



## Legislation Details (With Text)

**File #:** 19-0920      **Version:** 1

**Type:** Agenda Item      **Status:** Approved

**File created:** 6/4/2019      **In control:** Board of Supervisors

**On agenda:** 6/25/2019      **Final action:** 6/25/2019

**Title:** HEARING - Environmental Management Department recommending the Board consider the following options regarding Material Recovery Facility and solid waste collection rates for Waste Connections of California, Inc., doing business as El Dorado Disposal Service, Franchise Areas A, B, and C:  
 Option A:  
 1) Based on the analysis completed by staff, find that a 6.0% increase to the existing rates be in accordance with the interim year rate setting process as outlined in the Solid Waste Rate Setting Policies and Procedures Manual; and  
 2) Adopt and authorize the Chair to sign Resolution 099-2019 adjusting the Material Recovery Facility rates, and Resolution 100-2019 adjusting the residential and commercial solid waste collection rates for El Dorado Disposal Service, Areas A, B, and C, by 6.0% for the 2019 interim year to become effective July 1, 2019; or  
 Option B:  
 1) Based on the analysis completed by Crowe LLP, find that in addition to the 6.0% increase to existing rates in accordance with the interim year rate setting process, an additional 2.86% increase to the existing rates be in accordance with the Unforeseen Circumstances section of the Solid Waste Rate Setting Policies and Procedures Manual; and  
 2) Adopt and authorize the Chair to sign Resolution 101-2019 adjusting the Material Recovery Facility rates, and Resolution 102-2019 adjusting the residential and commercial solid waste collection rates for El Dorado Disposal Service, Areas A, B, and C, by a combined total of 8.86% for the 2019 interim year to be effective July 1, 2019. (Est. Time: 20 Min.)

**FUNDING:** User Fees/Franchise Fees. (No Federal Funding)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Contract Routing Sheet, 2. B - Franchise Area Rate Increase Resolution - 6% (Option A), 3. C - MRF Rate Increase Resolution - 6% (Option A), 4. D - Franchise Area Rate Increase Resolution - 8.86% (Option B), 5. E - MRF Rate Increase Resolution - 8.86% (Option B), 6. F - El Dorado Disposal 2019 Interim Year Rate Application, 7. G - County's Staff Report - Draft, 8. H - El Dorado Disposal Unforeseen Circumstances Letter, 9. I - County's Response to El Dorado Disposal, 10. J - El Dorado Disposal Service Commodity Revenue Analysis, 11. K - County's Public Notice - Mt. Democrat, 12. L - El Dorado Disposal Recycling Presentation, 13. Executed Resolution 101-2019, 14. Executed Resolution 102-2019

Date	Ver.	Action By	Action	Result
6/25/2019	1	Board of Supervisors	Approved	Pass

HEARING - Environmental Management Department recommending the Board consider the following options regarding Material Recovery Facility and solid waste collection rates for Waste Connections of California, Inc., doing business as El Dorado Disposal Service, Franchise Areas A, B, and C:  
 Option A:  
 1) Based on the analysis completed by staff, find that a 6.0% increase to the existing rates be in accordance with the interim year rate setting process as outlined in the Solid Waste Rate Setting

Policies and Procedures Manual; and

2) Adopt and authorize the Chair to sign Resolution **099-2019** adjusting the Material Recovery Facility rates, and Resolution **100-2019** adjusting the residential and commercial solid waste collection rates for El Dorado Disposal Service, Areas A, B, and C, by 6.0% for the 2019 interim year to become effective July 1, 2019; or

Option B:

1) Based on the analysis completed by Crowe LLP, find that in addition to the 6.0% increase to existing rates in accordance with the interim year rate setting process, an additional 2.86% increase to the existing rates be in accordance with the Unforeseen Circumstances section of the Solid Waste Rate Setting Policies and Procedures Manual; and

2) Adopt and authorize the Chair to sign Resolution **101-2019** adjusting the Material Recovery Facility rates, and Resolution **102-2019** adjusting the residential and commercial solid waste collection rates for El Dorado Disposal Service, Areas A, B, and C, by a combined total of 8.86% for the 2019 interim year to be effective July 1, 2019. (Est. Time: 20 Min.)

**FUNDING:** User Fees/Franchise Fees. (No Federal Funding)

## **DISCUSSION / BACKGROUND**

### Option A - Proposed 6.0% Rate Increase

On October 21, 2014 (Item 32, File No. 14-1047), the Board adopted Resolution No. 187-2014 authorizing a new Solid Waste Services Agreement (Franchise Agreement) between the County and Waste Connections of California, Inc., doing business as El Dorado Disposal Service (El Dorado Disposal), for the collection of solid waste throughout the franchise area and operation of the Material Recovery Facility (MRF). In addition to significant changes from the previous agreement, this Franchise Agreement also incorporated a new Solid Waste Rate Setting Policies and Procedure Manual (Rate Manual) developed by NewPoint Group (now Crowe LLP).

The Rate Manual provides specific requirements for the setting of collection rates during "Base" years (every third year of the Franchise Agreement) and "Interim" years (years falling between base years). Base year rate adjustments require an in-depth financial analysis to determine if rates require adjustment, the amount of the adjustment, and whether or not an increase or decrease to rates is warranted. Interim year rate adjustments are calculated based upon 85% of the change in the U.S. City Average - Garbage and Trash Collection Consumer Price Index (CPI) of the previous 12 months (December to December). The franchise hauler is not obligated to request an increase in interim years.

On August 18, 2015 (Item No. 13, File No. 15-0905), the El Dorado Disposal Service Agreement was amended (First Amendment) to consolidate the services provided by Amador Disposal Service under the Amador Disposal Service Franchise Agreement into the El Dorado Disposal Service Agreement (Area B) and terminate the Amador Disposal Service Franchise Agreement. Also on August 18, 2015 (Item No. 14, File No. 15-0632), the Sierra Disposal Service Franchise Agreement was assigned to El Dorado Disposal and the El Dorado Disposal Service Agreement was amended (Second Amendment) to consolidate the services provided by Sierra Disposal Service into the El Dorado Disposal Service Agreement (Area C).

Interim year rate increases for El Dorado Disposal were previously approved by the Board on June 7, 2016 (Item 38, File No. 14-1047, 1.75%), and on May 23, 2017 (Item 26, File No. 14-1047, 1.51%). On June 12, 2018 (Item 30, File No. 18-0825) the Board approved a base year rate increase of 5.02% to El Dorado Disposal residential and commercial customer rates and a 1.69% CPI increase

for MRF rates. The MRF rates are adjusted annually by CPI and are not subject to the base year rate setting process.

On March 22, 2019, El Dorado Disposal submitted an Interim Year Rate Application (Rate Application) to the Environmental Management Department (Environmental Management) for collection services for rate year 2019 (Attachment F) requesting a 6.0% rate increase to the MRF as well as residential and commercial collection rates. The Rate Manual requires Environmental Management to review the application, verify the CPI calculation, and prepare a staff report with recommendations of new rates for the Board's consideration (Attachment G). The staff report includes two (2) attachments: 1) the Application; and 2) the revised rate schedules.

The proposed Resolution XXX-2019 also contains the following additional services options:

- 96 gallon bear proof residential cart; and
- 1, 1.5, and 2 yard bear proof commercial bins.

The aforementioned additional services will be available to El Dorado Disposal customers, both residential and commercial, throughout Franchise Areas A, B, and C who may be experiencing increased incidents involving bear or other animal access to garbage.

Additionally, El Dorado Disposal has implemented expanded services for residential and commercial customers in Franchise Area C to match services currently provided to Franchise Areas A and B. Significant changes to Franchise Area C include the following additional service options:

- 6, 20, 30, and 40 yard green waste drop boxes;
- 10 yard concrete drop boxes; and
- 1, 1.5, 2, 3, 4, 6 commercial frontload and rear-load bins.

#### Option B - Proposed Additional 2.86% Increase

The Rate Manual also contemplates rate setting outside of the normal annual process under Section 1, C. - Rate Setting Policies, 6. - Unforeseen Circumstances, which states:

*The County should consider a proposed revision in a franchise hauler's rates whenever the franchise hauler can establish to the satisfaction of the County that Unforeseen Circumstances have arisen that have or will materially affect the franchise hauler's revenue or costs under this Manual.*

Under the Rate Manual incorporated into the Franchise Agreement, Unforeseen Circumstances are defined as:

*Circumstances beyond a franchise hauler's control. Examples include changes in laws or regulations, newly required County-approved solid waste management programs, Force Majeure events, or other economic events that could not reasonably be avoided.*

In a letter to the County dated December 20, 2018 (Attachment H), El Dorado Disposal requested a rate increase under the Unforeseen Circumstances section specified in the Rate Manual due to increasingly restricting changes in recycling laws and markets for recyclable materials, resulting in significant losses in revenue and additional expenses for providing services. On January 2, 2019, Environmental Management responded to El Dorado Disposal's rate request (Attachment I) advising that an independent third party financial evaluation will be required in order to determine whether or not a rate increase is warranted and, if so, if the amount requested is appropriate. Due to the unusual

nature of El Dorado Disposal's rate increase request, El Dorado Disposal was directed, at its own expense, to utilize Crowe LLP to perform this financial evaluation.

In late 2016, China, which was the largest importer of recyclable material (ex., plastic, paper, and cardboard) from the United States, initiated changes to restrict acceptance of these materials from the United States and other countries. These restrictions, which evolved over time to become even more onerous resulting in a virtual ban on exports to China, became known as the National Sword. Other major importers of the United States' recyclable material, such as Malaysia and Taiwan, followed suit. The National Sword and import restrictions by other countries have left haulers throughout California and the country with a severely limited market for recyclables and limited domestic options for processing.

Due to the aforementioned change in recycling market conditions, El Dorado Disposal must now pay a processor to take these materials that were previously a source of revenue for El Dorado Disposal. Since recyclable materials have historically been considered a revenue generating commodity, El Dorado Disposal offered recycling service to their customers at no additional cost when the customer subscribed to residential or commercial collection services.

The close of the Chinese and overseas markets for recyclables was not anticipated when the most recent base year rate increase was requested and approved by the Board in 2018. Therefore, El Dorado Disposal is requesting a rate increase under the Unforeseen Circumstances section cited in the Rate Manual in order to continue their residential and commercial recycling service collection provided to their customers as mandated by state law.

On February 20, 2019, Environmental Management received the results of Crowe LLP's review of El Dorado Disposal's Unforeseen Circumstance rate increase request (Attachment J). Crowe LLP is recommending an additional 2.86%, for a combined 8.86%, rate increase to residential and commercial collection services as well as MRF gate rates.

Consistent with Option A, the proposed Resolution XXX-2019 for Option B will also contain the following optional additional services:

- 96 gallon bear proof residential cart; and
- 1, 1.5, and 2 yard bear proof commercial bins.

The aforementioned additional services will be available to El Dorado Disposal customers, both residential and commercial, throughout Franchise Areas A, B, and C who may be experiencing increased incidents involving bear or other animal access to garbage.

Additionally, El Dorado Disposal has implemented expanded services for residential and commercial customers in Franchise Area C to match services currently provided to Franchise Areas A and B. Significant changes to Franchise Area C include the following additional service options:

- 6, 20, 30, and 40 yard green waste drop boxes;
- 10 yard concrete drop boxes; and
- 1, 1.5, 2, 3, 4, 6 commercial frontload and rear-load bins.

Attachments G and K include a sample summary of the impact to commercial and residential rates from both the CPI rate increase request of 6.0% (Option A) and the unforeseen circumstances rate increase request of the additional 2.86%, for a combined total increase of 8.86% (Option B). A

complete rate schedule for both Options A and B are included in the corresponding Resolutions.

In accordance with County Ordinance 8.42.170, notice of the time, date, place, and purpose of the public hearing to adopt the proposed solid waste collection rate adjustments has been duly noticed to affected ratepayers. At the request of Environmental Management, a public hearing notice for the franchise area was published in the Mountain Democrat newspaper on June 14, 2019 and June 21, 2019 (Attachment K). In addition, El Dorado Disposal Service provided notice to customers by including said notice on billing statements for customers in Franchise Area A and by postcard for Franchise Areas B and C, and posted a notice at the entrance to the MRF.

### **ALTERNATIVES**

Denial of the requested 6.0% 2019 interim year rate increase (Option A) would violate the contractual terms of the Board approved Franchise Agreement and Rate Manual incorporated therein. The Board may choose to deny the requested Unforeseen Circumstance rate increase (Option B). El Dorado Disposal will still receive CPI rate adjustments in 2019 and 2020 pursuant to the Rate Manual and will undergo a base year rate evaluation for 2021 rate setting.

### **PRIOR BOARD ACTION**

See Discussion/Background above.

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel has approved the proposed Resolutions.

### **CAO RECOMMENDATION**

It is recommended that the Board approve the 6% increase to existing rates, and provide staff direction on the additional 2.86% unforeseen circumstance increase.

### **FINANCIAL IMPACT**

The increase in rates proposed under both Options A and B by El Dorado Disposal are directly related to the cost to provide this service to customers. The County's Franchise Fee will remain at 5%. However, as rates are incrementally increased, the County will see a slight increase in Franchise Fee revenue.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) Clerk of the Board will obtain the Chair's signature on one (1) original copy of each adopted Resolution.
- 2) Clerk of the Board will forward one (1) copy of each executed Resolution to Environmental Management for further processing.

### **STRATEGIC PLAN COMPONENT**

Healthy Communities, Good Governance

### **CONTACT**

Greg Stanton, REHS, Director  
Environmental Management Department