



## WASHINGTON REFUSE & RECYCLING ASSOCIATION

November 30, 2017

Mr. Steve King  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

### **Re: Docket A-130355 WRRA Comments on Rate Filing Rule Proposed Language**

Dear Mr. King:

Specific to this rulemaking we appreciate the opportunity to comment on the second draft of the rate filing rules. First, the **Washington Refuse and Recycling Association (WRRA)** members have great appreciation for how the Commission and its staff carry out their roles and responsibilities with respect to the regulation of our industry. We restate our earlier comments on a number of positive changes in this rule proposal. We also take this opportunity to respond to Commission staff feedback on our previous comments to clarify and emphasize our previous comments in several areas.

#### **I. Roadmap and consistency: The rate filing rules provide the best opportunity to develop consistent practices and provide a better regulatory “roadmap.”**

The overarching theme of our comments on the original draft was the request for a better regulatory “roadmap” for solid waste companies filing a general rate case, pass-through increase, or other action with the Commission. A major concern from our members has been a lack of consistency in Commission audit procedure from case to case, with practices and requirements sometimes changing based on the particular Commission staff assigned to any given case. In our original comments, we made a number of suggestions regarding individual provisions and how adjustments in those sections could serve the purpose of better consistency for both solid waste collection companies and the Commission.

We understand that each company and rate case are unique in some ways, but the adoption of more general approaches will benefit both the Commission and the companies it regulates, as well as the ratepayer in the long-term. We reiterate our comments on several sections below, which apply generally to all solid waste companies. These suggested changes

will achieve that better “roadmap” and promote consistency going forward. Consistency will also aid in avoiding any appearance of arbitrariness in the treatment of particular revenue and expense items for a regulated solid waste collection company.

**II. WAC 480-07-505(3)(b): Recycling, yard waste, and other processing fees are universal costs for all solid waste companies and should be included in this section.**

In our original comments, WRRRA requested that the Commission include “recycling, yard waste, and processing fees” alongside disposal fees as submissions that should not trigger general rate proceedings. Commission staff responded that these fees are “different” than disposal, without explanation, and should be handled differently in each situation. These fees are not different than disposal, they are patently equivalent.

WRRRA does not understand why the Commission staff views these fees differently from disposal. Everything collected by a solid waste company requires an environmentally responsible final destination. For some materials, the final destination is a landfill for disposal, for others, wherever possible, this is a recycling, center, etc.

Not only are these fees unavoidable expenses for a solid waste collection company, they are often one of the largest expenses a company incurs. Further, these fees and the rates charged are generally set by outside entities. For practical purposes, there is no difference between disposal and recycling, processing or yard waste fees. These fees are not unique, they are a universal cost for nearly every solid waste collection company.

Including recycling, yard waste, and other processing fees in this section is also supported by the underlying statute. RCW 81.77 allows for pass-through on all costs related to the implementation of a local comprehensive solid waste management plans. Recycling and other diversion programs are regularly included in local comprehensive solid waste management plans. Local solid waste collection companies are crucial partners in achieving goals set forth in a local comprehensive plan. Thus, WRRRA suggests the following addition to WAC 480-07-505(3)(b):

Submissions seeking only to pass-through an increase in disposal fees, including fees for recycling and yard waste processing.

Again, this change is supported by the governing statute, reflects reality, and helps both local governments and solid waste collection companies achieve goals related to recycling, composting, and other diversion.

Review of this section and the need for flexibility with recycling fees is also a very timely concern based on the pending, momentous import ban on many recyclable materials by China, part of a customs program termed “National Sword.” WRRRA has previously briefed Commission staff on this issue and we will not reiterate the details or impacts again here, but attaches and [provides a link](#) to our white paper on the subject. This is a time of great uncertainty for the recycling industry, and costs are almost certain to increase, perhaps several times over, in the

near future. To protect and strengthen Washington’s excellent recycling programs we request the Commission to reconsider this issue.

This section also presents a unique opportunity to harmonize practices and provide both Commission staff and the regulated company with a more uniform approach. WRRRA well understands the role of Commission discretion in individual circumstances, but again requests Commission staff reconsider this section to promote consistency and develop a better “roadmap” for rate filings on an issue faced by virtually every solid waste collection company.

**III. WAC 480-07-505(3) should memorialize 81.77.160-170 and clarify that fees, charges, and taxes on the collection or disposal of solid waste do not initiate a general rate case.**

The language proposed for WAC 480-07-505(3) is overall much improved over the current rule language and memorializes a number of existing practices and statutory requirements. However, in addition to incorporating recycling and yard waste fees, this section is the ideal vehicle to clarify and implement RCW 81.77.170. The statute clarifies that “a fee, charge, or tax on the collection or disposal of solid waste is considered a normal operating expense” and that “filing for pass-through of any such fee, charge, or tax is not considered a general rate proceeding.” The current rule language addresses disposal fees and fees imposed by government entities, but the language in RCW 81.77.170 is broader, and applies to all fees on collection or disposal of solid waste. The current language should be updated to reflect the scope of the statute.

**IV. WAC 480-07-520(4)(d): The threshold for separating nonregulated revenue should be higher for small privately owned companies to avoid unnecessary time and costs.**

In our previous comments, WRRRA suggested that the Commission adjust the threshold for separating regulated and nonregulated revenue from 10 percent up to 20 percent for some companies. Commission staff responded that 10 percent is the standard for public entities based on the Financial Accounting Standards (ASC 280-10-50). To clarify, our suggestion was particularly intended to ease the burden on small privately owned companies, or “Class B” companies per WAC 480-70-041, not large publicly traded companies.

Smaller companies generally have some unregulated revenues but not necessarily always from solid waste collection activities. These jobs are typically performed on an “ad hoc” basis, and the affected company does not always perform well-documented cost allocations and cost accounting. In these instances, while it may be possible to separate regulated and non-regulated revenues, it is not practical to provide precise, detailed cost allocations for the non-regulated revenue, including time records for the non-regulated hauls.

WRRRA’s small, privately-owned member companies generally do not have an accountant or financial personnel on staff and are significantly burdened by this provision in that they must

devote their time and resources to hire professionals to do the rate filing and perform additional work. WRRRA supports modernization and transparency in Commission practices, but as standards increase, so do the cost of professional services required to meet those standards. Both the Company and the ratepayer would benefit from avoiding these costs in the case of a smaller company with, for example, 11% nonregulated revenue.

WRRRA asks Commission staff to reconsider this point, and to allow a higher threshold for revenue separation for smaller privately owned companies. This change will avoid extra time and expense, provide for clearer evidence, and allow for a more streamlined filing for smaller closely-held companies or “Class B” companies.

**V. WAC 480-07-520(4)(h): Confusion regarding this section highlights the need to codify as many standard procedures as possible to provide clarity and consistency.**

WRRRA supported the changes in this section in our original comments, but questions surrounding this section highlight the need for more direction and a clear roadmap to be included in the rule. This section requires “detailed calculation of net investment in plant and equipment and the net book value of used and useful assets at the end of the test period.” WRRRA members have shared concerns and reported conflicting information from Commission staff on this issue. The rate filing rules are the ideal vehicle to codify as many standard practices as possible, which will aid both the Commission and companies.

**VI. WAC 480-07-520(4)(i): A detailed depreciation schedule should be required for assets held by the regulated entity included in the rate filing.**

WRRRA appreciates the revisions offered by staff to clarify this issue and offer additional language to better delineate the scope of this section. We now suggest the following additional language:

“A detailed depreciation schedule listing all used and useful assets held by the regulated entity that operates under the tariff for which the rate request is submitted during the test period...”

Large and medium sized regulated solid waste collection companies often own or operate multiple regulated entities which make up separate tariff filing entities. This language clarifies that the detailed depreciation schedule need only be provided by the regulated entity actually included in the rate filing and not the entire regulated company.

**VII. Temporary rates subject to refund are necessary for solid waste collection companies and should be memorialized in rule:**

Solid waste collection companies face considerably more risk due to the variable nature of their capital deployment and comparatively faster turnover of assets than other regulated

industries. With solid waste, the Commission regulates both some of the largest and some of the smallest companies in Washington. The interval from when a solid waste company may identify a material revenue deficiency is much shorter than other regulated industries and the need to fill the deficiency much more acute as a result. Healthy and well-run solid waste collection companies, especially in the case of small privately-owned companies, can thus be placed in a position of imminent harm and financial peril if faced with a protracted rate case. Solid waste collection companies are more at risk due to the greater turnover ratios than other regulated industries.

The concept of temporary rates subject to refund is a well-established regulatory tool to address the challenges discussed above. Temporary rates subject to refund allow both the Commission and a petitioning solid waste company more time to resolve remaining issues in a rate filing while allowing interim rate relief for the company. Temporary rates subject to refund also pose no risk to the consumer because refunds are issued in the case of a subsequent overcharge finding.

We understand that companies have the right to petition for temporary rates and the decision to grant such rates will always be subject to Commission discretion. However, it would do no harm, and provide for better consistency to memorialize the right and procedure in rule. WRRRA maintains allowance of that temporary rates subject to refund should be memorialized as an option for solid waste collection companies in this rulemaking.

#### **VIII. The Commission should develop criteria for recovery of professional fees and imposition of investigatory fees in rate cases.**

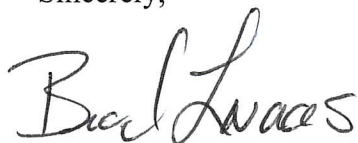
In keeping with this theme of consistency, WRRRA requests that the Commission develop and adopt criteria in rule which will be used to evaluate how professional fees associated with a rate filing will be recovered or denied and criteria for when an investigatory fee will be imposed. As noted above, smaller companies simply do not have the professional resources on staff and are required to retain both accounting and legal expertise from contracted professionals. Larger companies also increasingly rely on outside counsel and consultants as rate filings and adjudications become more complex and protracted. We believe that provision for the recoupment of these reasonable costs subject to Commission approval should be ratified in rule.

WRRRA members pay a regulatory fee intended to cover the costs of rate filings and audits. WRRRA has supported recent increases in regulatory fees to ensure the Commission has the resources to provide for effective regulation. To avoid the appearance of arbitrariness and to promote consistency, the Commission should outline a procedure when investigatory fees may be imposed.

**IX. Conclusion**

Thank you again for the opportunity to submit further comments on this rule. Obviously these are issues of great importance to the solid waste industry as a whole, and to individual companies, both large and small. We strongly believe that the issues discussed above deserve full and frank discussion, not only between the individual companies and the Commission but among Commission staff as well. We recognize this rulemaking as an opportunity to address many longstanding issues as it will likely be many years before a full update is undertaken again. We look forward to ongoing and expeditious discussions.

Sincerely,

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

Brad Lovaas

Executive Director