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7 BEFORE THE WASHINGTON STATE
8 UTILITIES AND TRANSPORTATION COMMISSION

9 WASHINGTON UTILITIES AND
10 TRANSPORTATION COMMISSION

Docket No. TG-131794

11 Complainant,

12 vs.

WASHINGTON REFUSE AND
RECYCLING ASSOCIATION'S
RESPONSE TO MOTION
TO DISMISS

13 WASTE CONTROL, INC. (G-101),

14 Respondents.

15 **COMES NOW** the Washington Refuse and Recycling Association (WRRRA)
16 and respectfully submits the following:

17 **I. OVERVIEW:** As always, the primary parties have, or will, cover the
18 applicable laws and regulations here, and WRRRA need not repeat or evaluate
19 citations which will be well covered by others. However, we cannot help but
20 wonder what the purpose of this Staff motion may be, and what the
21 consequences could be if it is granted. Motion practice, both in Superior Court
22 and administrative law, should have a realistic objective which furthers the
23 administration of justice while zealously, but fairly, attempts to advance the
24 moving party's theory of the case. To us, this motion seems to do neither; rather,
25 at best, it could simplify a record that is already complete and, at worst, it is
26 nothing more or less than a "gotcha" that serves neither a legal nor a factual
purpose. While WRRRA has a great deal of respect for Commission staff,
particularly the dedicated and highly competent Assistant AG's, this motion

Intervenor Washington Refuse &
Recycling Association's Response to
Motion to Dismiss - 1

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1 simply is out of character for those involved and, for that matter, the Commission
2 itself. Simply put, it makes no sense, legally or otherwise.

3 **II. PREFILED TESTIMONY, ORAL AGREEMENTS AND EXHIBITS:**

4 As we expect Waste Control to argue, this rate filing contained not an
5 insignificant number of issues. Discussions with staff, including a conference
6 call with the then assigned ALJ, attempted to address certain procedural issues,
7 testimony and exhibits to be subject to hearing. The company relied upon these
8 conversations in preparing and submitting its prefiled testimony. Now staff
9 seems to be saying that there must be prefiled testimony on all issues, even those
10 which are not contested (at least the company was given the impression that they
11 were not contested).

12 In any case, the information which staff asserts has not been provided is
13 found, in Exhibit No. JD-2. The exhibit was prepared by the same CPA who
14 submitted prefiled testimony, and who certainly can be cross-examined regarding
15 the exhibit as well as her prefiled testimony; and, of course, have the chance to
16 provide rebuttal testimony. The exhibit will be part of the record and the mere
17 fact that it is not accompanied by a few lines of prefiled testimony does not
18 change that. It can and will be considered by the ALJ, just like any other hearing
19 document. If deemed necessary for some reason, it seems obvious that Waste
20 Control would provide appropriate identifying testimony which would (should)
21 satisfy any lingering doubts staff may have as to authenticity.

22 **III. COST:** The undersigned certainly cannot be the only one who sees
23 this motion, if granted, as a monumental waste of everyone's time and resources.
24 If, as opposed to the potential of additional testimony simply being filed in
25 support of Exhibit JD-2, the motion is granted, it is clear that the company will
26 refile the case, probably the very next day. Then we start the whole process over
again, meaning the company continues its loss of revenue, and payment of
attorney and accountant fees to travel the same ground which has already been
done. There is absolutely no legal, rational nor logical reason to do that.

Perhaps everyone involved here should take a deep breath and consider
the ratepayer. The company is losing money at its present rates, and if it can
prove that to the Commission, there will be an adjustment. If this whole process

1 starts over because of this motion, those rates may well increase if justified by
2 proof presented. Rates are to be "compensatory" and that is the whole purpose
3 behind all this. Perhaps most important of all, they are also to be "just." The
4 consumers deserve to have this matter resolved as quickly and efficiently as
5 possible, which does not include doing the same thing twice because of an
6 apparent misunderstanding of what was, or was not, agreed upon. There is no
7 "turf" to be protected here, only the best interests of the ratepayer, the financial
8 stability of the company, and efficient use of the Commission's time and
9 resources.

8 **IV. CONCLUSION:** One cannot help but wonder if all this would be
9 necessary if only someone from staff or the AG's office had simply bothered to
10 pick up the phone and called the company representative and said something
11 like, "We need Exhibit No. JD-2 to be reconfigured as prefiled testimony." This
12 could have been done in a day, or less, and the case would have proceeded to
13 mediation (already set for April 3) and, if necessary, to hearing on May 13. In
14 fact, this issue could well be dealt with at mediation, if not resolved beforehand.

14 WRRRA obviously is not a neutral observer here and does not claim to be.
15 We do, however, respect efforts of both the staff and a company in their desire to
16 reach a consensus as to what is best for the ratepayer in this regulated
17 environment. And we certainly respect and adhere to rulings put forth by an ALJ
18 when consensus/compromise cannot, in good faith, be reached. We have found,
19 over the years, that when simple common sense is applied to the law and
20 regulations, the result is usually satisfactory to the parties and in the best
21 interests of the ratepayer. There is an obvious need for that here.

20 DATED this 10th day of March, 2014.

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23 JAMES K. SELLS
24 WSBA No. 6040
25 Attorney for Washington Refuse and
26 Recycling Association

CERTIFICATE OF SERVICE

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

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360.664.1160 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
Marguerite E. Friedlander <u>mfriedla@utc.wa.gov</u>	<input checked="" type="checkbox"/> Via Email
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Waste Control, Inc. PO Box 148 Kelso, WA 98626	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Email
Steven W. Smith Office of the Attorney General 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0218 360.664.1225 <u>ssmith@utc.wa.gov</u>	<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

DATED at Silverdale, Washington, this 10th day of March 2014.


Cheryl L. Sinclair