

No. 46100-5-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STERICYCLE OF WASHINGTON, INC.,

Appellant,

v.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION and
WASTE MANAGEMENT OF WASHINGTON, INC.,**

Respondents,

RESPONSE BRIEF OF RESPONDENT

**WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

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I. INTRODUCTION

This appeal concerns the Washington Utilities and Transportation Commission's ("WUTC" or "Commission") exercise of its discretion to determine the appropriate number of biomedical waste carriers who should be authorized to operate within a particular service territory. The Commission regulates the collection of solid waste, including biomedical waste, in the state of Washington.¹ One of the Commission's regulatory tasks is to regulate entry into the solid waste collection market. When a company applies to provide solid waste collection services within an area currently served, the Commission may grant the application only if an existing company does not object or if the existing solid waste collection company or companies "will not provide service to the satisfaction of the Commission."²

The Commission proceeding commenced when Respondent Waste Management of Washington, Inc. ("Waste Management") applied to the Commission to extend its authority to collect biomedical waste statewide, and other solid waste collection companies objected to the entry of another competitor into the territories they serve. At the time the Commission received the application, one company, Appellant Stericycle of

¹ Chapter 81.77 RCW.

² RCW 81.77.040.

Washington, Inc. (“Stericycle”), possessed authority to collect biomedical waste statewide, and various other companies, including Waste Management, possessed the authority to collect biomedical as well as other types of solid waste within particular service territories.

In its Final Order,³ the Commission determined that the existing service was unsatisfactory because it did not meet the need for effective competition. The Commission further found, based on the positive effects Waste Management demonstrated its competing biomedical waste collection service already had produced in its existing service area, that extending Waste Management’s authority will enhance the effectiveness of competition. The Commission granted Waste Management’s application for extension of its authority to collect biomedical waste. Only Stericycle appealed the Commission’s decision.

For purposes of evaluating “service to the satisfaction of the Commission,” Stericycle would have the Commission consider in 2014 only those circumstances it considered during the 1990s, when the market for biomedical waste was developing. Stericycle relies on case law addressing the Commission’s regulation of traditional rather than specialized solid waste collection as well as on the Commission’s case-

³ Order 10, Final Order Denying Petitions for Review of Order 07 and Granting Application (July 10, 2013).

specific analyses of satisfactory service in biomedical waste collection proceedings conducted primarily in the early nineties to assert that the Commission can only consider individual services provided, not provided, or deficiently provided. According to Stericycle, the Commission cannot consider whether the service market those services add up to will be satisfactory to the Commission. The solid waste collection entry statute, RCW 81.77.040, does not specify, however, what the Commission should consider. Rather, the statutory language, “if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the [C]ommission,” leaves the matter of satisfactory service entirely to the Commission’s discretion.

II. COUNTERSTATEMENT OF THE CASE

A. Commission Regulation of Biomedical Waste Carrier Operations and Entry

Since the early 1990s, when the market for biomedical waste collection burgeoned, the Commission has issued certificates of convenience and necessity to companies offering biomedical waste collection services in competition both with incumbent solid waste collection companies and with newer entrants specializing in biomedical waste collection. The Commission regulates solid waste collection companies under Title 81.77 RCW. Solid waste includes biomedical

waste.⁴ Solid waste collection companies that hold a certificate of public convenience and necessity from the Commission under RCW 81.77.040 are authorized to collect all types of solid waste, including biomedical waste.⁵ In addition, the Commission issues authority to specialized solid waste collection companies⁶ restricted to the collection of biomedical waste.

In 1990, the Commission issued a certificate of public convenience and necessity to American Environmental Management Corp. (AEMC) to collect “biohazardous, infectious, contaminated, and other related medical waste” statewide.⁷ This represented the Commission’s first grant of specialized permanent authority for the collection of what came to be termed “biomedical waste.”⁸ In its decision, the Commission cited

⁴ Biomedical waste consists of animal waste, biosafety level 4 disease waste, cultures and stocks, human blood and blood products, pathological waste and sharps waste. WAC 480-70-041. These types of waste are defined within the rule.

⁵ See *Stericycle of Washington, Inc., v. Waste Management of Washington, Inc.*, Docket TG-110553, Order 02, Final Order on Cross-Motions for Dismissal and Summary Determination, pp. 15-16, (July 13, 2011) (AR 768-69).

⁶ Defined at WAC 480-70-041 as follows: “a company providing other than traditional solid waste collection service. Specialized companies generally haul specific waste products for specific customers, provide only on-call or nonscheduled service, or provide accessorial services not normally provided by traditional solid waste collection companies.”

⁷ *In re American Envtl. Mgmt. Corp.*, Order M. V. G. No. 1452 (Wash. Utils. & Transp. Comm’n, Nov. 30, 1990) (AR 592-626).

⁸ A note following the definition of “biomedical waste” at WAC 480-70-041 states as follows:

Certificates issued prior to the effective date of these rules may contain the terms “biohazardous waste” or “infectious waste” in describing services

concern about the potential for spread of disease, such as AIDS and hepatitis, and found that biomedical waste posed a threat to public health and safety that created a need for specialized collection service.⁹ Incumbent solid waste collection companies had protested AEMC's application, but the Commission found that they would not provide the service needed as they lacked the requisite equipment and resources to handle biomedical waste.¹⁰ The certificate that the Commission issued to AEMC authorized biomedical waste collection service in all areas of the state, including in the incumbents' service areas.

In 1992, Sureway Medical Services, Inc. (Sureway) applied for authority to collect biomedical waste throughout Washington except in Clark County (and with some restrictions in Snohomish County).¹¹ Certificated solid waste collection companies, including companies providing biomedical waste collection, protested the application. At the time, BFI Medical Waste Systems of Washington, Inc. (BFI), formerly AEMC, was operating with statewide authority and litigated against

authorized. From the effective date of these rules, those permits shall be understood to allow the transportation of "biomedical waste."

The effective date of the biomedical waste rules is April 23, 2001.

⁹ *In re American Envtl. Mgmt. Corp.* at 4 (AR 595).

¹⁰ *Id.* at 8 (AR 599).

¹¹ *In re Sureway Med. Servs., Inc.*, Order M. V. G. No. 1663, p. 1 (Wash. Utils. & Transp. Comm'n, Nov. 19, 1993) (AR 659).

Sureway's application. The Commission considered the issue of detrimental competition and noted that Sureway and BFI had been competing in the Seattle area since BFI (then AEMC) received authority in 1990.¹² The Commission granted Sureway permanent authority in 1993 to collect biomedical waste in King County and in portions of Snohomish and Pierce Counties, finding that Sureway had met the evidentiary burden to show its service was needed with respect to only those counties.¹³

In 1994, the Commission issued authority to Medical Resource Recycling System, Inc. (Medical Resource) to collect biomedical waste in Spokane County.¹⁴ Medical Resource offered alternatives to the service offerings of existing biomedical waste collection companies, such as an alternative to incineration. Citing the evidence from waste generators¹⁵ of need for these service alternatives,¹⁶ the Commission granted the application over the protests of the Washington Refuse and Recycling Association (WRRRA) and BFI.

¹² *Id.* at 17 (AR 675).

¹³ *Id.* at 21 (AR 679).

¹⁴ *In re Medical Res. Recycling Sys., Inc.*, Order M. V. G. No. 1707 (Wash. Utils. & Transp. Comm'n, May 25, 1994) (AR 702-10).

¹⁵ "Biohazardous or biomedical waste generator" is defined as "any person, by site, whose act or process produces infectious waste, or whose act first caused an infectious waste to become subject to regulation." WAC 480-70-051.

¹⁶ *In re Medical Res. Recycling Sys. Inc.* at 3 (AR 704).

In 1995, the Commission granted Stericycle a certificate of public convenience and necessity to collect biomedical waste statewide.¹⁷ Stericycle had been operating with temporary authority in competition with other biomedical waste collection companies in some areas.¹⁸ In its decision, the Commission found that waste generators had a demonstrated need for particular services Stericycle could provide, and that existing biomedical waste carriers were not providing service to the satisfaction of the Commission because they were not offering services to meet those needs.¹⁹ Since obtaining permanent authority, Stericycle has continued to compete with other carriers in the collection of biomedical waste.²⁰

In 1998, the Commission issued a decision on a petition of Commission Staff for a declaratory ruling regarding certain practices of biomedical waste carriers.²¹ The Commission's order sets forth facts

¹⁷ *In re Ryder Distrib. Res., Inc.*, Order M. V. G. No. 1761 (Wash. Utils. & Transp. Comm'n, Aug. 11, 1995).

¹⁸ See *In re Sureway Med. Servs., Inc.*, at 14 (AR 672). In 1993, the Commission had denied an application involving Stericycle for permanent authority to collect biomedical waste, based on the Commission's view that the business arrangement proposed between Stericycle and the applicant, Ryder Distribution Resources, Inc. (Ryder), rendered Stericycle an unlicensed solid waste collection company. *In re Ryder Distrib. Res., Inc.*, Order M. V. G. No. 1596 (Wash. Utils. & Transp. Comm'n, Jan. 25, 1993) (AR 627-58).

¹⁹ *In re Ryder Distrib. Res., Inc.*, Order M. V. G. No. 1761 at 12 (AR 722).

²⁰ *E.g.*, AR 4188 (Consolidated Disposal Services, Inc. competes with Stericycle); AR 4204 (Murrey's Disposal Co., Inc. competes with Stericycle); AR 4177 (Rubatino Refuse Removal, Inc. competes with Stericycle); AR 4193 (Pullman Disposal Service competes with Stericycle).

²¹ *In re Biomedical Waste Carriers*, Docket TG-970532, Declaratory Order (Wash. Utils. & Transp. Comm'n, Aug. 14, 1998) (AR 734-53).

stipulated to by the parties, including Stericycle, which contain the following:

There are currently approximately 75 solid waste carriers with authority to transport biomedical waste in limited service areas of the state, and two carriers of biomedical waste with statewide authority. While the carriers with statewide authority are in competition with each other across the state, they also compete with carriers in limited service areas.

There is currently competition in the market for provision of services of transportation and disposal of biomedical waste.²²

In its discussion of its decision, the Commission observes, “The specialized service of collection and transportation of biomedical waste has . . . evolved into a highly competitive industry as a result of the Commission interpreting RCW 81.77.040 consistently with the unique requirements and attributes of the service.”²³

Waste Management sold its nationwide biomedical waste collection business to Stericycle’s parent company in 1996.²⁴ Stericycle acquired BFI in or around 2000²⁵ and has been the only statewide provider of biomedical collection services since.²⁶

²² *Id.* at 5 (AR 738) (paragraph numbers omitted).

²³ *Id.* at 11 (AR 744).

²⁴ AR 757, n.3.

²⁵ AR 3357.

²⁶ *See* AR 3435; AR 552.

In 2011, Waste Management recommenced providing biomedical waste collection services within its existing service area.²⁷ Waste Management holds Certificate G-237, which authorizes Waste Management to provide biomedical waste collection in major portions of King, Pierce, Snohomish, Island, Kitsap, Mason, Whatcom, Benton, Chelan, Douglas, Grant, Okanogan, Kittitas, Spokane and Skagit counties. Beginning approximately in January 2011, Waste Management began soliciting biomedical waste collection business.²⁸ Waste Management filed a tariff governing biomedical waste collection service with the Commission later that year.²⁹

In the meantime, in March 2011, Stericycle filed a complaint against Waste Management, asserting that Waste Management had abandoned its authority to collect biomedical waste. The Commission dismissed the complaint.³⁰ In its order, the Commission discussed the history of its regulation of biomedical waste collection. Specifically, it pointed out that the Commission had recognized as early as 1990 that “its

²⁷ AR 2734.

²⁸ *Stericycle of Washington, Inc., v. Waste Management of Washington, Inc.*, at 10 (AR 763).

²⁹ The Commission allowed Waste Management’s tariff to go into effect in April 2011. See *Stericycle of Washington, Inc., v. Waste Management of Washington, Inc.*, at 5-7, ¶¶ 13 and 15 (AR 758-60).

³⁰ *Stericycle of Washington, Inc., v. Waste Management of Washington, Inc.*, at 20 (AR 773).

regulation of this specialized service is underpinned by different policies than the ones applicable to traditional solid waste collection” and quoted the following passage from a 1990 order:

[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 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 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. The Commission is at this point unconvinced that any single carrier presently authorized to serve in the state of Washington could provide a level of service, on its own, which would satisfy the Commission and meet the needs of the waste generators.³¹

The Commission further reflected that “while the solid waste industry in general is characterized by monopoly service providers in given territories, the Commission has granted overlapping authority for the provision of biomedical waste services” and, “[t]hus, the Commission policy has

³¹ *Stericycle of Washington, Inc., v. Waste Management of Washington, Inc.*, at 15, citing *In re Sure-way Incineration, Inc.*, Order M. V. G. No. 1451, pp. 16-17 (Wash. Utils. & Transp. Comm’n, Nov. 30, 1990) (AR 768).

historically encouraged competition in the provision of biomedical waste services.”³²

B. The Waste Management Application Proceeding

In December 2011, Waste Management filed an application with the Commission to extend the company’s authority to provide biomedical waste collection statewide.³³ Stericycle and WRRRA and four of its member companies (collectively “WRRRA”) filed protests against the application.³⁴

The Commission reviewed prefiled written testimony and conducted a four-day hearing on the application. Multiple witnesses from waste generators testified about their desire for a statewide competitor to Stericycle in order to ensure the most responsive service and/or the best price.³⁵ Witnesses also testified concerning service improvements

³² *Id.* at 15-16, citing *In re Biomedical Waste Carriers*, Docket TG-970532, Declaratory Order, pp. 10-11 (Wash. Utils. & Transp. Comm’n, Aug. 14, 1998) (AR 768-69).

³³ AR 4-91.

³⁴ AR 104-121.

³⁵ Julie Sell, Olympic Medical Center, AR 2307; Tr. 218.

Jean Longhenry, Wendel Family Dental Care, AR 2313; Tr. 323.

Ray Moore, PeaceHealth Hospitals, AR 2317; Tr. 393-94.

Dr. Danny Warner, President, Washington State Dental Association, AR 2319-20; Tr. 412.

Rodger Lycan, Pathology Associates Medical Laboratories, AR 2323-24; Tr. 442.

Carla Patshkowski, Providence Medical Group, AR 2327-28; Tr. 479-81.

Terry Johnson, Chelan Community Hospital, AR 2310; Tr. 237-39.

instituted by Stericycle since Waste Management recommenced biomedical waste collection service.³⁶ Although Stericycle already was competing with Waste Management in multiple counties, the competition had not prevented Stericycle from increasing its revenues or customer count.³⁷

After conclusion of the hearing, an administrative law judge entered an initial order granting Waste Management's application.³⁸ Stericycle and WRRRA petitioned the Commission for administrative review of the administrative law judge's order.³⁹ On July 13, 2011, the Commission entered a final order, affirming and adopting the initial order, denying the petitions for administrative review, and granting Waste Management's application.⁴⁰

Stericycle petitioned for judicial review of the Commission's final order in Thurston County Superior Court. The Superior Court affirmed the Commission's decision and dismissed Stericycle's petition for judicial review. Stericycle subsequently sought review of the Commission's final order in this Court.

³⁶ AR 2734-36

³⁷ AR 2336.

³⁸ AR 2070-81.

³⁹ AR 2109-78.

⁴⁰ AR 2258-71.

III. STANDARDS OF REVIEW

This appeal is governed by the Administrative Procedure Act (APA), which provides the exclusive means of judicial review of an agency action.⁴¹ In reviewing administrative action, an appellate court sits in the same position as the superior court and applies the APA directly to the record that was before the agency.⁴² The agency action at issue in this appeal is the Commission's final administrative decision in Order 10. In a review of such a decision under the APA, the court reviews the decision of the agency head, not the underlying decision of the administrative law judge.⁴³

The court can grant relief on a petition for administrative review of an agency order only if the petitioner prevails on one of the standards of review enumerated in the APA⁴⁴ and demonstrates substantial prejudice to the petitioner resulting from the agency action.⁴⁵ Parties asserting that an agency order is invalid bear the burden of demonstrating the invalidity of

⁴¹ RCW 34.05.510.

⁴² *Washington Indep. Tel. Ass'n v. Washington Utils. And Transp. Comm'n*, 149 Wn.2d 17, 24, 65 P.3d 319 (2003).

⁴³ *Verizon Northwest, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008); *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 405, 858 P.2d 494 (1993) (“the Legislature has made the judgment that the final authority for agency decision-making should rest with the agency head rather than with his or her subordinates, and that such final authority includes ‘all the decision-making power’ of the hearing officer”).

⁴⁴ RCW 34.05.570(3).

⁴⁵ RCW 34.05.570(1)(d).

the agency order under each standard of review they advance.⁴⁶ In a review under RCW 34.05.570, the remedies that the court may order are limited.⁴⁷

The Appellant, Stericycle, sets forth three assignments of error together with one issue each,⁴⁸ implicating the following four standards of review under the APA:

- The order is outside the statutory authority of the Commission (RCW 34.05.570(3)(b));
- The agency erroneously interpreted the law (RCW 34.05.570(3)(d));
- The order is not supported by substantial evidence (RCW 34.05.570(3)(e)); and
- The order is arbitrary and capricious (RCW 34.05.570(3)(i)).

Stericycle's challenge to the Commission's Final Order is limited to these standards of judicial review.

Questions of statutory construction are reviewed *de novo*; however, courts give substantial weight to the agency's view of the law.⁴⁹ Moreover, courts accord great weight to the statutory interpretation of the agency charged with administering and enforcing the law.⁵⁰ In

⁴⁶ See RCW 34.05.570(1)(a).

⁴⁷ RCW 34.05.574.

⁴⁸ Appellant's Opening Brief, pp. 2-3.

⁴⁹ *Blueshield v. State Office of Ins. Com'r*, 131 Wn. App. 639, 644, 128 P.3d 640 (2006).

⁵⁰ *Id.* at 644.

interpreting a statute, courts look to the “plain meaning of the statute” to best discern and implement the intent of the legislature.⁵¹ If the statute is susceptible to two or more reasonable interpretations, however, it is considered to be ambiguous, and courts may look beyond the plain meaning.⁵² “The fact that two or more interpretations are conceivable does not render a statute ambiguous.”⁵³ Where the statute is ambiguous and is “one which the agency is charged with implementing and concerns matters within the agency’s expertise,” an agency’s interpretation of the statute “is entitled to great weight.”⁵⁴

Findings of fact are reviewed under the substantial evidence standard.⁵⁵ Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.⁵⁶ The substantial evidence standard is highly deferential to the agency fact-

⁵¹ *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011).

⁵² *Id.* at 305-306.

⁵³ *Id.* at 305 (citation omitted).

⁵⁴ *State ex rel. Evergreen Freedom Found. v. Washington Educ. Ass’n*, 140 Wn.2d 615, 645, 999 P.2d 602 (2000) (citations omitted); *Jametsky v. Olsen*, 179 Wn.2d 756 n.2, 764, 317 P.3d 1003 (2014) (“It is well established that ‘[w]here an agency is charged with the administration and enforcement of a statute, the agency’s interpretation of an ambiguous statute is accorded great weight in determining legislative intent.’ *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm’n*, 123 Wash. 2d 621, 628, 869 P. 2d 1034 (1994).”)

⁵⁵ RCW 34.05.570(3)(e).

⁵⁶ *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 542-43, 869 P.2d 1045 (1994) (citations omitted).

finder.⁵⁷ When an agency determination is based heavily on factual matters, especially factual matters that are complex, technical, and close to the heart of the agency's expertise, substantial deference is accorded to the agency.⁵⁸ The court may not weigh the evidence or substitute its view of the testimony for that of the agency.⁵⁹ Unchallenged agency factual findings are verities on appeal.⁶⁰

An agency's exercise of discretion is reviewed under the arbitrary or capricious standard.⁶¹ That standard is even narrower than the substantial evidence standard and the one asserting it carries a heavy burden.⁶² An agency's decision is arbitrary or capricious only if it is "willful and unreasoning and taken without regard to the attending facts and circumstances."⁶³ Where there is room for two opinions, an action

⁵⁷ *ARCO v. Washington Utils. & Transp. Comm'n*, 125 Wn.2d 805, 812, 888 P.2d 728 (1995).

⁵⁸ *Blueshield v. State Office of Ins. Com'r*, 131 Wn. App. at 644, citing *Hillis v. Department of Ecology*, 131 Wn.2d 373, 396, 932 P.2d 139 (1997).

⁵⁹ *Blueshield*, 131 Wn. App. at 646.

⁶⁰ *Kittitas Cy. v. Kittitas Cy. Conservation*, 176 Wn. App. 38, 54-55, 308 P.3d 745 (2013), citing *Hilltop Terrace Homeowner's Ass'n v. Island Cy.*, 126 Wn.2d 22, 30, 891 P.2d 29 (1995).

⁶¹ *Trucano v. Department of Labor & Indus.*, 36 Wn. App. 758, 677 P.2d 770 (1984).

⁶² *Washington Indep. Tel. Ass'n v. Washington Utils. & Transp. Comm'n*, 110 Wn. App. 498, 515, 41 P.3d 1212 (2002), citing *Pierce Cy. Sheriff v. Civil Serv. Comm'n*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983).

⁶³ *Washington Indep. Tel. Ass'n v. Washington Utils. & Transp. Comm'n*, 149 Wn.2d 17, 26 65 P.3d 319 (2003)(citations omitted).

taken after due consideration is not arbitrary or capricious even though a reviewing court may believe it to be erroneous.⁶⁴

Neither the existence of contradictory evidence nor the possibility of deriving conflicting conclusions from the evidence renders an agency's decision arbitrary or capricious.⁶⁵ And courts must not set aside a discretionary decision absent a clear showing of abuse.⁶⁶ Courts must also give substantial deference to a regulatory agency's judgment about how best to serve the public interest.⁶⁷

The APA addresses the extent of judicial review when an agency exercises discretion:

In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with the law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency.⁶⁸

As discussed below, this deferential level of review applies to the Commission's determinations under the "satisfaction of the commission" criterion.

⁶⁴ *Rios v. Department of Labor & Indus.*, 145 Wn.2d 483, 501, 39 P.3d 961 (2002).

⁶⁵ *Id.* at 504.

⁶⁶ *ARCO*, 125 Wn.2d 805, at 812.

⁶⁷ *Washington Indep. Tel. Ass'n v. Washington Utils. & Transp. Comm'n*, 110 Wn. App. 498, 516, 41 P.3d 1212 (2002).

⁶⁸ RCW 34.05.574(1).

While equality of treatment is the touchstone of justice,⁶⁹ this principle does not mean that an agency cannot alter existing precedent or change agency policy in an adjudication.⁷⁰ “Stare decisis plays only a limited role in the administrative agency context.”⁷¹ Moreover, “[o]ur Supreme Court has cautioned that ‘the APA’s provisions were not designed to serve as the straitjacket of administrative action.’”⁷² An agency may follow a course that varies from past policies or decisions when the agency provides a sound explanation for the variance.⁷³

⁶⁹ *Vergeyle v. Department of Emp’t Sec.*, 28 Wn. App. 399, 404, 623 P.2d 736 (1981), review denied, 95 Wn.2d 1021 (1981), disapproved on other grounds by *Davis v. Department of Emp’t Sec.*, 108 Wn.2d 272, 737 P.2d 1262 (1987) (citing *Jones v. Califano*, 576 F.2d 12, 20 (2d Cir. 1978)).

⁷⁰ *Snohomish Cy. Pub. Transp. Benefit Area v. Public Emp’t Relations Comm’n*, 173 Wn. App. 504, 521 n. 11, 294 P.3d 803 (2013).

⁷¹ *Vergeyle*, 28 Wn. App. at 405.

⁷² *Snohomish Cy. Pub. Transp. Benefit Area*, 173 Wn. App. at 521 n.11, citing *Budget Rent A Car Corp. v. Department of Licensing*, 144 Wn.2d 889, 898, 31 P.3d 1174 (2001).

⁷³ 2 Charles H. Koch, Jr., *Administrative Law and Practice* § 5:67 (3d ed. 2010) (“Impact of administrative decisions”). Although the treatise section cited analyzes federal administrative law, courts may look to these federal court decisions because Washington’s APA (WAPA) states specifically that the courts should interpret WAPA consistently with decisions of other courts interpreting similar provisions from other jurisdictions, including the federal government. RCW 34.05.001. See, e.g., *Wells Fargo Bank v. Department of Revenue*, 166 Wn. App. 342, 355-56, 271 P.3d 268 (2012) (finding that the omission of a principle of administrative law (the presumption that a decision must be final before judicial review is available) from WAPA, when federal decisions had adopted the principle as part of federal administrative law, is not enough to reject the principle, in light of the legislature’s directive to interpret WAPA consistently with federal administrative law).

IV. ARGUMENT

A. Summary

The law grants the Commission broad discretion to grant or deny entry to competing solid waste collection companies that demonstrate they meet the statutory requirements with respect to need for the service and the company's financial and regulatory fitness.⁷⁴ The language of RCW 81.77.040, which directs the Commission to consider service of the existing "company or companies" indicates that the statute contemplates entry of competing carriers. The cases Stericycle cites are all distinguishable and do not address satisfaction of the Commission with existing biomedical waste collection service. It is within the discretion of the Commission to determine satisfactory service, and, so long as the Commission provides a sound explanation, the Commission can change how it evaluates service that is to the satisfaction of the Commission. Substantial evidence supported the Commission's decision that there was a need for effective competition in the provision of biomedical waste

⁷⁴ Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

RCW 81.77.040.

collection service. The Commission's conclusion that existing companies will not provide service to the satisfaction of the Commission in that they cannot meet the need for effective competition was taken after due consideration and was not arbitrary and capricious.

B. Applicable law

One statute, RCW 81.77.040, is at issue in this appeal, and pertinent excerpts follow:

A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. . . .

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, 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 or if the existing solid waste collection company does not object. . . .

Specifically, Stericycle takes issue with the Commission's conclusion that Stericycle and other existing biomedical waste carriers will not provide "service to the satisfaction of the commission" due to an unmet need for effective competition that the statewide entry of Waste Management can assuage. As discussed below, it is the Commission's task as the agency entrusted with implementing and enforcing RCW 81.77.040 to regulate entry in the solid waste collection market. The Commission fulfilled this task in keeping with the statute when it looked beyond the adequacy and deficiencies of existing biomedical waste carrier services to consider the sufficiency of the market those services constituted.

C. RCW 81.77.040 Grants the Commission Broad Discretion to Grant or Deny Overlapping Authority.

In RCW 81.77.040, the Legislature indisputably gave the Commission the discretion to determine what constitutes satisfactory service. The breadth of this discretion was addressed by this Court in discussing another statute administered by the Commission:

"The statute [RCW 81.68.040] states that the Commission may grant an overlapping certificate only if it finds that the incumbent 'will not provide [service] to the satisfaction of the Commission.' The statute does not specify how the Commission is to make that determination. Indeed, on its face it would seem to give the Commission discretion to assess an incumbent carrier's future

conduct in any logical and reasonable way supported by the evidence.”⁷⁵

Thus, while the Legislature required consideration of this criterion before the Commission could grant an overlapping or competing certificate, whether that criterion is met is committed squarely to the discretion of the Commission.

Despite this Court’s recognition in *Pacific Northwest Transportation Services* that the similar auto transportation entry statute at issue there does not specify how the Commission is to determine whether the incumbent will provide service to the satisfaction of the Commission,⁷⁶ Stericycle argues that the decision requires the Commission to evaluate only “the characteristics of existing service” because that is what the court discussed in *Pacific Northwest Transportation Services*.⁷⁷ That decision does not stand for the proposition that Stericycle advances, however, nor does it require the Commission to proceed in any particular way in determining satisfactory service. *Pacific Northwest Transportation Services* addressed whether the Commission “is barred from looking at an incumbent’s *past* performance when determining whether the incumbent’s

⁷⁵ *Pacific Northwest Transp. Servs. v. Washington Utils. & Transp. Comm’n*, 91 Wn. App. 589, 596-97, 959 P.2d 160 (1998).

⁷⁶ See 91 Wn. App. at 596-97.

⁷⁷ Appellant’s Opening Brief at 23.

future performance will be satisfactory or deficient.”⁷⁸ The court did not consider, however, whether the Commission is barred from considering the market conditions produced by incumbent service. Thus, it does not follow that, because the court discussed “the service the incumbent was rendering,”⁷⁹ that the Commission must blindly apply this consideration in every case. This Court held as follows in *Pacific Northwest Transportation Services*:

[T]he Commission, when called upon to evaluate the future, may do so in any rational way that the evidence will support. In other words, the Commission may infer an applicant’s future conduct from his or her past conduct, or alternatively, proceed in any other rational way that the evidence will support.⁸⁰

We . . . hold that the Commission was permitted by law (but not necessarily required by law) to gauge the satisfactory or deficient nature of Capital’s *future* service by drawing an inference based on its *past* service.⁸¹

Rather than specifying how the Commission is to make the determination with respect to the “will not provide service to the satisfaction of the Commission” language, the *Pacific Northwest Transportation Services*

⁷⁸ 91 Wn. App. at 600-601.

⁷⁹ See Appellant’s Opening Brief at 23.

⁸⁰ 91 Wn. App. at 596.

⁸¹ *Id.* at 602.

decision makes clear that the Commission can make that determination “in any logical and reasonable way supported by the evidence.”⁸²

The state Supreme Court deferred to the Commission when deciding whether the Commission’s allocation of a refund to be made by Cascade Natural Gas to its industrial customers was “just and reasonable.”⁸³ The court held:

The statute does not say: “The commission’s determination must be just and reasonable.” Instead, it says that if a refund is to be passed on to the company’s consumers, it should be done so “in the manner and to the extent determined just and reasonable *by the commission.*” (Italics ours.) RCW 80.22.200. Thus, the statute itself clearly states who is to determine what is “just and reasonable” – it is the Commission, not the courts. For this reason also, we defer to the WUTC’s determination of whether the allocation of the refund is “just and reasonable.”

Likewise, the determination under RCW 81.77.040 is not whether existing service is satisfactory, but rather whether such service is satisfactory *to the Commission*. The statute “clearly states who is to determine” what is satisfactory service.⁸⁴ It would be hard to imagine a broader conferral of discretion by the Legislature on the Commission. This standard for the discretion granted to the Commission is at least as broad as the standard discussed in the *ARCO* case, which analyzed the

⁸² See 91 Wn. App. at 597.

⁸³ *ARCO Prods. Co. v. Washington Utils. & Transp. Comm’n*, 125 Wn.2d 805, 811-12, 888 P.2d 728 (1995).

⁸⁴ See *id.* at 811-12.

language “in the manner and to the extent determined just and reasonable by the commission.”⁸⁵ When the Commission determined that the existing service was unsatisfactory to the Commission because it was not sufficient to fulfill an unmet need for effective competition, the Commission acted within its statutory authority and exercised its discretion as the Legislature intended.

D. RCW 81.77.040 Does Not Impose a Monopoly Service Model for Biomedical Waste Collection.

Stericycle challenges the Commission’s decision to grant Waste Management additional overlapping authority with Stericycle. Stericycle and Waste Management had been competing already in Waste Management’s service territory because Waste Management had been offering biomedical waste collection during the two previous years within its existing territory, which covers significant portions of the state, and Stericycle operates statewide. Despite the fact that the two companies already compete in large parts of the state, Stericycle asserts that “[t]he Commission has recognized repeatedly that the Legislature intended to restrict competition and follow a ‘monopoly service’ model in the public interest.”⁸⁶

⁸⁵ 125 Wn.2d at 811-12.

⁸⁶ Appellant’s Opening Brief at 24.

The Commission responded to this claim in the final order.⁸⁷ First, the Commission noted that RCW 81.77.040 provides that the Commission can issue overlapping authority if it finds that the existing “company *or companies* serving the territory will not provide service to the satisfaction of the Commission.” (Emphasis added in order.) The order continues:

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.⁸⁸

The Commission noted that the Legislature knew how to indicate a single service provider by comparing RCW 81.77.040 with the statute for ferry service, which the Commission also administers. The latter statute provides that the Commission may not grant overlapping authority “unless the existing certificate holder has failed or refused to furnish reasonable and adequate service.”⁸⁹ Where certain language is used in one instance and different language in another, there is a difference in legislative intent.⁹⁰

⁸⁷ Final Order at ¶¶ 7-8 (AR 2260-61).

⁸⁸ Final Order at ¶ 7 (AR 2260).

⁸⁹ RCW 81.84.020.

⁹⁰ *UPS v. Department of Revenue*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984).

In advancing the argument that the Commission must interpret “service” to encompass only the services that an individual carrier offers rather than the totality of service available in the market, Stericycle necessarily is arguing that there are multiple interpretations of the statute and, thus, that RCW 81.77.040 is ambiguous with respect to the term “service.” The Commission is the agency entrusted to administer and enforce RCW 81.77.040 in regulating entry into the solid waste collection market. Accordingly, to the extent that the solid waste collection company entry statute is ambiguous, the court should accord great weight to the Commission’s interpretation of RCW 81.77.040.

The premise of Stericycle’s argument is that chapter 81.77 RCW is intended to protect it from competition. RCW 81.77.100 provides: “To protect public health and safety . . . the commission . . . shall regulate all solid waste collection companies conducting business in the state.” RCW 81.77.030(4) provides that the commission shall supervise and regulate solid waste collection companies in all matters “affecting the relationship between them and the public which they serve.” The purpose of the chapter as well as the entry statute is not to protect individual companies, but rather to protect the public the companies serve.

In considering the public convenience and necessity for new service, the Commission does look at “the needs of existing carriers for a

customer base that is large enough for economic viability.”⁹¹ In this connection, the Commission pointed out in the Final Order that “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 – without any adverse impact on the companies’ economic viability or ability to provide services . . . and *without detriment to Stericycle’s revenues or customer count.*”⁹² Accordingly, Stericycle is not entitled to relief under the APA because the Commission’s decision to grant Waste Management’s application has not substantially prejudiced Stericycle.⁹³

E. The Cases Cited by Stericycle Are Inapposite to Waste Management’s Application.

In its brief, Stericycle cites cases considering traditional solid waste collection or auto transportation applications from the 1920s and 1930s in claiming that the Commission cannot consider biomedical waste generators’ business need for a statewide alternative service under the “satisfaction of the commission” standard. These cases are all distinguishable from the case that is before the Court.

⁹¹ *In re Sureway Med. Servs., Inc.*, at 10 (AR 668).

⁹² Final Order at ¶ 13 (emphasis added) (AR 2264).

⁹³ “The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.” RCW 34.05.570(1)(d).

Stericycle cites *Superior Refuse Removal v. Utilities and Transportation Commission*⁹⁴ for the proposition that the “satisfactory service” standard requires the Commission to consider only the service provided by the incumbent service provider.⁹⁵ This case concerned traditional solid waste collection service, and the court did not consider or address the question of whether the Commission can consider biomedical waste generators’ business need for a statewide alternative service in determining whether service will be to the satisfaction of the Commission.

*North Coast Transportation Company v. Department of Public Works*⁹⁶ was a case under the former Auto Transportation Company statute.⁹⁷ In that case, the agency treated the matter as one of several competing applications for a new route rather than applications for a route already served by an existing transportation company.⁹⁸ Consequently, the agency never made a determination about its satisfaction with the existing service and such a determination was not under review by the court.

⁹⁴ 81 Wn. App. 43, 913 P.2d 818 (1996).

⁹⁵ Appellant’s Opening Brief at 22.

⁹⁶ 157 Wash. 79, 288 P.2d 245 (1930).

⁹⁷ Now codified at chapter 81.68 RCW.

⁹⁸ *North Coast* at 82-83.

Yelton & McLaughlin v. Department of Public Works,⁹⁹ another auto transportation case, was decided under the “grandfather” provision of the new 1921 law rather than the satisfaction of the Commission provision. The court stated:

There is no doubt that the intention of the Legislature was that one operating as a stage carrier when the law went into effect should be preferred as against one who had not operated on that particular route, and made it mandatory to grant a license or certificate to the operator who is operating over the designated route in good faith, to the exclusion of anyone else, if such operator desired to continue to operate over that route and signified his willingness and ability so to do.¹⁰⁰

The court was discussing the “grandfather” provision when it stated that the company had a “statutory right that cannot be denied them under the evidence of this case.”¹⁰¹

In *State ex rel. Krakenberger v. Department of Public Works*,¹⁰² the Supreme Court ruled only that there was “abundant evidence” to affirm the Department’s decision that the existing auto transportation service was satisfactory. *Krakenberger* is not useful because the factual context is distinguishable from the Commission proceeding at issue. The Department in *Krakenberger* found that inquiries about additional service

⁹⁹ 136 Wash. 445, 240 P. 679 (1925).

¹⁰⁰ *Id.* at 451.

¹⁰¹ *Id.* at 452.

¹⁰² 141 Wash. 168, 250 P. 1088 (1926).

did not rise to a claim that the service was inadequate. In contrast, waste generator testimony in support of Waste Management's application demonstrated that the present service did not meet their needs for an alternative provider. Thus, the two cases involve contexts that are quite different in terms of the evidence of public convenience and necessity. The entry statute requires the Commission to make a determination regarding satisfactory service in the context of evidence of the prevailing public convenience and necessity, not based on history; and that is just what the Commission did in its Final Order.

Moreover, as noted, under more recent pronouncements of the Washington Supreme Court and Division II of the Court of Appeals, "satisfaction" is to be determined by the Commission not the courts and may be determined "in any logical and reasonable way supported by the evidence."¹⁰³

F. To the Extent the Commission Evaluated "Service to the Satisfaction of the Commission" Differently From the Past, Its Decision Was Supported by a Sound Explanation.

In its Final Order the Commission fully explained its decision to consider the unmet needs of biomedical waste generators for effective competition. The Commission recognized that, in the early 1990s, it did not consider a mere preference for competition to demonstrate a need for

¹⁰³ *ARCO* at 811-12; *Pacific Northwest Transp. Servs.* at 594-95.

an additional carrier.¹⁰⁴ Since then, however, the Commission has determined that biomedical waste collection has evolved into a highly competitive industry.¹⁰⁵ Given the maturity of the biomedical waste collection market, and the positive effects the Commission observed from Waste Management's re-entry into the market, the Commission felt comfortable in giving weight to waste generators' expressed desire for a competitive alternative.¹⁰⁶

The Commission's decision to give high priority to customers' expressed need for effective competition was an appropriate exercise of its discretion under the application of the satisfactory service standard. This policy call was, as the Commission explained, less of a change in precedent and more of a continuation of its practice of considering the specialized needs of shippers.¹⁰⁷ In that the Commission has the discretion to determine which considerations are important, the element of satisfactory service has not, as Stericycle claims, been read out of the statute.¹⁰⁸ It is important to note that, in the Final Order, with respect to its consideration of satisfactory service, the Commission restricted its

¹⁰⁴ Final Order at ¶ 11 (AR 2263).

¹⁰⁵ *Id.* at ¶ 13 (AR 2264).

¹⁰⁶ *See* Final Order at ¶¶ 13-14 (AR 2264).

¹⁰⁷ *See id.* at ¶ 15 (AR 2264).

¹⁰⁸ *See* Appellant's Opening Brief at 18.

consideration of circumstances beyond inadequate service of incumbents to “at least these circumstances.”¹⁰⁹ This restriction reflects a duly considered exercise of discretion in that the Commission is evaluating “service to the satisfaction to the Commission” with conscious regard to the attendant facts and circumstances.

G. The Commission’s Decision Is Supported by Substantial Evidence and Is Not Arbitrary or Capricious.

There is ample evidence in the record to support the Commission’s decision to grant Waste Management’s application to extend its authority. Multiple biomedical waste generators who use the service testified in support of a need for statewide competitive biomedical waste collection service. On this record, the Commission made a finding of fact that there is a need for, and positive results from, Waste Management’s expansion into the statewide biomedical collection services market.¹¹⁰ Because this finding is supported by evidence sufficient to persuade a fair-minded person that this is true, this finding of fact may not be disturbed on appeal.

Julie Sell, the emergency preparedness coordinator for Olympic Medical Center, testified that her facility had only one option for biomedical waste service. She expressed her dissatisfaction with Stericycle’s process for scheduling collections. Without any alternative

¹⁰⁹ Final Order at ¶ 14 (AR 2262).

¹¹⁰ Initial Order, p. 10 (AR 2079).

service available, she has no ability to exert any pressure on Stericycle. Olympic Medical Center wants another option to ensure that it gets the best possible service at the most competitive price. Her primary concern, however, related to the service quality.¹¹¹

Terry Johnson is the director of plant engineering for Lake Chelan Community Hospital. Having only one provider of any service is a weakness for his hospital. Redundancy is critical for hospital operations and his facility has a backup for most of its systems. Mr. Johnson expressed the need for an alternative biomedical waste hauler in case a major catastrophe, such as a forest fire, were to block one of the major corridors to his facility. He also testified that a choice among haulers will provide his hospital with leverage and the ability to obtain a true market price.¹¹²

Jean Longhenry is the facilities manager for the Wendel Dental Centre in Vancouver. She testified that she was dissatisfied with Stericycle's service, in particular, on-going billing errors. Her clinic needs an alternative to Stericycle to leverage better service out of that company.¹¹³

¹¹¹ Tr. 218; AR 2307.

¹¹² Tr. 237-40; AR 2310.

¹¹³ Tr. 316, 321, 323; AR 2313.

Ray Moore is the Lead Contract Manager of Supply Chain for PeaceHealth, which owns eight hospitals and provides contracting service for more than thirty other hospitals as well as a number of healthcare clinics, laboratories, and other facilities in the state. All of these facilities receive biomedical waste service from Stericycle. PeaceHealth supports Waste Management's application because PeaceHealth desires an alternative competitive option to Stericycle's service to improve service and exert pricing pressure.¹¹⁴

Danny Warner is a dentist and the president of the 4,000 member Washington State Dental Association (WSDA). He testified that many WSDA members have only one alternative for biomedical waste service. The WSDA supports Waste Management's application as in the best interest of its members, their patients, and the communities through which the waste is transported.¹¹⁵

Roger Lycan is the procurement manager for Pathology Associates Medical Laboratories (PAML). PAML has 60 laboratory facilities in Washington which generate biomedical waste. Sixty percent of the facilities are served by Waste Management, and Stericycle serves the remainder. Mr. Lycan testified that in PAML's experience, Stericycle

¹¹⁴ Tr. 393-96; AR 2317.

¹¹⁵ Tr. 412; AR 2319-20.

does not have much interest in offering competitive prices or in reducing its costs. Once Waste Management began offering its services in 2011, PAML moved its business to Waste Management in the areas covered by Waste Management's certificate. Waste Management provides a better service at better prices. PAML wants to use one company on a statewide basis for reasons of efficiency, pricing, and customer service.¹¹⁶

Carla Patshkowski manages vendors and purchasing needs for the Providence Medical Group (PMG). PMG operates facilities in Chewelah, Colville, and Spokane, among other cities. Most facilities are served by Waste Management, but Stericycle is the only provider in Chewelah and Colville; therefore those facilities use Stericycle.

Prior to Waste Management's reentry into the biomedical waste collection market in 2011, PMG was served entirely by Stericycle but was dissatisfied with Stericycle's service. Once PMG had an alternative, it moved to Waste Management in areas served by Waste Management because of better pricing and service options. Based on that experience, PMG supports competition in all areas where it has facilities.¹¹⁷

Emily Newcomer is the University of Washington's recycling and solid waste program operations manager. She supports competition

¹¹⁶ Tr. 442; AR 2323-24.

¹¹⁷ Tr. 479-81; AR 2326-28.

among biomedical waste companies to promote better pricing and service. She found Stericycle's customer service to be only adequately responsive, while Waste Management has provided the university with excellent customer service.¹¹⁸

As some testified, the reentry of Waste Management into the biomedical waste market resulted in improved service by Stericycle. This response was also reflected in the testimony of Jeff Norton for Waste Management, in which he discussed the changes Stericycle made in service and pricing after Waste Management returned to the market in June 2011.¹¹⁹

In its order, as discussed above, the Commission restated that the satisfactory nature of specialized solid waste collection service is measured according to the specialized needs of customers. The Commission noted that these needs can arise out of the waste generator's business experience as shown by the testimony summarized above.

The Commission stated in regard to this testimony:

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.¹²⁰

¹¹⁸ Tr. 558-59; AR 2332.

¹¹⁹ AR 2734-36.

¹²⁰ Final Order at ¶ 18 (AR 2266).

Accordingly, the Commission applied the satisfaction standard to the case made by the waste generators' testimony:

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 provider, and (2) the new entrant will enhance the effectiveness of competition in the market place.¹²¹

In so doing, the Commission noted its experience with this industry over the past 20 years as it has evolved into a more competitive market.¹²² Where applicable to the issues before it, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of the evidence.¹²³

The Commission's order notes that the Commission's application of the "satisfaction" standard to the evidence before it is "an adaptation of regulation to the realities of the [biomedical waste] market."¹²⁴ As a market entry regulator, the Commission can consider market conditions in deciding whether service is satisfactory. As noted above, the input of generators of waste who use this service is important. A lack of competition, where there are public benefits to that competition, is a characteristic of existing service and the market it serves.

¹²¹ Final Order at ¶ 14 (AR 2264).

¹²² *Id.*

¹²³ RCW 34.05.461(5).

¹²⁴ Final Order at ¶ 15 (AR 2264).

There is substantial evidence in the record, summarized above, to support the Commission's findings of fact concerning biomedical waste generators' unmet need for competition. The Commission fully explained its decision to grant Waste Management overlapping authority in those areas of the state where the two companies are not already competing. That decision cannot realistically be characterized as: "willful and unreasoning and taken without regard to the attending facts and circumstances."¹²⁵

V. CONCLUSION

For the forgoing reasons, the Respondent Washington Utilities and Transportation Commission respectfully requests that the Court affirm its order granting Waste Management's application to operate as a carrier of biomedical waste in those areas of the state where it does not already possess that authority.

DATED this 3rd day of September, 2014.

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¹²⁵ *Washington Indep. Tel. Ass'n v. Washington Utils. & Transp. Comm'n*, 149 Wn.2d at 26.

CERTIFICATE OF SERVICE

I do hereby certify that on this 3rd day of September, 2014, I caused to be served a true and correct copy of the foregoing Washington Utilities and Transportation Commission's Response Brief, via e-mail, to:

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