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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 & WASTE
MANAGEMENT - SOUTH SOUND, AND
WASTE MANAGEMENT SNO-KING, G-237,

Respondent.

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

RESPONSE TO COMMISSION
STAFF'S OBJECTION TO WASTE
MANAGEMENT'S RESPONSE TO
BENCH REQUEST NO. 5 AND
MOTION TO STRIKE

If this were a typical rate case, Respondent Waste Management of Washington, Inc. ("WMW") would understand Commission Staff's Objection to Waste Management's Response to Bench Request No. 5 and Motion to Strike. But this not a typical rate case. Tariff rates are not at issue. Indeed, even the tariff filing that is docketed in this proceeding is no longer in dispute, having gone into effect by operation of law.

Instead, the Parties are seeking a decision from the Commission as to a revision to Tariff Item 30 relating to service requirements during and after strikes, work stoppages, and other labor disruptions. Finding a fair and reasonable resolution to this matter is important not only because

1 it will affect the language of the specific tariffs at issue, but also because it will likely serve as a
2 template for other tariffs on file for WMW and the Rabanco respondents, as well as for other
3 haulers throughout the State of Washington. This proceeding is more like a rulemaking,
4 underscored by the fact that the record from workshops, Open Meeting transcripts, and written
5 comments submitted in a related generic tariff proceeding has been incorporated by reference
6 into this proceeding. Order 02, Prehearing Conference Order (July 22, 2013) (taking official
7 notice of the record in Docket TG-010374).

8 Indeed, as Ms. Ingram of the Commission Staff recounted in her Declaration, the
9 Commission in the officially noted Docket TG-010374 had been struggling with finding suitable
10 consensus language to address strike-related service disruptions for the entire solid waste
11 industry.¹ That proceeding, in which the Commission wrestled with generic tariff language
12 dealing with work stoppages, effectively ended on July 26, 2013 when the Commission adopted
13 language at the Open Meeting to address service disruptions related to weather and road
14 conditions, but did not address strikes and labor disruptions.² Instead, the Commission asked the
15 Parties to this docket to submit proposed language and briefs supporting the proposed language.

16 Thus, this docket is more akin to a declaratory adjudication or a rulemaking that will
17 decide more than just the tariffs at issue. WMW therefore believes the Commission's full and
18 accurate understanding of WMW's position is important to a decision that will potentially have
19 broad application to Washington's regulated solid waste haulers.

20 ARGUMENT

21 So long as the Commission understands the factual data WMW submitted and the
22 clarification provided in WMW's Response to Bench Request No. 5 ("Response"), WMW does
23 not oppose Staff's motion to strike those parts of WMW's Response that Staff argues are "re-
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25 ¹ Decl. of Penny Ingram at ¶¶ 15-23 (Aug. 16, 2013).

26 ² *Id.* at ¶ 23.

1 briefing” or “re-argument.”³ Given the extensive record of this proceeding, at this point, it is
2 hard to conceive of any arguments that have not already been made. WMW does not believe it
3 added any new arguments in its Response and does not object to the Presiding Officer striking
4 them or simply reading them for what they are – a brief restatement of WMW’s position. WMW
5 does, however, oppose Staff’s objection and motion to strike WMW’s clarification of certain
6 language in its Response Brief, which is permitted by rule and consistent with the context of this
7 proceeding. WMW also strongly opposes Staff’s request for further briefing; WMW would
8 rather have Staff’s Motion granted entirely than prolong this proceeding.

9 WMW’s Response did five things. **First**, WMW responded to the Commission’s specific
10 request as to the number of “daily customers.”⁴ To that, Staff does not object.

11 **Second**, WMW provided additional information as to the types and number of customers
12 receiving service more frequently than weekly.⁵ WMW provided this information because
13 Bench Request No. 5 specifically quoted language from WMW’s Response Brief that referred to
14 “customers with collection service more frequently than weekly.” So as to avoid another round
15 of bench requests, WMW provide this additional information because it appeared that the
16 Commission was mainly interested in the number of customers with service more frequently than
17 weekly. Staff does not object to the table presenting this information in WMW’s response.

18 **Third**, WMW provided a clarification of its prior briefing, explaining:

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20 The reference to “commercial customers with daily service” should
21 have been more carefully stated as “commercial customers with
22 service more frequent than weekly.”⁶

23 ³ Specifically, WMW does not object to the Commission striking the following: (a) the sentences beginning on page
24 2, line 25 through the end of the sentence ending on page 3, line 6; (b) the sentences beginning on page 3 line 8
through the end of the paragraph; and (c) the two paragraphs beginning on page 4, line 8 through line 24.

25 ⁴ Response at 2.

26 ⁵ *Id.* at 2.

⁶ Response at 3:6-8.

1 WMW believes that this clarification is appropriate given the potential confusion that the
2 original discussion may have created. Moreover, WMW also believes that this clarification is
3 necessary and would be allowed as a correction or amendment pursuant to WAC 480-07-395(3)-
4 (5).⁷ If WMW had limited its response to the precise, literal language of the Bench Request, the
5 answer would have been “1 roll-off customer”, which would have only resulted in confusion and
6 possibly another round of bench requests asking about the number of commercial customers with
7 service more frequent than weekly. In providing this correction, WMW reiterated the discussion
8 in its prior briefing to provide contextual significance. So long as the Commission is now aware
9 of the clarification quoted above, WMW has no objection to the Commission striking the
10 sentences beginning on page 2, line 25 and ending on page 3, line 6, or striking the sentences
11 beginning on page 3, line 8 and ending on line 11.⁸

12 **Fourth**, WMW explained why it could not quantify the number of daily customers that
13 would be prioritized as “critical accounts” during a temporary service disruption.⁹ Again, Staff
14 does not seek to strike this explanation. It is consistent with topics explored at stakeholder
15 meetings in Docket No. TG-010374, but worth explaining for the Presiding Officer who did not
16 attend those workshops.

17 **Fifth**, WMW re-iterated its prior discussion supporting the Haulers’ Proposal.¹⁰ Staff
18 appropriately argues that this discussion repeats points made in WMW’s earlier briefing. WMW
19 does not object to the Commission striking these two paragraphs.
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23 ⁷ See also WAC 480-07-405(8) (requiring supplementation of responses to bench requests to correct a response that
was incorrect or incomplete).

24 ⁸ Staff also seeks to strike the sentences starting on page 2, line 19 and ending on line 25. As this language is merely
introductory to the clarification, WMW believes it is appropriate, but takes no position as to whether or not to strike
it.

25 ⁹ WMW’s Response at 3:12 to 4:7.

26 ¹⁰ WMW’s Response at 4:8 to 4:24.

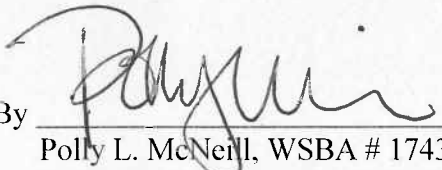
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CONCLUSION

In responding to Bench Request No. 5, WMW sought to provide the information requested, explain why other information was not available, and clarify prior briefing that appeared to create some confusion. WMW did not make new arguments: given the extensive nature of the record in this proceeding, it is difficult to think of anything that has not already been said. While WMW repeated some prior arguments, it did so to put its clarification into context for the convenience of the Commission. It was WMW's goal to provide a thorough response that would help to expedite a final decision in this matter and avoid the need for more bench requests or further clarifications. It was not WMW's intent to prolong this matter. WMW, therefore, does not object to Staff's motion to strike those parts of WMW's Response that Staff contends are re-argument, *see infra*. note 1, so long as the Commission does not strike the sentence on page 3 (lines 6-8) clarifying the prior reference to "commercial customers with daily service." WMW does, however, object to Staff's suggestion that more briefing is necessary – whether by it or any other party.

DATED this 12th day of February, 2014.

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By 

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Northwest, Waste Management of Seattle,
& Waste Management - South Sound, and
Waste Management Sno-King

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 480-07-405(7)(d).

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
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1 DATED at Seattle, Washington, this 12th day of February, 2014.
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6 Katie Angelikis, Legal Assistant
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