

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Application of:**

**SUPERIOR WASTE & RECYCLE LLC**

**for Authority to Operate as a Solid Waste  
Collection Company in Washington**

**DOCKET TG-181023**

**WASTE MANAGEMENT OF  
WASHINGTON, INC.’s MOTION  
FOR CLARIFICATION OR, IN THE  
ALTERNATIVE, PETITION FOR  
ADMINISTRATIVE REVIEW**

**MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, PETITION FOR  
ADMINISTRATIVE REVIEW**

*1* On November 13, 2019, Administrative Law Judge (“ALJ”) Rayne Pearson issued Order 04, Initial Order Denying Application in this docket (“Initial Order”). Seeking to clarify its obligations under the Initial Order, Waste Management of Washington, Inc., (“Waste Management”) moves for clarification or, in the alternative, petitions for administrative review.

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Motion for Clarification / Petition for Administrative Review  
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**I. Motion for clarification of Waste Management’s obligations**

2 Paragraph 56 of the Initial Order requires Waste Management to “file with the Commission revisions to its tariff to eliminate carry-out and drive-in service limitations within 90 days of the effective date of this Order, *consistent with the guidance provided in paragraph 38*, above.”

Initial Order ¶ 56 (emphasis added). In turn, paragraph 38 states that:

a small portion of consumers in Brem-Air Disposal’s service territory are, at the very least, inconvenienced by the company’s service limitations, and we agree with Staff that Brem-Air Disposal should be required to remedy the gaps in service created by these limitations.[footnote 14] To that end, Brem-Air Disposal must file tariff revisions eliminating its service limitations within 90 days of the effective date of this order.

Initial Order ¶ 38. The footnote to that passage discusses the Commission’s approval in 2007 of “Brem-Air Disposal’s carry-out and drive-in service distance limitations in Docket TG-071785.”

*Id.* at ¶ 38 n. 14. Waste Management understands “service limitations” in paragraph 56 to refer to the *distance* limitations in Brem-Air’s current tariff with respect to drive-in and carry out service, and does not object to removing such distance limitations.

3 However, paragraph 38 goes on to say:

Based on Brem-Air Disposal’s representations, we *anticipate* the company will . . . purchase smaller vehicles to ensure it is able to provide drive-in service to customers not currently eligible for such service[.]

*Id.* at ¶ 38 (emphasis added). That anticipation reflects Waste Management’s own stated anticipation of purchasing such vehicles to provide drive-in service to customers in locations inaccessible to standard trucks. *See* Weinstein, Exh. MAW-5T at 6:12-7:3.

4 Waste Management’s concern is that the anticipation expressed in paragraph 38 could be read as part of the “guidance provided in paragraph 38” referred to in paragraph 56. In that light, the Initial Order could arguably be read not only to *anticipate* but to *require* Waste Management to alter its tariff to offer services that would require buying the new trucks, even if the final analysis shows that such service cannot be offered on reasonable terms or costs. Under that reading, Waste Management might be accused of violating the Initial Order if it does not put the smaller vehicles into service, even if the final analysis shows that such service is not reasonable.

5 On the other hand, the Initial Order does not *unambiguously* require Waste Management to offer the expanded service that would necessitate smaller vehicles. That leaves the chance that Waste Management could buy the new trucks and put them into service in a good faith effort to comply with the Initial Order, only to find itself in a dispute over whether it was reasonable to do so.

6 Mr. Weinstein indicated in his pre-filed testimony that it “looked increasingly likely” that this extension of service might be reasonable. Weinstein, Exh. MAW-5T at 3:20-4:2. He also explained that there is significant remaining uncertainty regarding the cost of the potential service. *Id.* at 7:5-13. At hearing, he further elaborated that Waste Management has not finalized a proposed expansion of service relying on new vehicles. Weinstein, Tr. 131:2-14. Therefore, Waste Management’s plans are not final and require further review. *See* Weinstein, Tr. 117:11-25; Rutledge, Tr. 118:1-9.

7 Waste Management still believes the service may prove feasible. If the Interim Order becomes final and is not appealed, the denial of Superior’s application will remove one major element of

uncertainty that might have deterred Waste Management from investing in the new service. But Waste Management cannot yet say with certainty that it believes the costs and terms of service will be reasonable. Therefore, Waste Management respectfully moves for clarification that the only specific change to Brem-Air's tariff *required* by paragraph 56 of the Initial Order is to remove the *distance* limitations on drive-in and carry-out services.

8 Waste Management proposes to include, as part of the compliance filing required by the Initial Order, a proposal with respect to whether new trucks can, in fact, extend the drive-in service at reasonable cost. Based on that proposal, supported by relevant data, the Commission would have before it the necessary record upon which to decide whether to require the new trucks.

9 However, if the Initial Order *is* intended to mandate that Waste Management acquire the new trucks—without the record evidence to be provided as part of Waste Management's proposal—Waste Management moves that the requirement be clearly stated. Clarifying this requirement would not establish the rates for drive-in service with the new vehicles, which would be determined in implementing Waste Management's proposal. But it would foreclose any argument that it was imprudent for Waste Management to acquire the new trucks necessary to provide that service. If the intention of the Initial Order is to require acquisition of the new trucks on the record as it currently stands, Waste Management reserves its right to seek reconsideration, WAC 480-07-850(1), or judicial review, WAC 480-07-850(5) and WAC 480-07-825(7).

**II. Petition for exemption or modified application of the Commission’s rules or, in the alternative, petition for administrative review**

10 Waste Management does not believe the requested clarification merits review by the Commissioners, and respectfully requests clarification from the Administrative Law Judge. However, none of the procedures spelled out in the Commission’s adjudicative rules, WAC 480-07 Part III, apply neatly to this request. Waste Management therefore petitions for an exemption or modified application of the Commission’s rules as necessary to grant the motion for clarification efficiently, or in the alternative, petitions for administrative review of the Initial Order to seek the requested clarification.

11 In the usual course, motions for clarification of initial orders are intended only to “correct obvious or ministerial error,” WAC 480-07-825(3)(a). Waste Management’s requested clarification exceeds that. Substantively, Waste Management’s request would justify clarification of a *final* order, which can include clarifying “the meaning of, or requirements in, the order so that the parties can accurately prepare compliance filings.” WAC 480-07-835(1)(a). But allowing the Initial Order to become final would require waiver of Waste Management’s right to petition for administrative review under WAC 480-07-825(2), and clarification under WAC 480-07-835(1) also appears to require action by the full Commission.

12 The Commission may  
grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

WAC 480-07-110(1). Waste Management does not oppose resolution by the full Commission, but believes that clarification directly by ALJ Pearson would be most efficient due to her familiarity with the record and the limited nature of the requested clarification. Therefore, to simplify procedure without waiving its rights, Waste Management petitions for exemption or modified application of the Commission’s procedural rules as necessary to clarify the Initial Order efficiently. *See* WAC 480-07-110(2).<sup>1</sup>

13 In the alternative, Waste Management petitions for administrative review of the Initial Order to seek the clarification requested in Section I. On administrative review, a party may challenge any “remedy[] or result” in an initial order, as well as the supporting reasons given. *See* WAC 480-07-825(2). To the extent this filing is construed as a petition for administrative review, Waste Management has only one contention: That Waste Management’s obligations under Paragraph 56 of the Initial Order should be clarified, as laid out in Section I above. *See* WAC 480-07-825(2)(b)(i).

### **III. Conclusion**

14 For the reasons given, Waste Management respectfully requests clarification that paragraph 56 of the Initial Order does not require Waste Management to purchase new vehicles or extend drive-in service to currently-inaccessible locations on private property. Instead, Waste Management requests that such a decision by the Commission await a proposal to be filed by Waste

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<sup>1</sup> By email (with copy to all parties) on November 26, 2019, ALJ Gregory Kopta (responding in ALJ Pearson’s absence) agreed that this approach “presents the Commission with the appropriate options to determine how best to proceed.”

Management in conjunction with the compliance filing required by the Initial Order. This approach would assure that the Commission's decision is based on an adequate record, which is lacking at this time.

15 In the alternative, if paragraph 56 is intended to order such acquisition and extension of service, Waste Management requests that such requirement be stated explicitly.

16 Finally, Waste Management petitions for exemption or modified application of the Commission's rules to the extent necessary to grant the requested clarification as efficiently as possible, or in the alternative, petitions for administrative review to seek the requested clarification.

DATED this 3rd day of December, 2019

Respectfully Submitted,  
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