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February 5, 2014

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *WUTC v. Waste Management of Washington, Inc., et al.*
Dockets TG-120840, TG-120842 and TG-120843

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and six copies of Commission Staff's Objection to Waste Management's Response to Bench Request No. 5, and Motion to Strike, and Certificate of Service.

Sincerely,

MICHAEL A. FASSIO
Assistant Attorney General

MAF/emd
Enclosures
cc: Parties w/enc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC. D/B/A WASTE
MANAGEMENT OF THE NORTHWEST,
WASTE MANAGEMENT OF SEATTLE
AND SOUTH SOUND, AND WASTE
MANAGEMENT OF
SNO-KING, G-237.

Respondent.

DOCKETS TG-120840, TG-120842
and TG-120843

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

1 Washington Utilities and Transportation Commission Staff (Staff) submits this objection to Waste Management of Washington, Inc.'s (Waste Management or Company) Response to Bench Request No. 5 (Response), which requires only the number of daily service customers, grouped by customer class, and the number of such customers included in the Company's "critical accounts."

2 Staff objects to Waste Management's Response pursuant to WAC 480-07-405(6)(c), and, pursuant to WAC 480-07-375, submits this Motion requesting that the Commission strike portions of Waste Management's Response. The Response includes argument that is unresponsive to, and beyond the scope of, Bench Request No. 5. In the alternative, should the Commission not grant Staff's Motion to Strike, Staff requests the Commission provide a further opportunity to respond to Waste Management's Response.

I. BACKGROUND

3 The procedural schedule set forth in the Prehearing Conference Order, Order 02, included two rounds of simultaneous briefing. Parties, including Waste Management, filed their Proposed Item 30 Tariff Language, and initial briefs, on or before August 16, 2013. All parties, including Waste Management, filed reply briefs on or before August 30, 2013. On January 23, 2013, the Commission issued Bench Request No. 5 directed to Waste Management, and Bench Request No. 6 directed to Rabanco, Ltd. (Rabanco).¹ Bench Request No. 5 first referenced language in Waste Management's reply brief and asked Waste Management to provide two pieces of information, as follows:

“Please *indicate how many* daily service customers you serve and group them by customer class (i.e., commercial, industrial, et cetera). In addition, please *state how many* of these daily customers WMW includes within its definition of “critical accounts” which would be prioritized for collection restoration during a temporary labor disruption.” (Emphasis added).

See Notice of Bench Requests, dated January 23, 2014.

4 Waste Management responded on January 31, 2014, in Dockets TG-120840, TG-120842, and TG-120843.² In answer to the Commission's first inquiry, Waste Management included a table (Table 1) describing “the number and types of daily customers that WMW serves,” along with the “approximate number and types of customers that WMW serves more frequently than weekly.” See Response, page 2, lines 10-18.

5 In answer to the Commission's second inquiry in Bench Request No. 5, Waste Management stated, on page 3, lines 16-18, that it “cannot quantify how many daily

¹ The Notice of Bench Requests was issued in Dockets TG-120840, TG-120842, TG-120843 (Waste Management), and Dockets TG-121366, TG-121367, TG-121339, TG-121370, and TG-121371 (Rabanco).

² See Respondent Waste Management of Washington, Inc.'s Response to the Utilities and Transportation Commission's January 23, 2014 Bench Request No. 5, Dockets TG-120840, TG-120842 and TG-120843, (January 31, 2014).

customers would be prioritized as ‘critical accounts’ during a temporary service disruption,” and on page 4, lines 6-7, added that it “does not have a count of the number of daily accounts that it would deem critical.” In the rest of that same paragraph (including from page 3, line 12 through page 4, line 7), Waste Management appears to explain the reasons why it believes it is not willing or able to provide the Commission with the quantitative information the Commission requested, with reference to its prior response to Bench Request No. 1.

6 Waste Management’s Response also contains, in substantial part, other material which is the focus of Staff’s objection, and should be stricken, as explained below.

II. ARGUMENT

7 Other than the portions of Waste Management’s Response set out above, the remainder of Waste Management’s Response is unresponsive to Bench Request No. 5. The Bench Request does not ask Waste Management for its opinions, legal analysis, recommendations, or briefing of any kind. It asks Waste Management to provide quantitative data. Parties have already filed their proposals and two rounds of briefs explaining their positions in support of and in response to proposals. Yet, Waste Management uses most of its Response as an opportunity to further provide additional argument regarding the merits of its Item 30 proposal. It is, in a sense, a transparent attempt by Waste Management to “re-brief” the issues. Staff objects to the Response on these grounds, pursuant to WAC 480-07-405(6)(c), which permits a party to raise an objection based on the content of a bench request response within five days after distribution of the response.

8 Staff also moves that the Commission strike all aspects of Waste Management’s Response to Bench Request No. 5 not cited above in paragraphs 4 and 5.

9 The Response is unresponsive to the extent that it goes well beyond answering the straightforward, quantitative questions directly presented by the Commission – that is, specifically, *how many* daily service customers Waste Management serves, and *how many* of these daily service customers Waste Management includes within its definition of “critical accounts.” Waste Management’s Response, beginning on page 2, line 19 and continuing to page 3, line 11, contains subjective argument regarding the merits of its Item 30 proposal and Staff’s Item 30 proposal. Waste Management seeks to self-“clarify” its response brief, and “correct potential misimpressions” about that brief. Bench Request No. 5 did not solicit or invite this sort of input. Waste Management’s Response does not further explain the numbers provided in Table 1. Because it does not answer the factual, quantitative questions presented by the Bench Request and is a re-briefing of issues already fully briefed, Staff objects to the Company’s response, and requests the Commission to strike this section of Waste Management’s Response.³

10 Likewise, the entirety of Waste Management’s Response beginning on page 4, line 8 to page 4, line 24, is not responsive to the Commission’s Bench Request No. 5 and consists entirely of argument, and should therefore be stricken. Here, Waste Management inappropriately attempts to either re-argue points made in its initial or reply brief, or make new arguments. It does not explain Table 1 regarding the number of daily and “more frequently than weekly” customers that Waste Management serves. Moreover, this section

³ The Commission’s Bench Request No. 6, issued together with Bench Request No. 5, asked Rabanco to provide a similar set of data as Bench Request No. 5. Rabanco filed a response on January 31, 2014 in Dockets TG-121366, TG-121367, TG-121369, TG-121370 and TG-121371. In marked contrast to Waste Management’s Response, Rabanco, appropriately, limited its response to a presentation of data, in spreadsheet form, responsive to the two pieces of information requested, along with reference to a prior bench request response describing how it defines “critical facilities”. See Rabanco, Ltd.’s Response to Bench Request No. 6, in Dockets TG-121366, TG-121367, TG-121369, TG-121370 and TG-121371 (January 31, 2014).

appears to contain unsolicited comment on the propriety of the Commission's bench requests (see page 4, at lines 12-16), statements of Waste Management's position, and more recommendations. The Company even went so far as to surmise as to why the Commission issued the Bench Request, question the wisdom of it, and caution against the Company's presupposed outcome. None of this is asked for in Bench Request No. 5, and as already noted, all Parties have previously presented their respective Item 30 proposals, argued their respective positions and made recommendations in initial and responsive briefs in August 2013. As such, Staff objects to the Company's Response, and this portion of Waste Management's Bench Request Response should also be stricken.

11 In conclusion, Staff requests that the Commission grant its Motion to Strike Waste Management's Response, as described above. In the alternative, should the Commission deny Staff's Motion to Strike, in light of Staff's objection, Staff requests that it be afforded a further opportunity to respond to Waste Management's Response to Bench Request No. 5.

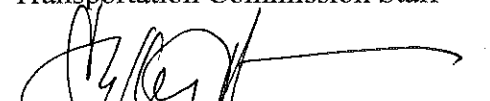
Dated this 5th day of February, 2014.

Respectfully submitted,

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Counsel for Washington Utilities and
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SALLY BROWN
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Counsel for Washington Utilities and
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Dockets TG-120840, TG-120842 and TG-120843
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Objection to Waste Management's Response to Bench Request No. 5, and Motion to Strike upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 5th day of February, 2014.



ELIZABETH M. DeMARCO

For Waste Management of Washington, Inc., d/b/a Waste Management of the Northwest, Waste Management of Seattle and South Sound, and Waste Management of Sno-King:

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