through its undersigned attorneys,
4 respectfully submits its opposition to Waste Management of Washington, Inc.’s (“Waste
5 Management”) motion to dismiss Stericycle’s Complaint and Petition for Declaratory Relief
6 (“Complaint”) as procedurally defective.

7 **II. Argument and Authority.**

8 **A. Stericycle’s Complaint and Claims for Relief are Properly Pled; Waste**
9 **Management’s Motion to Dismiss Should be Denied.**

10 1. **Stericycle’s Complaint is properly pled under RCW 81.04.110 and WAC**
11 **480-07-370.**

12 2. Waste Management argues that Stericycle’s Complaint should be dismissed
13 because it seeks declaratory rulings and is therefore “procedurally defective” under WAC 480-
14 07-930. Waste Management Motion to Dismiss (“WM Motion to Dismiss”) ¶¶ 11-20.
15 However, as RCW 81.04.110, WAC 480-07-370, and the Commission Staff’s Response to
16 Waste Management’s Motion for Dismissal (“Staff Response to Motion for Dismissal”) make
17 clear, (1) Stericycle’s Complaint is properly pled as a formal complaint under RCW 81.04.110
18 and WAC 480-07-370; and (2) the alleged procedural defects do not warrant dismissal under
19 WAC 480-07-395.

20 3. Stericycle’s Complaint invokes RCW 81.04.110, under which “any person or
21 corporation” may file a “petition or complaint in writing, setting forth any act or thing done or
22 omitted to be done by any public service company or any person, persons, or entity acting as a
23 public service company in violation, or claimed to be in violation, of any provision of law or of
24 any order or rule of the commission.” *See* Stericycle Complaint and Petition for Declaratory
25 Relief, ¶ 4. The Complaint is proper under WAC 480-07-370(a)(i) because it was “filed in
26 accordance with... RCW 81.04.110.” The Complaint is also properly pled under WAC 480-
07-370(a)(ii) because (1) it is in writing, (2) it “clearly and concisely set[s] forth the ground(s)

1 for the formal complaint and the relief requested”; and (3) it contains all required information,
2 including “[f]acts that constitute the basis of the formal complaint” and “[c]itations to relevant
3 statutes or commission rules.” WAC 480-07-370(a)(ii)(A)-(D). For these reasons, the
4 Commission Staff agrees that the Complaint is properly pled. *See* Staff Response to Motion for
5 Dismissal at ¶ 5. Also, the Commission accepted and served Stericycle’s Complaint on Waste
6 Management as a formal complaint under RCW 81.04.110. *Id.*, citing Notice of Prehearing
7 Conference ¶ 1 (Nov. 2, 2012). As the Commission Staff agrees, the Commission should reject
8 Waste Management’s motion to dismiss the Complaint as procedurally defective because, in
9 fact, it is properly pled under RCW 81.04.110 and WAC 480-07-370. *See* Staff Response to
10 Motion for Dismissal at ¶ 7.

11 4. Furthermore, under WAC 480-07-395, the Commission favors resolving
12 complaints on the merits. WAC 480-07-395(4) states that “The commission will liberally
13 construe pleadings and motions with a view to effect justice among the parties. The
14 commission, at every stage of the proceeding, will disregard errors or defects in pleadings,
15 motions, or other documents that do not affect the substantial rights of the parties.”¹ In prior
16 cases, the Commission has explicitly rejected similar arguments that alleged procedural defects
17 warrant dismissal of a complaint. For example, in *Waste Connections of Wash., Inc. v.*
18 *Enviro/Con & Trucking, Inc.*, Docket No. TG-071194, Order 5 ¶ 19 (October 7, 2008), the
19 Commission allowed a pleading containing procedurally flawed declaratory order requests to
20 “proceed as prosecuted, in the form of a complaint.” The Commission in *Waste Connections*
21 made clear that the Commission and the public have a “substantial interest in enforcement
22 actions” which warrants the Commission’s policies, under WAC 480-07-395, of “liberal
23 construction of pleadings and allowance of amendments.” *Id.* The Commission Staff agrees

24 ¹ The Commission also has discretion to return a defective or insufficient pleading or motion to
25 a party for correction (WAC 480-07-395(3)) and/or allow parties to amend pleadings, motions,
26 and other documents “on such terms as promote fair and just results.” WAC 480-07-395(5).
These provisions clearly demonstrate the Commission’s policy of adjudicating based on
substance rather than form, in the name of justice and the public interest.

1 with Stericycle that nominal procedural defects in Stericycle's Complaint, if any, would not
2 warrant dismissal. See Staff Response to Motion for Dismissal at ¶ 5. The Commission should
3 therefore reject Waste Management's motion to dismiss.²

4 5. Finally, as Waste Management has conceded (WM Motion to Dismiss at ¶ 21),
5 the Commission has the authority under WAC 480-07-930(4) to "convert the form of a
6 declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an
7 adjudicative proceeding." The Commission's acceptance of Stericycle's Complaint in this
8 proceeding, now supported by the Commission Staff, makes clear that Stericycle's Complaint
9 was properly filed under RCW 81.04.110. Even if it were viewed otherwise, the Commission
10 could and should convert the form of the proceeding into a formal complaint proceeding, rather
11 than dismissing Stericycle's Complaint.

12 2. **All relief Stericycle has requested is available under RCW 81.04.110.**

13 6. Waste Management argues that the Commission's authority to grant relief is
14 exceedingly limited when it acts pursuant to a private complaint, i.e. in an "enforcement
15 action." WM Motion to Dismiss ¶ 23, citing *Waste Connections of Wash., Inc. v. Enviro/Con &*
16 *Trucking, Inc.*, Docket No. TG-071194, Order 07 (Nov. 19, 2009). However, the decision cited
17 by Waste Management in support of this argument is actually the initial order of an
18 Administrative Law Judge, the reasoning and conclusions of which the Commission has
19 explicitly stated it "does not endorse." *Waste Connections of Washington, Inc. v. Enviro/Con &*
20 *Trucking, Inc.*, Docket TG-071194, Final Order ¶ 4 (Feb. 3, 2010), referencing *Waste*
21 *Connections of Wash., Inc. v. Enviro/Con & Trucking, Inc.*, Docket No. TG-071194, Order 07
22 (Nov. 19, 2009). In fact, RCW 81.04.110 grants the Commission "power" to determine whether
23 practices are unfair or illegal and to act to "correct the abuse complained of," and RCW
24 81.04.405 expressly authorizes the Commission to impose penalties "pursuant to a complaint

25 _____
26 ² If a complaint is procedurally flawed, the proper remedy is to direct the complainant to
amend, not to dismiss.

1 under RCW 81.04.110.” Therefore, the Commission may grant all of the relief requested in
2 Stericycle’s Complaint.

3 7. The Commission has authority under RCW 34.05.461 to enter orders including
4 “a statement of findings and conclusions, and the reasons and basis therefor, on all material
5 issues of fact, law, or discretion presented on the record, including the remedy or sanction” to
6 be imposed. As the Commission Staff argues, RCW 34.05.461 gives the Commission in this
7 instance the power to “declare whether Waste Management’s activities are subject to regulation
8 by the Commission or are unlawful.” Staff Response to Motion for Dismissal at ¶ 7.
9 Furthermore, RCW 81.04.110 makes clear that the Commission may, “by its order” determine
10 whether “the rates, charges, rules, regulations or practices” of a public service company are
11 “unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to
12 oppress the complainant, to stifle competition, or to create or encourage the creation of
13 monopoly.” Stericycle seeks just such a determination regarding Waste Management’s illegal
14 practices. Complaint at ¶ 21. Indeed, the Commission has made declarations such as those
15 Stericycle now requests in another proceeding involving Waste Management. *See* Staff
16 Response to Motion for Dismissal at ¶ 6, *citing Stericycle of Wash., Inc. v. Waste Management*
17 *of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Motions for Dismissal and Summary
18 Determination (July 13, 2011). Waste Management argues that Stericycle’s use of the words
19 “declaratory” and “declaration” in its Complaint render the Complaint “procedurally defective”
20 (WM Motion to Dismiss at ¶¶ 11-20) when in fact, a “declaration” by the Commission is no
21 more or less than an “order” determining whether “the rates, charges, rules, regulations or
22 practices” of Waste Management are unlawful or otherwise unfair under RCW 81.04.110. The
23 Commission should reject Waste Management’s arguments to dismiss Stericycle’s Complaint
24 based on semantic distinctions that do not impact the Commission’s statutory authority to grant
25 the relief Stericycle has requested. *See* Staff Response to Motion for Dismissal at ¶¶ 6, 7.
26

1 8. Not only may the Commission declare that certain practices are unlawful under
2 RCW 81.04.110, it also has the power to “correct the abuse complained of by establishing such
3 uniform rates, charges, rules, regulations or practices in lieu of those complained of.” RCW
4 81.04.110. Contrary to Waste Management’s arguments, the Commission clearly has authority
5 under this statute to correct abuses by ordering the party committing those abuses to cease its
6 unlawful and unfair practices. The Complaint requests that the Commission put a stop to Waste
7 Management’s unlawful practices, and the language of RCW 81.04.110 (as the Commission
8 Staff agrees) makes clear that the Commission has authority to do just that. *See* Staff Response
9 to Motion for Dismissal at ¶¶ 5, 6. Waste Management makes much of the words “cease and
10 desist” in the Complaint, yet Stericycle’s requests for relief do not rely on RCW 81.04.510. *See*
11 Complaint at ¶¶ 21(a), (e), (f). Rather, Stericycle requests no more than that the Commission
12 “correct” Waste Management’s “abuse[s]” by ordering them to cease their unlawful practices
13 and remedy any damage done by those practices; in short, Stericycle’s Complaint gives the
14 words “cease and desist” their ordinary meaning and requests relief properly available and
15 within the Commission’s authority in a Complaint proceeding. *See* Complaint at ¶¶ 21(a), (e),
16 (f); RCW 81.04.110. The Commission should reject Waste Management’s semantic arguments
17 that the Commission lacks authority to grant relief which it clearly has authority to grant under
18 RCW 81.04.110.

19 9. Stericycle also agrees with the Commission Staff that the Commission may
20 impose penalties in a private complaint proceeding under RCW 81.04.405, which states that
21 “every person or entity found in violation *pursuant to a complaint under RCW 81.04.110*, shall
22 incur a penalty....” (emphasis added.) *See* Staff Response to Motion for Dismissal at ¶ 8. Waste
23 Management relies on a 2005 decision, *Glick v. Verizon Nw.*, to argue that the Commission
24 may only impose penalties when it initiates a complaint on its own motion. WM Motion to
25 Dismiss at ¶ 26, *citing* Docket No. UT-040535, Order 03 (Jan. 28, 2005). In *Glick*, the
26 telephone customer-Complainant argued that “upon finding a violation, the Commission *must*

1 assess penalties.” Docket UT-040535, Order No. 3 ¶ 60 (emphasis added). The Commission
2 rejected the Complainant’s argument, and did not impose penalties. Nevertheless, the
3 Commission did not hold that it may *never* impose penalties in a private complaint proceeding.
4 Rather, the Commission in *Glick* made clear that it has discretion to determine “what
5 consequences to seek, and what level of penalties to impose” for rule violations. *Id.* at ¶ 62. The
6 Commission Staff agrees with this interpretation of the Commission’s decision in *Glick*. Staff
7 Response to Motion for Dismissal at ¶ 9. In a 2008 decision, the Commission emphasized its
8 considerable discretion to grant relief, explicitly stating that “a penalty may be an appropriate”
9 remedy in a private complaint proceeding under RCW 81.04.110. *Waste Connections of*
10 *Washington, Inc. v. Enviro/Con & Trucking, Inc.*, Docket TG-071194, Order 5 ¶ 18 (October 7,
11 2008); *see also* Staff Response to Motion for Dismissal, note 10. Stericycle has properly
12 requested that the Commission exercise this discretion by imposing penalties “in such amounts
13 as the Commission deems appropriate.” Complaint ¶ 21.h; *see also* Staff Response to Motion
14 for Dismissal at ¶ 9.

15 10. Because Stericycle’s Complaint is both properly pled under RCW 81.04.110 and
16 WAC 480-07-370 and requests relief which the Commission has clear authority to grant under
17 RCW 81.04.110, the Commission should reject Waste Management’s motion to dismiss. Under
18 the Commission’s long-standing policy of adjudicating based on the merits, the remedy for any
19 procedural defects would not include dismissal in any event.

20 **III. Conclusion**

21 11. Stericycle respectfully requests that the Commission deny Waste Management’s
22 motion to dismiss Stericycle’s Complaint as procedurally defective because it is properly pled
23 and seeks appropriate relief under RCW 81.04.110 and WAC 480-07-370.

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1 DATED this 18th day of December, 2012.

2 Respectfully submitted,

3 GARVEY SCHUBERT BARER

4
5 By 

6 Stephen B. Johnson, WSBA #6196

7 Jared Van Kirk, WSBA #37029

8 Attorneys for Protestant Stericycle of
9 Washington, Inc.

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OPPOSITION TO WASTE MANAGEMENT'S MOTION TO
DISMISS - 7

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1 **CERTIFICATE OF SERVICE**

2 I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of
3 Washington that, on December 18, 2012, I caused to be served on the person(s) listed below in
4 the manner shown a copy of COMPLAINANT STERICYCLE OF WASHINGTON, INC.'S
5 OPPOSITION TO WASTE MANAGEMENT'S MOTION TO DISMISS:

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7 Transportation Commission
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46 OPPOSITION TO WASTE MANAGEMENT'S MOTION TO
47 DISMISS - 8

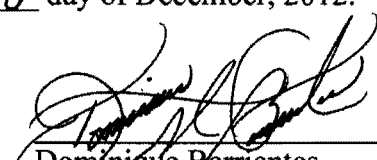
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Dated at Seattle, Washington this 18 day of December, 2012.



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