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May 17, 2013

Steven V. King
Acting Executive Director and Secretary
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Re: Procedural Rulemaking (Docket TG-130355)

Secretary King:

On behalf of our solid waste collection clients operating under the regulatory auspices of the Commission, Summit Law Group thanks you for the opportunity to comment on the Preproposal Statement of Inquiry to consider possible additions or modifications to chapter 480-07 WAC, the Commission's procedural rules ("the Procedural Rules").

We are pleased to provide these initial comments, and look forward to further opportunities to evaluate the Procedural Rules in light of remarks provided by others, and our continued understanding of the issues presented.

As a general comment, we note that the Procedural Rules are extensive and detailed. The rulemaking conducted in 2001 was ambitious in scope, and the Commission is to be commended for having produced procedural regulations that survived the test of time so well. Some provisions of the Procedural Rules require only minor modifications and improvements to address issues that have become apparent during the course of handling administrative matters under them. Others may warrant more significant revisions, based on the lessons learned in living with the Procedural Rules, the developments in technology, and evolving policies and understandings of the Commission and its regulated entities.

Nonetheless, we expect this docket to be fairly protracted simply because of the breadth and scope of the Procedural Rules themselves, and the variety of views represented by parties practicing before the Commission. We suspect that not all stakeholders will be interested in each of the potential areas being considered for revision. Our clients are particularly interested in the rate case filing requirements for solid waste collection company tariffs, and rule amendments implicated by that topic. We do not care so much about the Commission's review of company Integrated Resource Plans, for example. Our first comment, therefore, is to recommend that the

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Commission consider having a series of workshops, each devoted to a specific area of potential amendment or a regulated industry sector or both.

With regard to the topic of rate case filing requirements, for the solid waste industry there are regulations affecting general rate requests in both chapter 480-07 WAC and chapter 480-70 WAC. We ask that inconsistencies between those rules be reconciled. For instance, under the solid waste rules tariff changes are to be indicated by code symbols (WAC 480-70-286), but the Procedural Rules dictate legislative format to show revisions (WAC 480-07-520(1)).

Another inconsistency is the acceptable means of filing tariff documents. The solid waste rules require hard copies of tariffs to be delivered, mailed or faxed (WAC 480-70-326). The Procedural Rules are themselves internally inconsistent in that one provision allows for electronic filing of tariffs (WAC 480-07140(1)(a)), but another requires paper copies of work papers, too (WAC 480-07-520(4)). Even when an electronic filing is permitted, the Procedural Rules demand both a .pdf and the native electronic format in Word, Excel or Power Point (WAC 480-07-140(6)(b)).

In these days and times, we urge the Commission to allow for electronic filing for all filings, and that it eliminate the necessity of providing both .pdf and base format for all documents. Unless there is a reason for requiring both, it is unnecessarily redundant and sometimes burdensome. Companies filing tariff requests with work papers in Excel format should not have to create PDFs of the entire files, and then also provide a paper copy. Recognizing the reality of today's working environment, if electronic filings are submitted, it should not be necessary to follow with hard copies at all.

In addition to allowing electronic filing of tariff requests, the Commission should permit documents in adjudicative proceedings to be electronically filed as well, without the need for an order. Most courts allow for electronic filing to initiate litigation and during the course of adjudication, and the Commission could adopt e-filing standards also. For similar reasons, we recommend the Commission reconsider the number of copies that are required to be filed (WAC 480-07-145(3)). Both of these points are commonly addressed in a "procedural schedule in an adjudicative proceeding" (WAC 480-07-145(6)(a)), but there is no obvious need to wait until after a prehearing conference for an order permitting electronic filing and limiting the number of copies. (And, indeed, we observe that the quoted clause, which apparently states that a procedural schedule must be established as a condition precedent for electronic filings in adjudicative proceedings, is not very clearly stated and is buried pretty deeply in the text of the rule.)

A related topic is confidential documents, and we offer the following comments related to the provisions in the Procedural Rules that relate to documents submitted by solid waste collection companies. As we know, regulated solid waste collection companies are not within the scope of RCW 80.04.095. Therefore, a distinction between adjudicative or non-adjudicative is not relevant, and the ability to rely on the statutory presumption in favor of confidentiality of valuable commercial information

is not available to our clients. However, the exemptions stated in the Public Records Act, Ch. 42.56 RCW, may nonetheless apply to companies regulated under Title 81.

An example might be records of attorney fees, used to document regulatory compliance costs in a general rate request. We have had situations in which firm invoices included entries that arguably contained attorney-client privileged information. Assuming for the sake of discussion that those entries, if not the entire invoices, would be exempt from disclosure under RCW 42.56.070(1) (by virtue of RCW 5.60.060), then there is a need for handling those documents in a manner that prevents unnecessary or unintended production to third parties. The procedures under WAC 480-07-160 expressly apply to information protected by an exemption under the Public Records Act, and would seem to offer a procedural mechanism for preserving the protections of an exemption. Yet we understand that Commission staff has recently indicated that a tariff submittal utilizing the designation procedures under that rule and containing redacted and unredacted materials will be rejected. Even if that is not an accurate statement of the Commission's position, there seems to be enough confusion on the subject that this rulemaking should be used to resolve it.

The Commission should allow solid waste companies to file general rate requests and possibly other submittals in accordance with WAC 480-07-160. If there is a good faith basis for claiming an exemption, then the process described in that provision alerts the Records Officer to the potential for an exemption, and allows for notification to the provider if the information designated confidential is requested. It is then up to the provider to persuade a judge to issue a court order protecting the material. If the provider does not obtain a court order, then the materials would be produced. The process does not require the Commission to agree or disagree that the asserted exemption applies.

The process ensures that the Commission has the information it needs to do its job, but still affords a modicum of protection to the regulated companies. We have opined that the exemption for valuable formulae in RCW 42.56.270(1) might protect information submitted regarding a regulated company's unregulated operations, because production of that data gives an advantage to an unregulated competitor. The private gain is obvious, and public loss results from undermining the legislative intent to preserve competition in commercial recycling. This theory is untested. However, it is not necessary to resolve it for purposes of amending the Procedural Rules. The Commission should take this opportunity to clarify that all regulated companies can submit information under WAC 480-07-160 for which it has good faith reason to believe an exemption applies. Only if the claims are obviously unbelievable should a filing be rejected on that basis.

By way of further comment on tariff filing requirements, general rate proceedings for solid waste collection companies are governed by WAC 480-07-520, and in addition to the comments previously made about electronic filing and eliminating paper redundancies, we recommend the Commission consider some other refinements to that provision. For instance, it currently applies to Class A and B haulers, and we suggest

that it should also apply to Class C haulers unless an exemption or modification is granted.

More importantly, we request that the provisions related to work papers about nonregulated operations (WAC 480-07-520(4)(d) and (e)) be considered in the context of the competitive operations of commercial recycling and also municipal contracts. For the initial filing, we request that the rule require only consolidated reports, and eliminate the need to provide rates. For many companies, the rates for commercial recycling are subject to negotiation, and in some cases involve remitting to the commercial customer payments received for commodities. There really are no published rates, but even if there were, competitors would be very interested to learn what the regulated companies are charging for nonregulated commercial recycling.

As for municipal contract operations, the rates are public information and so the objection is more on the expense side of the ledger, which contains information that a potential bidder might use to undermine the competitive bidding process a city may decide to undertake. If the auditor needs further information about nonregulated information, perhaps much of that can be investigated in the company's offices during the site visit.

Finally, many solid waste companies utilize nonregulated solid waste handling facilities and recycling processors. Those operations are highly competitive, too. Companies should be entitled to earn a return on the investments made for those facilities, regardless of whether they are affiliated or not.

In addition to stating the requirements of the regulated companies, we ask that the Procedural Rules also state expectations of Commission staff. Primary among our comments is a request that a threshold determination of completeness be provided within a stated amount of time after a general rate request has been filed. We suggest one week. We would not want to preclude staff's ability to request further information, but the companies seek tariff revisions because they are under-earning, and they have an institutional need for a timely decision, and the 45-day clock moves fairly quickly. It should not be acceptable for a company to be told two weeks prior to the Open Meeting at which its request will be on the agenda that its filing is flawed. On a similar note, filings should be subject to rejection only for material omissions or errors. Corrections to minor errors should not be grounds for rejection.

Most of the comments our clients make about the tariff review process, however, do not related to the express language of the rules, but rather to expectations for consistency between rate filings. For example, if a certain allocation methodology or a specific depreciation rate has been used in past filings, then the company should be able to assume that it will be used in its next filing, absent a legitimate reason to change prior practice. The same holds true for pro forma and restating adjustments. Companies using affiliated solid waste handling facilities or recycling processing sites should not have to defend those rates at every filing, and if the rates, returns and profits have been reviewed and approved in prior filings, then companies should be able to rely on those determinations in subsequent filings, within reason.

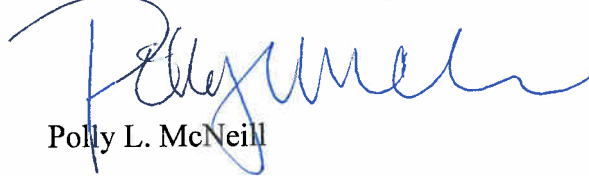
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Finally, there have been in the past several years a series of request for rule exemptions that have been granted so regularly that the Commission should consider adding language to the Procedural Rule that codifies the exemptions. One example is increased disposal fees. Although the rule identifies only a drop-box disposal fee increase as an exception to the general rate proceedings requirements, in fact for companies whose tariff rates are current, the staff routinely recommends an exemption. We suggest that the Procedural Rules should allow for disposal fees to be passed through to all rates, unless staff informs the company of an objection within a stated time after the filing, similar to the determination of completeness. Furthermore, if a company has had a petition for a rule exemption granted over and over again, perhaps the Commission should consider a blanket exemption instead.

These are only our initial comments, and we expect to refine them and learn more from other stakeholders and Commission staff. We look forward to further opportunities to clarify our comments, and we thank you for the opportunity to provide them for your consideration.

Sincerely,

SUMMIT LAW GROUP PLLC



Polly L. McNeill