

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET TG-110103
	)	
WASHINGTON UTILITIES AND	)	ORDER 01
TRANSPORTATION	)	
COMMISSION,	)	
	)	
Complainant,	)	
	)	
v.	)	COMPLAINT AND ORDER
	)	SUSPENDING TARIFF;
HAROLD LEMAY ENTERPRISES,	)	ALLOWING RATES AND
INC., D/B/A PIERCE COUNTY	)	REVENUE SHARING ON A
REFUSE, G-98	)	TEMPORARY BASIS, SUBJECT
	)	TO REFUND; AND GRANTING
Respondent.	)	EXEMPTION FROM RULE
.....	)	

**BACKGROUND**

*1* 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 2<sup>nd</sup> revised page 21. The Company serves approximately 44,000 residential and commercial customers in Pierce County (County).

- 2 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.
- 3 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.*
- 4 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.
- 5 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.
- 6 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.

- 7 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.
- 8 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.
- 9 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 states, "...the company will be required to make additional demonstrations and provide additional services in support of curbside recycling out of the revenues retained from the sale of recyclable commodities. Further, Pierce County will evaluate the company's performance against new performance measures and thereby determine whether the company will be eligible to retain up to fifty

percent (50%) of revenue generated from the sale of commodities in the upcoming rate period."

- 10 Staff recommends that the Commission authorize 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, require the Company to meet the performance requirements set forth in its recycling and revenue sharing plan, and in consultation with the County, consider whether to reduce the revenue share the Company retained if the Company fails to meet those performance requirements.
- 11 On January 13, 2011, the Company filed with the Commission a report of how it used revenues it retained in the prior plan year (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, less lobbying expense, are already included in the Company's rates, which were approved by the Commission as part of its last general rate case, TG-080105.<sup>1</sup> 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.

<b>Harold LeMay Enterprises, Inc. G-98, Pierce County Refuse December 2009 - November 2010</b>			
	<b>Commodity Value 100%</b>	<b>Commodity Value 70%</b>	<b>Company Retained 30%</b>
<b>Commodity Value</b>	<b>\$809,973</b>	<b>\$566,981</b>	<b>\$242,992</b>

<b>Program Costs:</b>	<b>Staff Comment</b>
Recycling Coordinator (wages & benefits)	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	
Truck and Labor Expense	
<b>Recycle Yard Rent:</b>	
Rent	

<sup>1</sup> In TG-080105, the Company's approved rates included its twenty percent share (\$11,858 of \$59,292) of WRRRA dues billed to all Harold LeMay Enterprises, Inc. companies.

Program Costs:		Staff Comment
Monitoring	\$14,061	
<b>Donations:</b>		
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".
<b>Professional Organizations</b>		
WRRRA, 1/2 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).
<b>Total Recycling Program costs</b>	<b>\$188,244</b>	
	<b>Difference</b>	<b>\$54,748</b>

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

12 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.

13 On October 28, 2010, the Commission, by order<sup>2</sup>, 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.<sup>3</sup> 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.<sup>4</sup>

<sup>2</sup> TG-101542, Order 01; TG101545, Order 01 and TG-101548, Order 01.

<sup>3</sup> 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.

<sup>4</sup> TG-101542, Order 02; TG101545, Order 02 and TG-101548, Order 02

- 14 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.
- 15 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.

### **FINDINGS AND CONCLUSIONS**

- 16 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts and affiliated interests of public service companies, including solid waste companies. *RCW 80.01.040, RCW 81.01, RCW 81.04, RCW 81.16, RCW 81.28 and RCW 81.77.*
- 17 (2) LeMay is engaged in the business of providing solid waste services within the state of Washington and is a public service company subject to Commission jurisdiction.
- 18 (3) LeMay is subject to the filing requirements of WAC 480-07-520, for general rate increase proposals.
- 19 (4) Under WAC 480-07-110, the Commission may grant an exemption from the provisions of any rule in WAC 480-70, if consistent with the public interest, the purposes underlying regulation and applicable statutes. *See also WAC 480-70-051.*
- 20 (5) 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.

- 21 (6) Pierce County is responsible for managing waste through its Comprehensive Solid Waste Management Plan. The Administrator of Pierce County's Solid Waste Program certified that LeMay's recycling plan is consistent with the County's Comprehensive Solid Waste Management Plan. The Administrator states that Pierce County will evaluate the Company's performance against new performance measures and thereby determine whether the company will be eligible to retain up to fifty percent of revenue generated from the sale of commodities in the upcoming rate period.
- 22 (7) The Commission finds that it should authorize the Company to retain fifty percent of the revenue the Company receives from the sale of recyclable materials collected in its residential recycling program on a temporary basis, subject to refund, require the Company to meet the performance requirements set forth in its recycling and revenue sharing plan, and in consultation with the County, consider whether to reduce the revenue share the Company retained if the Company fails to meet those performance requirements.
- 23 (8) After reviewing the tariff revisions LeMay filed in Docket TG-110103 on January 13, 2011, and revised on January 31, 2011, and giving due consideration, the Commission finds:
- (a) An exemption from the general rate increase filing requirements set forth in WAC 480-07-520 is in the public interest and consistent with the purposes underlying regulation, and applicable statutes and should be granted;
  - (b) The proposed rate increase, by reason of the increase in disposal fees, is fair, just, reasonable and sufficient; and
  - (c) The tariff revisions specific to recyclable commodity revenue adjustments might injuriously affect the rights and interest of the public.
- 24 (9) LeMay has not yet demonstrated that the tariff revisions relating to recyclable commodity revenue adjustments would ultimately result in rates that are fair, just, reasonable and sufficient.

- 25 (10) In order to carry out the duties imposed upon the Commission by law, and as authorized in [RCW 81.04.130](#) and [RCW 81.04.220](#), the Commission believes it is necessary to investigate LeMay's books, accounts, practices and activities, and to investigate and appraise various phases of LeMay's operations.
- 26 (11) As required by [RCW 81.04.130](#), LeMay bears the burden of proof to show that the proposed recyclable commodity revenue adjustments are just, reasonable and sufficient. Nothing in this Order is intended to limit the issues as to the fairness, justness, reasonableness and sufficiency of the proposed increases.
- 27 (12) In addition, the Commission invokes the rights, remedies and procedures contained in the reparations statute, [RCW 81.04.220](#), to the extent the Commission finds that any rate subject to this investigation is excessive or exorbitant.
- 28 (13) LeMay may be required to pay the expenses reasonably attributable and allocable to such an investigation consistent with the provisions of [RCW 81.20](#).
- 29 (14) This matter came before the Commission at its regularly scheduled meeting on February 25, 2011.

## **O R D E R**

### **THE COMMISSION ORDERS:**

- 30 (1) Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse, is authorized 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, until such time as a determination has been made in Dockets; TG-101542, TG-101545 and TG-101548 .
- 31 (2) Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse, is required to meet the performance requirements specified in its recycling and revenue sharing plan. The Commission requests that Pierce County inform the Commission if Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse, fails to meet its performance requirements. Upon receipt of such information, either from Pierce



County or from another source, the Commission, in consultation with the County, shall provide notice to Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse, that the revenue sharing is being reconsidered and Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse, should demonstrate why its percentage should not be reduced.

- 32 (3) The tariff revisions Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse filed on January 13, 2011, as revised on January 31, 2011, shall become effective on March 1, 2011, on a temporary basis, subject to refund if the Commission determines that different rates will be fair, just, reasonable and sufficient.
- 33 (4) The proposed rate increase, by reason of the increase in disposal fees, is fair, just, reasonable and sufficient
- 34 (5) After the effective date of this Order, Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse exemption from WAC 480-07-520(4) is granted, in part, consistent with the terms of this Order.
- 35 (6) The exemption granted to Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse in this Order applies only to the general rate proceeding in Docket TG-110103.
- 36 (7) The Commission will hold hearings at such times and places as may be required.
- 37 (8) Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse must not change or alter the tariffs filed in this Docket during the suspension period, unless authorized by the Commission.
- 38 (9) The Commission will institute an investigation of Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse's books, accounts, practices, activities and operations as described above.
- 39 (10) Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse shall pay the expenses reasonably attributable and allocable to the Commission's investigation consistent with RCW 81.20.

- 40 (11) The Commission retains jurisdiction over the subject matter and Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse, to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective February 25, 2011.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**JEFFREY D. GOLTZ, Chairman**

**PATRICK J. OSHIE, Commissioner**

**PHILIP B. JONES, Commissioner**