

EXHIBIT D



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October 12, 2012

VIA E-MAIL ONLY

David W. Danner
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive, SW
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Olympia, WA 98504-7250

Sent to Records Center at:
records@utc.wa.gov

**RE: Docket No. TG-010374 – Commission’s Tariff Template, Item 30
Comments of Waste Management of Washington, Inc. (Certificate No. G-237)**

Dear Secretary Danner:

I am submitting on behalf of Waste Management of Washington, Inc. (WMW) comments to the staff-initiated proposal to revise Item 30 in the Commission’s Tariff Template. WMW supports adding language to the Tariff Template to allow companies in the throes of labor strikes and other work stoppage situations to utilize the same process for collection and billing that is currently used in inclement weather situations and road conditions. Regulated solid waste collection companies deserve certainty in handling those situations, and should be freed from concerns about tracking and billing so that energies can be devoted to collecting as much garbage as possible.

Currently, and as WMW experienced recently, there is no clear method for dealing with missed collections when they are caused by anything other than inclement weather or road conditions. When faced with the prospect of a missed pickup for any other reason, the only procedure that is consistent with the current Tariff Template would be to credit customers for the missed collection, but then assess an additional charge for any extras set out at the next pickup. For reasons discussed below, WMW does not believe that approach is workable or to the benefit of the ratepayers.

Our responses to your specific questions follow. We anticipate refining these positions and perhaps even reconsidering them following the workshop on October 25. I will personally be unable to attend due to a long-standing scheduled travel, but Waste Management representatives will be present.

1. Should the Commission amend Item 30 and its current policy related to missed pickups resulting from inclement weather and road conditions? If so, how should Item 30 be amended?

No. The language describing how to handle missed pickups is clear and the outcome is fair to the companies and the customers. The process described is familiar to both companies and ratepayers.

2. Should customers receive a credit for missed pickups due to inclement weather and road conditions? If not, why not? If so, should a customer pay for all waste set out for the next pickup that

exceeds the customer's subscribed service (e.g., if a customer subscribes to one 64-gallon toter, and the customer sets out the 64-gallon toter and two 30-gallon plastic bags, should the customer pay the rate for the additional two 30-gallon bags)?

No. Customers are fairly treated by allowing for additional waste to be set out for the next pickup. If issuing credits and charging for extras were required, many customers would end up paying more, even if the amount of waste set out at the next pickup is exactly the same as it would have been with two pickups. This is because collecting extras is not part of the every-day collection routing and services, and typically costs a little bit more. Furthermore, based on our experiences, customers sometimes use the make-up collection as an opportunity to set out even more waste than they otherwise would have, and in that case they would actually benefit from the no-credit/no-extra-charges approach. Finally, the costs of administering credits and also tracking extras would outweigh the benefits. Drivers would be required to note which customers were missed, and to document the extras collected. Bills would have to be adjusted retroactively because most residential customers are on quarterly billing. Internal costs could be significant. Although those expenses would rightfully be included in the expense base for rate-setting purposes, the ratepayers are not now called upon to shoulder the cost as they would if the current method were changed to the individualized account adjustments suggested.

3. Should the Commission add language to the tariff template that describes how missed pickups would be handled as a result of labor disputes or strikes?

Yes. We look forward to working with other stakeholders and Commission staff to draft language for Item 30 addressing missed collections due to labor disputes.

a. What issues should the Commission consider?

The Commission should consider the inability of unionized companies to meaningfully negotiate wages and benefits if the Commission does not make any changes to the current tariff allowing for missed collections due to labor strikes. The Commission's current position unjustly prejudices the hauling companies in its labor negotiations. Waste Management has a fiduciary duty to its shareholders to maintain fair and reasonable labor costs through its negotiated collective bargaining agreements. Waste Management and the Commission have obligations to the ratepayers to refrain taking steps that result in passing unreasonable costs through to the customers. It would be fundamentally unfair for the Commission to insert itself into labor negotiations to so heavily skew the negotiating leverage against the haulers by imposing penalties during strikes. In doing so, the Commission would penalize haulers who are acting prudently and standing firm in trying to manage its costs and ultimately the rates paid by the rate payers. The imposition of fines affects the delicate balance of labor negotiations and interferes with the law that applies to both parties while bargaining collectively.

b. Should customers receive a credit for missed pickups due to labor disputes or strikes? If not, why not? If so, should customers pay for all waste set out for the next pickup that exceeds the customers (sic) subscribed service?

No. Missed collections should be uniformly handled, and the process used for weather and road conditions is familiar and efficient. In addition, the administrative and operational burden of tracking missed customers and documenting extras would interfere with the primary goal of collecting garbage and getting as much solid waste in the trucks as possible.

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c. If service is disrupted due to labor disputes or strikes, should the Commission consider penalties against a solid waste collection company comparable to provisions in contracts companies have with some cities? (Samples of such contract provisions are attached to this Notice as Attachments B & C.)

No. If the Commission is seeking parity with cities operating solid waste collection under service agreements, then it is wrongly assuming that all of those agreements impose sanctions, that cities would actually feel compelled to enforce those provisions, that cities would seek to impose penalties at the maximum amounts stated, and that the sanctions sought are enforceable. As to this last point, under Washington law, a contractual fee for failure to perform is treated as liquidated damages. However, in Washington, a liquidated damage clause is not enforceable if the resulting amount does not represent a good faith attempt to estimate or anticipate actual damages from non-performance. In that case, liquidated damages that are disproportionate would be considered a "penalty" and would be unenforceable. Furthermore, contracts with cities are negotiated, and should not be analogized to the regulatory system. The terms are bargained for, and the risks and costs of potential performance fees can be considered by the company into the rates it proposed for contract services. Likewise, some cities have recognized that unless some allowance is made for labor strikes, the ability of the companies to meaningfully negotiate collective bargaining agreements will be severely undermined, which could in turn result in more expensive contracts.

4. Should the Commission add language to the tariff to address missed pickups due to other force majeure events (i.e., events beyond the control of the company including but not limited to wildfire, volcanic eruption, earthquake or flood)?

Yes. A broad provision allowing for any force majeure event would prevent uncertainty, as has recently arisen with labor disruptions. Although many of these enumerated events would create road conditions that would already be covered by the tariff, there are others (e.g., earthquakes, terrorism) that warrant clear procedures as well.

5. Should the Commission adopt performance standards that specifically relate to disruption of service? If not, why not? If so, what performance standards should the Commission adopt?

Waste Management is willing to work with other stakeholders and staff to draft performance standards. The example provided in Attachment C, "Additional Provisions Related to Labor Disruptions," are possible options to consider adding to the tariff language.

Thank you for the opportunity to submit these comments. If you have any questions or concerns, please feel free to call me at (425) 814-7840.

Sincerely,



Michael A. Weinstein
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