

February 17, 2009

89010.0186

David Danner, Executive Director
Policy and Legislative Issues
Attn.: Records Center
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

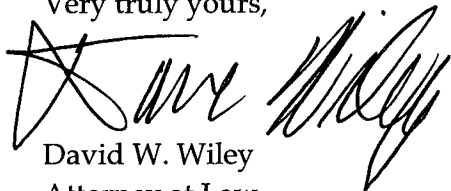
Re: TG-090096 – Petition by LeMay Enterprises, Inc. d/b/a Pierce County Refuse for Exemption
From/Modification to WAC 480-70-351 for an Abbreviated Historical Cost Period Accounting
Mechanism for Residential Recycling Customers

Dear Mr. Danner:

Enclosed please find an original Petition and three copies for Exemption From/Modification to the
above cited rule. Supporting workpapers were previously filed by Ms. Wilcox referencing the
commodity prices and projections supporting this Petition.

Please contact the undersigned should you have any further questions on this matter.

Very truly yours,



David W. Wiley
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DAV:lct

Encls.

cc: Irmgard Wilcox
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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of:

Petition for Exemption From/Modification
by Harold LeMay Enterprises,
Incorporated G-98 d/b/a Pierce County
Refuse

Case No. TG-090096

PETITION FOR EXEMPTION
FROM/MODIFICATION TO WAC 480-70-
351 FOR AN ABBREVIATED
HISTORICAL COST PERIOD
ACCOUNTING MECHANISM FOR
RESIDENTIAL RECYCLING
CUSTOMERS

COMES NOW Harold LeMay Enterprises, Incorporated, G-98, d/b/a Pierce County Refuse ("LeMay"), by and through its counsel, Williams Kastner and David W. Wiley, and hereby petitions the Washington Utilities and Transportation Commission ("the Commission"), pursuant to WAC 480-70-051 and 480-07-110, seeking modification of the deferred accounting commodity credit mechanism historical period for leave to use an abbreviated period of the three most recent months (*here October, November, December, 2008*) to estimate the Company's revenue for the next twelve month period.

I. PRELIMINARY STATEMENT

The Commission first approved the deferred accounting mechanism for Pierce County Refuse residential recycling customers effective July 1, 1998, in Docket TG-980767. Under that original order,¹ LeMay was required to utilize "an average of the three most recent months sales price and tonnage per commodity" as a factor in its calculation of commodity value in the deferred accounting mechanism.

¹ Prior to WAC 480-70-351's implementation in 2001 in TG-990161.

As the Commission is aware, that mechanism and comparative treatment of other regulated haulers' accounting methodologies essentially established a two-phase process for setting residential recycling rates, encompassing a true-up and projection mechanism involving calculation of average actual revenues and expenses in the (now, in the most recent historical 12 month period), and which calculations are then used to project expenses on a going-forward basis which are then reflected in a debit/credit format in estimating commodity values over the next year. This feature is in addition to the true-up component/phase intended to reflect the actual price experience in the prior year's charge/credit to the customer, all combined as a single line item in the customer's periodic statement.

As noted, with the modification of the recycling credit premise by rule in WAC 480-70-351 in 2001, the initial projection period of three months as set forth in the Commission's order in TG-980767 was modified to provide for revenue projections over "the most recent twelve-month historical period." After an intervening series of rate filings, LeMay's present deferred accounting residential recycling rates are now set to expire and would be revised by the Commission under the present filing.

II. CRUX OF REQUEST

To blunt the looming "rate shock" impact and working capital impact that has been precipitated by the recent "perfect storm" of relatively consistently performing commodities markets for approximately 9 1/2 months in 2008 followed by an almost overnight downturn thereof recently featured in general periodic and industry trade publication articles which fall off began in mid-October, 2008, LeMay now asks that the Commission exercise its discretion in setting fair, just and reasonable rates consistent

with the public interest under RCW 81.04.250 and RCW 81.77.030, to allow modification of WAC 480-70-351(2) for the use of the most recent three month period of commodity sales data realized by Pierce County Refuse rather than the most recent “12 month period” specified by subsequent rule.

LeMay believes that to more accurately gauge the secondary recycling market over the next year, the most relevant indicator of actual pricing experience is indicated by data from the last quarter of calendar year 2008, which includes the tumultuous sales pricing experience in October, and the actual (more levelized at historically low level) pricing data in November and December 2008. Without use of the last three months of 2008, the cost experience review would inaccurately weigh the “high water mark” months of the first three quarters of 2008 and would necessarily result in “peaks and valleys” of the recycling commodity credits of affected customers that would create sharp reversals in debits and credits to customers that would be substantially avoided simply by utilizing three, rather than twelve months data from the secondary market last year.

Specifically by LeMay’s projections based on current market conditions, if this waiver is rejected, customers will experience a charge of \$0.54 per month in 2010 versus a credit of \$0.10 per month in 2010 if the 3-month rule waiver is granted. As for the direct impacts (or hardships) on the company, LeMay projects it would be impacted under current market condition projections by an outflow of \$534,641.00 in working capital calculated on a 12-month historical period. This, as compared to a negative impact on working capital of \$203,542.00 based on current market conditions if the waiver is allowed enabling LeMay to use a 3-month period.

As the Commission noted in its original orders allowing LeMay to institute the residential recycling deferred accounting mechanism, this approach of setting rates “equitably balances the interests of solid waste providers and their customers against the risks of changing commodity values.” LeMay submits that the risk of changing commodity values in the current atmosphere has never been greater and that its instant request attempts to mitigate or blunt the longer term reflection of those risks to its customers in its upcoming invoices and on its own working capital in the near term.

III. PRAYER FOR RELIEF

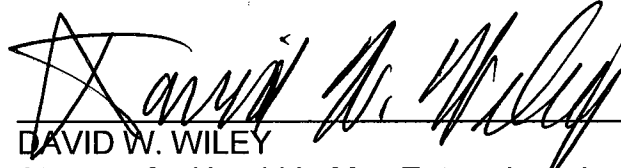
Based on the foregoing, LeMay asks that the Commission allow modification of WAC 480-70-351(2) to revise the interval of the historical period for the projection of commodity values for its affected residential recycling tariffs as was originally prescribed before rule promulgation in 2001. As referenced in WAC 480-07-110, LeMay submits that granting this rule waiver is not only consistent with the public interest but has the effect of encouraging recycling pursuant to WAC 480-70-351’s express goal thereof, especially when negative market forces and an inflexible approach to the current historical cost period might converge to ultimately cause spiking in tariff pricing that might tend to inhibit expansion of recycling participation.

As reflected by its proposed replacement revised tariff pages previously separately submitted, LeMay thus asks that the Commission permit those pages to become effective March 1, 2009. Simultaneously, that the Commission allow the truncated three-month historical period for the deferred accounting mechanism in this particular filing as a more accurate reflection of recent market prices and trends in order

to mitigate the affect on company cash flow and gyrations in its customers' residential recycling rates over the next few years.

Dated this 17th day of February, 2009.

Respectfully submitted,



DAVID W. WILEY
Attorney for Harold LeMay Enterprises, Incorporated

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2009, I caused to be served the original and 3 copies of the foregoing document to the following address via first class mail, postage prepaid to:

David Danner, Executive Director
Policy and Legislative Issues
Attn: Records Center
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to:

records@wutc.wa.gov



Lyndsay C. Taylor