

Agenda Date: February 25, 2011
Item Number: B1

Docket: TG-110103
Company Name: Harold LeMay Enterprises Inc., d/b/a Pierce County Refuse, G-98

Staff: David Gomez, Deputy Assistant Director, Water, Solid Waste and Transportation

Recommendations

1. Grant the company's request for an exemption from WAC 480-07-520(4) Work papers, for the purposes of this filing only;
2. Issue a Complaint and Order Suspending the Tariff Revisions filed by the company on January 13, 2011, to allow the commission to institute an investigation of the company's books, accounts, practices, activities and operations;
3. Allow revised rates to become effective March 1, 2010, on a temporary basis, subject to refund; and
4. Allow the company to retain fifty percent of the revenue it receives from the sale of recyclable materials collected in its residential recycling program on a temporary basis, subject to refund.

Discussion

On January 13, 2011, Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse (LeMay or company), filed with the Washington Utilities and Transportation Commission (commission) revisions to its currently effective Tariff No. 9, pages 1, 16, 21, 22, 26, 30, 32, 33, 34 and 35 to:

- Increase rates due to a disposal fee increase from \$112.94 per ton to \$123.29 per ton effective March 1, 2011, as communicated to the company by Pierce County Recycling, Composting and Disposal, LLC, d/b/a LRI's letter dated December 30, 2010; and
- Revise its monthly recyclable commodity revenue adjustment for residential customers from a \$0.22 debit to a \$0.91 credit; a decrease in customer bills of \$1.13 per customer per month.

The increase in rates to reflect the new disposal fees would generate \$702,843 (3.2 percent) in additional annual revenue for the company. Retained revenues (fifty percent) from the sale of recyclable commodities will also increase the company's revenues by \$404,987 (1.2 percent). On January 31, 2011, LeMay filed a substitute page designated as 2nd revised page 21. The company serves approximately 44,000 residential and commercial customers in Pierce County.

A disposal fee increase falls within the definition of a general rate increase pursuant to WAC 480-07-505. WAC 480-07-520 lists the minimum required information the company must provide in a general rate increase filing. The company provided information pertinent to the disposal fee increase but did not provide the remainder of the information required by the rule.

WAC 480-07-110 allows the commission to grant an exemption from or modify the application of its rules if consistent with the public interest, the purposes underlying regulation, and applicable statutes. *See also WAC 480-70-05.*

Commission staff reviewed the tariff request together with other factors and recommends the commission, on its own motion, grant an exemption from the rule for this filing for the following reason(s):

- a. There have not been any significant changes since the last rate case that became effective March 1, 2008. Since that date there has not been any customer growth, inflation has been low, and the company has not changed its collection methods.
- b. Disposal fees are set by Pierce County through its agreement with the landfill operator; Pierce County Recycling, Composting and Disposal, LLC, d/b/a LRI, and are required as a part of LeMay's operations.
- c. The company's financial information supports the proposed revenue requirement and the proposed rates.
- d. Staff concluded the proposed rate increase, by reason of the increase in disposal fees, is fair, just and reasonable.

The filing also proposes to increase the amount that the company pays to residential customers for the value of the recyclable materials that LeMay collects in its residential recycling service. Each residential customer will receive a credit of \$0.91 per month instead of paying a debit of \$0.22; a decrease in each customer's bill of \$1.13 per month. The company has requested that the tariff revisions filed January 13, 2011, as revised on January 31, 2011, become effective on March 1, 2011.

Also on January 13, 2011, the company petitioned the commission for the authority to retain fifty percent of the revenue generated from the sale of recyclable commodities.

RCW 81.77.185 states that the commission shall allow solid waste collection companies collecting recyclable materials to retain up to fifty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

On January 13, 2011, LeMay filed with Pierce County its recycling plan for calendar year 2010. The plan sets forth specific actions that LeMay will take including: working with Pierce County to better assess recycling efforts in the county; work with Pierce County Solid Waste to keep its website current and continue to promote 96-gallon recycling carts to new users. The plan also requires LeMay to track and maintain recycling data for its operations and report the results to Pierce County Solid Waste. The company states that it will use retained revenue for:

- Ongoing implementation of the Single-Cart Recycling Program;
 - Coordinated outreach with Pierce County.
 - Meeting customer service requirements specified in Pierce County Code.
- Data collection and reporting;
- Activities and actions designed to increase recycling and decrease disposal, as compared to the baseline years of 2004 and 2009; and
- Increasing tonnage, increasing participation and decreasing contamination.

On January 18, 2011, Pierce County's Public Works and Utilities filed a letter addressed to the Executive Director and Secretary of the Commission from Stephen Wamback, Solid Waste Administrator for Pierce County, Washington. Mr. Wamback states, "As Solid Waste Administrator, I am the appropriate local government authority to make the certification required by RCW 81.77.185 (1)." Specifically relating to the company's 2011-2012 Recycling Plan, Mr. Wamback adds, "I hereby certify that the updated Company Recycling Plan is consistent with the Tacoma-Pierce County Solid Waste Management Plan, and that the plan demonstrates how retained revenues will be used to increase recycling." Mr. Wamback also recommends that the company be allowed to retain fifty percent of the revenues generated from the sale of recyclable commodities.

On January 13, 2011, the company filed with the commission a report of how it used revenues it retained in the prior plan year (2010-2011, Table 1 below). Two-thirds of retained revenues were used to fund a Recycling Coordinator position. In addition, the company's annual dues for the Washington Refuse and Recycling Association (WRRRA) were included as an expense. WRRRA dues are already included in the company's rates, which were approved by the commission as part of its last general rate case, TG-080105. The company did not specify whether the unused portion of retained revenues (\$54,748) not spent during the prior plan period be carried forward to the following plan period.

Harold LeMay Enterprises, Inc. G-98, Pierce County Refuse December 2009 - November 2010			
	Commodity Value 100%	Commodity Value 70%	Company Retained 30%
Commodity Value	\$809,973	\$566,981	\$242,992
Program Costs:			Staff Comment
Recycling Coordinator (wages & benefits)			\$123,449
			100 percent of this position is paid for with Pierce County Refuse's retained recycling revenue. The employee is part of Lakewood Refuse's (non-regulated) payroll.
Community Outreach Activities			\$4,406
Truck and Labor Expense			\$4,930
Recycle Yard Rent:			
Rent			\$12,000
Monitoring			\$14,061
Donations:			
Cost			\$4,377
Truck/Labor			\$13,813
			Labor expense provided by employees of Lakewood Refuse (non-regulated). All tracking of these costs were done "off-book".
Professional Organizations			
WRRRA ½ of the company's annual dues			\$11,208
			Dues (less lobbying expense) for Washington Refuse and Recycling Association (WRRRA) are already in rates (General Rate Case, TG-080105, effective March 1, 2008).
Total Recycling Program costs			\$188,244
		Difference	\$54,748

Table 1; Harold LeMay Enterprises, Inc., d.b.a. Pierce County Refuse Revenue Sharing 2010-2011

LeMay is wholly owned by Waste Connections, Inc. (Waste Connections), as are three other companies; American Disposal Company, Inc. (American), Murrey's Disposal Company, Inc. (Murrey's), and Mason County Garbage Company, Inc. (Mason). All four of these companies are the only business entities within Waste Connections that currently participate in revenue sharing agreements with their respective counties.

On October 28, 2010, the commission, by order¹, authorized revenue sharing for American, Murrey's and Mason, requiring revenues not spent during prior plan period and current plan period be carried forward to the following plan period.² On November 8, 2010, counsel for Mason, Murrey's and American filed with the commission, a petition for reconsideration of a portion of Order 01 in all three dockets. The commission heard the petitions at its November 24, 2010, open meeting and set the matters for hearing. Furthermore, on December 1, 2010, the commission ordered that the petitions be consolidated for purposes of hearing and determination.³

Staff recommends that the commission issue a complaint and order suspending revisions to LeMay's Tariff No. 9, allowing rates and revenue sharing on a temporary basis, subject to refund until such time as a determination has been made in Dockets; TG-101542, TG-101545 and TG-101548.

Staff further recommends the commission allow, on its own motion, an exemption from WAC 480-07-520 requiring the company to file a general rate case for this filing as such exemption is consistent with the public interest, the purposes underlying regulation and applicable statutes.

Conclusion

Staff recommends that the commission:

1. Grant the company's request for an exemption from WAC 480-07-520(4) Work papers, for the purposes of this filing only;
2. Issue a Complaint and Order Suspending the Tariff Revisions filed by the company on January 13, 2011, to allow the commission to institute an investigation of the company's books, accounts, practices, activities and operations;
3. Allow revised rates to become effective March 1, 2010, on a temporary basis, subject to refund; and
4. Allow the company to retain fifty percent of the revenue it receives from the sale of recyclable materials collected in its residential recycling program on a temporary basis, subject to refund.

1 TG-101542, Order 01; TG101545, Order 01 and TG-101548, Order 01.

2 In TG-101542, Order 01; TG101545, Order 01 and TG-101548, Order 01, Order Section 4, Paragraph 20, the Commission required . . . [r]evenues retained by Murrey's Disposal Company, Inc., not spent during the previous plan period are to be carried over into the next year, and revenues from this plan period that are not spent are to be carried over to the following year, unless the Commission orders some other treatment.

3 TG-101542, Order 02; TG101545, Order 02 and TG-101548, Order 02