

[Service Date March 20, 2014]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND) DOCKETS TG-120840,
TRANSPORTATION COMMISSION,) TG-120842 and TG-120843

Complainant,

v.

ORDER 03

WASTE MANAGEMENT OF)
WASHINGTON, INC. d/b/a WASTE)
MANAGEMENT – NORTHWEST, *et al.*,)
G-237,)

Respondent.

.....)

WASHINGTON UTILITIES AND) DOCKETS TG-121366,
TRANSPORTATION COMMISSION,) TG-121367, TG-121369,
TG-121370 and TG-121371

Complainant,

v.

ORDER 03

RABANCO LTD, d/b/a CONTAINER)
HAULING, *et al.*, G-12, AND FIORITO)
ENTERPRISES, INC. & RABANCO)
COMPANIES d/b/a KENT-MERIDIAN)
DISPOSAL COMPANY, G-60.)

Respondent.

.....)

**FINAL ORDER GRANTING IN PART AND DENYING IN PART STAFF'S
MOTION TO STRIKE AND APPROVING TARIFF LANGUAGE TO
ADDRESS DISRUPTION OF SERVICE DUE TO WORK STOPPAGE**

BACKGROUND¹

- 1 On June 6, 2012, Waste Management of Washington, Inc., d/b/a Waste Management – Northwest, Waste Management – South Sound and Waste Management of Seattle, and Waste Management – Sno- King (Waste Management), G-237, filed with the Washington Utilities and Transportation Commission (Commission) tariff revisions regarding missed solid waste collections due to labor disruptions.² The company’s proposed language provides that Waste Management will “take all necessary actions”³ to continue providing solid waste collection service to its customers in King and Snohomish Counties in the event of a strike.⁴ Waste Management would not issue credits for any missed services but would also not charge customers for overfilled containers if the extra materials are consistent with what reasonably would have been expected to accumulate due to any missed services.⁵ On August 30, 2012, the Commission entered Order 01 – Complaint and Order Suspending Tariffs.
- 2 On August 17, 2012, Rabanco Ltd, d/b/a Container Hauling, Eastside Disposal, Rabanco Companies, Rabanco Connections, Lynnwood Disposal, Allied Waste Services of Lynnwood, Allied Waste Services of Klickitat County, Tri-County Disposal, Allied Waste Service of Kent & Rabanco Companies, and Seatac Disposal, G-12, and Fiorito Enterprises, Inc. & Rabanco Companies, d/b/a Kent-Meridian Disposal Company (Rabanco, collectively with Waste Management, the Haulers), G-60, also filed tariff revisions with the Commission regarding missed pickups due to work stoppages. Rabanco’s language is similar to that filed by Waste Management with the exception that Rabanco’s original tariff proposal allowed the company to credit customers at its discretion if Rabanco did not restore service by “the next

¹ The procedural history in these cases, as well as the two related dockets, Dockets TG-010374 and TG-121265, is quite voluminous. For the sake of brevity, we have only included that history which directly relates to the three remaining issues before us.

² The terms “labor disruption,” “strike,” and “work stoppage” are used interchangeably throughout this Order.

³ Waste Management’s Initial Brief ¶ 6 (August 16, 2012).

⁴ *Id.*

⁵ *Id.*

scheduled or available pickup date.”⁶ On September 27, 2012, the Commission entered Order 01 - Complaint and Order Suspending Tariffs.

- 3 At the time it filed revised Item 30 tariff language, Waste Management and its unionized employees were engaged in labor contract negotiations. On July 25, 2012, Teamsters Local 117 (Local 117), whose 152 members are employed by Waste Management as residential recycling and yard waste drivers, called a strike.⁷ Teamsters Local 174, including 387 garbage collection drivers employed with Waste Management, honored the strike.⁸
- 4 Waste Management developed its 2012 Puget Sound Labor Disruption Contingency Plan (Contingency Plan) in the event negotiations failed. The Contingency Plan provided for the mobilization of Waste Management’s Green Team, a cadre of employees from around the country who volunteer to temporarily replace the striking workers.⁹ As replacement drivers began arriving, the company provided them with orientation to familiarize them with their routes and equipment, as well as facilities and safety training needed to perform the collection services.¹⁰ Waste Management also verified Green Team members’ compliance with federal, state, and local laws and regulations before sending them out on routes.¹¹ Throughout the six day strike, Green Team members continued to arrive and perform various duties.¹²
- 5 In accordance with the Contingency Plan, Waste Management sent the replacement drivers to serve “critical accounts” first.¹³ The company defines these “critical accounts” as those facilities whose collection services impact public health and the

⁶ Rabanco’s Initial Brief ¶ 3 (August 16, 2013). WRRRA intervened in both proceedings.

⁷ *Id.*, ¶ 4 and Exhibit B to Declaration of Andrew M. Kenefick (Kenefick Declaration) at 3 (August 16, 2013).

⁸ Exhibit B to Kenefick Declaration at 3.

⁹ *Id.* at 4 and 6.

¹⁰ Waste Management’s Initial Brief ¶ 11.

¹¹ *Id.*

¹² *Id.*

¹³ Exhibit B to Kenefick Declaration at 4 and 5.

environment (i.e., hospitals, nursing homes, and day care centers).¹⁴ After restoring service to the “critical accounts,” Waste Management focused on restoring commercial garbage services, as these accounts generate significant amounts of trash and are generally located in densely populated areas, followed by residential garbage and the remaining unserved customers.¹⁵

6 The company and union leaders reached a tentative agreement on Wednesday, August 1, 2012, and Waste Management dismissed the Green Team replacement workers on August 2.¹⁶

7 On August 9, 2012, the Commission convened an Open Meeting in Woodinville where Waste Management explained its response to the labor disruption in Docket TG-121265.¹⁷

8 Over the next year, the Commission sought comments from interested parties in Docket TG-010374, which was reopened to consider whether Item 30, Limitations of Service, within the standard tariff template should be amended, and Docket TG-121265, an investigation into Waste Management’s response to the 2012 work stoppage. The comments, in part, addressed whether missed solid waste pickups due to work stoppages should be handled on an industry-wide or company-by-company basis. From the stakeholder input received, the Commission ultimately concluded

¹⁴ Commission’s Tariff Template, Item 30, Limitations of Service, Docket TG-010374, Waste Management Comments at 4 (March 29, 2013). Following a request from Rabanco, the Commission took official notice of the proceedings in Docket TG-010374. See Wiley, TR 44:12-16 (July 18, 2013).

¹⁵ Washington Utilities and Transportation Commission, Complainant, v. Waste Management of Washington, Inc., d/b/a Waste Management – Northwest, Waste Management – South Sound, Waste Management of Seattle, and Waste Management – Sno-King, Docket TG-121265, Sherman, TR 14:16-25. Pursuant to WAC 480-07-495(2), the Commission takes official notice of the proceedings in Docket TG-121265, including the August 9, 2012, Open Meeting in Woodinville, Washington.

¹⁶ Waste Management’s Initial Brief ¶ 13 and Exhibit B to Kenefick Declaration at 9 and 10.

¹⁷ See supra note 15.

that the best forum for addressing labor disruptions resulting in missed solid waste collections would be in company-specific proceedings.¹⁸

- 9 On June 14, 2013, the Commission convened a prehearing conference in the instant matter. A second prehearing conference was convened on July 18, 2013. At that time, a briefing schedule was established.
- 10 Waste Management's proposed tariff revisions went into effect by operation of law on July 1, 2013. Rabanco's proposed tariff revisions went into effect by operation of law on August 1, 2013.
- 11 On August 16, 2013, Waste Management, with the support of Rabanco and WRRRA, filed proposed tariff language (Haulers' Proposal). The Commission's regulatory staff (Staff)¹⁹ also filed tariff language addressing the Hauler's responsibilities during and after the disruption of service due to a labor strike (Staff's Proposal). All parties filed briefs in support of their respective proposals. On August 30, 2013, the parties filed response briefs.
- 12 On November 20, 2013, the Commission issued Notice of Bench Request Nos. 1 through 4. Rabanco filed its responses on November 25, 2013, while Waste Management filed responses on November 27, 2013. The Commission issued another Notice of Bench Request Nos. 5 and 6 on January 23, 2014. On January 31, 2014, Waste Management responded to Bench Request No. 5, and Staff moved to strike a portion of that response on February 5, 2014. Rabanco responded to Bench Request No. 6 on January 31, 2014.
- 13 Polly L. McNeill, Summit Law Group PLLC, Seattle, Washington, represents Waste Management. David W. Wiley, Williams, Kastner & Gibbs PLLC, Seattle,

¹⁸ On July 26, 2013, the Commission approved revisions to the Item 30 Tariff Template in Docket TG-010374 dealing with missed collections due to natural disasters and subsequently closed the docket.

¹⁹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Washington, represents Rabanco. James K. Sells, attorney at law, Gig Harbor, Washington, represents Washington Refuse and Recycling Association (WRRRA). Michael A. Fassio, Assistant Attorney General, Olympia, Washington, represents Staff.

MOTION TO STRIKE

Parties' Positions

- 14 On February 5, 2014, Staff filed a Motion to Strike (Motion) certain portions of Waste Management's Response to Bench Request No. 5 (Response). In Bench Request No. 5, the Commission sought the number of daily customers Waste Management serves, grouped according to class (i.e., commercial, residential, et cetera), and the number of daily customers the company would classify as "critical accounts" such that restoration of their service would be prioritized during a temporary labor disruption.
- 15 Staff objected to the company's Response and argued that it "is unresponsive to, and beyond the scope of, [the Commission's request]."²⁰ Specifically, Staff requests that the Commission strike all aspects of Waste Management's Response exclusive of:
- Page 2, lines 10-18; and
 - Page 3, line 12 to page 4, line 7.
- 16 In the alternative, Staff requests an opportunity to respond to Waste Management's "additional argument regarding the merits of its Item 30 proposal."²¹ Staff cites to WAC 480-07-405(6)(c), which allows a party to raise an objection to the content of a bench request response with five days of service of the response.²² The company's Response, according to Staff, "contains substantive argument regarding the merits of its Item 30 proposal and Staff's Item 30 proposal."²³ Staff asserts that the Commission, in Bench Request No. 5, did not solicit Waste Management's

²⁰ Staff's Motion ¶ 2.

²¹ *Id.* ¶ 7.

²² *Id.*

²³ *Id.* ¶ 9.

clarification of the company's own response brief, nor did it invite the company to "correct potential misimpressions" in the document.²⁴ Staff contends both the clarifications offered and the substantive arguments re-iterating Waste Management's briefing positions are inappropriate.

- 17 On February 13, 2014, Waste Management filed its Response to Staff's Motion (Motion Response). Waste Management argues that Staff's Motion is misplaced since "[t]his proceeding is more like a rulemaking"²⁵ that "will likely serve as a template for other tariffs on file for [Waste Management] and the Rabanco respondents, as well as for other haulers throughout the State of Washington."²⁶ The company states that it provided the additional information in its Response to clarify language within its brief that was the subject of the Bench Request.²⁷ Specifically, Waste Management asserts that its prior reference to "commercial customers with daily service" should have been stated as "commercial customers with service more frequently than weekly."²⁸ The company only has one daily roll-off customer but several hundred more-frequently-than-weekly customers, so this clarification provides greater accuracy as to Waste Management's operations.²⁹ Waste Management acknowledges that a portion of its Motion Response was duplicative of prior arguments in its brief and does not oppose Staff's request to strike: (1) page 2, line 25 through page 3, line 6; (2) page 3, lines 8 through 11; and (3) page 4, lines 8 through 24.³⁰

Decision

- 18 We grant Staff's Motion, but only in part. The Commission's request for information was specifically based upon the language utilized in the prior briefing filed by Waste Management. We asked for the company to indicate the number of daily customers it

²⁴ *Id.*

²⁵ Waste Management's Motion Response at 2.

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ *Id.*

serves, group them by class, and explain which of these daily customers the company considers “critical accounts” that will be prioritized during service restoration. The only reason we referenced “daily customers” is because the term was used in Waste Management’s brief. The explanation regarding the “more-frequently-than-weekly” customers provided by the company produces a more accurate and complete record. As such, Waste Management’s correction of the characterization of “daily customers,” found at page 2, lines 19 through 25 and page 3, lines 6 through 8, is appropriate. Staff’s Motion regarding these sections is denied.

- 19 A bench request response, however, should be carefully calculated to supply the requested information, not to re-argue positions. As the company admits, a portion of its Response was indeed a re-iteration of its positions on brief. Staff’s Motion is granted as to: (1) page 2, line 25 through page 3, line 6; (2) page 3, lines 8 through 11; and (3) page 4, lines 8 through 24.

SUBSTANTIVE ISSUES

- 20 The parties have spent significant time working through the issues surrounding strike-related service disruptions. As Waste Management explains, “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.”³¹ Through workshops, Open Meetings, written comments, and various presentations by the parties, general consensus has been reached in the following areas:³²

- The companies must communicate with the Commission’s regulatory services and consumer protection staff, customers, and local governments regarding the labor disruption and efforts made to meet full service requirements.³³
- The companies must use all reasonable and practicable means to restore regularly-scheduled service to all customers, and the Commission may

³¹ Waste Management’s Response Brief ¶ 2.

³² Waste Management’s Response Brief ¶ 4, Staff’s Initial Brief ¶ 10, Rabanco’s Response Brief ¶¶ 2-3, and WRRRA’s Response Brief ¶ 1.

³³ *Id.* at 6(a)-(e) and 6(i).

evaluate whether the companies have met this standard by considering the companies' resources, the circumstances of the labor disruption, and any other relevant factors.³⁴

- The companies will not charge for any extra accumulated solid waste set out in addition to the customers' normal receptacles if the amount of extra waste does not exceed the amount that reasonably would be expected to accumulate due to missed service.³⁵
- The companies will issue credits to customers if they do not collect all of the customers' accumulated solid waste on the customers' next regularly-scheduled service date.³⁶

21 Only three areas of dispute remain. These include:³⁷

1. The time period during which the Haulers must restore solid waste collection services caused by a work stoppage,
2. The circumstances under which the Haulers would be required to issue a credit for missed services during and after a strike, and
3. The calculation of any credit.

1. Restoration of Service

22 The greatest issue of disagreement between the parties is the standard that should be applied in evaluating the Haulers' restoration efforts. The Haulers' and WRRRA propose a definitive deadline, five business days after the start of the work stoppage and not including the first day of the strike, by which Waste Management and Rabanco must restore service to all customers. In contrast, Staff recommends that the

³⁴ *Id.* at 6(f). The parties disagree when the Commission's evaluation of the companies' efforts should begin "but not about the appropriateness of the standard." Waste Management's Response Brief ¶ 4.

³⁵ *Id.* at 6(g).

³⁶ *Id.* at 6(h). The Haulers' Proposal does, however, contain an additional five business day grace period beyond the next regularly-scheduled service date and is the subject of much disagreement.

³⁷ Waste Management's Response Brief ¶ 2.

Commission require the Haulers to “use all reasonable, practicable means to resume regularly-scheduled service to all customers.”³⁸

The Haulers’ Proposal

- 23 Waste Management, Rabanco, and WRRRA propose language to provide Waste Management and Rabanco five business days, not including the first day of the strike, to restore solid waste collection services. The five business day benchmark, the Haulers assert, supplies an objective, measurable target by which the Commission could evaluate a company’s performance.³⁹ The Haulers’ Proposal also allows the Commission to “consider the company’s resources, the circumstances of the labor disruption and any other relevant factors” in its evaluation.⁴⁰ The Commission, according to Waste Management, then has the “discretion to determine whether the company has used all reasonable, practicable means if the five-business-day deadline is missed.”⁴¹ If the Commission decides a delay beyond five business days was unreasonable, Waste Management indicates that the Haulers’ Proposal would allow the Commission to impose sanctions.⁴²
- 24 Citing its labor disruption experience during the summer of 2012,⁴³ Waste Management explains that any deadline short of five business days would be meaningless and impossible to meet.⁴⁴ In the event of a strike, the company claims that replacement drivers cannot realistically be notified that they are needed until the first business day after the strike is called.⁴⁵ Once substitute drivers are alerted, the necessary family and work arrangements must be made before workers can travel to the Pacific Northwest, which could take up the second business day.⁴⁶ Workers

³⁸ Staff’s Proposal at 6(f) (August 16, 2013).

³⁹ *Id.*

⁴⁰ The Haulers’ Proposal at 6(f).

⁴¹ Waste Management’s Initial Brief ¶ 31.

⁴² *Id.* ¶ 32.

⁴³ *See supra* note 15.

⁴⁴ *Id.* ¶ 26.

⁴⁵ *Id.* ¶ 27.

⁴⁶ *Id.*

would then need to be trained on servicing their routes, safety procedures, and equipment.⁴⁷ This would be accomplished during the third business day.⁴⁸ The first full day that drivers could begin handling the missed routes would be the fourth business day following the labor disruption.⁴⁹ Waste Management notes that these timeframes present “an aggressive schedule [that] only addresses the first arrivals.”⁵⁰ It is likely that all routes could not be restored until the fifth business day; perhaps later, if the strike came as a surprise and pre-strike preparations were not in place.⁵¹

- 25 The five business day deadline corresponds with most regulatory residential and commercial customers who receive weekly collection service, so missed collections would be picked up at the next regularly-scheduled service.⁵² Waste Management asserts that customers will understand this schedule and know when to place their carts out.⁵³ The five business day schedule is also “consistent with how most city contracts address resuming service disrupted by a labor event.”⁵⁴ The company contends that a different approach for restoring service to regulatory customers would create confusion and logistical problems.⁵⁵
- 26 Waste Management disagrees with Staff’s generalized language and failure to specify a time frame as it “leaves a company uncertain as to whether its actions will be deemed to have satisfied the Commission until after [the] disruption caused by a labor strike is over.”⁵⁶ The company points to its experience from 2012 as “factual

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* ¶ 30.

⁵⁴ *Id.* ¶ 29. Waste Management references its agreements with Auburn, Kirkland, Federal Way, and Seattle.

⁵⁵ *Id.*

⁵⁶ Waste Management’s Response Brief ¶ 8. See also Staff’s Initial Brief ¶ 11.

evidence regarding the realities of the time needed to marshal, orient, and train a sufficient number of substitute drivers to fully resume services.”⁵⁷

- 27 Rabanco echoes Waste Management’s statements and adds that a definitive timeframe gives “regulated providers sufficient time and space to implement alternative arrangements to pick up all missed accounts and prioritize [critical accounts].”⁵⁸ The company cautions that Staff’s language, “assumes a posture that would potentially presume service could be restored within 24 hours or less.”⁵⁹
- 28 In support of the Haulers’ Proposal, WRRRA asserts that Staff should understand that the additional time necessary for providing safety training and qualification verification prior to replacement drivers getting on the road is in the public interest.⁶⁰ Further, the Haulers, not Staff, have actual experience with a work stoppage.⁶¹

Staff’s Proposal

- 29 Staff recommends tariff language that would require the Haulers to “use all reasonable, practicable means to resume regularly-scheduled service to all customers” in the event of a labor disruption.⁶² Staff explains that its proposal allows the Commission to consider various factors to evaluate the Hauler’s response to the labor disruption and do so on a case-by-case basis.⁶³ As Waste Management’s tariff reads currently, the company “will take all necessary actions consistent with its collective bargaining agreements and applicable law to continue to provide service to customers.”⁶⁴ Staff’s proposal, therefore, reads closer to the company’s currently effective tariff.

⁵⁷ *Id.* ¶ 9.

⁵⁸ Rabanco’s Initial Brief ¶ 7 (August 16, 2013).

⁵⁹ *Id.* ¶ 8.

⁶⁰ WRRRA’s Initial Brief at 3 (August 16, 2013).

⁶¹ *Id.*

⁶² Staff’s Proposal at 6(f) (August 16, 2013).

⁶³ Staff’s Initial Brief ¶ 11.

⁶⁴ Tariff of Waste Management – South Sound and Waste Management of Seattle, Item 30, Original Page No. 14A (November 1, 2013).

- 30 Staff's opposition to the Haulers' firm deadline for service restoration stems from its belief that "no one deadline can anticipate or account for the variety of circumstances that may be presented by the labor disruption, nor can it fully account for a specific company's resources and its ability to respond to the circumstances."⁶⁵ Setting a minimum deadline may affect labor negotiations, according to Staff, or create false expectations for complete restoration in the minds of customers.⁶⁶ Companies should strive to restore service as soon as practicable, since customers' only other option is to self-haul to the nearest transfer facility.⁶⁷ Further, Staff states that its language "places the burden on the company to act in the public interest when making decisions during the labor negotiations."⁶⁸
- 31 Staff argues "there is no 'one-size-fits-all' grace period that captures all possible circumstances that may arise during a labor disruption."⁶⁹ Not all strikes are identical in duration or type.⁷⁰ Staff defends its proposed language, claiming it allows companies more flexibility to address the particular circumstances surrounding each disruption.⁷¹ Contrary to WRRRA's assertion, Staff argues it has taken into account such factors as public and worker safety in drafting its proposed language.⁷² It points to the discretion its language gives the Commission in considering additional factors and acknowledges that overall safety is included.⁷³

Discussion/Decision

- 32 All parties agree that the best course of action is to allow the solid waste companies to take all reasonable, practicable means to restore service as quickly as possible. The

⁶⁵ Staff's Initial Brief ¶ 11.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Staff's Response Brief ¶ 2.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

pivotal difference between the two proposals is the regulatory certainty provided by the Haulers' Proposal. We agree with Waste Management and Rabanco that some certainty is necessary for these companies to concentrate their time and efforts on restoring service to residential and commercial customers.

- 33 The Haulers' proposed time frame is consistent with agreements the companies have with several municipal governments in King County, including Seattle, Federal Way, Kirkland, and Auburn. The importance of consistency cannot be underestimated; separate and distinct restoration standards put the companies in a position of directing resources to particular jurisdictions and temporarily withholding resources from others based on these divergent requirements. The uniformity of the municipal and state regulatory restoration time frames will allow for planning and implementation to be done on a system-wide basis; thus, promoting efficiency.
- 34 As WRRRA and the companies note, replacement workers must travel from many locations around the country, are trained in safety and routes, and must comply with state regulations before even beginning to respond to customer needs. Under the five business day restoration period, most customers will miss no more than one scheduled pickup.
- 35 We believe that the best solution, and one that will foster "reasonable and practicable" efforts to resume service, is to create a rebuttable presumption that five business days is an appropriate target for Waste Management and Rabanco to restore collection services following a labor disruption. Waste Management presented experiential, persuasive evidence that five business days is a reasonable amount of time for restoration. While no one can say, with certainty, that five business days will be necessary in every labor disruption, we are confident that Staff and others will rebut this presumption of reasonableness if Waste Management and Rabanco act outside of the public interest and unreasonably delay resumption of collection services. The companies will better be able to develop and implement a restoration plan if they can have some level of certainty about the Commission's expectations, as well as the ability to plan for their entire service territory without dealing with competing deadlines from the various political subdivisions.
- 36 While five days is presumptively a reasonable time, it may not be appropriate for all companies and in all situations. We expect Staff to explore whether, under the specific circumstances presented at the time, a shorter time to restore service is

reasonable and practicable. Relevant factors could include the amount of time, if any, the company had to prepare for the labor disruption; the company's execution of any contingency plan it had (and whether it had a contingency plan); organization and training of any replacement workers (such as Waste Management's "Green Team"); ambulatory picketing that might delay restoration of service; and workplace safety issues and coordination with local government agencies that may affect overall public safety.

2. Application of Credit for Missed Service

37 The next issue we must address is when a credit for missed service must be applied. The Haulers and WRRRA advocate only issuing a credit when the companies fail to restore collection services, including collection of all accumulated solid waste,⁷⁴ by the next regularly-scheduled service date.⁷⁵ Staff's Proposal, likewise, provides for the issuance of credits only if the Haulers do not collect the solid waste at a customer's next regularly-scheduled service date.⁷⁶ The difference in the two proposals is tied to the first issue: the Haulers' Proposal allows for a five business day grace period before Waste Management and Rabanco are required to restore service.

The Haulers' Proposal

38 The Haulers' propose language that would only require Waste Management and Rabanco to issue credits to customers whose accumulated solid waste is not collected at the customers' next regularly-scheduled service date *after service resumes*.⁷⁷ The language, "after service resumes," is significant since the Haulers' Proposal does not require Waste Management or Rabanco to restore service for five business days following the first day of the strike. Waste Management states that this provides the

⁷⁴ The companies will "collect all accumulated solid waste at the customer's next regularly-scheduled service date" and the customer will not be charged "for extra waste set out in addition to customers' normal receptacle(s) if the amount of extra waste does not exceed the amount that reasonably would be expected to accumulate due to missed service." The Haulers' Proposal at 6(g).

⁷⁵ The Haulers' Proposal at 6(h).

⁷⁶ Staff's Proposal at 6(h).

⁷⁷ The Haulers' Proposal at 6(h) (emphasis added).

company with “a significant incentive to meet the performance standards and restore service fully within the first five business days.”⁷⁸ Waste Management claims that the Haulers’ Proposal and Staff’s Proposal are generally in agreement as to when credits should be refunded.⁷⁹

39 The slight difference that exists between those proposals, according to Waste Management, becomes apparent only for customers served more frequently than the Haulers’ five business day grace period.⁸⁰ For example, Waste Management serves 436 commercial customers, such as restaurants that generate daily large quantities of waste, whose solid waste it collects twice a week.⁸¹ During a week-long strike in which service is not restored until the fifth business day following the first day of the strike, the Haulers’ Proposal would not require Waste Management to issue these twice-weekly customers a credit for missed services, even though the company had failed to restore service by the next regularly-scheduled service date because this service date is within the Haulers’ grace period. Staff’s Proposal, however, would require Waste Management to credit these customers for the two missed services during the week-long strike because it does not contain this grace period. Waste Management asserts it “has established an abundance of evidence demonstrating why [the immediate restoration of service] is a standard that cannot be achieved.”⁸²

40 The company acknowledged that critical accounts were prioritized once service was restored during the 2012 strike, and many of the critical accounts were commercial customers on a more-frequently-than-weekly service schedule.⁸³ Staff’s Proposal would mandate the company establish a higher priority for commercial customers

⁷⁸ Waste Management’s Initial Brief ¶ 42.

⁷⁹ Waste Management’s Response Brief ¶ 13.

⁸⁰ *Id.* Waste Management notes that Staff’s Proposal “can be inferred” to absolve the companies of any duty to issue customer credits if the company collects the customers’ accumulated solid waste at the next regularly-scheduled pickup. We do not see the ambiguity in Staff’s Proposal. To the contrary, Staff’s Proposal clearly states that “[i]f the company does not collect all of a customer’s accumulated solid waste on the customer’s *next regularly-scheduled service date*, the company is required to give a credit to the customer.” Staff’s Proposal at 6(h) (emphasis added).

⁸¹ Waste Management’s Response to Bench Request No. 5 at 2 (January 31, 2014).

⁸² Waste Management’s Response Brief ¶ 15.

⁸³ *Id.*

who are served more frequently compared to other customer classes; if not, the company would be required to issue credits to customers.⁸⁴

Staff's Proposal

- 41 Staff argues that companies should be required to issue credits for missed collections until service is restored.⁸⁵ This proposal, according to Staff, is “straightforward, clear, and measurable.”⁸⁶ Further, Staff asserts that commercial customers, *i.e.*, those on a more-frequent-than-weekly schedule, will be disproportionately affected by a strike compared to weekly or every-other-week customers.⁸⁷ Staff notes that the more missed services, the more waste accumulates, and the greater the public health and safety concerns as well as the inconvenience to the customer.⁸⁸

Discussion/Decision

- 42 As previously stated, we find the rebuttable presumption of a five business day restoration time reasonable. This time frame would be meaningless if it didn't also apply to the issuance of credits to customers. As a result, we agree with Waste Management and Rabanco's proposal that neither company will be required to issue credits to customers for missed services unless the companies fail to collect the accumulated solid waste at the customers' next regularly-scheduled service date after service resumes, which will be within five business days after the beginning of the labor dispute. We don't want to leave the impression that the companies will never have to issue credits. Since it is rebuttable, Staff or any other party will have the opportunity to present evidence demonstrating the companies failed to restore service in a timely manner. Under such circumstances, Waste Management and Rabanco would be required to issue credits to customers whose service it failed to restore.
- 43 An important point to keep in mind is that most customers are on a weekly or every other weekly collection schedule and would not be affected by the Commission's

⁸⁴ Waste Management's Response Brief ¶ 17.

⁸⁵ Staff's Initial Brief ¶ 13.

⁸⁶ Staff's Response Brief ¶ 5.

⁸⁷ *Id.* ¶ 8.

⁸⁸ *Id.*

preference for either proposal's language. This is due to the limiting of credits in both proposals to those customers whose service has not been restored by their "next regularly-scheduled service date." The real difference manifests for more-frequently-than-weekly customers. Under Staff's proposal, these more-frequently-than-weekly customers would be owed a credit if their services were not restored by their next regularly scheduled service date. The Haulers' Proposal provides for a five business day grace period, so more-frequently-than-weekly customers could miss several regularly-scheduled collections and still not receive a credit. That said, many of these customers have been or would be classified by Waste Management and Rabanco as "critical accounts," such as hospitals and nursing homes that will receive restoration of service on a priority basis.

44 As stated previously, we prefer the haulers concentrate their efforts and energies on restoration of service system-wide and not based on the jurisdictions in which it will have to issue credits. We find the Haulers' Proposal language related to the issuance of credits in the public interest.

3. Recycling Commodity Adjustment

45 The final issue concerns the calculation of the missed service credit. The Haulers and WRRRA argue that it should not include any recycling commodity credit,⁸⁹ while Staff asserts that Waste Management and Rabanco should be required to include the recycling commodity credit within any missed service credit.⁹⁰

The Haulers' Proposal

46 With regard to the calculation of the credit to be issued, the Haulers and Staff have reached substantial consensus on the calculation methodology. The Haulers' Proposal, however, only credits the customer "for the missed service, not for the value of the [recycling] commodity not collected."⁹¹ As an example of how the company proposes to calculate a credit, Waste Management uses a hypothetical customer billed

⁸⁹ Waste Management's Response Brief ¶ 21.

⁹⁰ Staff's Initial Brief ¶ 13.

⁹¹ Waste Management's Response Brief ¶ 21.

at \$5.00 per pick-up for every other week recycling service.⁹² If the customer is also typically credited \$2.00 per pick-up for a recycling commodity credit, the net missed collections credit Waste Management should refund to the customer is \$3.00 – “i.e., his/her actual out of pocket cost.”⁹³ The company argues that this \$3.00 per-service rate should be the starting point for calculating the amount of any missed collection credit.⁹⁴

47 According to the company, recycling customers should not get paid a deferred recycling commodity credit for the sale of a commodity Waste Management never received and the customer did not provide.⁹⁵ Waste Management also advocates the removal of any processing costs from the credit calculation.⁹⁶ The company argues that the full recycling credit, with the commodity adjustment included, would result in a windfall to the customer.⁹⁷

48 Rabanco acknowledges that the commodity credit is “established on a twelve-month historical pricing period and involve[s] an estimate for the next twelve month period.”⁹⁸ The company argues for an adjustment to the credit “under WAC 480-70-351(2) for missed pick-up circumstances to protect against over-crediting of customers for recyclables never picked up, processed and sold.”⁹⁹ Rabanco admits, however, that “this effect [attrition in recycling collectables from missed pick-ups] should be reflected in the annual calculation under WAC 480-70-351.”¹⁰⁰

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* ¶ 23.

⁹⁶ *Id.* ¶ 21.

⁹⁷ *Id.*

⁹⁸ Rabanco’s Initial Brief ¶ 13.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Staff's Proposal

- 49 Staff disagrees with the Haulers' approach and explains that the recycling commodity credit is calculated separately from the company's "tariff collection and processing rate."¹⁰¹ The commodity credit is a deferred accounting treatment that is approved by the Commission and designed to "pass through to customers the costs and benefits of the sale of recyclable materials collected from residences."¹⁰² It is annually trued-up "to reflect actual revenue the company received from the sale of recyclable commodities."¹⁰³ Staff supports removal of disposal and processing costs from the missed collection credit calculation.¹⁰⁴ Unlike the commodity credit, these amounts are embedded in the published tariff rates, and the company will incur them when it collects the accumulated materials at no additional costs to customers.¹⁰⁵
- 50 Staff states that any effects from a company's missed recycling pickup will be "reflected in the annual calculation under WAC 480-70-351, because the recycling commodity adjustment is established based on a 12-month historical pricing period and involves an estimate for the next 12-month period."¹⁰⁶ Therefore, withholding any commodity credits for a collection missed this year "den[ies] the customer any monies owed from the sale of recyclable materials from the previous year."¹⁰⁷

Discussion/Decision

- 51 Waste Management and Rabanco confuse the concept of a recycling commodity credit with rates for solid waste collection, which are calculated to compensate the companies for the costs they incur to collect and dispose of solid waste on a going-forward basis for each pick up they make. Recycling commodity credits, in contrast,

¹⁰¹ Staff's Initial Brief ¶ 13.

¹⁰² *Id.*

¹⁰³ Staff's Initial Brief ¶ 13.

¹⁰⁴ Staff's Response Brief ¶ 13.

¹⁰⁵ *Id.*

¹⁰⁶ Staff's Response Brief ¶ 14.

¹⁰⁷ *Id.*

are calculated to compensate customers for the total value of all the recyclable materials the companies collected in the past year. Pursuant to WAC 480-70-351(2):

Companies that estimate the revenue from the sale of recyclable materials collected in residential curbside programs as part of a deferred accounting program to return recycling revenues or charges to customers must use the most recent twelve-month historical period to estimate the revenue for the next twelve months.

- 52 Requiring the companies to continue to provide this commodity credit to customers even if the companies are not collecting recycling materials does not result in a “windfall,” as Waste Management claims; it compensates the customers for commodities the companies collected and sold in the prior year. When the commodity credit is trued-up the following year, it will reflect any decrease in sales from the missed collections. Removal of the commodity adjustment from the missed pick-up credit would punish customers twice: not only will they have been inconvenienced by a missed collection, but they would also have been denied a credit from the previous year’s commodity sales. As a result, we find that Staff’s proposed language should be approved.

SUMMARY

- 53 Based on the foregoing, Waste Management and Rabanco should re-file conforming tariff sheets that provide for: 1) Restoration of collection services by all reasonable and practicable means within five business day grace period, not including the first day of the strike, in the event of a labor disruption; 2) The issuance of customer credits for missed services outside of the five business day grace period or if the companies are shown to have unreasonably delayed the restoration of services during the five business day grace period; and 3) Any customer credits for missed recycling services will include the recycling commodity credit.

FINDINGS AND CONCLUSIONS

- 54 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules,

regulations, practices, and accounts of public service companies, including solid waste companies.

- 55 (2) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 56 (3) Waste Management of Washington, Inc., d/b/a Waste Management – Northwest, Waste Management – South Sound and Waste Management of Seattle, and Waste Management – Sno-King (Waste Management), is a solid waste collection services corporation in the State of Washington.
- 57 (4) Rabanco Ltd, d/b/a Container Hauling, Eastside Disposal, Rabanco Companies, Rabanco Connections, Lynnwood Disposal, Allied Waste Services of Lynnwood, Allied Waste Services of Klickitat County, Tri-County Disposal, Allied Waste Service of Kent & Rabanco Companies, and Seatac Disposal, G-12, and Fiorito Enterprises, Inc. & Rabanco Companies, d/b/a Kent Meridian Disposal Company (Rabanco) is also a solid waste collection services corporation in the State of Washington.
- 58 (5) Waste Management and Rabanco filed proposed tariff revisions relating to missed solid waste pick-ups due to labor disruptions on June 6 and August 17, 2012, respectively.
- 59 (6) Waste Management, Rabanco, and the Washington Refuse and Recycling Association filed revised tariff language, modifying its original proposal, on August 16, 2013.
- 60 (7) The Commission’s regulatory staff (Staff) also filed proposed language, modifying Waste Management and Rabanco’s original tariff proposals on August 16, 2013.
- 61 (8) On February 5, 2014, Staff filed a Motion to Strike (Motion) portions of Waste Management’s Response to Bench Request No. 5.

- 62 (9) The Commission finds the public interest is best served by granting in part and denying in part Staff's Motion in accordance with paragraphs 18 and 19 above.
- 63 (10) The public interest is best served by requiring Waste Management and Rabanco to restore service in the event of a labor disruption using all reasonable, practicable means within five business days not including the first day of the labor disruption.
- 64 (11) The five business day restoration grace period is presumptively reasonable but may be rebutted by evidence that Waste Management or Rabanco did not use all reasonable, practicable means to resume collection services.
- 65 (12) The public interest is best served by requiring Waste Management and Rabanco to issue credits to customers if, during a labor disruption, they did not restore service by the customers' next regularly-scheduled pick-ups after the five business day grace period, or the Commission determines that the companies unreasonably delayed the restoration of service during this grace period.
- 66 (13) It is reasonable for the missed pick-up credits to include the recycling commodity credit, which is designed to return to customers the monies received from the sale of recyclables from the prior year.

ORDER

THE COMMISSION ORDERS:

- 67 (1) Staff's Motion to Strike portions of Waste Management's Response to Bench Request No. 5 is granted in part and denied in part in accordance with paragraphs 18 and 19 above.
- 68 (2) Waste Management and Rabanco shall resume collection services for all customers within five business days, not including the first day of a strike, during a labor disruption.

- 69 (3) Waste Management and Rabanco shall issue customer credits if the companies fail to restore collection services by the customers' next regularly-scheduled service date following the five business day grace period or the Commission determines that the companies unreasonably delayed the restoration of service during this grace period.
- 70 (4) Any customer credits issued by Waste Management and Rabanco for missed recycling collection services shall include the recycling commodity credit.
- 71 (5) Waste Management and Rabanco shall file tariffs that comply with this Order within two weeks of the effective date of this Order.
- 72 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective, March 20, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.