

December 10, 1999

Washington Utilities Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. TG 990161 (480-70 WAC)

Dear Commissioners;

I represent the City of Shoreline, which is located north of Seattle and incorporated in August, 1995. The City is currently served by two separate solid waste haulers operating under state certificates. Since incorporation, the City has been trying to navigate a path to a competitive bid process that would allow the City to ensure that uniform, efficient, and effective solid waste collection service is available to all Shoreline residents and businesses. This path has always been uncertain, long, and fraught with risks of significant financial liabilities. Changes in state law have altered the few landmarks along this path that were once visible. It is our interest that your actions clear some of the fog and not create new pitfalls to impede our progress. Our comments will focus on your proposed WAC 480-70-121 and its relation to RCW 35A.14.900.

The report completed by your staff in November 1999 regarding Incorporation & Annexation provides valuable background for our comments. There is one subtle and important distinction, however, that is not mentioned in the report, nor, we believe, has it been considered in the drafting of your proposed WAC 480-70-121. The distinction we would like to explore is that between the notice to the WUTC of an intent to contract or self-haul necessary under RCW 35A.14.900 (post 1997) to initiate the seven year continuation franchise termination period, and a notice of actual contract execution or the commencement of self-hauling necessary to terminate WUTC authority to regulate under RCW 81.80.020.

If this distinction is not clear, then a city's only path to the cancellation of a state certificate passes through a contract with the current hauler with the only alternatives being to pay that hauler's acquisition price or the price established by a court of law through condemnation proceedings. An interpretation of the relevant regulations more consistent with the WUTC's duty to serve the Public Interest under RCW 81.80.020 would be to allow cities to issue a notice of intent to assume regulation of solid waste haulers as of a specific date in the future consistent with RCW 35A.14.900 and provide a franchise or other authority allowing the certificated hauler to continue providing service under WUTC regulation until that transition period has run and/or a contract for services is actually executed placing the City in the position of regulator.

In order to recognize this distinction, your proposed WAC 480-70-121 would need to be altered as follows:

Paragraph (1): Changing the presumption of this paragraph from actual cancellation of the state certificate to a presumption of intent to cancel the certificate consistent with RCW 35A.14.900, etc. would preserve the seven year transition period contemplated by those statutes and WUTC regulation. The city and the hauler can always agree to enter into a service contract resulting in the termination of WUTC regulation prior to the expiration of that seven year transition period. Should that occur, your proposed paragraphs (2) & (3) would work together to ensure that the WUTC is notified and its regulatory responsibilities transferred to the city. The immediate removal of WUTC authority upon annexation resulting from the proposed language may result in an undesirable and unintended lapse of regulation as the WUTC ends its role and the city works to develop a contract with the existing provider. If an agreement is not reached, the city may be forced to acquire the current hauler's right to serve. Alternatively, this provision may become a barrier to annexations as cities attempt to resolve transition issues with the waste hauler prior to acting to add new territory delaying the implementation of state growth management policies.

Paragraph (2): Simply clarifying in this paragraph that notice to the WUTC of an intent to cancel the state certificate under RCW 35A.14.900, etc. at a future date does not remove WUTC regulation without specific language doing so, would reduce the risk of an unintended lapse in regulation while supporting an orderly transition of regulation over a seven year period as established by state law.

These two changes in your proposed section would also be consistent with the transition processes that have already begun in many cities including those under pre-1997 legislation. It would also provide some clarity should an annexation occur after a city has initiated a cancellation period, but prior to actual certificate cancellation. In this case, the annexation would follow its own transition path.

The City of Shoreline executed five-year continuation franchises for certificated haulers in 1995 consistent with state law at that time. In August 2000, the City should be able to award a contract for services and cancel the state certificate. The City has completed three annexations since incorporation; one prior to 1997 and two after the change in state law. In the two post-1997 annexations, the City notified the WUTC of its intent to cancel the state certificate in seven years. The WUTC has continued to regulate solid waste services in all of Shoreline including those annexation areas. Changes to your regulations implying that notice under RCW 35A.14.900 must terminate WUTC regulatory authority may thwart our efforts of the last four

years and erect new barriers to the achievement of our policy objectives. With the requested changes, Shoreline should be able to transition most of the City to local regulation this year and work to transition the annexation areas over the next six years or earlier.

None of this is the ideal transition process from the perspective of the City of Shoreline, but it is probably as far as the WUTC can go under current state law to provide clarity and reduce the risk of regulatory gaps.

Please feel free to contact me with questions regarding these comments or if I can be of further assistance in the Commission's deliberations.

Sincerely,

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