

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC. D/B/A WASTE  
MANAGEMENT OF THE  
NORTHWEST, WASTE  
MANAGEMENT OF SEATTLE AND  
SOUTH SOUND, AND WASTE  
MANAGEMENT OF  
SNO-KING, G-237.

Respondent.

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

RABANCO LTD, D/B/A CONTAINER  
HAULING, EASTSIDE DISPOSAL,  
RABANCO COMPANIES, RABANCO  
CONNECTIONS, LYNNWOOD  
DISPOSAL, ALLIED WASTE SERVICES  
OF LYNNWOOD, ALLIED WASTE  
SERVICES OF KLICKITAT COUNTY,  
TRI-COUNTY DISPOSAL, ALLIED  
WASTE SERVICES OF KENT &  
RABANCO COMPANIES, AND SEATAC  
DISPOSAL (G-12), AND FIORITO  
ENTERPRISES, INC. & RABANCO  
COMPANIES D/B/A KENT MERIDIAN  
DISPOSAL COMPANY (G-60).

Respondent.

DOCKETS TG-120840, TG-120842  
and TG-120843

DOCKETS TG-121366, TG-121367,  
TG-121369, TG-121370 and  
TG-121371

COMMISSION STAFF BRIEF IN  
SUPPORT OF STAFF'S PROPOSED  
ITEM 30 TARIFF LANGUAGE

1 Washington Utilities and Transportation Commission Staff (“Staff”) submits the following Brief in support of its Statement of Proposed Item 30 Tariff Language (or “Staff’s Proposal”) filed concurrently in the above-referenced dockets.

2 Staff recommends that the Commission adopt Staff’s Proposal as fair, just, and reasonable tariff revisions to Item 30 of the Respondent companies Waste Management of Washington, Inc. and Rabanco LTD (“Companies”, and jointly with “Staff” and intervenor Washington Refuse and Recycling Association as “Parties”) tariffs currently in effect by operation of law in the above-referenced dockets.

3 The current solid waste tariff template, approved in docket TG-010374<sup>1</sup>, contains no provisions for labor disruptions. Ms. Penny Ingram’s attached Declaration describes the history of this issue, and refers to both the above-referenced dockets as well as the extensive record developed in docket TG-010374, which was primarily focused on missed service due to labor disruptions. At the prehearing conference in the above-referenced dockets, the Commission granted a request by Rabanco to take official notice of the record in docket TG-010374.

4 The current tariffs, filed in the above-referenced dockets, contain provisions for missed service in the event of a labor disruption, which would apply to the individual companies. The Companies filed these revisions, at Staff’s request, before efforts were undertaken in docket TG-010374. Current tariffs do not contain several provisions that Staff believes are necessary. These provisions:

5 1) Address communications between the Companies, customers, Staff, the media and other governmental entities;

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<sup>1</sup> In 2001, in docket TG-010374, the Commission issued an order adopting the standard solid waste tariff template and directing companies to file using the template. The Commission reopened the docket in July, 2012. In July, 2013, the Commission issued Order 02 in that docket, revising the standard solid waste tariff template. See Declaration of Penny Ingram, attached.

6           2)     Address what Companies must do to re-establish service during a labor  
disruption; and

7           3)     Define the circumstances that would require Companies to issue credits to  
customers and the method by which customer credits are calculated.

8           Staff's Proposal is the result of numerous discussions with stakeholders (including  
Companies), considerable debate, and partial agreement with the Companies. While Staff's  
Proposal does not represent consensus, Staff believes it best serves the interests of the  
ratepayers.

9           The tariff provisions proposed by Staff would replace the Item 30 tariff language filed  
in these dockets and currently effective, under the heading "Missed pickups due to labor  
disputes, union strikes or other employee actions" with new Section 6 ("Missed service due to  
a labor disruption, which causes work stoppages that prevent or limit a company from  
collecting solid waste") and new Section 7 ("Definitions"). See Staff's Proposal. Sections 1-  
5 in Item 30 of the Standard Solid Waste Tariff Template were approved by the Commission  
on July 26, 2013, in its Order 02 in Docket TG-010374. Staff's Proposal does not modify  
these sections.

10          Staff believes that the Parties have reached general consensus on the requirements in  
Sections 6(a) – (e), and (i) in Staff's Proposal. Together, these new requirements are intended  
to improve regulatory oversight by the Commission of solid waste service in the event of a  
labor disruption, and open lines of communication between the affected company and the  
Commission, which would allow timely and accurate response to affected customers and the  
media.

- Section 6.a. requires the companies communicate with the Commission when  
a labor disruption is imminent;

- Section 6.b. requires the companies provide daily email reports regarding progress toward meeting full service requirements;
- Section 6.c. requires the companies develop a customer outreach plan regarding the labor disruption, what to expect and how to contact the Commission;
- Section 6.d. requires the companies provide the Commission with a copy of the company's consumer outreach plan;
- Section 6.e. requires companies provide an email that includes a schedule and plan for communicating with local governments and the media; and
- Section 6.i. requires the companies notify the Commission when the labor disruption has been settled, and when normal service is anticipated to resume.

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Section 6.f. of Staff's Proposal requires the companies to "use all reasonable, practicable means to resume regularly-scheduled service to all customers" and provides that the Commission may consider various, non-exclusive factors to evaluate a company's response to a labor disruption. Like the tariffs filed in the above-referenced dockets that are currently in effect for both companies, Staff's Proposal does not contain a specific, set "deadline" to resume regularly-scheduled service. It is vital to customers that the companies, who have an obligation to provide service, resume regularly-scheduled service as soon as reasonably practicable. Customers have no alternative to disposing of their waste other than self-hauling. Labor disruptions should be addressed on a case-by-case basis; no one deadline can anticipate or account for the variety of circumstances that may be presented by the labor disruption, nor can it fully account for a specific company's resources and its ability to respond to the circumstances. Imposing a deadline of any set length may inadvertently affect labor negotiations between the company and the union. A deadline may also create false expectations of complete service restoration and, as a result, it may inadvertently set the company up for failure. For these reasons, Staff supports the flexibility that the Staff Proposal

provides. As the proposed language indicates, in the event of a labor disruption, the Commission may evaluate the response (i.e. the company's efforts to resume regularly-scheduled service) on a case-by-case basis. Staff's Proposal places the burden on the company to act in the public interest when making decisions during the labor negotiations and provides the company with an opportunity to provide a detailed explanation of its actions to the Commission when the labor disruption has ended. This provision has stimulated extensive debate, and the companies have previously advocated in docket TG-010374 for a specific deadline that has ranged from five to seven calendar days.

12           Section 6.g. of Staff's Proposal reflects that the company will not charge for extra waste set out if it does not exceed what would be reasonably expected to accumulate due to missed service (as defined in the Definitions section under 7.a.). Staff believes the Parties have general agreement on this element.

13           Section 6.h. of Staff's Proposal specifies when the companies are required to provide a credit for missed service. Specifically, a credit, proportionate to the service-related component of the tariff rate for a customer's service, is required for all missed services until regularly-scheduled service is restored in the event the companies do not collect all accumulated solid waste on the customer's next regularly-scheduled service date. Staff's Proposal provides an example of how to calculate such a credit under Definitions, Section 7.c. Staff's Proposal is designed to provide clarity for this calculation to the companies, customers, and Commission Staff reviewing such credits. Staff believes that the labor disruption credits should be based on the approximate cost to the company to provide service but should exclude processing and/or disposal costs. The company will incur processing and/or disposal costs when the company collects the accumulated materials, at no additional charge, at a later time. Therefore, Staff agrees that those costs should not be used to calculate the labor disruption

credit. The example in Staff's Proposal also specifies that the recycling commodity credit/debit has no bearing on the calculation for recycling collection and should not be considered at all in calculating the credit owed to consumers due to missed service caused by a labor disruption. The recycling commodity credit/debit was created to pass through to customers the costs and benefits of the sale of recyclable materials collected from residences. To ensure the customers and the company are treated fairly, the Commission approved deferred accounting treatment with annual true-ups to reflect actual revenue the company received from the sale of recyclable commodities, actual recycling commodity credits the company paid to customers and actual recycling commodity debits the company received from customers.<sup>2</sup> The recycling commodity credit/debit is calculated completely separate from the tariff collection and processing rate. The tariff rate for recycling collection and processing is independent from, and does not vary by, the amount of the recycling commodity credit/debit, changes in commodity prices or the amount of revenue that the company receives from the sale of commodities collected from residences.

14 Staff's Proposal filed in the above-referenced dockets should be approved because it: 1) provides specific communication requirements between the companies, the Commission, and other stakeholders; 2) gives companies the flexibility to use reasonable, practicable means to resume scheduled service while also considering the circumstances of the labor disruption and a company's resources; and, 3) provides a reasonable methodology for determining credits due to customers. Together, these provisions reasonably mitigate the impacts that consumers experience during a labor disruption without overly prescribing a company's

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<sup>2</sup> See RCW 81.77.185. See also *in the Matter of the Petition of Waste Management of Washington, Inc., DBA Waste Management- Spokane, G-237*, Docket TG-090923, Order 01, (July 30, 2009); *In the Matter of the Petition of Rabanco LTD, DBA Lynnwood Disposal, Maltby Division G-12*, Docket TG-091262, Order 01, (August 27, 2009).

response to a labor disruption. Staff also believes that its proposal would not affect the bargaining position of the company with its unions in labor negotiations.

15 Commission Staff respectfully requests the Commission approve Staff's Proposal and require a compliance filing by the respondent Companies in the above-referenced dockets.

Dated this 16<sup>th</sup> day of August, 2013.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General



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