

# **EXHIBIT G**



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June 12, 2013

***VIA E-MAIL ONLY***

Steven V. King  
Acting Executive Director and Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive, SW  
P.O. Box 47250  
Olympia, WA 98504-7250

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

Dear Secretary King:

On behalf of Waste Management of Washington, Inc. (WMW), we write to provide the Commissioners with further comments for consideration at the Open Meeting this week, when they deliberate on the above-referenced docket matter, and evaluate potential amendments to Tariff Template, Item 30. We also write to communicate our concerns about the Tariff amendment process and its overlap with other pending matters involving WMW. For convenience, WMW has attached to this letter the revisions to Section 6 of the Tariff that WMW recommends.

On its merits, the proposed amendment described in the Staff Memo and attachments reflect significant improvements. We appreciate Staff’s response to the widely-stated concerns about the previous concept that relied on an approved yet standardless “Operational Plan”. The proposed tariff revision now takes a wholly different approach. In our view, instead of perpetuating potentially complicated and extensive administrative procedures by requiring an approved plan to be in place, the current proposal offers an outcome that can immediately be implemented. We commend the committee that worked on this proposal for taking this different tack.

Nonetheless, there are several significant and inter-related problems with some of the details of the proposed approach. Most fundamentally, WMW’s objection to the proposed approach is that it is not possible, practical, or realistic to require haulers to restore service to weekly or bi-weekly customers on a schedule different than their normal service schedule. For example, subsection 6(f) will subject a company to penalties if it does not, “Restore service to all customers within three business days, beginning the first day of the labor disruption....” This is not possible or practical. When all or a significant part of an entire day is missed because of a work stoppage, the company cannot simply “inject” that day’s services into another full day of collection. Stated another way, if a surprise strike is

called on Monday and customers are missed that day and Tuesday, the proposed 6(f) would require the company to “restore” service by the end of Wednesday. This would require the company to marshal enough drivers and trucks to run three days of collection routes in one day. Moreover, these resources would have to be ready to roll by Wednesday morning, less than two days after the strike was called. Not only would it be impossible to marshal, orient, and train enough substitute drivers,<sup>1</sup> WMW does not have a triplicate fleet of collection vehicles to cover three days’ worth of collection routes in one day. Even stretching this period to five days would not solve the problem because the company would still not have the necessary trucks and drivers to double-up or even triple-up on routes to meet the deadline.<sup>2</sup> In a significant strike, it may take a number of days to bring in sufficient resources to cover even one full collection day, let alone multiple days compressed into one.

The only reasonable and possible way to make up for the misses at the beginning of a strike is by resuming collection for weekly or every-other-week customers on the next regularly scheduled pickup day. This solution avoids the problem of duplication of resources since the company cannot compress two, three, or even four days of service into the course of one day. Service will resume for those customers who are normally scheduled for service that day. Even doing that requires over-time and additional expense because the trucks fill up with extras more quickly, they travel routes more slowly, and it is a challenge to actually make up for those missed collections on the next regularly scheduled date. There is significant cost to the company for meeting even that performance standard, so it is not without some financial motivation to resume services as soon as possible.

This approach will also assist WMW in its overall response to a work stoppage because it will be consistent with how most city contracts address resuming service. Most city contracts recognize the inherent logic of a seven-day period for resuming service. To have one approach (3-day resumption requirement) in WUTC territories and a different approach (resumption on next scheduled weekly collection day) will create significant logistical problems and customer confusion. Indeed, the staff’s proposal to require collection on days other than regularly-scheduled collection days could create massive customer confusion. Some customers will not know to place their garbage curbside on a different day. Customers in other haulers’ territories may place their containers curbside on different days because they are confused as to who their hauler is. City customers may have similar confusion, not knowing whether they are within a city contract area or in a G-certificate territory. WMW believes that customers are generally aware that if their garbage is not picked up during one week, it will be picked up on their next regularly scheduled collection day.

With respect to more frequent commercial service, the proposed language presents the same problem as described above for weekly residential or commercial collection. WMW will not have the

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<sup>1</sup> Except for the smallest strikes where extra drivers are available locally, it will likely take several days for a significant number substitute drivers to arrive, let alone receive facility and route familiarization. For a strike called mid-day on Monday, WM will likely be able to alert substitute drivers elsewhere in the county no earlier than Tuesday morning. With the time needed to mobilize and travel (especially for those on the East Coast), this effectively means that the first significant wave of substitute drivers would not arrive until Wednesday and could not be deployed until much later that day or the following day, after receiving required facility and route familiarization. To expect that a full complement of substitute drivers would be available on Wednesday morning is absurd.

<sup>2</sup> This is unworkable for even a one-day strike. If it occurred on a Monday, the returning workers would have to collect garbage, recyclables, and yard waste from both Monday’s and Wednesday’s customers by close of business on Wednesday. Given the number of drivers, DOT hours of service limitations, and a finite number of available trucks, this cannot be done for any but the smallest strike-related disruptions.

resources (drivers, trucks, etc.) available if it must compress three days of collection service into one day.

Therefore, we propose the following substitute for subsection 6(f):

*(f) For weekly or EOW (i.e., all services occurring no more frequently than weekly) residential or commercial service, if the company fails to provide collection service because of a work stoppage, the company shall resume regular collection service by the customer's next scheduled service date after the missed collection.*

- *Example: if the strike starts on Monday and the company misses collection for a weekly customer on Wednesday, the company will be required to resume collection service for that customer by the following Wednesday.*
- *Example: if the strike starts on Monday and the company misses an every-other-week (EOW) yard waste collection customer on Wednesday, the company will be required to resume collection service by the second Wednesday (i.e., next scheduled service day) after the first miss.*

*For commercial service with collection more frequently than weekly, if the company fails to provide collection service because of a work stoppage, the company shall resume regular collection service within three business days after the missed collection or by the customer's next scheduled service date, whichever is later.*

- *Example: if the strike starts on Monday and the company misses a daily collection customer on Monday, the company will be required to resume collection service for that customer by Thursday.*
- *Example: if the strike starts on Monday and the company misses collection on Monday for a customer with Monday and Friday service, the company will be required to resume collection service for that customer by Friday (i.e., the next scheduled service date).*

While WMW will not oppose the basic concept in subsection 6(g), the company objects to including the clause "or within seven days from the date service is restored." For most collection services, this provision is acceptable because most collection services occur on a weekly or more frequent basis; however, for every-other-week (EOW) collection (e.g., residential recyclables or yard waste), this provision suffers a problem similar to the one described above for subsection 6(f). For example, if a strike is called on Monday, and WM cannot collect an EOW yard waste customer on Wednesday, subsection 6(g) would require the company to collect that customer the next week (in addition to the regularly scheduled customers), even though the customer is not scheduled for service during the next week. WMW likely would not have the necessary drivers and trucks to run double routes on the following Wednesday. Instead, WM recommends deleting the reference to "within seven days from the date service is restored."

In addition, WMW recommends that additional language be added to this section to prevent customers from taking undue advantage of the free "extras" by cleaning out their garages or throwing out "Grandma's trash." WMW recommends the following substitute language for subsection 6(g):

*g. Collect, at no additional charge, all accumulated solid waste before or at the customer's next scheduled service date. The company will not charge for extra waste set out (except provided in Item 207, if applicable) in addition to customers' normal receptacle(s) if the amount of extra waste does not exceed the amount that reasonably would be expected to accumulate due to missed service.*

Subsection 6(h) is directly related to subsection 6(f). WMW will not oppose the basic principle in proposed subsection 6(h) if it is modified consistent with our recommendation for modifying subsection 6(f) above. If the company fails to resume collection as required by subsection 6(f), then the company will give a proportionate service credit for its failure to do so. While WMW certainly does not endorse that approach, WMW can live with this requirement if the other requested revisions are adopted. The credit, however, should be the collection service-related component only, since the disposal component will be the same regardless of when the service was provided. WMW proposes the following language:

*h. If the company fails to resume collection of customer's accumulated solid waste by the deadlines in subsection (f) above, the company shall give a service-related credit, proportionate to the customer's monthly service-related charge (excluding the disposal component), for all missed services on and after the date when service was required to resume.*

Having said that, and although WMW is supportive of having a Commission decision that would provide a clear directive of how to handle work stoppages as soon as possible, the change from using a contingency plan-approach to instead defining a time period for resuming service is significant. It highlights for the first time a procedural concern. The current proposal is welcome, but it has not been subject to written comment or informal workshop discussions. We just received it on Monday. It will be discussed only at this week's Open Meeting. We are aware that the Commission can specify the form and size requirements for tariff templates (WAC 480-70-281), but at this point the Tariff Template is more than a form. It is, instead, a formulation of general policy that is intended to set future standards of behavior, which if violated or ignored may result in penalties. That sounds like a rule. *See* RCW 34.05.010(16). Yet this amendment has not been handled through rule-making procedures required under the Administrative Procedures Act, Chapter 34.05 RCW. While WMW has not examined this issue in detail, we raise it for the Commission's consideration.

Finally, the Commission is already aware of the serious concerns WMW has with respect to the interrelationship between this proceeding and (1) the pending enforcement action brought by the Commission against WMW for service disruptions during last summer's labor strike, and (2) the company's tariff filing on this same issue that has been pending for over a year and which will be decided before the end of this month. We understand that it is not technically impermissible for the Commission to undertake a parallel rulemaking and adjudication related to the same subject matter, provided that certain precautions are exercised. *E.g., In re Verizon Northwest, Inc., Initial Order, Docket No. UT-061298 (Jul. 24, 2007)* ("It is generally understood by Commission personnel and participants in rulemaking proceedings that discussions in such proceedings must not include discussions of pending cases or issues specific to pending cases. Only if that occurred would there be even a potential violation of the *ex parte* rule."). Nonetheless, the obvious overlap and connections between this tariff revision proceeding and the other two pending matters will present very significant challenges for ensuring that all processes are conducted fairly and with due regard for the procedural and substantive rights of all parties to these multiple matters.

June 12, 2013

Thank you for your consideration of these comments. I will be present at the Open Meeting on Thursday to discuss any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Andrew M. Kenefick".

Andrew M. Kenefick.



**CONSOLIDATED PROPOSED AMENDMENTS TO  
TARIFF ITEM 30, SECTION 6**

(f) For weekly or EOW (*i.e.*, all services occurring no more frequently than weekly) residential or commercial service, if the company fails to provide collection service because of a work stoppage, the company shall resume regular collection service by the customer's next scheduled service date after the missed collection.

- Example: if the strike starts on Monday and the company misses collection for a weekly customer on Wednesday, the company will be required to resume collection service for that customer by the following Wednesday.
- Example: if the strike starts on Monday and the company misses every-other-week (EOW) yard waste collection on Wednesday, the company will be required to resume collection service by the second Wednesday after the first miss.

For commercial service with collection more frequently than weekly, if the company fails to provide collection service because of a work stoppage, the company shall resume regular collection service within three business days after the missed collection or by the customer's next scheduled service date, whichever is later.

- Example: if the strike starts on Monday and the company misses daily collection on Monday, the company will be required to resume collection service by Thursday.
- Example: if the strike starts on Monday and the company misses collection on Monday for a customer with Monday and Friday service, the company will be required to resume collection service by Friday (*i.e.*, the next scheduled service date).

g. Collect, at no additional charge, all accumulated solid waste before or at the customer's next scheduled service date. The company will not charge for extra waste set out (except provided in Item 207, if applicable) in addition to customers' normal receptacle(s) if the amount of extra waste does not exceed the amount that reasonably would be expected to accumulate due to missed service.

h. If the company fails to resume collection of customer's accumulated solid waste by the deadlines in subsection (f) above, the company shall give a service-related credit, proportionate to the customer's monthly service-related charge (excluding the disposal component), for all missed services on and after the date when service was required to resume.