BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  WASTE MANAGEMENT OF WASHINGTON, INC. d/b/a WASTE MANAGEMENT NORTHWEST, WASTE MANAGEMENT OF SEATTLE AND WASTE MANAGEMENT - SOUTH SOUND, AND WASTE MANAGEMENT - SNO-KING, CERTIFICATE NO. G-237,  Respondent. |  | Docket Nos. TG-120840, TG-120842 and  TG-120843  response in support of proposed item 30 tariff language by WASTE MANAGEMENT OF WASHINGTON, INC. |

1. Waste Management of Washington, Inc., d/b/a Waste Management Northwest, Waste Management of Seattle, Waste Management – South Sound, and Waste Management – Sno-King (WMW), submits the following Response in Support of Proposed Item 30 Tariff Language (Response) with further reasons for the Commission to adopt the Hauler Proposed Work Stoppage Text for Item 30 (the Hauler Proposal), attached as Exhibit 1 to WMW’s Statement in Support of Proposed Item 30 Tariff Language (Statement).
2. WMW is gratified that the various dockets and forums considering Item 30 Tariff Language in the context of actual and hypothetical work stoppage situations have proven so effective for narrowing and informing the issues. The parties – along with the Commissioners themselves – are to be commended for having made the effort to acquire a good understanding of the operational challenges and policy implications of various approaches. With the understandings gained from frank communications at workshops and open meetings, as well as written comments and presentations, the proposals before the Commission are sophisticated, thoughtful, and share the same underlying principles of balancing the customers’ inconvenience with the practical and logistical challenges facing a company trying to resume garbage collection during and immediately after a labor disruption.
3. As a result, at this point the Hauler Proposal and the Staff Proposal for Item 30 tariff language are not that far apart. There are many points and specific language on which the parties agree, as well as principles on which the parties share common concepts but simply propose different approaches. The parties agree that WMW has demonstrated that much of the proposed tariff language is just, fair, reasonable and sufficient, and the Commission may adopt that agreed-upon language without controversy. On the remaining issues of divergence, the record reflects that the Hauler Proposal is the only means of adopting tariff language that is reasonable and sufficient for the company, and yet still just and fair for the customers.

# analysis and response

1. In comparing the Hauler Proposal and the Staff Proposal, the commonalities are striking. See Exhibit 1, Track Changes Comparison of the Hauler Proposal on the Staff Proposal. The parties are all in agreement that language in the Hauler Proposal by WMW addressing the following points is just, fair, reasonable, and sufficient:

* The company must ensure compliance with standards regarding communications between the parties, to the public and with local governments, as reflected in the Hauler Proposal and the Staff Proposal at Sections 6.a through 6.e, and 6.i.;
* The company will not charge for extra waste set out if it does not exceed what would be reasonably expected to accumulate due to missed service, as reflected in the Hauler Proposal and the Staff Proposal at Section 6.g, and 7.a.;
* If a company does not collect all of a customer’s accumulated solid waste on the customer’s next regularly-scheduled service date, it will be required to give a credit to the customer, proportionate to the customer’s monthly service charge, for all missed services and for each subsequent missed service until normal service is restored. (Although, as discussed below, we are not certain whether we agree about when the next scheduled pickup takes place.)
* The Commission should evaluate whether a company used all reasonable, practicable means to resume regularly-scheduled service to all customers in response to a labor disruption, by considering the company’s resources, the circumstances of the labor disruption, and any other relevant factors. (On this matter, as discussed below, the parties clearly disagree about when the evaluation should take place, but not about the appropriateness of the standard.)

1. WMW appreciates the Staff’s willingness to limit the focus of the remaining controversy, and is pleased to join Staff’s position regarding the tariff language that is commonly proposed by all parties. When all is said and done, there are only a few outstanding issues on which the parties vary, and in some cases WMW believes that the parties agree in principle, but differ in the approach taken.

## WMW and Staff Only Disagree About Three Specific Points.

1. The Hauler Proposal and the Staff Proposal most obviously diverge on three specific subjects. The most significant is the question of whether the Commission should adopt the Staff’s generalized performance standard that cannot be measured until afterwards for determining whether services have been resumed in accordance with tariff standards, or whether it should adopt the Hauler Proposal tariff language that includes both a temporal deadline for objectively measuring performance as well as a more generalized standard for the Commission to apply if that deadline is missed. The second, and closely related issue, is when credits must be issued for missed services during and after a labor disruption. The third, perhaps less significant, disagreement has to do with how the recycling commodity tracker should be handled in calculating the amount of a credit that might be due if the second, make-up pickup is missed.

### The Need For A Time Period For Resuming Service.

1. WMW feels strongly that the Commission should establish a measurable and achievable time period for objectively determining whether a company’s response to a labor disruption has occurred promptly enough to satisfy the Commission, so that under certain circumstances there can be no dispute about whether the company has satisfied its tariff obligations. If the parties know how the haulers’ recovery efforts can be deemed successful, then extended administrative proceedings can be avoided and uncertainties about performance possibly eliminated. The time period should strike a balance between minimizing inconvenience to customers with the practical and logistical challenges faced by a company trying to collect garbage in the midst of or immediate aftermath of a strike.
2. Staff prefers a standard that is more generalized and that is not susceptible to bright-line compliance. While WMW agrees with the principles set forth by Staff, WMW disagrees with how to best implement those principles. Although it may afford greater flexibility, whether the company used all reasonable, practicable means to resume service following a work stoppage cannot be known until after the event has ended, operations are fully resumed, and missed collections are all made up. It leaves a company uncertain as to whether its actions will be deemed to have satisfied the Commission until after disruption caused by a labor strike is over. Lacking a specific deadline to manage around unfairly hamstrings a hauler’s ability to control and affirmatively deal with a labor disruption while still meeting the requirements of its tariff.
3. WMW has established factual evidence regarding the realities of the time needed to marshal, orient, and train a sufficient number of substitute drivers to fully resume services, and why the proper period of time is five business days, at a minimum. The record shows, based on the company’s actual experiences, that anything less would create a standard functionally incapable of being met, and therefore meaningless. WMW believes it is an appropriate temporal performance expectation to have stated in its tariff, so that it and the customers know what to expect during and after a labor disruption.
4. Imposing a five-business-day deadline will enable WMW to manage its resources most effectively during the strike and will avoid second-guessing and potentially arbitrary decisions made after-the-fact. A clear understanding of expectations will allow WMW to deploy resources effectively, prioritize critical accounts, and communicate consistently with its residential, commercial, and municipal customers. In contrast, it will be difficult to make operational decisions if WMW does not know whether the Commission will later decide that WMW should have resumed service after two days, five days, ten days, or longer.
5. Allowing for a five-day recovery period is also sensible because it synchronizes with most residential and commercial customers who have weekly collection service. Importantly, is also aligns WUTC-regulated operations with city contract requirements. The five-business-day standard is easy to communicate to customers, and straightforward for them to understand. Both WUTC and contract customers are generally aware that when solid waste is not picked up during one week, it will be collected on their next regularly scheduled collection day, along with extras that have accumulated. Customers are used to operating under this cycle of services when collection is missed due to weather or road conditions. It is not a stretch for them to appreciate that a labor disruption creates similarly-unpredictable conditions, and to expect that all missed collections will be handled in the same manner, with services resumed by no later than the next collection cycle. Customers will be treated consistently and fairly under the Hauler Proposal.
6. However, the performance standard to measure a company’s success in resuming service following a labor disruption should also allow the Commission to exercise its discretion if the objective temporal deadline is not met, and thus WMW suggests a two-part means of measuring whether a company has complied with its tariff. The Hauler Proposal and the Staff Proposal offer identical language for what that discretionary standard should be. The difference is in the timing for its applicability. The Hauler Proposal offers it as a means of determining whether the inability to meet the objective five-business-day standard was reasonable or not. Staff believes it is the only standard that is needed.

### WMW and Staff Agree In Principle Regarding When Credits Should Be Refunded.

1. Although there are nuances in the language and approaches taken, both Staff and WMW agree on the principle that the company must issue a credit for all missed services if it does not collect accumulated solid waste on the customer’s next regularly-scheduled service date. See Hauler Proposal Section and Staff Proposal at Section 6.h. However, there are slight differences between the proposals.
2. Firstly, the Hauler Proposal keys the “next regularly-scheduled service date” off of the time period by which service must be resumed. The Hauler Proposal would result in weekly and every-other-weekly customers being missed only once, which maintains the rhythm of solid waste collection services for residential services. Thus, for the majority of customers, there is no functional difference between the Hauler Proposal and the Staff Proposal. It matters not for weekly and every-other-weekly customers whether service has been resumed right away (which might happen if a strike lasted a few hours, for example) or by the five-business-day deadline (which reasonably could happen if a strike lasts a week, as it did in 2012). Only in an extreme situation that causes a company to be unable to resume service within five business days would the weekly cycle be disrupted, and in that case the Hauler Proposal gives the Commission discretion to determine whether the company used all reasonable, practicable means.
3. Because of the specificity of the approach taken, however, the Hauler Proposal differs from the Staff Proposal in that it allows for the company to handle commercial customers with more frequent services. For businesses with daily collection, the Staff Proposal would require credits if the pickup were missed on the day following commencement of the strike (i.e., Day 1, in accordance with the examples provided in WMW’s initial Statement). WMW has established an abundance of evidence demonstrating why that is a standard that cannot be achieved. By measuring the next regularly scheduled service date where accumulated solid waste must be collected as the first pickup after the five-day period has expired, the company has the ability to transition commercial customers back into regular operations. WMW believes it is more just and fair, and certainly more reasonable.
4. For customers with collection service more frequent than weekly, Staff’s Proposal would require the company to issue credits for service misses within the first few days of a strike. This requirement would be inconsistent with the treatment of commercial customers in cities with week-long grace periods and with both city and WUTC residential customers with weekly collection. Rather than deploy resources to maximize collections and prioritize critical accounts, the company would be forced to prioritize commercial customers in WUTC territories. This structure would create an unjust disincentive to resume service to residential customers and to contract customers, and to treat commercial customers differently.
5. WMW cannot emphasize enough to the Commission that its efforts to collect solid waste that has accumulated during a labor disruption is driven by its objective of serving its customers as best as it can. The company is proud of its recovery efforts last year, and believes its genuine desire to collect as much solid waste as quickly as possible cannot be disputed. Its “Super Saturday” efforts demonstrate its view that rigid adherence to regular schedules does not drive its recovery actions. WMW is not suggesting that commercial customers with daily services will be affirmatively ignored if the Commission were to adopt the approach taken in the Hauler Proposal. Indeed, as the Commission is aware, many of the critical customers for whom services were prioritized in the 2012 strike were commercial. Rather, WMW is simply urging the Commission to incorporate the more explicit approach taken in the Hauler Proposal into the tariff language it endorses regarding when credits are due.
6. On the issuance of credits, the other difference between the two proposals is that the Hauler Proposal specifically states that the company is not obligated to extend credits to missed customers who do not receive service if the company collects the customers’ accumulated solid waste at the next regularly scheduled pickup, in compliance with the tariff conditions. This point can be inferred from the Staff Proposal, but WMW urges the Commission to eliminate any potential ambiguities and adopt the statement presented by the Hauler Proposal in the first sentence of Section 6.h.

### Methodology for Calculation of Credits.

1. The parties are in agreement that credits are appropriate under certain conditions, and seem to agree about when those credits would be due. Further, WMW and Staff both believe that credits should be established in an amount necessary to refund customers for solid waste collection services paid for but not received, in an amount that is proportionate to the service-related component of the tariff rate. Customers are repaid for the actual services they did not receive, and the hauler is not harmed by being forced to incur essentially double the cost for the component of the rate that is related to disposal or processing. Both the Hauler Proposal and the Staff Proposal propose that credits be adjusted so that only the service-related component is credited to the customer.
2. The only point of remaining disagreement on the method for calculating credits is with regard to the recycling commodity tracker. WMW and Staff both believe the missed-collection credit to the customer should be calculated based on the net cost for the recycling collection services, but disagree about whether there should or should not be an adjustment for the recycling commodity tracker. There is no disagreement that processing costs should be backed out.
3. However, the recycling commodity tracker must be factored in to determine the net cost of the missed service to the customer. The customer should get a credit only for the missed service, not for the value of the commodity not collected. For example, if a customer were billed $5.00 per pick-up for every-other-week recycling service, yet receives a $2.00 commodity rebate, the customer’s net amount due is $3.00 – *i.e*., his/her actual out-of-pocket costs. It is this number – $3.00 – that should be the starting point for calculating the amount of the credit. From this amount, the credit would be further calculated to determine the collection costs paid-for-but-not-received by deducting the processing costs to determine the service related component. To further the example, if processing costs were $0.50 per container, then our hypothetical recycling customer would be refunded a missed-pickup credit of $2.50.
4. WMW strongly disagrees with Staff’s view that the commodity tracker is independent from the service-related credit. To the customer who writes one check for its collection services, it is not. If the customer normally pays a net $3.00 for recycling collection services, including processing charges; it would be an odd windfall for the customer to receive a $5.00 credit. The missed-pickup credit should reflect the net service-related cost which necessarily must account for the amount of the commodity tracker.
5. WMW disagrees with Staff’s suggestion that recycling customers are due the commodity tracker for missed collections. It is a deferred accounting amount that is established by truing up values received and costs incurred to market recyclable materials over based on twelve-month increments. It has little if any correlation to the value of the recyclable materials the company actually collects from a customer.
6. Further, the deferred accounting calculation has at times resulted in a debit to the customer. Under the Hauler Proposal, customers would not be required to have negative commodity values added to the amounts due for collection service. WM does not endorse that outcome, and Staff would probably not support that result, either.

# conclusion

1. WMW has demonstrated that the Item 30 tariff language in the Hauler Proposal is just, fair, reasonable and sufficient, and urges the Commission to adopt that language. Much of the language is commonly supported, and the result of thoughtful and genuine efforts by all the parties. On the remaining issues of divergence, WMW has established evidence to show that the tariff language that is reasonable and sufficient for the company, and just and fair for the customers.
2. WMW has established that tariff language allowing for a service resumption deadline of five business days after the labor disruption commences, is just, fair, reasonable, and sufficient. RCW 81.28.010. A standard that lacks any defined temporal standard is not reasonable or sufficient because it leaves a company without any certainty of how to manage resources during a chaotic labor disruption. Knowing that it is vulnerable to an after-the-fact discretionary determination that the company failed to use all reasonable and practical means to resume service will create significant uncertainty for the company as it tries to deploy its resources most effectively and efficiently during and after a labor disruption.
3. The Hauler Proposal sets forth a reasonable, practical, and balanced approach. It is just and fair to customers because they receive the outcome of two pickups at the price of two collections, are only temporarily and mildly disrupted by waiting for the next service date, and are afforded consistent expectations for how missed collections under calamities will be handled. It is fair to the haulers because in that it establishes an aggressive temporal deadline but does not set impossible or punitive standards for companies who are using all reasonable, practicable means to restore service. It is reasonable in that it balances the need for an achievable and measurable standard with the goal of minimizing customer inconvenience. And the proposal is sufficient in that it does not entirely insulate a regulated collection company from having the Commission exercise its discretion if the deadline is not met.

DATED this 30th day of August, 2013.

By

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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 as indicated below, pursuant to WAC 480-07-150.

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DATED at Seattle, Washington, this 30th day of August, 2013.

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