

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.

---

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 KLUCKITAT 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'S RESPONSE  
BRIEF IN SUPPORT OF STAFF'S  
PROPOSAL

1

Washington Utilities and Transportation Commission Staff (“Staff”) submits the following Response Brief. Staff filed its Proposed Item 30 Tariff Revisions (“Staff’s Proposal”) and an opening brief in support (“Opening Brief”) on August 16, 2013. The Respondents, Waste Management of Washington, Inc. (“Waste Management”), Rabanco LTD & Fiorito Enterprises, Inc. (“Rabanco”) and Washington Refuse and Recycling Association (“WRRRA”) also filed opening statements in support (“Opening Statement(s)”) of a joint Industry Proposal Revising Tariff Item 30 (“Industry Proposal”) on August 16, 2013.

**A. Staff’s Proposal requires the company to use all reasonable and practicable means to resume service and in so doing gives the Commission discretion to consider the unique facts and circumstances surrounding the labor disruption and any other relevant factors to evaluate the company’s response.**

2

One of the major differences between the two proposals relates to resuming service, in Section 6.f. Staff’s Proposal requires a company to “Use all reasonable, practicable means to resume regularly-scheduled service to all customers.” In contrast, the Industry Proposal includes this language but also adds a specific deadline, or grace-period, for resumption of service to all customers. In the past, there has been much discussion over this issue, and Waste Management and Rabanco continue to assert in their opening statements why having this particular grace period is appropriate. As Staff detailed in its Opening Brief, it is important and in the public interest that companies resume service as quickly as possible, but Staff believes that there is no “one-size-fits-all” grace period that captures all possible circumstances that may arise during a labor disruption. Staff’s Proposal recognizes that not all labor disruptions are the same; they will vary by type, duration, and extent. Moreover, a company’s response will necessarily be tailored to fit the situation, and the company should be allowed the flexibility, given its particular resource capabilities, to make appropriate business decisions. Staff’s position recognizes that there may be many relevant factors a

company will need to consider in making decisions that support the resumption of regularly-scheduled service, and likewise for the Commission to consider at the time when evaluating a company's response. Staff's flexible approach does not diminish, but rather, enhances, the Commission's regulatory discretion to consider any and all relevant factors as it evaluates each labor disruption on its own merits. These factors include those detailed by the other parties in their opening statements, such as public and worker safety, which will impact when service should be, and actually is, resumed. Even WRRRA notes in its opening statement that each situation is different, and to adhere to an artificial, possibly unrealistic, deadline could put drivers and the public at safety risk.<sup>1</sup> Staff agrees with this sentiment. Staff's Proposal allows the Commission to fully consider these factors at the time, taking into account that the company will be the best source of information, without overly and preemptively prescribing a company's response; it does not presume or prejudge an artificial deadline.

3           In contrast, the Industry Proposal imposes a set deadline, or grace period, to resume service to all customers "within five business days, not including the first day of a labor disruption." Memorializing a grace period would appear to limit the Commission's discretion over its evaluation of a company response, creating a presumption that a response that falls within what amounts to a six day "grace period" is reasonable. The Industry Proposal would allow the full grace period for a very short strike that affects very few customers. The Commission's discretion could only be applied when the company exceeds that deadline. Waste Management supports the "reasonableness" of the Industry's proposed deadline by citing the example of the labor disruption it experienced in 2012. As has been noted already, this occurred when the tariff Item 30 contained no provisions for missed service due to a labor disruption. Staff does not deny that similar factors may be at play in a future labor disruption.

---

<sup>1</sup> See Statement of Intervenor Washington Refuse and Recycling Association, page 3, lines 10-14.

For the same reasons, Staff believes the proposal should remain flexible. Moreover, Staff cautions against establishing a fixed time requirement that applies to all companies based merely on the experience of one labor disruption. In fact, Waste Management's advocacy underscores the arbitrary nature of its grace period by acknowledging that for a "brief work stoppage" it will "likely be able to resume full service" in less than five days, but there may be "other circumstances" in which "that standard will be challenging" and "when a hauler cannot resume service within five days."<sup>2</sup> Given all this uncertainty, the Commission should avoid establishing a deadline that will likely create false customer expectations of complete service restoration when there is a great deal of variation around the effort to resume service during a labor disruption.

**B. Staff's Proposal contains a clear, predictable, and measurable standard for when credits are due to customers in the event of missed service to due to a labor disruption.**

4 With respect to when credits are required, as set out in Section 6.h., it appears that from a practical perspective Staff's Proposal largely aligns with the Industry Proposal for the weekly, or less-than-weekly (i.e., every other week or monthly service) customer. However, a close reading of the Industry Proposal appears to show that, for the more-than-weekly (e.g., daily service) customer, the two proposals differ significantly with respect to when credits are due.

5 As Staff explained in its Opening Brief, Staff's Proposal, Section 6.h., requires a credit for all missed services if the company does not collect all accumulated solid waste at the customer's next regularly-scheduled service date. This is a straightforward, clear and measurable requirement that ensures any credit due to customers is commensurate with the

---

<sup>2</sup> See Statement in Support of Proposed Item 30 Tariff Language by Waste Management of Washington, Inc., paragraph 31.

severity of the missed service for that customer. In practical effect, Staff's Proposal appears consistent with the Industry Proposal for weekly, every-other-week, or monthly service regarding credits. As Waste Management explained the Industry Proposal in its opening statement, in the event a weekly customer is missed on a Monday ("day 0") because of a strike, the customer would receive service the following Monday ("day 5"), coinciding with the weekly customer's next-regularly-scheduled service date; as such, the customer would only be inconvenienced once.<sup>3</sup> No credit would be required for the weekly customer so long as all accumulated waste is picked up at that time, on the next-regularly scheduled service date. Staff's Proposal would have the same result.

6           Importantly, Staff's Proposal also would allow credits for affected daily-service customers under similar circumstances. If a daily customer is missed on a Monday (day 0), and receives service again the following Monday (day 5), the daily customer will miss several regularly-scheduled services and experience substantially more inconvenience. If the company collects all accumulated solid waste for that customer on day 5, under Staff's Proposal, the daily customer *would be* entitled to a credit for all missed services proportionate to the service-related component of the tariff rate for the customer's service during that period until the company collects all accumulated solid waste.

7           In contrast, the Industry Proposal would appear to *not* allow for credits to daily customers in that situation. This is because, under a reasonable interpretation of the language in the Industry Proposal, a credit would not be required under Section 6.h. so long as a company collects all accumulated solid waste at the next scheduled service *after* "service

---

<sup>3</sup> See Statement in Support of Proposed Item 30 Tariff Language by Waste Management of Washington, Inc., paragraph 28.

resumes to all customers.”<sup>4</sup> (emphasis added) When exactly will “service resume to all customers?” One could assume five business days, not including the first day of the labor disruption, because the Industry Proposal requests this grace period for “service to resume” to all customers in Section 6.f. In marked contrast with Staff’s Proposal, under the Industry Proposal a daily customer with several services missed during this period *would not be* entitled to a credit for those regularly-scheduled missed services that occurred before service resumed for all customers.

8           A labor disruption of any length will have a disproportionate impact on customers with more-than-weekly service because they are more likely to miss multiple services. The more missed services, the more waste accumulates, and the greater the inconvenience to that customer. The effect on customers from accumulated waste will be exacerbated the longer a strike lasts and the longer it takes for a company to resume service to that customer. While it may be true that a majority of customers subscribe to weekly or less than weekly service, the Item 30 Tariff language should account for and protect all customers and subscription levels, not just majority. The language in the Industry Proposal gives little apparent credit recourse for the daily customer.

9           Staff’s Proposal addresses each of these issues. First, by not fixing an artificial deadline to resume service to all customers, it allows the Commission to consider the extent and length of the strike and any other relevant factors to determine whether the company responded in a reasonable and practicable manner. Second, by defining when a credit is due

---

<sup>4</sup> The Industry Proposal, Section 6.h., refers back to Section 6.g. (“If the company does not collect all of a customer’s accumulated solid waste as required in subsection (g)...”). The Industry’s Section 6.g. refers back to Section 6.f., by requiring the company to “collect all accumulated solid waste at the customer’s next regularly-scheduled service date after service resumes as set forth in subsection (f).” Section 6.f. requires the company to “...resume regularly-scheduled service to all customers within five business days, not including the first day of the labor disruption.” Following this complicated trail of references, it appears that a customer would only be eligible for credits after full service has been resumed to all customers served by the company.

in terms of a customer's next regularly-scheduled service date and not by relation to a system-wide resumption of service, Staff's Proposal fully accounts for the severity of the missed service during that time and provides a predictable measurement of when credits are due to a particular customer.

**C. Staff's Proposal provides clear, detailed, and reasonable definitions, including an example of how to calculate a credit.**

10 There are a number of differences, some minor and some substantive, between Staff's Proposal and the Industry Proposal in Section 7, which includes both definitions, and examples that show how to calculate a credit in the event a credit is required for missed service due to a labor disruption. These differences are discussed in order, below.

11 Section 7.b. of Staff's Proposal refers to "customers" generally in the three examples, (i), (ii), and (iii), while the same section in the Industry Proposal specifically refers to "residential" customers. While the Industry's specificity is not incorrect, Staff believes generalizing the example provides consistency with the general reference to "customers" elsewhere in Section 6 and reflects that there is no need to distinguish between residential and commercial customers because the section would apply to both.

12 Section 7.c. of Staff's Proposal, unlike the Industry Proposal, includes the additional example of how to calculate a credit for a customer with every-other-week service. While this is also a minor difference, Staff believes this additional example provides useful guidance in a section that is, in and of itself, useful and intended to give the company, customers, and the Commission clear guidance on "...*how to calculate a credit.*"

13 Section 7.c. of Staff's Proposal, also defines the term "service-related component of the tariff rate" as it is used in Section 6.h (credit) and the example, to aid those determining the correct calculation. In contrast, the Industry Proposal does not clearly define this term.

Adding detail and clarity is also appropriate to avoid ambiguity, reduce potential misunderstanding. As Staff explained in its Opening Brief, it supports removing disposal and/or processing costs, which are included in the published tariff rates for garbage, yard waste, and recycling, in the credit calculation, because these costs will still be incurred when the company collects accumulated materials. The parties do not appear to disagree on this basic principle. Staff's example language, however, more clearly explains that the calculation is based on the published tariff rates minus the costs for processing and/or disposal "embedded" in the rates. This resulting value approximates the cost to provide the service.

14

Because the "service-related component of the tariff rate" used to calculate a credit in Staff's example is based on tariff rates for garbage, recycling, and yard waste service, minus those "embedded" costs only, Staff's Proposal clarifies in Section 7.c. under "recycling" that the "recyclable commodity adjustment (credit or debit) has no bearing on this calculation." By contrast, the Industry Proposal describes the credit as calculated using the "...monthly rate (...offsetting any recyclable commodity adjustments)" in Section 7.c. and so appears to factor the adjustment in the credit calculation. This is confusing, at best. It perhaps indicates that in calculating the credit, one should take the cost to provide the service (tariff rate minus embedded disposal and processing), and further subtract out the recycling commodity credit otherwise due the customer, which would thereby result in a lower "collection cost" and thus a lower labor disruption credit than under Staff's example. As Staff described in its Opening Brief, the adjustment is completely separate from the tariff rate for recycling collection and processing, and has no bearing on the calculation of that tariff rate. Because it is entirely independent, it should not be considered in calculating this particular credit. In fact, Staff agrees that the effects of any missed pickups is reflected in the annual calculation under WAC 480-70-351, because the recycling commodity adjustment is established based on a 12-month



historical pricing period and involves an estimate for the next 12-month period, a point Rabanco acknowledged in its opening statement.<sup>5</sup> The actual revenues received during the calendar year in which the labor disruption occurs will be used to estimate revenues for, and set rates for, the following year, in effect a “true up.” In the meantime, the customer is owed the monthly recycling commodity credit (or debit) that was set for the current 12-month period. If the commodity credit is excluded from the customer, it will deny the customer any monies owed from the sale of recyclable materials from the previous year. This is precisely the reason for Staff’s proposed language here.

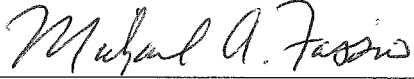
### CONCLUSION

15 Staff respectfully requests that the Commission replace Item 30 language regarding labor disruptions currently effective in the above-referenced dockets and adopt that set forth in Staff’s Proposal filed on August 16, 2013, which provides reasonable standards in the event of a labor disruption for resuming service, gives companies the flexibility to fully manage their business decisions and allows the Commission the discretion to fully consider particular circumstances in evaluating a company’s response. Staff’s Proposal also sets forth clear, reasonable, and measurable standards for when credits are due, and provides clear guidance as to how to calculate a credit for a customer.

Dated this 30<sup>th</sup> day of August, 2013.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General

  
MICHAEL A. FASSIO  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff

---

<sup>5</sup>See Rabanco’s Statement in Support of Industry Proposal Revising Tariff Item 30, paragraph 13.