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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of:

WASTE MANAGEMENT OF WASHINGTON,
INC. D/B/A WM HEALTHCARE SOLUTIONS
OF WASHINGTON

For an Extension of Certificate G-237 for a
Certificate of Public Convenience and Necessity
to Operate Motor Vehicles in Furnishing Solid
Waste Collection Service

Docket No. TG-120033

**WASTE MANAGEMENT'S MOTION
FOR SUMMARY DETERMINATION AS
TO FINANCIAL AND OPERATIONAL
FITNESS**

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1 **I. RELIEF REQUESTED**

2 1. Pursuant to WAC 480-07-380(2)(a), Applicant Waste Management of Washington, Inc.
3 d/b/a WM Healthcare Solutions of Washington (“Waste Management”) moves that the Commission rule
4 as a matter of law that Waste Management is financially and operationally fit to provide collection
5 services in the territory containing the remaining portion of Washington’s biomedical waste not
6 presently served by Waste Management.¹

7 **II. STATEMENT OF FACTS**

8 2. Waste Management is the largest regulated hauler of solid waste in Washington. It holds
9 general solid waste authority under Certificate No. G-237 and has provided solid waste collection
10 services subject to the Commission’s oversight and approval for decades. Waste Management’s
11 authorized service area under Certificate No. G-237 covers major portions of the State of Washington
12 and includes densely populated cities and vast, sparsely-populated unincorporated territories, in King,
13 Pierce, Snohomish, Island, Kitsap, Mason, Whatcom, Benton, Chelan, Douglas, Grant, Okanogan,
14 Lincoln, Kittitas, Spokane and Skagit Counties.² Pursuant to Certificate No. G-237 and the
15 Commission’s July 2011 Order,³ Waste Management operates solid waste collection services, including
16 biomedical waste collection service, throughout the Certificate No. G-237 territory. According to
17 Stericycle, Waste Management’s territory encompasses sources for 80% of Washington’s generated
18 biomedical waste.⁴

19 3. In the pending Application, Waste Management has requested permission to expand its
20 services to provide biomedical waste collection service in the territories where the incremental

21 _____
22 ¹ This Motion does not address the other factors to be considered in adjudicating an application under RCW 81.77.040
including, regulatory fitness, public need and “service to the satisfaction of the commission.”

23 ² Declaration of Jessica L. Goldman in Support of Waste Management’s Motion for Summary Determination as to Financial
and Operationsl Fitness (“Goldman Decl.”), Exs. 1 & 2.

24 ³ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Motions for Dismissal &
Summ. Determination (Wash. Utils. & Transp. Comm’n, July 13, 2011).

25 ⁴ Docket TG-110553, Reply in Supp. of Stericycle’s Mot. for Summ. Determination at 11 n.7 (June 1, 2011). The cited
26 portions of this brief are attached as Exhibit 3 to the Goldman Declaration. Stericycle has been performing biomedical waste
27 collection services statewide for over twenty years and presumably is in a position to make this calculation. Waste
28 Management has not itself undertaken a precise computation of the percentage of biomedical waste which might be generated
in the Certificate No. G-237 territory. However, there is no question that the territory is large, it encompasses many of the
most densely-populated areas of the State where the large medical waste generators are located, and it includes a huge
majority of the State’s biomedical waste, whatever the precise percentage.

1 remainder of Washington's biomedical waste is generated. As Judge Kopta noted in the April 16, 2012
2 Prehearing Conference Order, this is an application for "extended authority."⁵

3 III. STATEMENT OF ISSUES

4 4. Is Waste Management entitled to a summary determination that its financial and
5 operational fitness to provide biomedical waste collection services in the territory generating the
6 incremental remainder of Washington's biomedical waste is established as a matter of law and that there
7 exist no genuine issues as to any material fact related thereto?

8 IV. EVIDENCE RELIED UPON

9 5. Waste Management relies upon the concurrently filed Declaration of Jessica L. Goldman
10 and the public records attached thereto.

11 V. ARGUMENT

12 A. The Test for Determining Financial and Operational Fitness Under RCW 81.77.040 Is to 13 Ensure the Hauler Has the Ability to Perform the Services

14 6. The Commission regulates "in the public interest."⁶ Hence, the RCW 81.77.040 inquiry
15 regarding financial and operational fitness is intended to protect the public by guarding against issuance
16 of solid waste certificates to unreliable, unstable companies. In keeping with this statutory goal, the
17 standard for establishing financial and operational fitness in an application for authority depends on the
18 particular applicant, and the Commission may determine what an applicant needs to prove to satisfy its
19 goals of overseeing public interest.

20 7. In considering an application by a biomedical waste service provider new to the
21 Commission and to the State of Washington, the Commission explained that "[t]he type of detailed
22 financial information necessary in a rate case is not required in an application for authority."⁷ The
23 Commission seeks only

24 to determine whether an applicant has enough money to start and maintain
25 operations, whether it has a source of funds to allow it to operate through
the start up phase of business (when it most likely will not be profitable),

26 ⁵ Prehearing Conference Order ¶ 8.

27 ⁶ RCW 80.01.040(2).

28 ⁷ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 9 (Wash. Utils. & Transp. Comm'n, Nov. 30, 1990).

1 whether it can provide consistent service to its customers and can continue
2 to meet those customers' needs by acquiring additional equipment and
3 personnel if necessary.... The Commission needs enough information to
4 be reasonably certain that the company will not go out of business, leaving
5 its customers stranded. Finally, the Commission does need information
6 about an applicant's cost of providing the proposed service in order to
7 determine ... whether the applicant's finances will allow it to provide the
8 proposed service.⁸

9 8. The Commission does not require proof that proposed operations are certain to be
10 profitable.⁹ Rather, the applicant need only demonstrate "that it could finance statewide operations for a
11 reasonable period, until they either become profitable or demonstrate that they lack feasibility."¹⁰ It was
12 under this lenient standard that Stericycle, an entity not previously regulated by the Commission, was
13 granted statewide authority in 1995.¹¹ In that proceeding, WRRRA complained that Stericycle's

14 financial information is not sufficiently specific and [] it consists
15 principally of testimony regarding its existing operations on temporary
16 authority, serving "about 205 of the most profitable accounts ... in the
17 most densely populated corridor" of the state. Protestant contends that
18 applicant's pro forma operating statement fails to consider declining
19 revenues per account and customer attrition. It contends that the
20 applicant's operating history in another territory, where it does serve
21 customers in rural settings, cannot establish financial feasibility for a
22 service based on different customer and regulatory requirements.¹²

23 The Commission rejected WRRRA's complaints and took pains to emphasize again that "[t]his is not a
24 rate case, in which precise historical evidence is required and future projections must often be known
25 and measurable to be considered."¹³ With regard to financial fitness, then, the standard is capable of
26 being met by a fairly perfunctory review of a company's fiscal resources and corporate wherewithal.
27
28

⁸ *Id.*

⁹ *In re Sureway Med. Servs., Inc.*, App. No GA-75968, Order M.V.G. No. 1663 at 19 (Wash. Utils. & Transp. Comm'n, Nov. 19, 1993).

¹⁰ *Id.*

¹¹ *In re Stericycle of Wash., Inc.*, App. No. GA-77539, Order M.V.G. No. 1761 at 9 (Wash. Utils. & Transp. Comm'n, Aug. 11, 1995).

¹² *Id.*

¹³ *Id.*

1 9. Operational fitness is an inquiry to determine whether the applicant has the physical
2 ability to provide the proposed service.¹⁴ Generally, a showing of adequate equipment and personnel is
3 sufficient to prove ability to serve, although the Commission has for biomedical services also inquired
4 into disposal and processing infrastructure necessary to perform the proposed services. Evidence of a
5 company's ability to operate is required to prove operational fitness, but the Commission may determine
6 what is needed to meet that burden on a case-specific basis.

7 **B. The Commission Has Sufficient Information About Waste Management to Establish Waste**
8 **Management's Financial and Operational Fitness.**

9 10. As discussed above, in the case of a new entrant into the biomedical waste collection
10 market, "[t]he Commission needs enough information to be reasonably certain that the company will not
11 go out of business, leaving its customers stranded."¹⁵ The applicant presently before the Commission is
12 not a new, untested entrant into the market and what is "enough information" in this context will reflect
13 Waste Management's long regulatory history with the Commission (and with the Protestants). Waste
14 Management and its predecessor companies have been providing certificated waste collection services
15 throughout vast areas of the State of Washington for decades and, for the last year, Waste Management
16 has also been providing biomedical waste collection services throughout the large Certificate No. G-237
17 territory.¹⁶ Waste Management is a financially healthy corporation with substantial resources to ensure
18 no Washington medical waste customer will be stranded due to Waste Management closing its doors.¹⁷

19 11. Fitness is not intended as an area of unfettered inquiry simply because it is an element of
20 proof, but rather it is a public interest factor subject to verification by the Commission. If the applicant
21 demonstrates to the Commission that it has the wherewithal to serve the public interest, then further
22 inquiry is unnecessary. Plainly, the Commission has "enough information to be reasonably certain that
23

24 ¹⁴ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 13 (Wash. Utils. & Transp. Comm'n, Nov. 30,
1990).

25 ¹⁵ *Id.* at 9.

26 ¹⁶ Goldman Decl., Ex. 1.

27 ¹⁷ *Id.*, Ex. 4. Moreover, Waste Management has corporate affiliates with nation-wide biomedical waste operations. See
28 <http://www.wm.com/enterprise/healthcare/index.jsp> (last visited May 3, 2012). See *In re Am. Env'tl. Mgmt. Corp.*, App. No.
GA-874, Order M.V.G. No. 1452 at 5 (Wash. Utils. & Transp. Comm'n, Nov. 30, 1990) ("The applicant's parent company is
quite large and its financial statements show retained earnings of \$9 million.").

1 [Waste Management] will not go out of business [and] leav[e] its customers stranded”¹⁸ if it is permitted
2 to **also** serve the territory within the state which is home to the **final** incremental remainder of
3 biomedical waste. Plainly, the Commission has “enough information to be reasonably certain” that
4 Waste Management “has enough money to start and maintain [the additional] operations.”¹⁹ Plainly, the
5 Commission has “enough information to be reasonably certain” that Waste Management “has a source
6 of funds to allow it to operate through the start up phase of its [additional] business.”²⁰

7 12. Unlike the case with a new entrant into the regulated market, Waste Management already
8 has in place a tariff for the biomedical waste collection services it provides to customers in territory
9 including the significant proportionate share – ostensibly 80% – of Washington’s biomedical waste.²¹ It
10 is these exact rates which Waste Management will charge to customers when it starts service in the
11 expanded territory. These rates are comparable to those presently charged by Stericycle under a
12 presumably reasonable, nearly 20-year-old tariff.²²

13 13. Moreover, Waste Management is obviously operationally fit to provide the proposed
14 service, not because it is a subsidiary of a “big international company,”²³ but, rather, because it is
15 already operating in territory where the overwhelming majority of the state’s biomedical waste is
16 generated. It is impossible to conceive of more compelling evidence of its operational capability to
17 serve the incremental remainder of biomedical waste which is not covered by Certificate No. G-237.

18 14. There can be no material dispute as to Waste Management’s financial or operational
19 fitness and it **already has** demonstrated the “feasibility of [its] operations.”²⁴ The wild goose chase
20 which would ensue absent issuance of an order on summary determination (along with the existing

21 ¹⁸ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 9 (Wash. Utils. & Transp. Comm’n, Nov. 30,
22 1990).

23 ¹⁹ *Id.*

24 ²⁰ *Id.*

²¹ Docket No. TG-110552.

²² Goldman Decl., Ex. 5. When a regulated company files a tariff to start a new service option or service level which has not
25 been previously included in its tariff, it is required only to file its rates with proper notice (as Waste Management did). RCW
26 81.28.040. Of course, to the degree the Commission has concerns about any of these tariffs which took effect automatically
27 by operation of law, WAC 480-70-262, the Commission may initiate a complaint proceeding. RCW 81.28.230.

²³ WRRRA’s Objections at 3:22-24.

²⁴ WRRRA Objections at 4:7-10 (citing *In re Ryder Distrib. Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 at 9
28 (Wash. Utils. & Transp. Comm’n, Aug. 11, 1995)).


1 restriction on discovery) would uncover no possibly relevant information regarding the financial and
2 operational fitness of this applicant, but it would accomplish its intended goal of making it more
3 expensive and more burdensome for Waste Management to pursue this Application and provide the
4 competition among biomedical waste collection services which the Commission has held is in the public
5 interest.²⁵ In the absence of a “genuine issue” as to a “material fact,” Protestants are not entitled to a
6 hearing on the issue of Waste Management’s financial and operational fitness and an order of summary
7 determination should issue.²⁶

8 **VI. CONCLUSION**

9 15. Given that today Waste Management provides solid waste collection services – including
10 biomedical waste – throughout the territories in Washington State in which the vast majority of the
11 biomedical waste is generated, there is no possible “**genuine** issue as to any **material** fact”²⁷ regarding
12 Waste Management’s financial and operational capacity to provide service to the territories where the
13 remaining biomedical waste is generated. There can be no legitimate dispute that the Commission has
14 “enough information to be reasonably certain that [Waste Management] will not go out of business [and]
15 leav[e] its customers stranded.”²⁸ Hence, Waste Management respectfully requests that the Commission
16 enter summary determination that Waste Management’s financial and operational fitness has been
17 established as a matter of law.

18 DATED this 4th day of May, 2012.

19 SUMMIT LAW GROUP PLLC

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25 ²⁵ *Stericycle of Wash., Inc. v. Waste Mgmt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Motions for Dismissal &
26 Summ. Determination ¶ 36 (Wash. Utils. & Transp. Comm’n, July 13, 2011).

27 ²⁶ WAC 480-07-380(2)(a).

28 ²⁷ *Id.* (emphasis added).

²⁸ *In re Sure-Way Incineration, Inc.*, App. No. GA-868, Order No. 1451 at 9 (Wash. Utils. & Transp. Comm’n, Nov. 30, 1990).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method indicated below, pursuant to WAC 480-07-150.

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DATED at Seattle, Washington, this 4th day of May, 2012.

Deanna L. Schow