

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE CONTROL, INC.,

Respondent.

DOCKET TG-131794

COMMISSION STAFF'S MOTION TO  
DISMISS TARIFF FILING

**I. STAFF MOTION TO DISMISS**

1           The Commission staff (staff) files this motion to dismiss under WAC 480-07-380. This motion is based on the prefiled direct case of Waste Control, Inc. (Waste Control or the company).

**II. ARGUMENT**

**A. Waste Control's Pre-Filed Direct Case**

2           On February 18, 2014, Waste Control prefiled its direct case in support of its tariff filing in this docket. The company's case includes 25 pages of accounting testimony.<sup>1</sup> The direct testimony addresses just eight accounting issues that result in six adjustments in the pro forma results of operations and one adjustment in the Lurtio-Gallagher revenue requirement calculation.<sup>2</sup> That pro forma results of operations (Ex. No. JD-3A), however, consists of allocations between regulated and non-regulated operations,<sup>3</sup> 18 additional restating adjustments, and five pro forma adjustments, most of which are not addressed in the company's testimony.

---

<sup>1</sup> Ex. No. JD-1T.

<sup>2</sup> Id. at 4:15 through 5:21; Ex. JD-3A.

<sup>3</sup> Ex. JD-3A, Restating Adjustment 8.

3            Apart from addressing these six adjustments in the pro forma results of operations  
and one adjustment in the Lurito-Gallagher revenue requirement calculation, the company's  
testimony regarding Exhibit No. JD-3A consists of just 21 lines of general testimony.<sup>4</sup>

4            In short, the company failed to support any of the adjustments in its case other than  
six adjustments in the pro forma results of operations and one adjustment in the Lurito-  
Gallagher revenue requirement calculation. This strategy is intentional. As the company's  
accounting witness summarizes in her testimony, the company's case is an attempt "to  
depict, reconstruct and articulate all of the accounting issues in dispute of which we were  
aware when the Company and Staff reached impasse...."<sup>5</sup>

5            Apparently, the company erroneously assumed first, that staff will not or cannot  
oppose any adjustment staff has not opposed earlier in its review of this filing, and second,  
that the Commission is bound to accept each adjustment staff does not oppose.

#### **B. Burden of Proof**

6            Public service companies such as Waste Control bear the burden of proving that their  
proposed rate increases are just and reasonable in general rate case proceedings. RCW  
81.04.130, WAC 480-07-540. The burden of proof includes the burden of going forward  
with evidence. WAC 480-07-540. The Commission considers the company's prefiled  
evidence to be its full direct case in support of its rate filing for purposes of deciding any  
prehearing motion to dismiss. Id.

#### **C. Waste Control's Prefiled Evidence Fails to Satisfy its Burden of Proof**

7            Because the company's prefiled direct case makes no attempt to address each of the  
adjustments the company is proposing in this case, Waste Control has failed to make a prima

---

<sup>4</sup> Ex. JD-1T at 6:4-23.

<sup>5</sup> Id. at 25:6-8.

facie case for its requested rate increase. Consequently, it is appropriate for the Commission to dismiss the tariff filing under WAC 480-07-380. As noted, the company elected to provide testimony on only those accounting issues which it believes the staff will disagree. The company elected to forego any defense whatsoever for the balance of the company's accounting adjustments underlying its request for general rate relief.

8           Moreover, even if Waste Control is correct that staff will agree with the company on all adjustments other than those the company now believes staff will contest, it does not mean the Commission is bound to accept those "uncontested" adjustments without supporting evidence. First, the Commission may not agree on the ratemaking treatment for any of these items. Second, even if the Commission were to agree, the company's direct case provides no basis for the Commission to do so.

9           Under the Administrative Procedure Act, the Commission's findings of fact in this case must be based exclusively on the evidence of record and on matters officially noticed in the proceeding.<sup>6</sup> Based on the company's direct case, the Commission is not in a position to make legally defensible findings of fact on the accounting issues for which the company has supplied no support.

10           In *Washington Utilities and Transportation Commission v. Puget Sound Energy, Inc.*,<sup>7</sup> the Commission granted a motion to dismiss two consolidated dockets based on the legal insufficiency of the pre-filed evidence. The Commission stated:

In reviewing a motion under WAC 480-09-246(1) [the predecessor to WAC 480-07-380], the Commission uses the prefiled evidence to define the pleadings originating the proceeding.... The situation is analogous to CR 50, which allows dismissal of a proceeding at the conclusion of the plaintiff's presentation if, taking the evidence in the light most favorable to the respondent, the evidence is insufficient to support the complaint. A company seeking a rate increase has the

---

<sup>6</sup> RCW 34.05.461(4).

<sup>7</sup> Docket Nos. UE-011163 and UE-011170, Sixth Supplemental Order at 5 (October 2001).

burden of coming forward with sufficient evidence to support its request  
(emphasis added.)<sup>8</sup>

11 As noted, there is nothing in the company's prefiled case explaining most of the  
accounting adjustments in Ex. No. JD-3A. As the Commission observed: "Other parties  
rely on the prefiled evidence as the basis for preparing their cross examination of witnesses  
and in formulating their responsive evidence."<sup>9</sup> It is not incumbent on staff, or any other  
party, to fill in the gaps in the company's direct case.

12 In essence, Waste Control elected to limit its direct case primarily to an anticipatory  
rebuttal of what the company thinks staff's position will be on eight accounting issues.<sup>10</sup>  
That is no substitute for presenting a direct case sufficient to sustain the company's burden  
of proof.

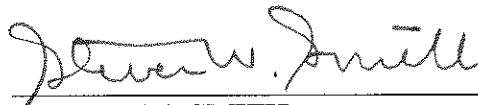
**D. Relief Requested**

13 Like Puget's filing in Docket UE-011163, Waste Control's pre-filed direct case fails  
to support the requested rate increase. Therefore, Commission staff requests that the  
Commission enter a summary order dismissing the rate filing without prejudice.

Dated this 5th day of March, 2014.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General



STEVEN W. SMITH  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff

---

<sup>8</sup> Id. at 5.

<sup>9</sup> Id. at 5.

<sup>10</sup> Ex. JD-1T at 4:15 through 5:21.