



## WASHINGTON REFUSE & RECYCLING ASSOCIATION

June 3, 2022

Ms. Amanda Maxwell  
 Executive Director and Secretary  
 Washington Utilities and Transportation Commission  
 P.O. Box 47250  
 Olympia, WA 98504-7250

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 06/03/22 16:47:48  
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 COMMISSION

### **Re: Docket A-220140 Proposed Rulemaking**

Dear Ms. Maxwell:

The Washington Refuse and Recycling Association (WRRA) represents the private sector solid waste and real recycling industry in Washington - from curbside collection services to our state-of-the-art recycling facilities, composting operations and landfills. WRRA represents most regulated solid waste collection companies in Washington State. As such, it has taken part in virtually every Washington Utilities & Transportation Commission (UTC) rulemaking, workshop, hearing and other proceeding regarding solid waste since the inception of solid waste regulation in 1961. WRRA member companies and the solid waste industry serve a vital role in our state's public health, safety, and environmental protection.

The association is not positioned to answer many of the questions posed by staff, which require information about company-specific practices. Nevertheless, our comments provide additional information and context for each topic area identified by Staff. Individual member companies will likely offer some responses as well. Given the number and breadth of questions within this short comment window, the industry and association members will continue to offer comment up to and at the upcoming workshop and throughout the rulemaking process.

## **Missed/Delayed Pick-ups:**

Staff's questions request company specific information regarding missed or delayed pick-ups are examples of responses that WRRRA cannot directly provide. However, the association can respond to the second question:

Staff Question: Do you think there should be a specified time limit for resolving missed pick-ups? Why or why not?

WRRRA does not believe that there should be a specified time limit for resolving missed pick-ups beyond what is present in existing solid waste Tariffs in Item 30. Current Item 30 language addresses missed pick-ups for weather and extraordinary events. Many tariffs already include a specified time limit for resolving missed pick-ups due to labor disruptions.

It is crucial to note that most missed pick-ups are actually *delayed* pick-ups. Service is typically resumed at the next scheduled pick-up date and the customer is not charged for additional waste set outs. If the Commission were to require customer credits for delayed pick-ups, companies would need to charge for "extras" left out once service resumes to make up the lost revenue.

Solid Waste Collection companies are simply not operationally equipped to compress several days of route work into one. Nor are the companies financially able to shoulder those increased costs unless the Commission were to authorize additional revenue recovery in rates. Indeed, if the Commission were to establish a timeframe for delayed pickups other than the next regularly scheduled date, regulated companies would need additional staff, equipment and thus significant revenue to make it happen.

### ***A. Delayed Pick-ups due to Weather:***

Weather is the most common cause for a delayed pick-up. In those instances, WRRRA views missed pick-ups as a driver and community safety issue. Refuse and Recycling trucks are heavy-duty trucks (gross vehicle weight rating between 26,001 and 33,000 pounds) that must navigate various types of roads and both public and private property. Confined urban corridors and streets and unkempt rural roads magnify the risks associated with providing service during inclement weather.

The decision to take a heavy-duty truck down a snowy, ice-covered, flooded, or otherwise compromised road should remain with those closest to and most familiar with solid waste collection routes: the company and its drivers who must navigate precarious and impassible local conditions in real time. Many companies and their employees are confronted with news reports urging Washingtonians to stay off the roads when making the call to provide service. In rural areas, road restrictions can often be in place and local governments do not authorize waste collection vehicles to travel on roads.

The Commission's current rules reflect that missed pick-ups related to weather are primarily a safety issue. WAC 480-70-366(b) & (c) provide that service can be refused "in the

company's judgment" when roads are improperly maintained or service would be "hazardous, unsafe, or dangerous to persons or property."

***B. Delayed Pick-ups due to Labor disruptions:***

For delays due to labor disruptions, many company tariffs include Item 30 language which states that the company must: "Use all reasonable, practicable means to resume regularly-scheduled service to all customers within five business days, not including the first day of the labor disruption." Delayed pick-ups due to labor disruptions also present potential safety flashpoint issues if workers are forced to cross picket lines. The Commission considered this issue in detail over several years, culminating in Dockets TG-120840, TG-120842 and TG-120843 in 2014.

***C. Overlapping Disruptions:***

Curbside garbage collection is typically provided weekly, while recycling and yard waste collection are often provided bi-weekly or monthly. Overlapping weather or labor incidents may result in longer delays if service is impossible on two consecutive bi-weekly (or longer) service dates. These situations are *extremely* rare. However, during the particularly harsh 2022 winter, unexpected labor disruptions outside company control, and the challenges of the COVID-19 pandemic resulted in isolated overlapping disruptions in some service areas in 2022 and 2023. While these instances are rare, they are better evaluated on an individual basis rather than a broad-brush "one size fits all" manner. The Commission followed this approach in a docket related to delayed pick-ups in Kitsap County in docket TG-210689.

The current missed pickup rules protect the company, the driver, and the customer by ensuring that the decision to drive down any road is made by those with *actual* knowledge of the conditions present. Commission rules requiring a prescribed time-limit for safety or weather-related missed pick-ups would undermine those crucial safety considerations in the current rule. Many company tariffs already include a specified time for resolving delayed pick-ups due to labor disputes. In rare cases where service is delayed beyond the next pick-up date, the Commission should follow current procedure and evaluate each instance according to the facts of each matter.

**Notice Requirements, Generally:**

WRRRA disagrees with the notion that RCW 81.28.050 somehow conflicts with the Commission's customer notice rules. RCW 81.28.050 governs notice *to the public* for common carrier and solid waste collection companies and states:

Unless the commission otherwise orders, a change may not be made to any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier subject to regulation by the commission as to rates and service, except after thirty days' notice to the commission and to the public. In the case of a solid waste collection company, a change may not be made except after forty-five days' notice to the commission and to the public.

(Emphasis added)

Notice *to the public* is distinct and consistent with the Commission's rules that govern notice to *directly affected customers* in WAC 480-70-271. WRRRA instead believes the notice requirement to the general public is fulfilled when a requested tariff change is docketed on the Commission's website, similar to how the Commission provides notice to the general public for rulemakings, adjudications, etc. WAC 480-70-271 governs notice specifically to impacted customers, not the public as a whole. The statute also authorizes the Commission to modify the notice date by order, such as the prior rulemaking order where the Commission adopted WAC 480-70-271, WSR 01-08-012.<sup>1</sup>

WRRRA's members have expressed concerns for increased regulatory lag if the Commission requires 45 days' notice unilaterally in all instances. Often documents filed as part of a rate increase will be changed, corrected, updated, etc. and refiled following dialogue between the company and staff. Because of this, customer notices cannot be comprehensively finalized until later in the process. We believe this proposed change will likely increase turnaround time significantly.

WRRRA believes electronic notice should be an option if the company chooses to offer it. The decision to provide paper or electronic notice should remain with the company and customers should be able to "opt-in" or "opt-out" of electronic notice.

#### **Low Income Discounts:**

In 2010, the legislature adopted RCW 81.77.195 which authorized the Commission to approve discounts for low-income customers, "upon the request of a county." To WRRRA's knowledge, no solid waste collection company has offered a discount for low-income customers in regulated service areas because no county has made such a request. Similarly, we are unaware of any Commission rulemaking or significant agency action to implement RCW 81.77.195. WAC 480-70 contains no references to RCW 81.77.195 or low-income customer discounts.

The discount issue raises a number of complex questions regarding implementation, including: verification of low-income status, reconciliation with applicable County solid waste plans, and the requirement that "[e]xpenses and lost revenues as a result of these discounts must be included in the company's cost of service and recovered in rates to other customers."<sup>2</sup> Similarly, the rate base for solid waste services in UTC regulated areas is much smaller than for an electrical utility. Moreover, solid waste collection is almost always an optional subscription service unlike utility services. Establishing low-income rates will impact other customers more than utility service due to the smaller rate base.

Some WRRRA members report offering discounted rates under municipal contracts in areas outside the Commission jurisdiction. In all instances identified by WRRRA, the municipality itself determines eligibility for the special rate and simply reports that information to the company to qualify. For example, Chapter 3.02.090 of the City of Selah Municipal code specifies: "...[d]etermination of eligibility shall be made by the city clerk-treasurer based upon

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<sup>1</sup> Docket No. TG-990161, General Order No. R-479), § 480-70-271, filed 3/23/01, effective 4/23/01.

<sup>2</sup> RCW 81.77.195

the annual statement of the low income senior citizen or disabled person or any other reasonable and verifiable means at the discretion of the city clerk-treasurer.”<sup>3</sup> For discounted utility rates, WRRRA’s understanding is that local county agencies carry out eligibility determinations.<sup>4</sup> As the request for discounted rates must appropriately come from a County, eligibility for a discounted rate should also be determined by the County or other appropriate local agency.

WRRRA is interested in hearing the staff perspective on this topic and learning more about staff’s interest. If the Commission seeks to address this rather complex issue, we request that Staff and Commissioners initiate a stakeholder process that includes the regulated industry, relevant local agencies, and the county governments who must initiate the request for low-income rates.

### **Electronic Billing:**

Ultimately the decision about what forms of payment to accept should remain with the company. WRRRA has verified that many companies currently offer electronic billing. WAC 480-70-401 provides that “companies must, at a minimum” accept “cash, certified funds (e.g., cashier check or money order), and personal checks.” Many companies accept credit cards and other forms of electronic billing. Ultimately the decision should remain with the company as to what methods of payment to accept, and with the customer to elect which approved payment and billing method to use.

We look forward to learning more about Staff’s interest in this particular topic at the forthcoming workshop and having the opportunity to weigh-in on any decisions considered. If the Commission moves forward with requiring electronic billing, the association urges a significant runway for implementation. Companies will need a reasonable timeframe to update their billing practices.

### **Deposits:**

WAC 480-70-411 establishes comprehensive rules governing credit and deposits for Commission regulated solid waste collection companies. The current WAC sets narrow conditions for when a deposit can be required, outlines alternate, cost-free means of establishing credit, caps the size of the deposit, requires companies to allow installment payments on the deposit, and provides that the deposit plus interest must be returned when a customer has paid consistently for 12 months. Upon termination of service, the company must refund any deposit plus accrued interest.

The current rules governing deposits for residential customers already appear quite robust and well considered. Many WRRRA members report not requiring deposits for residential service, in part due to the complexity of the Commission’s current rules. The association was not able to identify any company that currently charges deposits for curbside residential services. The

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<sup>3</sup> <https://selah.municipal.codes/Code/3.02.090>

<sup>4</sup> See Puget Sound Energy Website which directs applicants to local Community Agencies <https://www.pse.com/account-and-billing/assistance-programs/HELP>

association is interested to learn more about Staff's perspectives on this issue at the workshop and how/if it may relate to low-income discounts or other issues presented in the current notice.

### **Late Fees & Disconnection Notices:**

WAC 480-70-376 governs service cancellation by the company. The rule sets forth criteria under which service can be cancelled and prescribes notice requirements for customers. Companies cannot cancel service while a customer pursues a dispute over disputed charges. WAC 480-70-396 governs billing by solid waste collection companies. The rule requires that requires late fees be displayed on bills and caps the fee at "one percent of the unpaid balance or one dollar, whichever is greater." WAC 480-70-271(2) also requires customer notice when a company increases late fees.

Many tariffs include the standard language from WAC 480-70-271, but WRRRA members report rarely collecting late fees due to multi-month billing cycles. Many solid waste customers are billed in 2- or 3-month intervals. A late charge would not be assessed until months after the missed payment. The long billing window often results in a situation where service is terminated before a late fee is collected. WRRRA member companies report regularly waiving late fees upon payment of a delinquent bill. In many cases, even when the company ceases providing service, containers are left in place so service can be quickly resumed upon resolution of the bill or dispute.

The Commission is investigating similar changes for utilities related to late fees and disconnection in Docket U-210800. WRRRA certainly shares the Commission's concerns about equity and access. It is important to note that there is a distinction to be drawn between solid waste collection and disconnection from true utility "lifeline" services. While solid waste management is an essential service, it is also an optional subscription service. Many potential customers, particularly those in more rural territories, choose to self-haul waste. In contrast, few would consider access to water and energy "optional" or "subscription-only" services.

WRRRA is committed to ensuring that all Washingtonians have access to world class solid waste collection services at rates that are "just, fair, reasonable, and sufficient." Per Staff question 19, WRRRA is not currently aware of any rules/policies or best practices from other jurisdictions that should be considered here. The Commission's rules on these issues appear thoughtful and comprehensive. Expanding electronic notice to include disconnection notices would also assist with language barriers, allowing customers to quickly translate any notice through free online services. We are interested in learning more about the staff perspective on late fees/disconnection notices and any consumer complaints that have arisen due to language or other barriers in our industry.

### **Timing and Scope:**

As this rulemaking continues, the Commission and the regulated industry will likely be more successful with enhanced communication. Indeed, WRRRA presently lacks context for many of the questions/issues posed by staff. Thus, we await a Commission workshop and other interactive opportunities to understand the scope and intent of the proposed rulemaking.

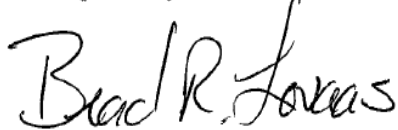
This rulemaking will also be more successful with a strong roadmap and reasonable timelines. Commission staff received the petition that resulted in this rulemaking on or around March 2, 2022. Staff developed 19 questions (with approximately 30 sub-questions) over a two-month period. Staff issued the Notice of Opportunity to Comment on April 28, 2022, with a deadline of June 3<sup>rd</sup>. This deadline gave the industry around 25 working days to respond to nearly 50 questions which in some instances called for data dating back a decade or more.

While the association has worked quickly to develop a substantive response and provide context here, more frequent communication and sufficient intervals to respond will undoubtedly produce more useful answers and improved outcomes for all involved. WRRRA looks forward to the workshop and other interactive opportunities to better understand the scope and intent of this proposed rulemaking.

In conclusion, WRRRA Members statewide are committed to maintaining outstanding service to all of our customers in a safe, efficient and reliable fashion. As noted, WRRRA looks forward to additional dialogue with the Commissioners and Staff leading up to and at and after the anticipated Commission Workshop. Strengthened communication, a clear agenda, and more practical timelines will benefit the Commission, WRRRA Members and our customers alike throughout this important process.

Thank you for the opportunity to comment on this rulemaking. Should Staff have any questions please reach out to Rod Whittaker ([rod@wrra.org](mailto:rod@wrra.org)) and myself, Brad Lovaas ([brad@wrra.org](mailto:brad@wrra.org)), at 360-943-8859.

Respectfully submitted,

A handwritten signature in black ink that reads "Brad R. Lovaas". The signature is written in a cursive, flowing style.

Brad R. Lovaas

Executive Director