BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

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

Indeed, as Ms. Ingram of the Commission Staff recounted in her Declaration, the Commission in the officially noted Docket TG-010374 had been struggling with finding suitable consensus language to address strike-related service disruptions for the entire solid waste industry.[[1]](#footnote-2) That proceeding, in which the Commission wrestled with generic tariff language dealing with work stoppages, effectively ended on July 26, 2013 when the Commission adopted language at the Open Meeting to address service disruptions related to weather and road conditions, but did not address strikes and labor disruptions.[[2]](#footnote-3) Instead, the Commission asked the Parties to this docket to submit proposed language and briefs supporting the proposed language.

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

**ARGUMENT**

So long as the Commission understands the factual data WMW submitted and the clarification provided in WMW’s Response to Bench Request No. 5 (“Response”), WMW does not oppose Staff’s motion to strike those parts of WMW’s Response that Staff argues are “re-briefing” or “re-argument.”[[3]](#footnote-4) Given the extensive record of this proceeding, at this point, it is hard to conceive of any arguments that have not already been made. WMW does not believe it added any new arguments in its Response and does not object to the Presiding Officer striking them or simply reading them for what they are – a brief restatement of WMW’s position. WMW does, however, oppose Staff’s objection and motion to strike WMW’s clarification of certain language in its Response Brief, which is permitted by rule and consistent with the context of this proceeding. WMW also strongly opposes Staff’s request for further briefing; WMW would rather have Staff’s Motion granted entirely than prolong this proceeding.

WMW’s Response did five things. ***First***, WMW responded to the Commission’s specific request as to the number of “daily customers.”[[4]](#footnote-5) To that, Staff does not object.

***Second***, WMW provided additional information as to the types and number of customers receiving service more frequently than weekly.[[5]](#footnote-6) WMW provided this information because Bench Request No. 5 specifically quoted language from WMW’s Response Brief that referred to “customers with collection service more frequently than weekly.” So as to avoid another round of bench requests, WMW provide this additional information because it appeared that the Commission was mainly interested in the number of customers with service more frequently than weekly. Staff does not object to the table presenting this information in WMW’s response.

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

The reference to “commercial customers with daily service” should have been more carefully stated as “commercial customers with service more frequent than weekly.”[[6]](#footnote-7)

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

***Fourth***, WMW explained why it could not quantify the number of daily customers that would be prioritized as “critical accounts” during a temporary service disruption.[[9]](#footnote-10) Again, Staff does not seek to strike this explanation. It is consistent with topics explored at stakeholder meetings in Docket No. TG-010374, but worth explaining for the Presiding Officer who did not attend those workshops.

***Fifth***, WMW re-iterated its prior discussion supporting the Haulers’ Proposal.[[10]](#footnote-11) Staff appropriately argues that this discussion repeats points made in WMW’s earlier briefing. WMW does not object to the Commission striking these two paragraphs.

**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, s*ee* *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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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).

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DATED at Seattle, Washington, this 12th day of February, 2014.

Katie Angelikis, Legal Assistant

1. Decl. of Penny Ingram at ¶¶ 15-23 (Aug. 16, 2013). [↑](#footnote-ref-2)
2. *Id.* at ¶ 23. [↑](#footnote-ref-3)
3. Specifically, WMW does not object to the Commission striking the following: (a) the sentences beginning on page 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. [↑](#footnote-ref-4)
4. Response at 2. [↑](#footnote-ref-5)
5. *Id.* at 2. [↑](#footnote-ref-6)
6. Response at 3:6-8. [↑](#footnote-ref-7)
7. *See also* WAC 480-07-405(8) (requiring supplementation of responses to bench requests to correct a response that was incorrect or incomplete). [↑](#footnote-ref-8)
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. [↑](#footnote-ref-9)
9. WMW’s Response at 3:12 to 4:7. [↑](#footnote-ref-10)
10. WMW’s Response at 4:8 to 4:24. [↑](#footnote-ref-11)