WASHINGTON REFUSE & RECYCLING ASSOCIATION

May 17, 2013

Mr. Steve King
Acting Executive Director & Secretary
Washington Utilities and
Transportation Commission
PO Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Comments: Docket A-130355

Dear Mr. King:

Thank you for the opportunity to comment on this Docket. Please consider the following as comments on behalf of the Washington Refuse and Recycling Association (WRRA). Also please be aware that as we review other interested parties' comments, along with discussions with staff, we may well have additional comments and/or opinions to offer at the stakeholder workshop scheduled for July 2, 2013.

As a general observation, many, if not most, attorneys who practice before the Commission also actively practice in Superior Courts statewide. We have, over many years, appeared in virtually all Superior Courts in Washington, all three Courts of Appeal, the State Supreme Court, and Federal Courts. Thus my "prejudice" in favor of making the Commission's procedural rules reflect, as closely as practical, the Superior Court Civil Rules. To a substantial extent, they already do so, but when, and if, the Commission considers revision of procedural rules, it should first look to the Superior Court Rules for guidance and, perhaps, inspiration. We already cite the Court Rules on a regular basis at hearings, and perhaps an even greater reliance on them is appropriate Regarding some of the specifics of the Notice of Opportunity:

- Settlement agreements are almost always reached through extensive negotiations between or among experienced counsel on behalf of litigants who have "been there before." The role of the Commission is to ensure that such agreements are in the public interest, and that is a proper and essential job. There does not seem to WRRA to be any reason to change that role. If

anything, staff, or even the Commission itself, may want to take a more active role in attempting resolution of these usually complex and often highly publicized cases. Settlements seem to be more prevalent when the Judge (i.e. Commission) encourages serious negotiation.

- This leads one to consider a more active Commission involvement in mediation. The rules are in place but, for whatever reason, there is very little use of the service. Perhaps the Commission should consider tapping the resource of retired staff, AAGs and/or ALJs to help. The cost of a successful mediation is always less than that of a multi-day hearing, yet still leaves the litigants with the assurance that they "have been heard." Consideration should also be given to use of professional arbitration/mediation services and making mediation mandatory in contested matters.

- As the Commission is well aware, the issue of confidentiality of certain (not all) documents is of concern. However, once any such document becomes an exhibit at hearing, it would seem to be available not only to an "interested party," but the general public as well. This does not mean documents entered in a contested matter cannot be labeled "confidential" and be available only to the ALJ and the parties, with a stern warning that they are not to be "released." This is one area where new rules may well be necessary, and WRRA is more than willing to participate in that effort. One partial solution is a return to the use of "site visits" by auditors. Everything there is available for inspection and questions can be immediately answered, without the necessity of literally boxes of documents being sent (electronically or otherwise) to Olympia. There has to be a common sense application of the confidentiality issue that is within the applicable rules and statutes.

- The Notice references "procedures for requesting preliminary relief in adjudicative dockets." Commission rules already provide for what are essentially summary judgment motions, and there probably is no need to add to that procedure. If the idea also refers to the various types of injunctive relief, it probably is deserving of further study. Such relief comes from Superior Court, of course, upon motion, either by the Commission or a party. Whether or not this is practical (or even possible) in the administrative arena remains to be seen. In solid waste, for example, an applicant for authority can apply for, and receive, temporary authority which effectively eliminates the whole injunction/bond argument.

- I will leave the discussion of exhibit numbering and filing to those who are involved in cases with literally boxes, if not rooms, of exhibits. Suffice it to say, there is no simple way or doing this, but whatever the rule may be, WRRA will follow it, although, at times, begrudgingly. Any savings of cost and time here would be greatly appreciated by everyone involved.

- The suggestion of most interest to this practitioner is that of the opportunity to seek "clarification or revision" of an Initial Order prior to filing administrative review. I assume that CR 59 is the basis (inspiration?) here. This is a good idea. It is not that often that any Judge will change his or her mind after issuance of an Order, but it does happen, perhaps more often than we would think. I do suggest local Court Rules on this issue be reviewed as well. For example, in Kitsap County, where I practiced for many years, when a motion for reconsideration is filed, the Judge can ask for a response, or not; the latter meaning, in effect, the motion is denied. This is a time saving method which, I think, would work well for the Commission, and if the almost inevitable Petition for Administrative Review is filed, would provide the Commission with additional, and hopefully valuable, information. A "motion for clarification" may well be an even more valuable tool for the parties and the Commission. The same procedure could be followed as for a motion for reconsideration

Some other comments from WRRA members are:

1) More certainty that disposal fee increases do not somehow morph into a general rate case. This is a statutory "pass through" and should be "automatic" once the verified information is provided the Commission;

2) Place some limitations on the term "all supporting calculations ..." to avoid overburdensome and unneeded information being filed;

3) Clarify the term "rate charged for services required" in (4)(e);

4) Earlier notification of auditor assignment on a filing. Five working days from filing would be appropriate; the sooner the assignment, the sooner the resolution

5) In the case of a "rejected filing" for a minor issue, notify the company involved and allow a short time period (24 hours perhaps) for the error to be corrected, rather than reject the entire filing;

6) Some uniformity in application of auditing procedures. All too often different auditors seem to employ differing procedures;

7) There is some confusion over the term ". . . new requirements for prefiled responses to standard data requests in rate cases." This seems vague and needs further explanation.

8) Consideration of rules to provide for *in camera* inspection of documents which one or both parties in a hearing wish not to be in the public

record. Allow the Presiding Officer to make that decision after reviewing the particular item.

Again, thank you for the opportunity to comment. As you can see, WRRA has not commented on all of the suggested topics. Individual members will provide comments as well.

We look forward to taking part in the July 2nd workshop and discussing this important issue in greater detail.

Very truly yours,

WASHINGTON REFUSE AND
RECYCLING ASSOCIATION

James K. Sells/cs

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