

EXHIBIT E



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VIA E-MAIL ONLY

Steven V. King
Acting Executive Director and Secretary
Washington Utilities & Transportation Commission
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**RE: Commission's Tariff Template, Item 30, Limitation of Service
Docket No. TG-010374
Comments on Draft Revised Item 30**

Dear Mr. King:

On behalf of Waste Management of Washington, Inc. (WMW), I am pleased to submit the attached comments on the proposed revisions to the Commission's Tariff Template, Item 30, Limitation of Service, Docket No. TG-010374. As should be apparent from our comments below, WMW supports the basic approach being proposed by the Commission. WMW does however have some concerns and suggestions with respect to some of the details, particularly the requirements for the "Operational Plan" and the lack of clear standards against which these plans will be evaluated.

We look forward to working with you and the Commission on this matter.

Sincerely,

Andrew M. Kenefick

Attachment

WASTE MANAGEMENT OF WASHINGTON, INC.
COMMENTS ON
COMMISSION'S TARIFF TEMPLATE, ITEM 30, LIMITATION OF SERVICE
DOCKET NO. TG-010374

1. GENERAL COMMENTS

1.1. Waste Management of Washington, Inc. (WMW) supports the Commission's proposed approach.

WMW supports the general approach that the Commission is proposing for Tariff Template, Item 30 (the "Template"). While WMW makes every effort to avoid service disruptions, including those due to work stoppages (such as strikes and lockouts), such disruptions are always possible. Given this reality, WMW believes that if a hauler has a reasonable plan for restoring service during and after a labor disruption and complies with that plan so that collection service is restored as soon as reasonably practicable, the hauler should not be penalized or deemed out of compliance with the Commission's service requirements. We understand that to be the intention of this proposed Template, and we concur with this approach.

Even though WMW supports the concept of having a plan in effect, the Template should also include requirements a company has if it does not have an approved plan. The Template simply states that a company must provide "all normal solid waste collection services...." Presumably, a hauler would not run afoul of Commission regulations if it issued credits for missed collections, and then also assessed charges for extras picked up. While WMW would not prefer this approach, further clarification would be useful for those unionized haulers without approved Operational Plans.

1.2. The Template lacks standards for assessing Operational Plans.

Notwithstanding WMW support for the Commission's basic approach, WMW is concerned with the lack of detail or standards for assessing whether the Commission will approve a hauler's Operational Plan. Without standards or guidelines for evaluating plans, a hauler is at risk that it cannot get approval of its Operational Plan without including requirements that cannot be met or that will hamstring its ability to negotiate fair resolutions of its labor disruptions. WMW believes that these standards are especially important in light of WMW's experience over several years trying to anticipate in good faith the Commission's requirements for revenue sharing plans. WMW does not wish to embark on another protracted and costly administrative process for developing Operational Plans without a clearer understanding of the Commission's expectations. As specifics would be welcomed early in this process, we have presented some recommendations below.

1.3. The Operational Plans need to strike a balance between restoring regular service without unduly constraining a hauler's labor negotiations.

Given the need to provide greater clarity and better defined standards for the Operational Plans, WMW strongly recommends that the Commission seek a reasonable balance between the need to restore service during and after a labor dispute without unduly constraining a hauler's labor negotiations. The Commission has the responsibility, among other things, of ensuring that

businesses and residents in Washington State have “adequate and dependable” solid waste collection service at “just and reasonable” rates. WAC 480-70-001. In most labor disputes, there is often a tension between these two goals. Capitulating to excessive wage and benefit demands may help to avoid or end a labor dispute; however, the increased costs will likely result in higher rates paid by the consumer. Refusal to compromise on these demands may help keep rates down, yet could extend a strike or lockout, thereby prolonging the inconvenience to the consumer.

WMW therefore recommends that the Commission adopt standards that will allow a reasonable and measured restoration of service that neither prolongs the inconvenience to the customer nor interferes with a company’s ability to negotiate fairly with the unions and the employees they represent. WMW appreciates the Commission’s efforts to achieve that equilibrium in the draft Template. In the specific comments below, WMW has proposed standards that we believe strike the appropriate balance.

2. SPECIFIC COMMENTS

2.1. The proposed Template should apply to all labor disruptions, including both strikes and lockouts.

Section 6 of the Template uses the terms “strike” and “other disruption by the company’s employees.” Labor disruptions can arise in a number of ways, with the most common being worker strikes. Sometimes, employers are hit with surprise sympathy strikes (or “secondary boycotts”) brought by other unions or collective bargaining units. In other cases, lockouts become necessary when the parties are unable to resolve a labor dispute through negotiations. The applicability of the Template should not be limited to “strikes”. WMW recommends the following revisions to Section 6:

Missed service due to a ~~lawful labor strike by the company’s employees,~~ sympathy strike, lockout, or other labor disruption that results in a work stoppage that prevents or limits a company from collecting solid waste.

- a. A company is required to provide all normal solid waste collection services in the event of a labor strike, sympathy strike, lockout, or other labor disruption ~~by the company’s employees~~ unless the commission has issued an order approving the company’s plan for revised operations during a labor strike, sympathy strike, lockout, or other labor disruption (Operational Plan).

2.2. WMW agrees that a strong communications plan should be included in all Operational Plans.

WMW agrees that subsection (a) in the definition of “Operational Plan” should be included in any Operational Plan. Effective and frequent communication to the Commission, local governments, and customers is a critical element of mitigating the confusion and problems that will inevitably arise during any service disruption. WMW recommends that the

Commission allow some flexibility in frequency and substance of communications, especially during the chaotic times preceding and immediately following the beginning of a work stoppage.

2.3. The Template should clarify what the Commission considers to be “prioritized and measurable goals” for restoring service as part of the Operational Plan element (b).

As mentioned in the General Comments above, the proposed Template lacks clarity in explaining what the Commission would consider to be adequate “prioritized and measurable goals for restoring service by customer class and service area.” We believe this item requires further detail and specific standards to assist in the preparation and Commission evaluation of Operational Plans.

As a threshold matter, some of the terminology in this section needs clarification, or the Commission should confirm that the haulers have some discretion in how the terms are defined in the Operational Plans. For example, it is not clear whether the term “customer class” is tied to the various types of rates stated the Commission’s tariff, or whether a company is free to identify other customer classifications. The Commission’s tariff creates a distinction between residential and commercial customers, and presumably those are each a separate “customer class.” For the commercial customers, some use containers, and others have drop box service – which may in turn include those receiving regularly scheduled service and others who are on-call. Furthermore, we also have discussed with the Commission a category of commercial customers we refer to as “critical accounts.” – *i.e.*, a limited subset of commercial accounts that are prioritized for collection, such as hospitals, nursing homes, and day care centers. Even though that “critical accounts” is not a term defined in the tariffs, these accounts, in WMW’s view, should be prioritized in determining where disrupted service should be first restored.

Similarly, would the Commission approve a “service area” defined by operational efficiencies, or is it intended only as a means of distinguishing between jurisdictional boundaries, *i.e.*, city versus WUTC service areas? As you are aware, in our experience proximity to WMW’s bases of operation and to transfer station/disposal sites can be an important factor in maximizing the amount of garbage that can be collected during a disruption in service. Efficiencies of access, such as population density and proximity to major freeways, are also relevant to consider in defining “service areas” and identifying appropriate service restoration goals.

Without knowing exactly what the Commission is expecting in Operational Plans, WMW nonetheless plans to include the following metrics as general guidelines for establishing “prioritized and measurable goals.” An approvable Operational Plan can establish different benchmarks and different service priorities, but service restoration should be generally consistent with these goals. WMW is concerned that if these metrics are not approvable as goals for restoring service, and the Commission demands more stringent requirements, the “safe harbor” provided by the propose Template will be illusory and unachievable.

	% Service Restoration	Schedule
"Critical Accounts" (see note)		
While Disruption Continues	50%	By Day 7 after disruption begins
	100%	By Day 14 after disruption begins
Residential Service		
While Disruption Continues	50%	By Day 14 after disruption begins
	75%	By Day 21 after disruption begins
	100%	By Day 28 after disruption begins
After Disruption Ends	100%	By Day 7 after disruption ends
Commercial Service		
While Disruption Continues	75%	By Day 14 after disruption begins
	100%	By Day 21 after disruption begins
After Disruption Ends	100%	By Day 7 after disruption ends

Note: "Critical Accounts" are a limited subset of commercial accounts that are prioritized for collection, such as hospitals, nursing homes, and day care centers.

WMW would also intend to include language to address the problem of surprise sympathy strikes where another bargaining unit in a labor dispute with another employer pickets a WMW site, causing a surprise and sudden work stoppage. These situations are especially difficult to address because WMW will have no role in the labor negotiations and little or no ability to anticipate the location or duration of such sympathy strikes. As such, WMW could not reasonably respond in the same manner as it can when its own bargaining units strike. WMW would include provisions in its Operational Plans allowing these events to be treated in the same fashion as weather events that suddenly disrupt service.

2.4. The requirement for "daily reports" in element (c) should be relaxed.

Subsection (c) refers to daily reports provided to the Commission. Daily reports would be extremely cumbersome when a hauler's first and foremost priority during a work stoppage is to restore service. As discussed above, immediately before and especially right after a strike is called, WMW feels that it is ill-advised to focus on preparation and dissemination of daily reports in light of the critical needs to be addressed during the first few hours and days of a service disruption. If the labor dispute continues after three days, then it would be appropriate to require daily reports sent to the Commission. WMW does not however object to responding to occasional and limited telephone calls or e-mails from the Commission staff during the early days of the labor disruption; rather, WMW is concerned with a requirement for a more formalized "daily report" requirement during the first few days of a work stoppage when resources are best focused on restoring service and resolving the dispute. We note, however, if a strike were to continue for a protracted period of time, then daily reports seem more than what would be necessary if the communication is to simply say that nothing has changed. For all of these reasons, we suggest this language require "regular and frequent" reports, rather than rigidly dictating daily communications.

2.5. The requirement to provide “specific data” in daily reports should be deleted.

Subsection (c) also requires that “daily reports” include “specific data”. Assuming “specific data” is intended to mean data on the number (and identification?) of customers who have not received service during each day of the strike, it has been WMW’s experience that this information is not readily available or reliable during the strike until service has been fully restored. During WMW’s recent labor strike in the Puget Sound area, WMW was able to collect only very rough estimates of the number of customers that had not been serviced. In general, WMW could determine which routes had been completed or partially completed during each day, but could not determine the exact number of accounts that had or had not been serviced on partially completed routes. There are several apparent reasons for this situation: (1) WMW’s standard system for determining missed collections is based on customer notifications and is not based on recording all customers actually serviced, (2) substitute drivers are focused on servicing as many customers as possible and do not document which customers have been collected or missed; (3) customer confusion can result in customers placing containers curbside on the wrong days or failing to place containers for pickup; and (4) substitute drivers who are unable to complete full routes do not have a means for recording where each route ended on each day.

WMW therefore recommends revising subsection (c) as follows:

(c) a schedule for providing regular daily reports ~~provided~~ to the commission ~~containing specific data~~ on the company’s efforts and progress toward meeting the service restoration goals;

2.6. The Template lacks clear standards as to what amount and mechanism for providing credits will be approvable in element (d) of the Operational Plan.

Subsection (d) requires the Operational Plan to include the amount and mechanism for providing customer credits. While WMW agrees with the need to include language on customer credits, WMW is concerned with how the Commission expects customer credits to be calculated. WMW intends to propose in its Operational Plan that customers will be issued credits for each service miss after two consecutive regularly-scheduled service misses for customers with weekly or bi-weekly (*i.e.*, every other week) service. In other words, for the third missed collection and thereafter, WMW agrees credits are appropriate. For customers with more frequent service, WMW will propose to issue credits only if WMW has failed to restore regular service within 14 days after the customer’s service disruption began. Each Operational Plan should specify the amount of the collection service component that would be used to calculate any credits.

Since disposal costs will be incurred regardless of any collection delays resulting from a work stoppage, customer credits should be prorated to the “collection service” component of the monthly rate since the hauler will still have to collect and dispose of the extra material upon service restoration. This latter point bears emphasis. WMW’s collection services have two basic components: (1) regularly scheduled collection of waste placed curbside for collection, and (2) transportation and final disposal or recycling of the collected wastes. While a labor disruption may cause a hauler to fail to provide the collection service component, the hauler will still be required to provide the transportation and final disposal component for basically the same quantity of waste, regardless of the labor disruption. In other words, missing collection on one

service day will generally result in double the quantity of waste to be collected on the following service day. The hauler will incur the same transportation and disposal costs, and while WMW acknowledges the benefit of crediting customers after a grace period for collection service charges, the disposal fee component should be passed through in the final bill

Similar to misses caused by inclement weather, each miss would entitle the customer to set out, at no additional charge, extra waste in an amount that does not exceed the amount that reasonably would be expected to accumulate due to missed service.

WMW therefore recommends and requests that the Commission provide additional guidance and clarification as to what would constitute an acceptable means for calculating customer credits.

2.7. The requirement (e) to include alternative disposal locations or vouchers should be deleted as an element of the Operational Plan.

Subsection (e) requires that each hauler provide in its Operational Plan alternate disposal locations or vouchers for customers to dispose of accumulated waste. This subsection (e) should be deleted in its entirety. WMW understands that many county-, city-, or privately-operated transfer stations or landfills would object to any strategy that would encourage thousands of individual residents or businesses to self-haul wastes to their facilities during a service disruption. A massive influx of self-haulers to transfer stations and landfills would seriously impinge on operational efficiencies at a time when efficiency will be at a premium. Regular collection trucks could be significantly delayed in completing their routes by lines of self-haulers, especially if picket lines or labor unrest occurs at the transfer stations or landfills. Such delays will only further delay the restoration of service and exacerbate the inconvenience to the consumer. During the recent labor disruption experienced by WMW in the Puget Sound region, King County specifically identified as a serious problem the “significant operational challenges for King County as self-haul to our disposal facilities increased dramatically during the strike.” Letter from County Executive D. Constantine to WUTC Chair J. Goltz.

As for providing temporary drop-box locations, WMW thinks such a strategy would also be counter-productive. The requirement to provide drop box locations – which would have to be staffed by WMW employees – during a labor disruption would stall and impede our efforts to resume regular service to our customers. During a labor disruption, our goal is to restore service as quickly as possible; any activity that reduces available resources (including trucks and drivers) would be counterproductive. Finally, while drop-boxes may be an effective tool where customers are densely populated, that tactic makes less sense in sparsely populated territories.

2.8. Element (f) should be deleted because the haulers should not be required to define “penalties” in their Operational Plans.

It is inappropriate to require the haulers to define in their Operational Plans the penalties that would apply for “failure to provide service.” The underlying premise of the proposed approach in the Template is that a hauler who has and implements an Operational Plan will not be penalized for service disruptions during a strike and during the post-strike recovery period, so long as they are in substantial compliance with the Operational Plan. It is therefore contrary to

the underlying approach to include penalties in an Operational Plan for missed service. Now that the Commission has informed haulers of mechanisms to mitigate service disruptions, in the future, if a hauler has not prepared an Operational Plan, fails to provide required collection services, and neither credits customers for missed collections nor assesses extra pick-up charges, then the Commission would justifiably consider using its existing enforcement authority, including the potential assessment of penalties or other available remedies. Whether and how penalties will be assessed will then be based on the specific circumstances of the service disruption, including the nature and extent of missed service, the extent of any deviations from the Operational Plan, the length of the recovery period, the customer credits issued, the communications and cooperation with the Commission, and any other relevant factors that the Commission considers under its enforcement regulations and policies.

WMW therefore recommends deleting subsection (f) as an element of the Operational Plan.

2.9. Element (g) should be deleted because it is unnecessary, unworkable, and irrelevant to include in the Operation Plan a discussion of the differences between the Operational Plan and comparable plans or agreements under municipal contracts.

It is not practical to include in an Operational Plan element (g), which requires a discussion of “the differences between the provisions of the operational plan filed with the commission and comparable plans or agreements the company has with cities, municipalities, and other local governmental entities with which the company contracts to provide solid waste collection service.” Many haulers have numerous contracts with municipal customers. WMW alone has over 40 such contracts. For many of these cities, WMW has worked out processes and strategies – some written, some unwritten – for addressing service disruptions. It would be extremely cumbersome for WMW to have to explain every plan or agreement with every franchised city in its Operational Plan, especially since those plans and arrangements may change over time. Furthermore, WMW does not believe that it would be appropriate or even lawful for the Commission to approve or disapprove an Operational Plan based on differences between it and the plans or arrangements negotiated with WMW’s municipal customers. Rates and service terms and conditions are a matter of negotiation with municipalities and economic arrangements under those contracts may allow for quite different arrangements for handling missed collections.

WMW therefore recommends deleting subsection (g) as an element of the Operational Plan.

2.10. The Commission should consider a different name for “Operational Plans”.

The term “Operational Plan” does not describe very well the nature of the plans that haulers will be proposing under this Template. WMW recommends the Commission refer to these plans as “Service Disruption Plans” or some similar and more descriptive name.