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BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of:

Waste Management of Washington, Inc. d/b/a
Waste Management – South Sound and Waste
Management of Seattle; Waste Management –
North Sound and Waste Management –
Marysville; Waste Management of Skagit
County; Brem-Air Disposal; Waste
Management of Spokane and Valley Garbage
Service Co.

CASE NO.

PETITION FOR RULE EXEMPTION

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I. INTRODUCTION

1. COMES NOW Waste Management of Washington, Inc. (“WMW”) holder of Certificate of Public Convenience and Necessity No. G-237, by and through its attorney, Polly L. McNeill of Summit Law Group PLLC, and in accordance with WAC 480-07-370(3)(b) files this *Petition for Rule Exemption* (“Petition”) respectfully requesting the Commission’s approval to vary from a strict interpretation of the customer notice requirements under WAC 480-70-271(1)(a) in order to implement a temporary surcharge.
2. This Petition is filed contemporaneously with WMW’s application for approval of adjustments to five of its operating tariffs¹, to add rate surcharge mechanisms that are intended to mitigate the impacts of volatile markets for recyclable material due to the consequences of China’s “National Sword” policy. Providing thirty-days’ notice of this surcharge to residential customers who are billed on a quarterly basis would undermine the responsiveness of the cost-recovery mechanism intended by the filing.

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¹ The request is for adding a surcharge to Waste Management – South Sound and Waste Management of Seattle, Tariff No. 23 - \$0.63 (6.7%); Waste Management - North Sound and Waste Management – Marysville, Tariff No. 19 - \$0.37 (4.2%); Waste Management of Skagit County, Tariff No. 18 - \$0.78 (8.7%); Brem-Air Disposal, Tariff No. 20 - \$0.55 (7.7%); Waste Management of Spokane, Valley Garbage Service Co., Tariff No. 18 - \$0.41 (5.0%).

1 3. This Petition also requests approval to vary from the workpaper requirements of WAC 480-
2 07-520(4) because revising WMW’s tariffs to add a processing fee surcharge is not explicitly
3 listed as an exception to general rate case requirements, but for purpose of Commission
4 review only documents related to the processing tonnages and expenses from WMW’s
5 affiliated material recovery facilities (MRFs) are necessary and appropriate.

6 **II. PARTIES**

7 4. Petitioner’s name and address are as follows:
8 Waste Management of Washington, Inc.
9 720 Fourth Avenue, Suite 400
10 Kirkland, WA 98033-8136

11 5. Petitioner’s attorney’s name and address are as follows:
12 Polly L. McNeill
13 Summit Law Group PLLC
14 315 Fifth Avenue S., Suite 1000
15 Seattle, WA 98104

16 **III. GROUNDS FOR RELIEF**

17 6. Beijing notified the World Trade Organization in July of 2017 of its plans to ban the import
18 of at least 24 varieties of solid waste and recyclables, including mixed plastic and paper,
19 metals, and other materials commonly sold by U.S. recyclers by 2018. China also adopted
20 stringent quality control standards in November 2017. Attached hereto is a copy of
21 Washington Department of Ecology’s FAQ regarding “China National Sword 2017.”

22 7. As a result, there have been significant operational cost increases at WMW’s affiliated
23 MRFs. In order to meet the new contamination standards, “China Sword” has required the
24 MRFs to significantly slow down processing lines, dispose of contaminants that were
25 previously accepted, increase storage capacity, and search for new markets to sell materials
26 at significantly lower prices.

8. At this point in time, the Company does not know the full impacts of “China Sword” or how
long they will last. The increased processing costs are both unanticipated and uncertain. It
would not be prudent to adjust residential recycling rates on a permanent basis until the
markets settle and MRF operations normalize. WMW is therefore proposing a surcharge on

1 its current recycling rates where materials are delivered for processing, with an adjustment
2 every 90 days based on actual impacts from “China Sword” on the costs of processing at
3 affiliate facilities.

4 9. WMW has applied for approval to revise Item 100 in its tariffs to reflect that recycling rates
5 shown will be subject to an additional per-month recycling processing surcharge, which if
6 effective May 1 as requested, would expire on July 31, 2018.

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8 **A. Petition for Exemption from Thirty-Day Customer Notice Requirements.**

9 10. The Company seeks approval to vary from the application of WAC 480-70-271(1)(a),
10 requiring thirty days’ notice to customers of an increase to tariff rates for this surcharge to go
11 into effect, and requests permission for notice to be managed as part of the three-month
12 billing cycles used for residential customers. The time-delay caused by mailing advance
13 notice to quarterly customers undercuts the need for responsiveness to a volatile situation that
14 a surcharge is intended to address. Because a thirty-day notice requirement would be
15 burdensome, costly, and not necessary to serve the public’s interest, the Company requests
16 permission to provide customer notice in alternative means, at the time of billing.

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18 **B. Petition for Exemption from Work Paper Requirements.**

19 11. The Company also seeks approval to file work papers limited to what is required for Staff to
20 verify the amount of the surcharge needed to recover some of the increased processing fees.
21 The filing is not a general rate case. However, this surcharge is not identified in the
22 applicable regulations as an exception to the requirements for a general rate case, and
23 therefore a literal application of the tariff-filing regulations would necessitate work papers to
24 be prepared and submitted, even though they would not be relevant to Staff’s review of this
25 particular filing. Because preparation of those work papers would be unnecessarily
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1 burdensome and not applicable to the filing itself, the Company requests permission to limit
2 its work papers to only those necessary to verify the surcharge amount.

3 12. WAC 480-07-520(4)(a) (detailed pro forma income statement) – The required income
4 statement is limited to reflecting how the cost of processing recyclables at the affiliated
5 MRFs will impact the recycling collection rates that WMW is seeking to address through its
6 surcharge.

7 13. WAC 480-07-520(4)(b) (revenue impact calculation for proposed tariff revisions) – The
8 work papers reflect the revenue impact of the proposed tariff revisions, and no waiver from
9 this section is necessary.

10 14. WAC 480-07-520(4)(c) (income statement listing all revenue and expense accounts by
11 month) – The required income statement is limited to the processing facilities providing
12 services for recyclable materials that WMW is seeking to address through its surcharge.

13 15. WAC 480-07-520(4)(d) (detailed separation of all revenue and expenses between
14 regulated/nonregulated operations if nonregulated revenue exceeds ten percent of total
15 company test period revenue) – The filing is entirely based on increased processing costs
16 from WMW’s affiliated MRFs. A detailed separation is not relevant to the surcharge
17 requested.

18 16. WAC 480-07-520(4)(e) (detailed list of all nonregulated operations, including the rates
19 charged for the services rendered) – The filing is entirely based on increased processing costs
20 from WMW’s affiliated MRFs. The rates charged at the processing facilities are the subject
21 of the surcharge.

22 17. WAC 480-07-520(4)(f) (detailed price-out information) – A detailed price-out is not relevant
23 to this surcharge request.

24 18. WAC 480-07-520(4)(g) (consolidated balance sheet) – The filing is entirely based on
25 increased processing costs from WMW’s affiliated MRFs. A consolidated balance sheet is
26 not necessary to this surcharge request.

- 1 19. WAC 480-07-520(4)(h) (detailed depreciation schedule) – To the extent a depreciation
2 schedule is relevant, it is limited to the investments at the processing facilities for which a
3 surcharges are requested.
- 4 20. WAC 480-07-520(4)(i) (computed average investment) – This component of a general rate
5 case is not relevant to this surcharge request.
- 6 21. WAC 480-07-520(4)(j) (information about every transaction with affiliated interests or
7 subsidiaries) – Affiliated interest transactions under this requirement are limited to those
8 between the subject tariff-based operational units, and the processing facilities for which a
9 surcharge is requested.

10 IV. PETITION FOR EXEMPTION

- 11 22. The Commission, for good cause shown, may by order allow changes in rates without
12 requiring statutory notice and the publication time periods. RCW 81.28.050. The process
13 specified in WAC 480-07-110 provides that the Commission may grant an exemption from
14 or modify the application of its rules in individual cases if consistent with the public interest
15 and the purposes of the underlying regulation:

16 The standard for consideration is the public interest standard.
17 Factors the commission may consider include whether the rule
18 imposes an undue hardship on the requesting person of a degree or
19 a kind different from hardships imposed on other similarly situated
20 persons, and whether the effect of applying the rule to the
21 requesting person would be contrary to the underlying purposes of
22 the rule.

- 23 23. Providing notice to customers through bills mailed after Commission action is not contrary to
24 the underlying purposes of the notification rules, and to require thirty-days' notice would
25 impose an undue hardship on WMW. Limiting work papers to the documents related to
26 processing costs that are the subject of this filing is not contrary to the policy behind creating
27 exemptions of some rate filings from the general work paper requirements.

A. The Commission should allow the Company to notify customers of the surcharge in the first billing following rate approval, because thirty-days'

prior notice would be burdensome and inconsistent with the need for prompt action being addressed by the surcharge itself.

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3 24. For solid waste collection companies regulated by the Commission, WAC 480-70-271 sets
4 out requirements for customer notice, depending on the type of filing. Under WAC 480-70-
5 271(1)(a), for an increase in “recurring monthly rates” a company must provide each affected
6 customer a notice at least thirty days before the requested effective date.

7 25. WMW requests approval to notify customers of its proposed surcharge by inserting a notice
8 in the next bills following Commission approval sent to customers. WMW would work with
9 Consumer Protection to craft appropriate wording to communicate the message informing
10 customers that, “Due to rising recycling processing costs associated with the lack of available
11 markets for recyclable materials following an announced ban of many recyclable materials
12 and new unachievable quality requirements by the overseas markets; the WUTC has
13 approved a temporary surcharge on your recycling service,” and stating the appropriate,
14 approved amount (which varies slightly by tariff area).

15 26. Compelling a thirty-day advance notice requirement would undermine the very intent of the
16 surcharge. WMW’s request is precipitated by the lack of certainty and unpredictability with
17 responding to the “China Sword.” A surcharge offers the ability to be more immediately
18 responsive to changes in handling and processing recyclable materials. Advance notice
19 undermines that goal. Thirty-days’ advance notice would delay the process of recovering the
20 increase processing charges significantly, and could result in need for a higher surcharge
21 amount than what is proposed.

22 27. Residential customers affected by this surcharge are billed on a three-month cycle. A thirty-
23 day advance notice effectively equates to a 90-day notice for one-third of the customers, and
24 a 60-day notice for another third. Advance notice would effectively impose a meaningful
25 delay in the ability for WMW to recovery the increased costs that it is now incurring. It
26 would be burdensome to isolate the particular customer segments for an advance mailing.
Pre-notifying customers that are billed quarterly without doing a separate mailing would be

1 quite cumbersome, and the cost of sending out a separate mailing would be cost prohibitive.
2 Cart-tagging similarly causes excessive costs. This is especially true because it is highly
3 likely that this surcharge will be adjusted at the end of the first period.

4 28. The effect of allowing customer notice following Commission approval of the surcharge is
5 not contrary with the underlying purpose behind the regulations. The surcharge is not putting
6 into effect a permanent change in customer rates. Because it is temporary, the surcharge
7 proposed is not literally a “recurring monthly rate.” It will only be in effect for 90 days, and
8 then revisited. Given the uncertainty of the effect of “China Sword” policies, it is unknown
9 whether a surcharge will be necessary after that time period, or whether a further adjustment
10 downward or upward at the end of the temporary period is warranted. It is not a “recurring
11 charge” as the term is used in the regulation, because it may not be repeated and most
12 certainly the amount of the surcharge will not be constant.

13 29. Under WAC 480-70-271(2), certain increases to rates are specifically allowed by customer
14 notice on or with the first bill after Commission action, and this surcharge is similar to some
15 of those situations. For example, recycling commodity credits and charges are eligible for
16 notice in customer bills after the amount has been approved by the Commission. WAC 480-
17 70-271(2)(a)(vi). Although the proposed “China Sword” surcharge is not directly correlated
18 to the market rates for recyclable materials in the same way commodity credits or charges
19 are, it is nonetheless a similar cost that is a result of increased expenses involved in preparing
20 recyclable materials for markets.

21 30. Similarly, the Commission regularly approves fuel surcharges for solid waste collection
22 companies. WMW does not itself use that rate adjustment tool, but it reflects the
23 Commission’s recognition that some fluctuations in rates due to volatility of circumstances
24 causing changes in costs can be handled by providing customer notice in the first bills
25 following approval of a surcharge.

1 31. Also, the regulations do not require thirty days' advance notice for changes in disposal fees.
2 The surcharge is not a pass-through, in the sense that it only covers a portion of the increased
3 costs, not the entire processing fee. However, similar to a change in disposal fees, the
4 increased expenses for processing recyclable materials are actual costs being incurred
5 presently, not prospectively. The need for the Company to recover these increased recycling
6 costs is similar to a disposal fee recovery.

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8 **B. The Commission should allow the Company to limit its work papers to those**
9 **related only to processing costs because this filing is not a general rate case**
10 **and it would be burdensome and unnecessary to require full compliance with**
11 **WAC 480-07-520(4) for review of this surcharge.**

12 32. In submitting its surcharge request, for certain elements of WAC 480 07 520(4) WMW has
13 limited financial data included in its work papers to the expenses and revenues of the
14 processing facilities to which it delivers recyclable materials, and has not provided the
15 analysis for WMW as a regulated collection company.

16 33. To prepare all components of the work paper requirements for WMW's regulated operations
17 as a whole would impose a significant hardship on the Company. The sole question
18 presented to the Commission is whether the surcharge is permissible in the amount requested.
19 The other operational expenses and revenues of the collection company are not pertinent.

20 34. Allowing limitations to the financial information included in the work papers avoids filing
21 immaterial and unnecessary work papers and relieves the administrative burden to both
22 WMW and Commission.

23 V. CONCLUSION

24 For the reasons stated above, WMW respectfully requests that the Commission grant an
25 exemption of WAC 480-70-271, and of WAC 480-07-520(4) because literal compliance with the
26 rules would be burdensome, not necessary for the policies behind the rules to be satisfied, and
inconsistent with the need for immediacy of the surcharge. WMW also respectfully requests that

1 the Commission make a determination on this Petition on or before March 15, so that the
2 surcharge requested can go into effect on May 1.

3 DATED this 1st day of March, 2018.

4 

5 By _____

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FAQ on how Chinese restrictions on importing recyclable materials will affect Washington recycling programs

Introduction

New restrictions by the Chinese government on what recyclables may be imported into their country are likely to have significant impacts on Washington State's residential and commercial recycling programs. China is a major destination for our state's recyclable commodities.

By the end of this year, the new regulations known as "China National Sword 2017" will begin taking effect. China has announced that, as of the beginning of 2018, they will no longer allow the importation of low-grade post-consumer plastics and unsorted paper. The regulations aim to increase the quality of the recyclable commodities entering China by restricting the amount of contamination permitted in imported recyclables. For instance, if a lid from a plastic food container is mixed in with recyclable paper, it contaminates the paper and reduces its value.

As the Chinese work to implement their new regulations, this is likely to be a period of transition and, over time, Washington consumers may see changes in what is allowed to go into single stream recycling bins, or other changes in their local recycling programs. In the short term, more potentially recyclable materials are likely to go to the landfill because no market is available for them.

What is China's ban on accepting recyclable materials?

China has announced that beginning Jan. 1, 2018, it will no longer allow the import of low-grade post-consumer plastics and unsorted paper. This action is in response to the poor quality of recyclable materials shipped from the U.S., Australia and Europe, severe impacts to environmental and human health caused by poor recycling infrastructure and China's desire to develop its own domestic markets for recyclable materials.

China first began trying to address these issues in 2013 when it launched an effort to reduce contamination in the bales of recyclable materials being imported into the country. This initiative, called "the Green Fence," was focused on improving the quality of these bales.

In spring of 2017, China implemented additional restrictions on importing recyclable materials. This new initiative is called "National Sword 2017." In July, China announced a complete ban on these materials in 2018. Because it can take weeks or months to load materials on ships and travel from ports in the U.S. to China, the impacts of the ban are being felt now.

What are the specifics of the ban?

There are three key components on the new restrictions.

1. Ban of all Unsorted Mixed Paper and Mixed Plastics

On July 18, the People's Republic of China informed the World Trade Organization of its intention to ban the import of 24 recyclable commodities, including "unsorted mixed paper" and "mixed plastics" effective Jan. 1, 2018.

The ban proposal came amid China's "National Sword" customs enforcement effort that started in February 2017. The National Sword campaign is essentially a crackdown on smuggling and contaminated scrap imports, and has led to arrests, confiscated scrap materials, and increased shipment times for exporters.

Reduction of Contamination Threshold to 0.3%

As of Jan. 1, 2018 all scrap materials imported into China may not exceed 0.3% contamination. This far exceeds the existing industry standard established by the Institute for Scrap Recycling Industries' (ISRI) Quality Specifications Circular, which allows for 1.5% to 5%, depending upon the grade. It is believed that a 0.3% contamination limit would render virtually all domestic recovered materials ineligible for sale to China.

Suspension of all New License Approvals

China has frozen the approval of all scrap paper import permits since May. As a result, the majority of scrap paper import companies are not able to import any scrap paper into China, which has caused a virtual total suspension of all imports since September.

How is this ban effecting Washington?

The ban is beginning to create a major disruption in Washington and throughout the region. Material recovery facilities in Washington, which receive mixed recyclables and sort them for resale to commodities brokers, have been drastically slowing down their processing of recyclable materials in an attempt to reduce contamination. This has caused a reduction in the amount of material that can be processed. The amount of material collected in Washington currently exceeds the processing capacity at these slower processing rates. In the short term, some materials may not be able to be processed and will need to be disposed of.

What are the long term impacts?

The impacts of the ban are just beginning to be felt and we don't know how the situation will shake out in the long term. Ecology and its partners in local government and at recycling companies are working together to develop strategies to strengthen our recycling system and increase its resilience.

How did Washington become so reliant on Chinese markets?

China is the single largest consumer of recyclable materials generated in North America. One-third of all scrap material collected in the U.S. is shipped overseas, with the large majority of this material going to China. In 2016, the U.S. exported \$5.6 billion in scrap commodities to China. This makes recyclable materials the sixth largest U.S. export to China.

Shipping recyclable materials to China is cheap because container ships bringing manufactured goods to the U.S. from China do not want to return empty. This opened the door for recyclable materials to be able to be shipped to China at very little cost.

Chinese manufacturers have also grown to depend on the cheap feedstock of U.S. recyclable materials in their processing. Recyclers in Washington and on the west coast have relied on Chinese demand for

feedstock, cheap labor and cheap shipping for recyclable materials. These factors have resulted in the loss of domestic markets for these materials.

These Chinese markets were so hungry for recycled feedstock that there has been little emphasis placed on the overall quality of the materials sent. As more and more cities in the United States moved to commingled recycling systems (i.e., putting all paper, glass, metal, and plastic together in one cart) contamination in recycled bales has increased.

What is recycling contamination and why is it a problem?

Recycling contamination is any item that does not belong in the recycling process. Recycling contamination can either be a material that is not collected for recycling or when different types of recyclable materials are mixed and baled together. Letting a lid from a plastic container become mixed in with paper contaminates the paper. Likewise, if glass is placed in with other recyclables, it can break and contaminate the rest of the material.

Contamination is a serious issue – it reduces efficiency, destroys value and leads to greater waste. Ecology and its partners have been tackling issues related to contamination for several years, with a particular focus on residential commingled recycling (the single bin for recycling most homeowners are familiar with).

While there are many ways to reduce contamination, the most important is increased education. What is accepted in one city may not be accepted in a neighboring city. Local governments, their collection companies and their processors need to develop coordinated messages on what does and does not belong in a commingled bin. Common items that can contaminate recycling bins include plastic bags, plastic wrap and film, liquids, food, soiled packaging, garden hoses, wire hangers, diapers, electronics, lightbulbs and batteries. Some of these items can be recycled separately - but not in a commingled bin.

When a contaminant enters the system, it can cause problems with the sorting machinery. For example, plastic bags and garden hoses can wind around parts of the machinery that sorts recyclables. This causes damage to the machinery and safety concerns for workers. When plastic bags or lids get sorted into bales of paper, the value of the bale of paper is decreased.

What should Washington residents do? How can I help?

Keep recycling whenever and whatever is possible. Recycling is still the right thing to do – it saves energy, resources and reduces greenhouse gases. Just keep these thoughts in mind:

- Ensure your recyclables are clean and dry. Food residue is a contaminant. Water gets paper wet and decreases its value.
- Pay attention to instructions from your local city, county or recycling service. These instructions can change over time with changes in markets.
- When in doubt, throw it out. If an item is not clearly listed as an accepted material for collection, err on the side of throwing it away. Non-recyclable items decrease the effectiveness of the system and can reduce the value of other recyclable materials.
- Many materials are still being recycled! Aluminum cans, cardboard, plastic water and soda bottles and milk jugs (#1 and #2 bottles) are all in demand by domestic processors as recyclable commodities.

What is Ecology doing to address these issues?

Ecology is expanding the work and scope of our commingled improvement recycling project. Working with partners from local governments, processors, collectors, exporters and end users we are strategizing on both the short and long term.

In Washington, recycling regulations are set by local governments. Ecology is advising local governments to be flexible as our state's recycling system adapts to these new regulations.