



## Legislation Text

File #: 20-0919, Version: 2

HEARING - Environmental Management Department recommending the Board consider the following 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:

1) Find that a 1.0% Consumer Price Index increase to the existing Material Recovery Facility and solid waste collection rates, both residential and commercial, in Franchise Areas A, B, and C, to be in accordance with the interim year rate setting process as outlined in the Solid Waste Rate Setting Policies and Procedures Manual;

2) Based on the analysis completed by Crowe LLP, find that an additional flat \$0.19 cent increase on all residential collection rates, and an additional 1.59% increase on all commercial collection rates in Franchise Areas A, B, and C to be in accordance with the Unforeseen Circumstances section of the Rate Setting Policies and Procedures Manual;

3) Based on the analysis completed by Crowe LLP, due to significant cost increases associated with the Material Recovery Facility construction project, find that a greater than 1% increase to certain Material Recovery Facility gates rates, phased in over a 3-year period, and a 3.23% increase to all solid waste collection rates, is warranted;

4) Consistent with the Board's action on the Fifth Amendment to the El Dorado Disposal Service Solid Waste Services Agreement, Legistar 20-0918 also being heard this date, find that an additional increase of up to 2.46% on all Material Recovery Facility and solid waste collection rates is required to fund Environmental Management's solid waste programs, including the ongoing operation, maintenance and monitoring of the Union Mine Landfill;

5) Adopt and authorize the Chair to sign Resolution **127-2020** (Attachment D), adjusting the Material Recovery Facility rates 3.46% (1%+2.46%) with certain rates increasing greater than up to 3.46% over a 3-year period; and

6) Adopt and Authorize the Chair to sign Resolution **128-2020** (Attachment E), adjusting the residential solid waste collection rates 6.69% (1%+3.23%+2.46%) plus \$0.19 cents, and adjusting commercial solid waste collection rates 8.28% (1%+1.59%+3.23%+2.46%), for El Dorado Disposal Service Areas A, B, and C, to become effective September 1, 2020. (Cont. 8/4/2020. Item 40)

**FUNDING:** User Fees and Franchise Fees.

### **DISCUSSION / BACKGROUND**

#### 1.0% Interim Year Rate Increase

On October 21, 2014 (Legistar 14-1047, Item 32), the Board adopted Resolution 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). Interim year rate adjustments are subject to a minimum increase of 1% and a maximum increase of 6%. The franchise hauler is not obligated to request an increase in interim years.

On August 18, 2015 (Legistar 15-0905, Item 13), 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 (Legistar 15-0632, Item 14), 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). On December 12, 2017 (Legistar 14-1047, Item 25), The El Dorado Disposal Agreement was amended (Third Amendment) to provide seasonal curbside green waste cart service in the Area B community of Grizzly Flats,

Interim year rate increases for El Dorado Disposal, Areas A, B, and C, were previously approved by the Board on June 7, 2016 (Legistar 14-1047, Item 38, 1.75%), on May 23, 2017 (Legistar 14-1047, Item 26, 1.51%), and on June 25, 2019 (Legistar 19-0920, Item 42, 8.86%). On June 12, 2018 (Legistar 18-0825, Item 30) the Board approved a base year rate increase of 5.02% to El Dorado Disposal residential and commercial customer rates, Areas A, B, and C, 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. The next base year rate review will take place in 2021.

On March 1, 2020, El Dorado Disposal submitted an Interim Year Rate Application (Rate Application) to the Environmental Management Department (Environmental Management) for rate year 2020 (Attachment C) requesting a 1.0% CPI increase to MRF, residential and commercial collection rates. Environmental Management reviewed the application, verified the CPI calculation, and confirmed the requested 1.0% increase is consistent with the interim year rate setting requirements in the Rate Manual.

#### Proposed Unforeseen Circumstance Rate Increase

El Dorado Disposal's March 1, 2020, Rate Application also included a request to discuss additional rate changes related to further declines in recycling commodity markets revenue compared to last year, and capital costs associated with the construction of the new Transfer Station / MRF due to unforeseen circumstances.

The Rate Manual 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.*

The Rate Manual defines Unforeseen Circumstances 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.*

Additionally, the Fourth Amendment of the Franchise Agreement, approved by the Board on November 13, 2018 (Legistar 18-1693, Item 21), Section 11 A, Initial Term, includes the following as it relates to El Dorado Disposal seeking rate increases related to the Transfer Station / MRF construction project where costs significantly exceed the original maximum project estimate of 12 million dollars:

*At no time over the Franchise term will the Contractor be allowed to request, and the Board will not approve, an increase in refuse Collection rates or Transfer Station / MRF rates to compensate Contractor for any of the costs for the new Transfer Station / MRF improvements at 4100 Throwita Way based on Contractor's original 2014 maximum project estimate of twelve million dollars (\$12,000,000). An increase in refuse Collection rates or Transfer Station / MRF rates to compensate Contractor for any estimated costs of the new Transfer Station / MRF improvements that are in excess of the 2014 maximum project estimate may only be requested and considered by the Board if the estimated costs significantly exceed Contractor's original 2014 maximum estimate.*

Environmental Management staff and representatives of El Dorado Disposal held multiple meetings to discuss the basis for potential additional rate increases associated with revenue losses due to continued constricting commodity markets for recyclable material, as well projected cost overruns for the Transfer Station / MRF construction project. In addition to the 1% interim year CPI request, El Dorado Disposal proposed the following additional increases:

- 1) \$0.19 cents per month flat increase on all residential cart services (35, 64 and 96 gallon) due to further declines in recycling commodity market revenue;
- 2) 1.59% increase on all commercial collection services due to further declines in recycling commodity market revenue; and
- 3) 3.23% increase on all residential and commercial collection services, and an increase to certain MRF gate rates above the 1.0% CPI increase to compensate for the unanticipated capital cost overruns for the construction of the new Transfer Station/MRF.

Due to the unusual nature of El Dorado Disposal's request, and since these potential rate increases fall outside the normal rate setting process, El Dorado Disposal was requested to hire an independent third party consultant, Crowe LLP (Crowe), to conduct a financial evaluation of the proposed additional rate increases to determine whether or not the proposed increases are reasonable and justifiable.

On June 17, 2020, Environmental Management received the results of Crowe's analysis of El Dorado Disposal's Unforeseen Circumstances rate increase request (Attachment B). While the analysis goes into to great detail regarding El Dorado Disposal's proposed increase, Crowe also provides the following summary:

*The analysis of EDDS's tonnage and recycling sales data for 2019, and actual and year-to-date 2020, supports that EDDS' request to make up for a \$321,371 revenue shortfall is reasonable at this time. EDDS's proposed rate increase of \$0.19 cents per customer, per month, for residential customers, and a 1.59 percent increase in commercial rates for El Dorado County will cover this*

shortfall. Should recycled markets dramatically improve between now and the time of the next base year review, the County should calculate a “true up” to determine differences between this projected recycled commodity revenue shortfall and what actual occurred and consider providing this as a credit back to County ratepayers.

The analysis of transfer station/MRF capital cost estimates spanning 2014 to 2020, and the current facility plans/configuration, supports that the transfer station/MRF facility construction costs are expected to exceed the high end of Waste Connections original 2014 commitment, of \$12M, by \$13.6M at this time (see rightmost column in Table 1). (1) Waste Connections has proposed recovery of a \$12M increase in transfer station/MRF costs. This increase in capital cost is considered significantly higher than the 2014 maximum estimate and therefore, consistent with the 4th Amendment language, can be considered by the Board.

We verified that Waste Connections’ proposed rate changes to hauling rates and gate rates will cover this \$12M revenue requirement. The proposed 3.23 percent rate increase to County residential and commercial customers is estimated to cover approximately 61 percent of this revenue requirement. We verified that this increase was accurately calculated.

Waste Connections requested various changes to gate rates (see Table 2) to make up the remaining 39 percent of the revenue requirement. We reviewed the proposed gate rate changes as presented and these gate rate increases appear sufficient to cover the remaining 39 percent of the revenue requirement based on assumptions for how customers respond to the proposed gate rate changes. However, we conclude that the proposed gate rate changes for Mixed Loose Waste, Clean Yard Waste, and Minimum Load Fees as presented are too significant to implement in a one-year period and would cause undue hardship on those customers currently using these services at the transfer station/MRF. To mitigate rate impacts, gate rate increases for these three services should be phased in over at least a 3-year period. We also suggest that the County and Waste Connections consider monitoring the total spend of this facility construction and “true up” differences upon completion.

(1) Note: Waste Connections is requesting recovery of \$12M which is \$1.6M below the current difference of \$13.6M (based on a \$25.7M total cost estimate). Note that if \$5M of additional planned costs are included, the current total cost estimate is over \$30M. These additional costs are in the areas of: 1) final additional design items (\$874k); 2) planning, permitting and environmental review costs (\$1.3M), 3) improvements to the Wetsel Oviatt site for interim offsite greenwaste and C&D processing (under temporary lease) (\$1.4M), and 4) new MRF equipment/land purchase costs (\$834k). Waste Connections has indicated it plans to seek opportunities for cost reductions/savings throughout the remaining construction period. The total current project estimate is \$30.5M and Waste Connections will be looking at design alternatives for the C&D building so that the project value is no more than \$25.6M.

Crowe found the additional proposed rate increases reasonable and justifiable with the exception of the additional increase to certain MRF gate rates, which Crowe recommended be phased in over a 3-year period. The following MRF gate rate increases will be increased to the “Proposed” amounts over a three-year period, exclusive of any solid waste surcharge that the Board may approve under Legistar 20-0918 also heard on this date, and will not be subject to an annual CPI increase until year 2023.

<u>Rate Description</u>	<u>Current</u>	<u>Proposed</u>
County of El Dorado		

			<u>Change</u>
Mixed Loose Waste (greater than ½ cubic yard)	\$13.16	\$22.00	\$8.64
Clean Yard Waste/Clippings/Small Limbs, Min. 1 Yard	\$9.76	\$15.00	\$5.24
Minimum Load (up to 2 cubic yards or 55-gallon drum)	\$7.66	\$20.00	\$12.34
Clean Wood Waste (not painted, burnt, or chemically treated)	\$10.19	\$15.00	\$4.81
Appliances	\$13.52	\$20.00	\$6.48
Per Additional 32-Gal Can Household Waste	\$3.45	\$15.00	\$11.55
Mixed Loose Waste (greater than ½ cubic yard) - Unsecured	\$16.45	\$27.50	\$11.05
Minimum Load (as defined above) - Unsecured	\$9.58	\$25.00	\$15.42
Clean Yard Waste, Min 1 Yard - Unsecured	\$12.20	\$25.00	\$12.80

Crowe also recommended that a “true up” occur during the next base year rate review to determine if residential and commercial recycling revenue collected as a result of the proposed increase exceeds the projected revenue shortfall. This will be accomplished in the 2021 base year rate review.

Additionally, once the Transfer Station / MRF construction project has been completed, currently scheduled for 2022, El Dorado Disposal will provide the County an itemized list of the actual cost of the project. The Fourth Amendment of Franchise Agreement, Section 11A, Initial Term, includes the following:

*Contractor will provide the actual agreed upon cost when completed, and Contractor must furnish an itemized list of the final facility costs, by asset name, asset description, asset number, acquisition date, and acquisition cost. This asset listing shall be retained in County files and listed as an attachment to the Franchise Agreement.*

If the Board approves El Dorado Disposal’s request to increase residential and commercial rates by 3.23%, and certain MRF gate rates beyond the 1% CPI, to compensate for the projected 13.6 million dollar capital cost overrun, the revenue collected from this increase will be evaluated each base year (every three years) to ensure that once cost recovery has been completed, rate payers are not paying in excess of the total final costs of the project. Once the revenues collected from this increase have compensated El Dorado Disposal for the cost overruns, rates will be adjusted accordingly.

Solid Waste Surcharge Increase

The Fifth Amendment to the El Dorado Disposal Franchise Agreement, Legistar 20-0918 also heard by the Board on this date, includes a recommendation to increase the surcharge on all solid waste exported from the MRF and buried in an approved landfill. The County may increase this per ton fee, but only if such increase is compensated for by an increase in El Dorado Disposal’s rates. This surcharge is remitted to the County and utilized by Environmental Management to help fund the department’s solid waste programs and the ongoing operation, maintenance, and monitoring of the Union Mine Landfill.

Dependent upon the Board’s action on Legistar 20-0918, also heard on this date, the surcharge increase will result in an additional increase to El Dorado Disposal’s MRF, residential and commercial collection rates by 0.82% to 2.46%.

Summary of Potential Rate Changes

Attachment F provides a sample summary of the impact to commercial and residential rates from the CPI rate increase request, the combined Unforeseen Circumstances rate increase request for recycling market revenue loss and Transfer Station / MRF increased capital costs, and the maximum

solid waste surcharge increase if approved by the Board on this date per Legistar 20-0918.

In accordance with County Ordinance 8.42.170, notice of the date, time, 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 areas was published in the Mountain Democrat newspaper on July 24 and July 31, 2020 (Attachment G). In addition, El Dorado Disposal provided notice to customers in Franchise Areas A, B, and C by postcard, and also posted a notice at the entrance to the MRF.

### **ALTERNATIVES**

Denial of the requested 1.0% 2020 interim year rate increase would violate the contractual terms of the Board approved Franchise Agreement and Rate Manual incorporated therein. The Board may choose to deny any or all El Dorado Disposal's rate increase requests due to Unforeseen Circumstances.

Additionally, while considering Legistar 20-0918 on this date, the Board may have chosen to deny the request by Environmental Management to increase the current solid waste surcharge to \$10.80/ton, or elected to approve an alternative surcharge increase, either of which will result in changes to the two Resolutions attached to this item.

If the Board elects to not adopt any of the individual rate adjustments detailed above, revised Resolutions consistent with the Board's direction will be provided to the Clerk of the Board for the Chair's signature.

### **PRIOR BOARD ACTION**

See Discussion/Background above.

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

County Counsel has approved the proposed Resolutions (Attachment A)

### **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

### **FINANCIAL IMPACT**

The increase in rates proposed by El Dorado Disposal are directly related to the cost to provide these services 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.

Additionally, upon the Board's approval of the Fifth Amendment to the Franchise Agreement with El Dorado Disposal, Legistar 20-0918 heard this same date, the addition of an increase to the current surcharge of \$2.70/ton will result in additional funding for Environmental Management. The amount of this additional funding is estimated to result in an estimated increase of \$250,000 to \$750,000 annually over the current surcharge revenue dependent upon the Board's action.

### **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 and Good Governance

**CONTACT**

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