

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DIRECTING STAFF TO) RESOLUTION NO. 10-4172
CONDUCT A REVIEW OF PRIVATE)
TRANSFER STATION FINANCIAL RECORDS) Introduced by [insert name here]

WHEREAS, Metro requires any person owning or controlling a transfer station to obtain a Metro Solid Waste Franchise; and

WHEREAS, currently Metro authorizes four private local transfer stations and one private regional transfer station to operate under Metro Solid Waste Franchises; and

WHEREAS, Metro has established a Solid Waste Roadmap planning effort, the purpose of which is to improve the region's solid waste system; and

WHEREAS, as part of the Solid Waste Roadmap planning effort, Metro seeks to provide transparency in the rates charged by Metro Solid Waste Franchisee; now therefore

BE IT RESOLVED that the Metro Council directs Metro staff to take all necessary steps to conduct a review of private transfer station financial records for the purpose of improving transparency in the rates charged by the facilities.

ADOPTED by the Metro Council this _____ day of _____ 2010.

WITHDRAWN

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

DRAFT STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4172 FOR THE PURPOSE OF DIRECTING STAFF TO CONDUCT A REVIEW OF PRIVATE TRANSFER STATION FINANCIAL RECORDS

Date: August 18, 2010

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Jonathan Jubera

PURPOSE

This Resolution directs Metro staff to take all necessary steps to conduct financial reviews of private transfer stations in the Metro region for the purpose of enhancing rate transparency throughout the region. For practical reasons, financial review should begin with the Forest Grove Regional Transfer Station, which franchise provides for detailed review of the operating company's financial records. Review of the three Local Transfer Stations (Troutdale Transfer Station, Pride Recycling, and Willamette Resources Inc.) can follow if staff determine such review to be relevant and useful.

BACKGROUND

Solid waste disposal is regulated—by Metro—to protect the environment, and to ensure the health & safety of the region's citizens. Metro's policies reflect this commitment in part through the efficient and equitable provision of solid waste disposal services. For example, Metro provides direct disposal services at two regional transfer stations in north Portland and Oregon City, and to improve overall access and reduce system costs, Metro authorizes a limited number of privately owned and operated transfer facilities to provide similar disposal services to the region.

Metro depends upon competitive market forces to ensure reasonable and affordable pricing for disposal services in the region. Metro's approach to ensuring reasonable pricing has been to set its own pricing in an open and transparent manner, and let private providers set their own prices. As long as private providers offer similar services at a posted price similar to Metro's, Metro has presumed that consumers are receiving a reasonable deal, whether or not the service level is precisely the same as Metro's. In some instances, Metro may offer a service level different than a private facility's. For example, private facilities typically are not open as many hours each day as Metro's stations, and Metro may offer more spotting assistance and traffic direction than private operators, who tend to depend more on their own haulers to self-direct.

Metro's form of passive rate regulation has been in place at minimum administrative cost since Metro first authorized the current system of private transfer stations in 1998. Metro's price has served as the market benchmark even as the responsibility for handling the region's waste has shifted to the private sector. Over that time, the proportion of throughput at private transfer stations has increased at the expense of tonnage flow to Metro's transfer stations. Metro has approved franchises that have included tonnage limitations for local facilities (currently 70,000 tons of putrescible waste per year at each station). Private facilities' share of the region's waste has grown from 40% to 56% over that period, while Metro's share—the complement— has dropped from 60% to 44%. Yet private facilities' posted prices have, in general, continued to match or exceed Metro's, despite presumed better scale economies.

RATE TRANSPARENCY

It is in the public interest that disposal charges reasonably reflect the costs of providing disposal services. Access by Metro to the financial records of transfer stations will give Metro the chance to provide a level of checks and balances that protects regional ratepayers as consumers, rather than relying on private industry to act in the best interest of the public. By ensuring that reasonable rates prevail throughout the system, Metro will be able to verify regional equity and perhaps improve affordability for some.

Metro's disposal charges are designed to recover Metro's costs and no more. So-called tip fees at Metro Central and Metro South transfer stations are *transparent*. That is to say, the disposal charge—including all the components that constitute the “tip fee”—that customers pay at Metro Central and Metro South transfer stations are adopted annually by the Metro Council in an open, public process, in concert with Metro's budget adoption. Hence, Metro's customers—licensed haulers, ratepayers, and public customers—have access to all cost and rate setting information necessary to independently derive Metro's charges.

Importantly, local governments (cities and counties) who set curbside garbage and recycling rates know with certainty what the allowable disposal costs are for licensed haulers who use Metro Central and Metro South transfer stations. Local governments are less certain of the reasonableness of private facility pricing, and in the absence of true cost data, may simply allow Metro's price to serve as the proxy for the cost of privately provided services.

Private transfer stations, which Metro franchises and regulates, and which offer similar waste disposal services, do not typically share their costs nor rate setting practices with customers or regulators. Additionally, it is very difficult to understand the pricing components that make up their tip fees and how businesses account for non-arms-length transactions between haulers, transfer stations, and landfills. As a result, the prices paid by the public and local businesses whose waste is delivered to a private transfer station may or may not reflect the actual costs—plus a fair profit—of handling that waste. Prices may be fair and reasonable, but there is no process in place to independently verify the reasonableness of prices. It is this lack of process that this Resolution begins to cure.

TECHNICAL ANALYSIS

In the absence of actual cost data, a 2008 Metro study¹ inferred operating costs at each franchised transfer station by subtracting known or assumed per-ton transport and disposal costs, plus government fees and taxes, from the effective tip fees posted at each transfer station. The remainder was inferred to be available to pay for the costs of all on-site operations and support, plus profit and property taxes.

The 2008 study found that after paying for transport and disposal, Local Transfer Stations have anywhere from about \$11.90 to \$14.80 per ton remaining to cover the costs of processing and transfer of waste on site, averaging \$13.25 per ton. This is consistent with Metro's cost of approximately \$13 per ton for processing and transfer of waste delivered by large, commercial hauling vehicles, the predominant vehicle type that utilizes private transfer stations. Thus, Local Transfer Stations appear to operate at *roughly* the same per-ton cost as Metro's transfer stations (some higher cost, some lower).

¹ Wet Waste Allocation Study, Final Draft Report, September 2008.
http://library.oregonmetro.gov/files/wet_waste_allocation.pdf

The same study estimates operating costs at the one privately owned Regional Transfer Station—Forest Grove Transfer Station—of \$16.45 per ton, over \$3 per ton above Metro’s costs and the average for Local Transfer Stations’.

These estimates—for both Local and Regional Transfer Stations—are not sufficient to draw a firm conclusion about the materiality of differences between private facility costs and pricing. To draw a firmer conclusion, Metro needs more complete and direct information. Specifically, Metro needs to know the specific costs of operating the private transfer stations in the present environment, and then needs to determine if the tip fees charged to customers are reasonably related to these costs.

SUMMARY

Private industry now handles the majority of the region’s waste and, in general, offers similar but somewhat lower levels of service compared to the transfer stations that Metro owns. Hence, Metro wishes to exercise its regulatory authority in the interest of the region’s ratepayers to conduct a financial review of private transfer stations in order to ensure that pricing reasonably reflects the costs of providing service. As a first step, Metro intends to review the financial records of private transfer stations—starting with the one regional transfer station, compare facility costs to pricing, and evaluate the materiality of any differences. The materiality of differences will inform Metro’s decision as to whether or not economic regulation is called for, including but not limited to rate regulation and/or adjustment to existing tonnage limitations.

In the event that significant discrepancies exist between costs and pricing, Metro will consider corrective actions, such as economic regulation. If discrepancies are large, Metro may consider some form of rate regulation. If discrepancies are minimal, Metro may choose to do little more than publish its findings for the benefit of local government regulators, who set curbside rates.

ANALYSIS/INFORMATION

1. Known Opposition

Private transfer station owners, Waste Management, Inc, Pride Recycling Co., and Republic/Allied Waste, have voiced reluctance in the past to disclose financial records to Metro. Continued opposition is anticipated.

2. Legal Antecedents

Oregon State Law gives Metro broad authority to regulate the disposal of solid waste. As part of its related responsibilities, Metro authorizes the operation of and regulates a number of solid waste disposal facilities. Five of those regulated facilities are authorized by franchise to accept, transfer, and dispose of putrescible waste (among other authorizations). These facilities include one Regional and four Local transfer stations, as follows:

Regional Transfer Station

Forest Grove Transfer Station

The Forest Grove Transfer Station franchise (No. F-004-08) contains explicit provision for Metro to review financial records of the franchisee (see Sections 7.4 and 12.3 of the franchise agreement). If the

scope of the desired review is sufficiently broad, Metro must procure an independent third-party to conduct the review.

Local Transfer Stations

Troutdale Transfer Station, Franchise No. F-001-08
Pride Recycling (Sherwood, OR), Franchise No. F-002-08
Willamette Resources, Inc (Wilsonville, OR), Franchise No. F-005-08
Columbia Environmental (Portland, OR), Franchise No. F-057-05

Local transfer station franchises are not subject to rate regulation; however, local transfer station franchises provide for Metro inspection of "...all information from which all required reports are derived including all books, maps, plans, income tax returns, financial statements, contracts, and other similar written materials of Franchisee that are directly related to the operation of the facility." (Section 12.3) Franchisees may mark any of these documents as confidential, and to the extent of law Metro will make good faith efforts to keep such documents confidential.

Hence, Metro may proceed with a limited level of Local Transfer Station financial review under the current franchise provisions. If the franchisee believes the scope of the review to be undue, the franchisee may invoke Section 11.1 of the Local Transfer Station franchise, which provides for good faith negotiations between franchisees and the Metro Chief Operating Officer. If Metro and a franchisee enter into good faith negotiations and fail to reach agreement therein, then Metro can adopt Ordinances that amend franchise terms, per Section 11.2 of the Local Transfer Station franchise agreements.

3. Anticipated Effects

Preliminary financial reviews should provide Metro with adequate information to determine whether or not some form of economic regulation may be called for. Short of economic regulation, simple rate transparency could inform customers and local government regulators as to whether or not private rates fairly reflect the actual costs of service.

4. Budget Impacts

Staff estimate that a third-party consultant will require between \$20,000 and \$50,000 to conduct a preliminary financial review of the one Regional Transfer Station. Should full rate regulation be desired, a more thorough, and costly, financial review would be required. The cost of preliminary review at the three Local Transfer Stations will likely be in the range of \$40,000 to \$100,000, with a detailed review costing much more. Available funds: a total of \$250,000 are budgeted in the FY10-11 PES budget for contracted services related to disposal system planning.

RECOMMENDED ACTION

The Metro Chief Operating Officer recommend that the Metro Council pass this Resolution 10-4172 directing Metro staff to take all necessary steps to conduct a review of private transfer station financial records for the purpose of improving transparency in the rates charged by the facilities.