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April 1, 2011

David W. Danner  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive, SW  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: *Docket T-101661 – Fuel Surcharge Inquiry***

Dear Secretary Danner:

On behalf of Waste Management of Washington, Inc. (“Waste Management”), this letter is intended to provide comments to the *Notice of Staff Recommendation for Fuel Surcharges, Opportunity to File Written Comments, and Open Meeting* (“Notice”), dated March 18, 2011.

As a general observation, Waste Management is now even more curious and confused about what motivated the Commission to change the existing methodology in the first place. So many of Staff’s justifications for eliminating the current fuel surcharge process seem to be based on a few companies who are apparently abusing the system. Surely it would be more straightforward, equitable and efficient for the Commission to utilize its plenary powers of oversight to deny filings made by companies that are misusing fuel surcharges as a surrogate for general rate adjustments, and to outright reject filings improperly submitted.

Furthermore, the industry participants and commentators have continuously communicated willingness to accept change to some features of the existing methodology, and address Staff concerns by tweaking the current fuel surcharge process. Staff has instead suggested a method that was the least acceptable to the regulated solid waste certificate holders. It seems odd not to work through compromise to refine an existing system,

especially when interest in doing so has been consistently articulated. As has been discussed at stakeholder meetings and posited through comments, correcting the current fuel surcharge process to address some of Staff's ongoing concerns would be fairly easy, and far less contentious, than suggesting through a "Staff Recommendation" that the Commission unilaterally implement a significant change in how solid waste collection company rates are set over the industry's objection.

We were frankly surprised to see that Staff is not recommending changes to the current process, but is instead now exhorting the Commission to adopt a much different manner of dealing with fuel price spikes – the only one that has been unanimously opposed – with the apparent intent to force the industry to utilize deferred accounting over time. Certainly, we do not expect the Commission to bow to the industry's preferences, but we believe the Commission has a history and practice of imposing change in the face of strong and legitimate opposition only when the policy reasons for doing so are compelling. To Waste Management and most of the other companies who have kept their solid waste collection rates current, who have utilized the fuel surcharge on an as-needed basis, and who have tried to prepare and submit paperwork in a proper manner, the policy behind foisting deferred accounting on the industry seems wholly lacking.

Otherwise, there are several statements in the Notice on which Waste Management feels comments are necessary. The company is singled out for rebuttal, and apparently our opinions matter. They should, therefore, be more accurately characterized.

The reasons for criticizing the current fuel surcharge methodology are in some ways misstated and misleading. Notice, pages 3-5. For instance, the Notice expresses Staff's opinion that the current fuel surcharge methodology "is not a surcharge." Notice, page 3. The rationale is because "[s]ome solid waste companies have been filing surcharges on a regular basis." This is a non sequitur. The fact that the Commission has allowed some companies to abuse the use of the surcharge does not change its essential qualities. It is, "intended to address a significant change in a significant cost element, not otherwise offset by other factors, over a short period of time." The current method allows for severe price spikes to be rectified for a short period of time. If the Commission wanted to limit the number of times a fuel surcharge can be used, or constrain the time period that a company can elect to file one, then it should do so. It is, nonetheless, a "surcharge" – and appropriately so, regardless of whether some companies are not using it properly.

Throughout the discussion, both in the Notice and at stakeholder meetings, Staff has repeated the theme that some companies have misused fuel surcharges as a surrogate for general rate adjustments, and have thereby avoided the scrutiny of full audit while gaining the revenue benefit of a fuel surcharge. And the industry's response has been consistent: the Commission should not allow that. By establishing a time frame (three

years, five years) and conditions (population growth, corporate acquisitions) under which companies are not eligible for fuel surcharges, this concern can be handily addressed. If the Staff is concerned because the voluntary nature of the fuel surcharge allows companies to “subsidize or offset cost increases for other expense components,” then they should be bringing enforcement actions instead of criticizing the methodology. One complaint action would soundly curtail improper practices, rest assured.

Staff describes the “continuing controversy” over the dead-band element of the mechanism incorrectly. There has never been any serious opposition to eliminate risk-sharing. Waste Management has urged that disposal fees and taxes be subtracted to “normalize” the revenue throughout the state, and if that were done then the one-percent dead-band should be reconsidered. Waste Management has never suggested that risk-sharing be eliminated, or that the threshold be reduced so that it would “qualify for more frequent, higher fuel surcharges,” and Staff mischaracterizes the company’s position on this point. Indeed, as Staff acknowledges, the existing methodology does – and should – allow for risk-sharing, whereas the deferred accounting eliminates any incentive for the companies to minimize fuel costs. Notice, page 9.

Nor is it relevant to talk about whether the solid waste businesses “earn a profit” on disposal fees. Waste Management believes that conclusion is overly simplistic, since the disposal revenues merely result in the companies being on a different point in the Lurito-Gallagher Curve – but that can be debated another day. The point is simply that disposal fees vary, and even in Table 3 they range from 19% to 49.7% of garbage revenue. Whether the companies earn a return on disposal fee revenues is not germane to the concept of eliminating it from the fuel surcharge calculation (and adjusting the risk-sharing dead-band appropriately) to ensure a more even-handed approach.

The Notice expresses concern about Staff resources that are required for implementing fuel surcharges because not all companies are aligning surcharge filings with billing cycles, and some are filing surcharges without errors. Again, these seem like administrative details that can be easily fixed by simply rejecting those submittals. Waste Management supports using Staff’s time judiciously on more important matters than fixing ministerial errors. If the recycling commodity credits are any reflection of how Staff’s time might be employed with a deferred accounting mechanism, however, Waste Management does not believe changing to that methodology will reduce Staff efforts and may instead require more administrative resources.

Staff spends several pages in the Notice rebutting Waste Management’s comments about its experience with deferred accounting. The company stands by its original remarks, and does not support deferred accounting for fuel costs. Staff’s refutations are speculative, and do not give any credence to Waste Management’s actual experiences. For example,

the significant confusion of company service representatives answering customer rate questions would not be alleviated by having all Washington operations utilize deferred accounting. With nine different tariffs, customer service personnel will be even more challenged, when the line-item for fuel in Spokane is different than it is in Seattle or Marysville. Also, using a six-month period instead of the twelve-month period employed by Waste Management in its pilot program will not alleviate ratepayer confusion. The disparity between the spikes customers see at gas station pumps and the line-item assessed on the invoices will not be dispelled by changing to a shorter period.

In response to the concern about how the deferred accounting process would be started, Staff proposed an implementation schedule that suggests a mandatory time frame for imposing deferred accounting – and yet Staff dismisses concerns about the resources involved in starting the program. The schedule presented certainly seems to suggest that significant resources will be dedicated to starting it up over the next year and a half. The Notice offers Staff resources to for “training workshops to meet with companies to explain the proposed methodology, record keeping requirements and filing requirements (data and timing) for true up.” That certainly doesn’t sound like a low-resource endeavor for either the Commission Staff or for industry representatives. Despite Staff’s astonishing confidence about being able to “process all of the deferred accounting start-up filings in one month,” Waste Management’s experience with it was cumbersome and certainly from the company end, using deferred accounting will cause additional work and increased expense to the ratepayer for its implementation.

Also, it is unclear from the language in the Notice whether adopting a deferred accounting is optional. The Staff recommends that the Commission, “Establish deferred accounting for each company, by separate order, in each company’s next rate case,” and that does not voluntary. On this point, Waste Management adamantly believes the deferred accounting must be elective. The company is somewhat concerned that the Notice discusses the ease with which a company can make the “one-time adjustment to fuel expense to start the program” either according to the complicated timeline set out in Schedule B or by petition at any time. Notice, page 8. Nowhere does the Notice explain how a company would end it. Particularly as companies become more proactive about alternative fuels, purchasing options and costs of investment for infrastructure might dictate different approaches. Regardless, companies electing to use deferred accounting would need to be able to opt out.

Finally, the Notice articulates the purpose of Docket T-101661 as being for the Commission “to consider whether to adopt, by rule, methods for determining the circumstances under which it will permit solid waste companies to impose a surcharge for fuel costs and the methods of calculating any such fuel surcharge.” Notice, page 1. We are somewhat confused, then, whether the Notice should more properly be a “Notice

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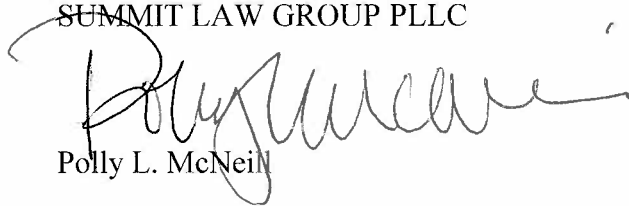
of Inquiry” for rulemaking, or an invitation for comment on a potential order, or something else entirely.

In sum, Waste Management perceives that the entire industry is being penalized because of the behavior of a few companies. The Notice says, “Each company needs to determine what best serves its business needs,” and we couldn’t agree more. It would seem to be better policy to allow the industry the option of continuing to use the existing surcharge methodology in some revised fashion. Waste Management believes the fuel surcharge is the best manner to accurately capture some portion of the spikes in fuel prices for short periods of time. It is known and familiar, and easily explained to customers. The deficiencies noted by Staff can be corrected by adjusting this pre-existing methodology, and we perceive no compelling policy for a wide-scale change in practice.

Thank you for your consideration to this matter. Company representatives will be present at the Open Meeting and available for questions and further consultation.

Sincerely,

SUMMIT LAW GROUP PLLC

A handwritten signature in black ink, appearing to read "Polly L. McNeil", is written over the typed name. The signature is fluid and cursive, with a large initial "P" and a long horizontal stroke at the end.

Polly L. McNeil

cc: David Gomez (WUTC)  
Michael Weinstein