



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket: WM01305

Order: WM21-01R

IN THE MATTER of an application by the Island Waste Management Corporation for approval to vary the rates for waste management services, in accordance with section 18.1 of the *Environmental Protection Act*, RSPEI 1988, Cap. E-9.

**BEFORE THE COMMISSION ON Tuesday,
June 1, 2021.**

J. Scott MacKenzie, Q.C., Chair

M. Douglas Clow, Vice-Chair

Erin T. Mitchell, Commissioner

CERTIFIED A TRUE COPY

Collette A. Vessey,
Executive Assistant
Island Regulatory & Appeals Commission

REASONS FOR ORDER

IN THE MATTER of an application by the Island Waste Management Corporation for approval to vary the rates for waste management services, in accordance with section 18.1 of the *Environmental Protection Act*, RSPEI 1988, Cap. E-9.

INTRODUCTION

1. On December 17, 2020, the Island Waste Management Corporation ("IWMC") filed an application with the Island Regulatory and Appeals Commission (the "Commission"), seeking approval to vary the rates for certain waste management services (the "Application").
2. IWMC sought approval to increase the annual fee for households, cottages and extended cottages, and to increase the maximum residential disposal fee.
3. In particular, IWMC sought approval of the following changes to its rates:

Fee Category	Current Rate	Proposed Rate
Household Annual Fee	\$205	\$213
Cottage Annual Fee	\$95	\$115
Cottage Extended Fee	\$120	\$140
Residential Min-Max	\$5 min - \$20 max	\$5 min - \$30 max

4. The Application was filed in accordance with section 18.1(2) of the *Environmental Protection Act* (the "Act") which requires IWMC to submit any proposed changes to its rates to the Commission for review and approval.
5. Upon review of the Application, the Commission has the discretion to approve the rates proposed by IWMC, to determine and fix new rates, or to refuse the rates proposed and confirm the existing rates (see *Act*, section 18.1(4)). The decision of the Commission must be made within sixty (60) days from the date the Application is filed by IWMC (see *Act*, section 18.1(5)).
6. Upon receipt of the Application, notice of the Application was published on the Commission website and in local newspapers. Any person wishing to comment on the Application was invited to do so in writing, in accordance with section 18.1(3)(a) of the *Act*.

7. On January 19, 2021, the Commission issued interrogatories to IWMC seeking additional information with respect to the Application and the proposed rates.
8. IWMC filed responses to the Commission's interrogatories on or about February 2, 2021.
9. On February 4, 2021, a technical briefing was held with respect to the Application. At the technical briefing, IWMC presented the Application to the Commission and answered questions arising from the Application and the interrogatories.
10. On February 24, 2021, the Commission issued Order WM21-01 approving the proposed changes to the annual fees for households, cottages and extended cottages, effective January 1, 2021, and approving the change to the residential maximum disposal fee.
11. The Commission did not, however, approve the proposed changes to the balance of the disposal fees charged by IWMC. The Commission ordered that the disposal fees shall remain in place without change until such time as a cost allocation analysis is completed by IWMC and submitted to the Commission for approval.
12. In Order WM21-01, the Commission advised that written reasons would follow.
13. The following are the reasons in support of Order WM21-01.

ANNUAL FEES FOR HOUSEHOLDS, COTTAGES & EXTENDED COTTAGES

14. IWMC provides collection and disposal services to more than 75,000 residential households and cottages in the Province. In 2020, IWMC serviced 67,082 residential households, 7,704 cottages, and 779 extended cottages.
15. IWMC charges an annual fee for collection and disposal services. The fee is charged as an added item on provincial property tax bills.
16. The annual fee for households, cottages and extended cottages has not changed since January 1, 2012 – a period of nine years. Since that time, IWMC has seen increases in contracted collection, transportation and processing costs, as well as inflationary increases in expenses.
17. IWMC explained that more than seventy-five percent (75%) of its operational expenditures are paid directly to private corporations for the collection and final disposal of waste generated on PEI. The cost of these contracted services have increased significantly since the last rate increase in January 2012. While some increases are due to yearly index formulas in the contracts, others are due to increased costs of new contracts that are the result of recent contract tenders.
18. In its Application, IWMC noted the following increases in contracted costs since January 2012:

PEI Energy Systems: PEI Energy Systems is a privately-owned facility that processes waste material into steam heat, which it in turn sells. IWMC is contractually required to send waste material to the facility and pay a per-tonne fee to PEI Energy Systems. In accordance with the contract, the fees paid by IWMC increase each year using the CPI index. The

annual fees paid to PEI Energy Systems by IWMC have increased by \$353,000 since the last rate increase in 2012.

ADI International (PEI) Inc.: IWMC contracts the operation of the Central Composting Facility to ADI International (PEI) Inc. Since the last rate increase in January 2012, the total annual cost of the contract has increased by \$505,000. The current agreement with ADI International (PEI) Inc. extends to March 31, 2024 and includes an annual increase of two percent (2%) per year.

Compost and Waste Collection Contracts: IWMC has six contract zones for the collection of waste and compost. Collections are performed on a weekly basis, alternating between waste and compost. IWMC's total contract cost for compost and waste collection has increased by \$1.146 million since 2012. In addition, the contracts also include a yearly increase. Below is a table that summarizes the unit contract price for waste and compost collection in 2012 versus 2020:

Zone	Contractor	Unit Price in 2012	Unit Price in 2020
West Prince	Label Construction and Sanitation	\$68.00	\$76.00
East Prince	Label Construction and Sanitation	\$33.53	\$53.43
Central Region	Superior Sanitation	\$52.00	\$72.78
Capital Region	Superior Sanitation	\$36.00	\$47.01
Southern Kings	Superior Sanitation	\$54.74	\$66.90
Eastern Kings	Superior Sanitation	\$65.00	\$65.00

Recycling Collection Contracts: IWMC has five collection zones for the collection of recyclable materials. Collection is provided to homes in all zones on a monthly basis. In 2018, IWMC issued an RFP for the collection and processing of recyclables for each of the five collection zones. IWMC received only one response to the RFP. Since the date of IWMC's last rate increase, the cost of the recycling collection contract has increased by \$773,000 annually. Below is a table summarizing the unit price for recycling services per household in 2012, versus the unit price in 2020:

--	--	--	--

Zone	Contractor	Unit Price in 2012	Unit Price in 2020
West Prince	GreenIsle Environmental Inc.	\$15.00	\$31.61
East Prince	GreenIsle Environmental Inc.	\$15.00	\$26.61
Central Region	GreenIsle Environmental Inc.	\$24.77	\$23.61
Capital Region	GreenIsle Environmental Inc.	\$12.49	\$20.61
Eastern Region	GreenIsle Environmental Inc.	\$26.95	\$26.61

19. In light of the increased inflationary and contract costs, IWMC sought approval to increase the annual household and cottage fees as follows:

Fee Category	Current Annual Rate	Proposed Annual Rate	Proposed Annual Increase
Household Annual Fee	\$205	\$213	\$8
Cottage Annual Fee	\$95	\$115	\$20
Cottage Extended Fee	\$120	\$140	\$20

20. According to IWMC, the proposed increases will result in an annual increase in revenue of \$706,316. In the event the proposed increases are not approved, IWMC forecasts a net loss of \$1.436 million for the 2022-year end.
21. According to IWMC, the current proposed rate increases should be higher than those proposed. However, IWMC seeks to limit the rate increase in any one year to avoid potential rate shock to customers.

COST ALLOCATION MODEL

22. The Commission is concerned that IWMC has not determined rates based on the cost of providing service to different rate classes. The rates to be charged by a regulated entity such as IWMC are to be based on the cost of service to the rate payers of a rate class. This is known as a cost allocation model. Rate payers of each class of customers are to pay the

same fees as other customers in the same rate class. The appropriate annual fee to be charged by IWMC to each rate payer is to be determined by calculating the total costs of serving that class of rate payer divided by the total number of rate payers of that class. This manner of determining fees ensures that each rate payer pays their fair share of the total costs of providing the service to that rate payer. As the rates charged by IWMC are not supported by a cost allocation model, it is possible that certain rate classes could be paying more or less than the cost to serve them.

23. As will be discussed herein, the Commission will be seeking further information from IWMC in the next few months to appropriately determine the allocation of costs between the different rate classes.

COMMISSION FINDINGS

24. IWMC presented evidence that clearly shows that the cost of providing service to household and cottage customers has increased significantly since the last rate increase in 2012. The increases are due to both increased inflationary costs, as well as substantial increases in the contracted collection and disposal costs.
25. The Commission is therefore satisfied that the proposed rate increases in the annual fees for households, cottages and extended cottages are, in the circumstances, reasonable. The annual rate increases proposed by IWMC are, therefore, approved effective January 1, 2021.

RESIDENTIAL DISPOSAL FEES

26. Residential property owners can take materials to any Waste Watch Drop-Off Center ("WWDC") for disposal. For certain materials, IWMC charges a residential disposal fee.
27. The residential disposal fees are designed to charge a minimum and maximum amount for the disposal of residential waste, yard trim and compost material from residences. The residential disposal fees are currently \$5 (minimum) and \$20 (maximum).
28. IWMC explained that the posted rate for disposal is \$115 per tonne. However, the maximum charged to a residential customer for disposal at a WWDC is currently capped at \$20 per load. Although IWMC charges residential customers a maximum of \$20, the actual disposal cost to IWMC is far greater than this.
29. According to IWMC, the reason for the residential cap per load is two-fold. Firstly, IWMC considers that a portion of the residential disposal cost is included in the annual fee charged to households and cottages. Secondly, IWMC recognizes that charging the full posted rate of \$115 per tonne could be a disincentive to use the service and result in illegal dumping, rather than proper disposal of waste.
30. The current residential minimum and maximum disposal fees (currently \$5 and \$20) have not changed since the program started in 2003.
31. As part of its Application, IWMC sought approval to increase the maximum residential disposal fee from \$20 to \$30. According to IWMC, the proposed increase is still significantly less than the cost of providing disposal services to residential customers.

32. Further, by increasing the maximum disposal fee (rather than the minimum disposal fee), only those customers who bring in a large volume of waste in a single transaction will be impacted.
33. IWMC estimates that the increase in the maximum residential disposal fee will result in an annual revenue increase of approximately \$47,674.
34. The Commission recognizes that the disposal services offered by IWMC are intended to ensure that residential waste is properly disposed of. As a result, and to limit illegal dumping, the disposal fees charged to residential customers are not based on a strict cost recovery model.
35. Although the maximum disposal fee is less than the cost of providing the service, the Commission is satisfied that the proposed residential maximum disposal fee is, in the circumstances, reasonable. As a result, the residential maximum disposal fee charged by IWMC shall increase from \$20 to \$30, effective April 1, 2021.

OTHER DISPOSAL FEES

36. As part of this Application, IWMC has not proposed to change the rates charged for any other waste management services. At the technical briefing, IWMC confirmed that the rates charged for its other services have not increased since 2012. Although IWMC has not performed a cost allocation analysis, representatives confirmed that the cost of providing certain services have increased since 2012.
37. Through the interrogatory process and the technical briefing, the Commission inquired as to why IWMC is not seeking to increase the rates charged for its other services, particularly its commercial disposal fees.
38. IWMC estimates that it provides disposal services to approximately 12,000 commercial customers in the province. IWMC does not collect commercial waste from those customers, it is responsible for the disposal of the commercial waste that is delivered to its facilities. This commercial waste may be transported to the disposal facility by a contracted hauler or the commercial customer may self-haul the waste to the disposal facility. All costs for hauling and transportation are negotiated and paid directly by the commercial customer to the contracted hauler.
39. IWMC charges fees of between \$100 and \$115/ ton for the disposal of commercial waste delivered to its facilities. Although IWMC has confirmed that its disposal costs have increased, these disposal fees charged to commercial customers have not increased since 2012.
40. In response to interrogatories and questions posed by the Commission at the technical briefing, representatives of IWMC stated that they believe that the commercial disposal fees that are collected have been in excess of the cost of servicing commercial customers and that these fees have been subsidizing the cost of service to residential customers. However, the financial information that was provided to the Commission by IWMC left the Commission questioning whether or not this determination was, in fact, correct. Without a cost allocation analysis being completed there certainly was no evidence before the Commission to support this position.

41. Without a proper cost allocation analysis, the Commission cannot determine whether the rates currently charged by IWMC for its various rate classes are comparable to the current cost of providing the service to those classes. It is possible, for example, that commercial disposal fees are, in fact, subsidizing the cost of service to residential customers. However, it is also possible based on the financial information provided to the Commission by IWMC that commercial disposal fees are not sufficient to cover the cost of providing the commercial disposal service and that other rate payers subsidize the commercial disposal costs.
42. As a result, the Commission is not prepared to approve the balance of the disposal fees charged by IWMC. However, the Commission shall allow the disposal fees currently charged by IWMC to remain in place until such time that a cost allocation analysis is completed by IWMC and submitted to the Commission for approval.
43. IWMC shall work with Commission staff to develop a cost allocation model for the purpose of determining the cost of providing service to IWMC's various rate classes. The cost allocation analysis is to be completed, and submitted to the Commission for approval, on or before September 15, 2021.

NET ASSET BALANCE

44. In accordance with the *Act*, the rates approved by the Commission must allow IWMC to recover the costs incurred to provide each type of service (see *Act*, section 18.1(9)). The Commission also has the discretion to permit IWMC to earn an additional return in respect of its operations (see *Act*, section 18.1(10)). The relevant provisions of the *Act* state as follows:

Corporation entitled to recover costs

(9) When making a decision in respect of a submission by the Corporation, the Commission shall allow the Corporation to earn, annually or within such other period as the Commission considers appropriate, such return from its rates for each type of service the Corporation provides as the Commission considers is just and reasonable to recover the costs incurred by the Corporation to provide that type of service.

Earnings

(10) The Commission may allow the Corporation to earn, in addition to the return required by subsection (8), such amount as the Commission considers appropriate in respect of the operation of the Corporation.

45. In 2020, IWMC filed a rate application which was approved in part by the Commission (see Order WM20-01). As part of its 2020 rate application, IWMC submitted that it was appropriate to have a net asset balance that would meet or exceed 12 months of current expenditures. IWMC also submitted that a rate of return of seven percent (7%) to eight percent (8%) would be reasonable.
46. In support of its position, IWMC filed an excerpt from an opinion provided by its auditors. In the opinion, the auditors compared IWMC to a for-profit privately owned regulated public utility, such as Maritime Electric Company, Limited, and determined that it was entitled to

earn a reasonable return in accordance with the fair return standard. The auditors concluded that a reasonable return was in the range of 7% to 8%.

47. With respect, the Commission, does not agree with the opinion of the auditors for IWMC in this matter. IWMC is not a privately owned regulated public utility. The approval by the Commission and other utility boards in this country of rates of return in the vicinity of 7.00% to 9.35% per annum are based on a cost of capital model appropriately set for privately owned regulated utilities. The cost of capital model is based on determining, as best can be done by looking at the current financial market, what the privately owned utility could expect as a reasonable return on its assets based on the financial markets at the time of the setting of the rates. This rate of return is based on the cost of capital on the open financial markets. The use of such a cost of capital determination of what is a fair return is inappropriate when considering a crown corporation like IWMC.
48. The Commission retained MRSB Group to undertake an independent review of the 2020 rate application. MRSB did not agree with the submission that IWMC should be entitled to earn a rate of return in the range of 7% to 8%. Instead, MRSB concluded that accumulated net assets are different for a crown corporation (such as IWMC) than for a for-profit entity, such as a privately owned utility. MRSB concluded that reasonable net assets for a crown corporation should be based on estimated unfinanced future capital expenditures and other risk management assessments, such as future changes in insurance, staff benefits or future operating costs.
49. MRSB noted that most of IWMC's revenues are fixed user fees and significant declines are less than likely. If there are declines, it would be expected that expenditures would decrease proportionately. MRSB also noted that in the previous four years, there had been no significant changes in revenues or expenditures that would support possible fluctuations in operations.
50. In the present Application, IWMC was of the understanding that the Commission would not allow IWMC to retain a reasonable net asset balance in future. This is not the case, and no such decision was made by the Commission in Order WM20-01.
51. The Commission recognizes that it is reasonable and prudent for IWMC to have a net asset balance on hand to deal with unforeseen financial situations, such as those identified by MRSB.
52. The Commission does not, however, agree that IWMC should have excess revenue on hand sufficient to fund its capital expenditures, or that IWMC is entitled to earn an annual rate of return similar to a for-profit public utility.
53. At the time of the review undertaken by MRSB, IWMC had a net asset balance of more than \$2 million. To achieve this balance, the rates charged by IWMC must have been greater than the cost of providing service. Rates that are greater than the cost of service are not consistent with the cost of service model.
54. The rates approved by the Commission should allow IWMC to recover its cost of providing service, and ensure that IWMC has a reasonable net asset balance to cover unforeseen

financial situations, thereby minimizing financial risk. Rates that strike this balance are consistent with the cost of service model, and with sections 18.1(9) and (10) of the *Act*.

55. IWMC shall work with the Commission staff to determine what a reasonable net asset balance should be for IWMC. This is to be determined with input from IWMC at the same time as the cost allocation analysis, as required in paragraph 43.

DISPOSITION

56. The foregoing reasons follow Commission Order WM21-01, issued on February 24, 2021, in Commission Docket WM01305, a copy of which is attached to and forms part of this decision.

DATED at Charlottetown, Prince Edward Island, on Tuesday, June 1, 2021.

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) Douglas Clow

M. Douglas Clow, Vice-Chair

(sgd) Erin T. Mitchell

Erin T. Mitchell, Commissioner