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BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC. d/b/a WASTE
MANAGEMENT NORTHWEST, WASTE
MANAGEMENT OF SEATTLE AND WASTE
MANAGEMENT - SOUTH SOUND, AND
WASTE MANAGEMENT - SNO-KING,
CERTIFICATE NO. G-237,

Respondent.

Docket Nos. TG-120840, TG-120842 and
TG-120843

RESPONSE IN SUPPORT OF
PROPOSED ITEM 30 TARIFF
LANGUAGE BY WASTE
MANAGEMENT OF WASHINGTON,
INC.

1. Waste Management of Washington, Inc., d/b/a Waste Management Northwest, Waste Management of Seattle, Waste Management – South Sound, and Waste Management – Sno-King (WMW), submits the following Response in Support of Proposed Item 30 Tariff Language (Response) with further reasons for the Commission to adopt the Hauler Proposed Work Stoppage Text for Item 30 (the Hauler Proposal), attached as Exhibit 1 to WMW’s Statement in Support of Proposed Item 30 Tariff Language (Statement).

2. WMW is gratified that the various dockets and forums considering Item 30 Tariff Language in the context of actual and hypothetical work stoppage situations have proven so effective for narrowing and informing the issues. The parties – along with the Commissioners

1 themselves – are to be commended for having made the effort to acquire a good understanding
2 of the operational challenges and policy implications of various approaches. With the
3 understandings gained from frank communications at workshops and open meetings, as well as
4 written comments and presentations, the proposals before the Commission are sophisticated,
5 thoughtful, and share the same underlying principles of balancing the customers' inconvenience
6 with the practical and logistical challenges facing a company trying to resume garbage collection
7 during and immediately after a labor disruption.

8 3. As a result, at this point the Hauler Proposal and the Staff Proposal for Item 30
9 tariff language are not that far apart. There are many points and specific language on which the
10 parties agree, as well as principles on which the parties share common concepts but simply
11 propose different approaches. The parties agree that WMW has demonstrated that much of the
12 proposed tariff language is just, fair, reasonable and sufficient, and the Commission may adopt
13 that agreed-upon language without controversy. On the remaining issues of divergence, the
14 record reflects that the Hauler Proposal is the only means of adopting tariff language that is
15 reasonable and sufficient for the company, and yet still just and fair for the customers.

16 I. ANALYSIS AND RESPONSE

17 4. In comparing the Hauler Proposal and the Staff Proposal, the commonalities are
18 striking. See Exhibit 1, Track Changes Comparison of the Hauler Proposal on the Staff
19 Proposal. The parties are all in agreement that language in the Hauler Proposal by WMW
20 addressing the following points is just, fair, reasonable, and sufficient:

21 • The company must ensure compliance with standards regarding communications
22 between the parties, to the public and with local governments, as reflected in the Hauler Proposal
23 and the Staff Proposal at Sections 6.a through 6.e, and 6.i.;

1 • The company will not charge for extra waste set out if it does not exceed what
2 would be reasonably expected to accumulate due to missed service, as reflected in the Hauler
3 Proposal and the Staff Proposal at Section 6.g, and 7.a.;

4 • If a company does not collect all of a customer's accumulated solid waste on the
5 customer's next regularly-scheduled service date, it will be required to give a credit to the
6 customer, proportionate to the customer's monthly service charge, for all missed services and for
7 each subsequent missed service until normal service is restored. (Although, as discussed below,
8 we are not certain whether we agree about when the next scheduled pickup takes place.)

9 • The Commission should evaluate whether a company used all reasonable,
10 practicable means to resume regularly-scheduled service to all customers in response to a labor
11 disruption, by considering the company's resources, the circumstances of the labor disruption,
12 and any other relevant factors. (On this matter, as discussed below, the parties clearly disagree
13 about when the evaluation should take place, but not about the appropriateness of the standard.)

14 5. WMW appreciates the Staff's willingness to limit the focus of the remaining
15 controversy, and is pleased to join Staff's position regarding the tariff language that is commonly
16 proposed by all parties. When all is said and done, there are only a few outstanding issues on
17 which the parties vary, and in some cases WMW believes that the parties agree in principle, but
18 differ in the approach taken.

19 **A. WMW and Staff Only Disagree About Three Specific Points.**

20 6. The Hauler Proposal and the Staff Proposal most obviously diverge on three
21 specific subjects. The most significant is the question of whether the Commission should adopt
22 the Staff's generalized performance standard that cannot be measured until afterwards for
23 determining whether services have been resumed in accordance with tariff standards, or whether
24 it should adopt the Hauler Proposal tariff language that includes both a temporal deadline for
25 objectively measuring performance as well as a more generalized standard for the Commission
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1 to apply if that deadline is missed. The second, and closely related issue, is when credits must be
2 issued for missed services during and after a labor disruption. The third, perhaps less significant,
3 disagreement has to do with how the recycling commodity tracker should be handled in
4 calculating the amount of a credit that might be due if the second, make-up pickup is missed.

5 **1. The Need For A Time Period For Resuming Service.**

6 7. WMW feels strongly that the Commission should establish a measurable and
7 achievable time period for objectively determining whether a company's response to a labor
8 disruption has occurred promptly enough to satisfy the Commission, so that under certain
9 circumstances there can be no dispute about whether the company has satisfied its tariff
10 obligations. If the parties know how the haulers' recovery efforts can be deemed successful,
11 then extended administrative proceedings can be avoided and uncertainties about performance
12 possibly eliminated. The time period should strike a balance between minimizing inconvenience
13 to customers with the practical and logistical challenges faced by a company trying to collect
14 garbage in the midst of or immediate aftermath of a strike.

15 8. Staff prefers a standard that is more generalized and that is not susceptible to
16 bright-line compliance. While WMW agrees with the principles set forth by Staff, WMW
17 disagrees with how to best implement those principles. Although it may afford greater
18 flexibility, whether the company used all reasonable, practicable means to resume service
19 following a work stoppage cannot be known until after the event has ended, operations are fully
20 resumed, and missed collections are all made up. It leaves a company uncertain as to whether its
21 actions will be deemed to have satisfied the Commission until after disruption caused by a labor
22 strike is over. Lacking a specific deadline to manage around unfairly hamstring a hauler's
23 ability to control and affirmatively deal with a labor disruption while still meeting the
24 requirements of its tariff.

1 9. WMW has established factual evidence regarding the realities of the time needed
2 to marshal, orient, and train a sufficient number of substitute drivers to fully resume services, and
3 why the proper period of time is five business days, at a minimum. The record shows, based on
4 the company's actual experiences, that anything less would create a standard functionally
5 incapable of being met, and therefore meaningless. WMW believes it is an appropriate temporal
6 performance expectation to have stated in its tariff, so that it and the customers know what to
7 expect during and after a labor disruption.

8 10. Imposing a five-business-day deadline will enable WMW to manage its resources
9 most effectively during the strike and will avoid second-guessing and potentially arbitrary
10 decisions made after-the-fact. A clear understanding of expectations will allow WMW to deploy
11 resources effectively, prioritize critical accounts, and communicate consistently with its
12 residential, commercial, and municipal customers. In contrast, it will be difficult to make
13 operational decisions if WMW does not know whether the Commission will later decide that
14 WMW should have resumed service after two days, five days, ten days, or longer.

15 11. Allowing for a five-day recovery period is also sensible because it synchronizes
16 with most residential and commercial customers who have weekly collection service.
17 Importantly, is also aligns WUTC-regulated operations with city contract requirements. The
18 five-business-day standard is easy to communicate to customers, and straightforward for them to
19 understand. Both WUTC and contract customers are generally aware that when solid waste is
20 not picked up during one week, it will be collected on their next regularly scheduled collection
21 day, along with extras that have accumulated. Customers are used to operating under this cycle
22 of services when collection is missed due to weather or road conditions. It is not a stretch for
23 them to appreciate that a labor disruption creates similarly-unpredictable conditions, and to
24 expect that all missed collections will be handled in the same manner, with services resumed by
25 no later than the next collection cycle. Customers will be treated consistently and fairly under
26 the Hauler Proposal.

1 12. However, the performance standard to measure a company's success in resuming
2 service following a labor disruption should also allow the Commission to exercise its discretion
3 if the objective temporal deadline is not met, and thus WMW suggests a two-part means of
4 measuring whether a company has complied with its tariff. The Hauler Proposal and the Staff
5 Proposal offer identical language for what that discretionary standard should be. The difference
6 is in the timing for its applicability. The Hauler Proposal offers it as a means of determining
7 whether the inability to meet the objective five-business-day standard was reasonable or not.
8 Staff believes it is the only standard that is needed.

9 **2. WMW and Staff Agree In Principle Regarding When Credits Should**
10 **Be Refunded.**

11 13. Although there are nuances in the language and approaches taken, both Staff and
12 WMW agree on the principle that the company must issue a credit for all missed services if it
13 does not collect accumulated solid waste on the customer's next regularly-scheduled service
14 date. See Hauler Proposal Section and Staff Proposal at Section 6.h. However, there are slight
15 differences between the proposals.

16 14. Firstly, the Hauler Proposal keys the "next regularly-scheduled service date" off
17 of the time period by which service must be resumed. The Hauler Proposal would result in
18 weekly and every-other-weekly customers being missed only once, which maintains the rhythm
19 of solid waste collection services for residential services. Thus, for the majority of customers,
20 there is no functional difference between the Hauler Proposal and the Staff Proposal. It matters
21 not for weekly and every-other-weekly customers whether service has been resumed right away
22 (which might happen if a strike lasted a few hours, for example) or by the five-business-day
23 deadline (which reasonably could happen if a strike lasts a week, as it did in 2012). Only in an
24 extreme situation that causes a company to be unable to resume service within five business days
25 would the weekly cycle be disrupted, and in that case the Hauler Proposal gives the Commission
26 discretion to determine whether the company used all reasonable, practicable means.

1 15. Because of the specificity of the approach taken, however, the Hauler Proposal
2 differs from the Staff Proposal in that it allows for the company to handle commercial customers
3 with more frequent services. For businesses with daily collection, the Staff Proposal would
4 require credits if the pickup were missed on the day following commencement of the strike (i.e.,
5 Day 1, in accordance with the examples provided in WMW's initial Statement). WMW has
6 established an abundance of evidence demonstrating why that is a standard that cannot be
7 achieved. By measuring the next regularly scheduled service date where accumulated solid
8 waste must be collected as the first pickup after the five-day period has expired, the company has
9 the ability to transition commercial customers back into regular operations. WMW believes it is
10 more just and fair, and certainly more reasonable.

11 16. For customers with collection service more frequent than weekly, Staff's Proposal
12 would require the company to issue credits for service misses within the first few days of a
13 strike. This requirement would be inconsistent with the treatment of commercial customers in
14 cities with week-long grace periods and with both city and WUTC residential customers with
15 weekly collection. Rather than deploy resources to maximize collections and prioritize critical
16 accounts, the company would be forced to prioritize commercial customers in WUTC territories.
17 This structure would create an unjust disincentive to resume service to residential customers and
18 to contract customers, and to treat commercial customers differently.

19 17. WMW cannot emphasize enough to the Commission that its efforts to collect
20 solid waste that has accumulated during a labor disruption is driven by its objective of serving its
21 customers as best as it can. The company is proud of its recovery efforts last year, and believes
22 its genuine desire to collect as much solid waste as quickly as possible cannot be disputed. Its
23 "Super Saturday" efforts demonstrate its view that rigid adherence to regular schedules does not
24 drive its recovery actions. WMW is not suggesting that commercial customers with daily
25 services will be affirmatively ignored if the Commission were to adopt the approach taken in the
26 Hauler Proposal. Indeed, as the Commission is aware, many of the critical customers for whom

1 services were prioritized in the 2012 strike were commercial. Rather, WMW is simply urging
2 the Commission to incorporate the more explicit approach taken in the Hauler Proposal into the
3 tariff language it endorses regarding when credits are due.

4 18. On the issuance of credits, the other difference between the two proposals is that
5 the Hauler Proposal specifically states that the company is not obligated to extend credits to
6 missed customers who do not receive service if the company collects the customers'
7 accumulated solid waste at the next regularly scheduled pickup, in compliance with the tariff
8 conditions. This point can be inferred from the Staff Proposal, but WMW urges the Commission
9 to eliminate any potential ambiguities and adopt the statement presented by the Hauler Proposal
10 in the first sentence of Section 6.h.

11 **3. Methodology for Calculation of Credits.**

12 19. The parties are in agreement that credits are appropriate under certain conditions,
13 and seem to agree about when those credits would be due. Further, WMW and Staff both
14 believe that credits should be established in an amount necessary to refund customers for solid
15 waste collection services paid for but not received, in an amount that is proportionate to the
16 service-related component of the tariff rate. Customers are repaid for the actual services they did
17 not receive, and the hauler is not harmed by being forced to incur essentially double the cost for
18 the component of the rate that is related to disposal or processing. Both the Hauler Proposal and
19 the Staff Proposal propose that credits be adjusted so that only the service-related component is
20 credited to the customer.

21 20. The only point of remaining disagreement on the method for calculating credits is
22 with regard to the recycling commodity tracker. WMW and Staff both believe the missed-
23 collection credit to the customer should be calculated based on the net cost for the recycling
24 collection services, but disagree about whether there should or should not be an adjustment for
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1 the recycling commodity tracker. There is no disagreement that processing costs should be
2 backed out.

3 21. However, the recycling commodity tracker must be factored in to determine the
4 net cost of the missed service to the customer. The customer should get a credit only for the
5 missed service, not for the value of the commodity not collected. For example, if a customer
6 were billed \$5.00 per pick-up for every-other-week recycling service, yet receives a \$2.00
7 commodity rebate, the customer's net amount due is \$3.00 – *i.e.*, his/her actual out-of-pocket
8 costs. It is this number – \$3.00 – that should be the starting point for calculating the amount of
9 the credit. From this amount, the credit would be further calculated to determine the collection
10 costs paid-for-but-not-received by deducting the processing costs to determine the service related
11 component. To further the example, if processing costs were \$0.50 per container, then our
12 hypothetical recycling customer would be refunded a missed-pickup credit of \$2.50.

13 22. WMW strongly disagrees with Staff's view that the commodity tracker is
14 independent from the service-related credit. To the customer who writes one check for its
15 collection services, it is not. If the customer normally pays a net \$3.00 for recycling collection
16 services, including processing charges; it would be an odd windfall for the customer to receive a
17 \$5.00 credit. The missed-pickup credit should reflect the net service-related cost which
18 necessarily must account for the amount of the commodity tracker.

19 23. WMW disagrees with Staff's suggestion that recycling customers are due the
20 commodity tracker for missed collections. It is a deferred accounting amount that is established
21 by truing up values received and costs incurred to market recyclable materials over based on
22 twelve-month increments. It has little if any correlation to the value of the recyclable materials
23 the company actually collects from a customer.

24 24. Further, the deferred accounting calculation has at times resulted in a debit to the
25 customer. Under the Hauler Proposal, customers would not be required to have negative
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1 commodity values added to the amounts due for collection service. WM does not endorse that
2 outcome, and Staff would probably not support that result, either.

3 II. CONCLUSION

4 25. WMW has demonstrated that the Item 30 tariff language in the Hauler Proposal is
5 just, fair, reasonable and sufficient, and urges the Commission to adopt that language. Much of
6 the language is commonly supported, and the result of thoughtful and genuine efforts by all the
7 parties. On the remaining issues of divergence, WMW has established evidence to show that the
8 tariff language that is reasonable and sufficient for the company, and just and fair for the
9 customers.

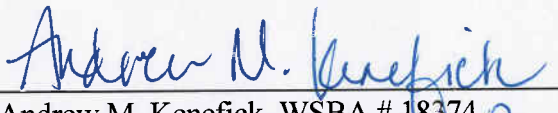

10 26. WMW has established that tariff language allowing for a service resumption
11 deadline of five business days after the labor disruption commences, is just, fair, reasonable, and
12 sufficient. RCW 81.28.010. A standard that lacks any defined temporal standard is not
13 reasonable or sufficient because it leaves a company without any certainty of how to manage
14 resources during a chaotic labor disruption. Knowing that it is vulnerable to an after-the-fact
15 discretionary determination that the company failed to use all reasonable and practical means to
16 resume service will create significant uncertainty for the company as it tries to deploy its
17 resources most effectively and efficiently during and after a labor disruption.

18 27. The Hauler Proposal sets forth a reasonable, practical, and balanced approach. It
19 is just and fair to customers because they receive the outcome of two pickups at the price of two
20 collections, are only temporarily and mildly disrupted by waiting for the next service date, and
21 are afforded consistent expectations for how missed collections under calamities will be handled.
22 It is fair to the haulers because in that it establishes an aggressive temporal deadline but does not
23 set impossible or punitive standards for companies who are using all reasonable, practicable
24 means to restore service. It is reasonable in that it balances the need for an achievable and
25 measurable standard with the goal of minimizing customer inconvenience. And the proposal is
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1 sufficient in that it does not entirely insulate a regulated collection company from having the
2 Commission exercise its discretion if the deadline is not met.

3 DATED this 30th day of August, 2013.

4
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21 Attorneys for Waste Management of
22 Washington, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this day served this document upon all parties of record in this
3 proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

4 Washington Utilities and Transportation Commission 5 1300 S. Evergreen Park Dr. SW 6 PO Box 47250 7 Olympia, WA 98504-7250 8 360-664-1160 9 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
10 Sally Brown 11 Senior Assistant Attorney General 12 Utilities and Transportation Division 13 1400 S. Evergreen Park Dr. SW 14 P.O. Box 40128 15 Olympia, WA 98504-0218 16 sbrown@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
17 Michael A. Fassio 18 Office of the Attorney General 19 Utilities and Transportation Division 20 1400 S. Evergreen Park Dr. SW 21 P.O. Box 40128 22 Olympia, WA 98504-0218 23 mfassio@utc.wa.gov 24 <i>Attorney for Washington Utilities and Transportation 25 Commission Staff</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
26 David W. Wiley Williams, Kastner & Gibbs PLLC 601 Union Street, Ste. 4100 Seattle, WA 98101 dwiley@williamskastner.com <i>Attorney for Rabanco</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
James K. Sells PMB 22 3110 Judson Street Gig Harbor, WA 98335 jamesells@comcast.net <i>Attorney for Washington Refuse and Recycling Association</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

1 DATED at Seattle, Washington, this 30th day of August, 2013.

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4 _____
5 Katie Angelikis

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EXHIBIT 1

STAFF PROPOSED

Tariff No. _____

_____ Revised Page No. _____

Company Name/Permit Number:

Registered Trade Name:

Item 30 – Limitations of Service

{Paragraphs 1-5 omitted}

6. Missed service due to a labor disruption, which causes work stoppages that prevent or limit a company from collecting solid waste. A company must:

- a. Immediately inform the commission’s regulatory services and consumer protection staff when a labor disruption is imminent by email at: servicedisruption@utc.wa.gov. This email must be used for all communications regarding the labor disruption.
- b. Provide daily email reports to the commission regarding the company’s progress toward meeting full service requirements.
- c. Develop and implement a customer outreach plan regarding the labor disruption, what to expect, and how to contact the commission.
- d. Provide the commission’s regulatory services and consumer protection staff with a copy of the customer outreach plan by email.
- e. Provide an email that includes a schedule and plan for communicating with local governments and the media.
- f. Use all reasonable, practicable means to resume regularly-scheduled service to all customers within five business days, not including the first day of the labor disruption. To evaluate a company’s response to a labor disruption, the commission may consider the company’s resources, the circumstances of the labor disruption and any other relevant factors.
- g. ~~Collect all accumulated solid waste at the customer’s next regularly-scheduled service date after service resumes as set forth in subsection (f) above. The company will not charge for extra waste set out in addition to customers’ normal receptacle(s), if the amount of extra waste does not exceed the amount that reasonably would be expected to accumulate due to missed service.~~
- h. ~~The company is not obligated to extend credit to missed customers who do not receive service if the company collects the customers’ accumulated solid waste as required in subsection (g) above. Credit:~~
 If the company does not collect all of a customer’s accumulated solid waste as required in subsection (g) above on the customer’s next regularly-scheduled service date, the company is required to give a credit to the customer, proportionate to the customer’s monthly service charge, for all missed services and for each subsequent missed service until normal service is restored.
- h.i. When the labor disruption has been settled, notify the commission’s regulatory services and consumer protection staff by email, and indicate when normal service is anticipated to resume.

Issued by: _____

Issue date: _____

Effective date: _____

(For Official Use Only)

Docket No. TG- _____

Date: _____

By: _____

Company Name/Permit Number:

Registered Trade Name:

7. Definitions:

- a. "Reasonably would be expected to accumulate due to missed service" means, at a minimum, the amount of solid waste represented by the number of missed service(s) multiplied by the customer's subscribed service level. For example, if the company misses two services for a customer who subscribes to one 96-gallon toter, the amount would be the equivalent of 192 gallons (2 services x 96 gallons subscription per service).
- b. "Next scheduled service date" – this date is defined by each customer's subscription service.
 - i. Example 1: A residential customer subscribes to weekly service that the company schedules for every Wednesday. If the company does not provide service on Wednesday, November 14, the next scheduled service date would be Wednesday, November 21.
 - ii. Example 2: A commercial customer subscribes to daily service. If the company does not provide service on Wednesday, November 14, the next scheduled service date would be Thursday, November 15.
 - iii. Example 3: A residential customer subscribes to every-other-week recycling service scheduled for Wednesday, November 14. If the company does not provide service on Wednesday, November 14, the next scheduled service date would be Wednesday, November 28.
- c. Example of how to calculate a credit: Monthly residential garbage rates for weekly service rates are set based on 4.33 services per month. If the company misses one service, the credit is calculated as: .231 (1 missed service divided by 4.33 services per month) multiplied by the service-related component of the monthly tariff rate (excluding disposal and processing costs, and offsetting any recyclable commodity adjustments); provided that the credit for any specific month does not exceed the full rate per month.

The "service related component of the tariff rate" is calculated as follows:

- Garbage: Garbage tariff rate minus disposal costs. The published garbage tariff rates include costs for disposal.
- Yard Waste: Yard Waste tariff rate minus processing and disposal costs. The yard waste tariff rates include costs for processing.

Issued by:

Issue date:

Effective date:

(For Official Use Only)

Docket No. TG- _____ Date: _____ By: _____

STAFF PROPOSED

Tariff No. _____

_____ Revised Page No. _____

Company Name/Permit Number:

Registered Trade Name:

- Recycling: Recycling tariff rate minus processing costs. The recycling tariff rate includes costs for processing recyclable materials. The recycling commodity adjustment (credit or debit) has no bearing on this calculation.

Issued by:

Issue date:

Effective date:

(For Official Use Only)

Docket No. TG- _____ Date: _____ By: _____