BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **WASTE MANAGEMENT OF WASHINGTON, INC.** **Respondent.**	**DOCKET TG-240189** **WASTE MANAGEMENT OF WASHINGTON, INC.'s POST-HEARING BRIEF**

POST-HEARING BRIEF

Waste Management of Washington, Inc. ("WMW") hereby submits its post-hearing brief.

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I. Introduction and Overview

1 This case asks the Washington Utilities and Transportation Commission ("Commission") to determine the proper monetary penalty for Waste Management of Washington, Inc. ("WMW"). WMW provided 25 customers less frequent service than required by its tariff and did not correct the service frequency until its senior management learned of the violations, 11 months after WMW received technical assistance from Commission Staff ("Staff") directing WMW to correct the violations.[1] Three key themes should guide the Commission's decision.

2 First: WMW is proud of its exemplary record of compliance with Commission regulations and of its history of proactive cooperation with this Commission, even when WMW has incurred violations. Here, WMW cooperated with Staff, owned up to its failures, and voluntarily made systemic improvements to prevent similar violations.

3 Second: Staff fails to justify its insistence on the statutory maximum penalty.[2] Though the record and Commission precedent point to a far lesser penalty, Staff testified that it recommends the maximum monetary penalty essentially by default, with little attention to the Commission's eleven enforcement factors.[3] Staff's recommendation also lacks basis because Staff's cursory investigation led to numerous faulty assumptions and gaps in its testimony. Staff's penalty

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[1] *See* Exh. BF-3r, Staff Investigation Report (Apr. 30, 2024) at 27-28 (technical assistance email dated May 11, 2022), 37 (investigation letter dated April 20, 2023).
[2] Prior to any post-hearing brief it may file on the parties' simultaneous briefing deadline, Public Counsel has taken no position on any issue in this case.
[3] *Infra*, ¶¶ 17-20. *See generally In re Matter of the Enforcement Policy of the Wash. Utils. & Transp. Comm'n*, Docket A-120061, Enforcement Policy of the Wash. Utils. & Transp. Comm'n ("Enforcement Policy") (Jan. 7, 2013) (admitted at hearing as Exh. BF-13X), ¶ 15.

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recommendation may be routine, but it would be unprecedented for the Commission to follow that recommendation on this record.

4 And third: Rather than following Staff's path, the Commission should apply its eleven enforcement factors to achieve its overarching enforcement objective when enforcing statutes, rules, orders, and tariffs: "to ensure services within the Commission's jurisdiction are delivered [1] safely, [2] adequately, [3] efficiently, and [4] at rates and charges that are just and reasonable."[4] WMW's tariff violations did not cause its service to fall short with respect to any of these core criteria (which WMW will refer to as the "Service Qualities"), and WMW remains committed to positive engagement with Commission regulation and proactive improvement. The Commission should take this opportunity to signal to the industries it regulates that it values companies that show long-term commitment to regulatory compliance and positive engagement with the Commission.

5 Finally, the Commission should suspend 75 percent of the penalty, contingent on WMW's future compliance.

II. Background: WMW cooperated with Staff, admitted the violations, corrected them, and made systemic improvements to prevent recurrence.

6 This case deals with service under Item 240 of WMW's Tariff No. 14, collection of non-compacted material in WMW-owned containers, dumped into WMW collection vehicles. Permanent Item 240 service requires scheduled pickup "no less than . . . every other week," with no relevant exceptions.[5]

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[4] Enforcement Policy ¶ 9.
[5] WMW, Tariff No. 14, Item 240, n.1, Exh. BF-2r at 37 (applicable to unincorporated Douglas County).

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7 In a 2022 complaint to the Commission, a WMW customer in Douglas County reported seeking every-other-week service under Item 240 and being told that WMW would only provide monthly service.[6] Staff informed WMW's Area Customer Experience Manager—the WMW point of contact with the Commission on informal complaints—that WMW's service was not in compliance with Tariff No. 14, Item 240 and recorded 14 informal violations. Staff's technical assistance told WMW that it "must provide, and bill for, service in a manner consistent with the conditions described in its approved tariff."[7] WMW did not do so until after further action by Staff the next year.[8]

8 This course of events is unacceptable to WMW's senior management, represented at hearing by Chad Brooks, Director of Collection Operations.[9] Unfortunately, senior management was initially unaware of the problems.[10] When the 2023 investigation first brought the issues to WMW senior management's attention, WMW promptly returned all the affected customers to every-other-week service.[11]

9 WMW was "cooperative and responsive" throughout the compliance investigation.[12] Based on data WMW shared, Staff identified 254 violations affecting 25 customers in Douglas County.[13] After receiving the Complaint, WMW immediately admitted the violations[14] and voluntarily

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[6] Staff Investigation Report, Exh. BF-3r at 4.
[7] *Id*. at 28.
[8] *Id*. at Attach. A at 3.
[9] Brooks, Exh. CB-1T at 4:13-15.
[10] *Id*. at 13:1-5. That, too, was a failure of internal process, which WMW addressed with its recent improvements.
[11] Brooks, Exh. CB-1T at 5:8-11, 13:1-5.
[12] Feeser, Exh. BF-1T at 15:9.
[13] *See generally* Staff Investigation Report, Exh. BF-3r (Apr. 30, 2024).
[14] Subject only to confirmation of Staff's count of violation, *see* WMW's Answer to Compl., ¶ 2 (June 10, 2024) ("Answer"), which WMW's testimony fully confirmed, Brooks, Exh. CB-1T at 6:14-16.

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investigated the service frequency of its roughly 12,000 customers under Item 240 statewide.[15] The review identified an additional 0.14 percent (17 customers) receiving service on non-compliant frequencies, which WMW corrected and self-reported to the Commission.[16]

10 WMW also added new trainings to make sure local managers, including those involved in the non-compliant services in this case, fully understand tariff requirements and are empowered to prevent, identify, communicate to senior management, and correct violations.[17] In addition, members of WMW's senior management and legal team now review a log of all customer complaints received through the Commission every two months to ensure prompt correction of any compliance issues.[18] These overlapping new safeguards at both WMW's local and senior levels dramatically reduce the chance of any future issue going uncorrected.

III. WMW is proud of its exemplary record of complying with Commission rules, orders, and tariffs.

11 As shown here and in earlier cases, WMW has long taken its obligations under Commission regulation seriously. WMW's track record of positive engagement stretches back at least as far as 2012 (the earliest case Staff cites), and the Commission has specifically recognized WMW's commitment to compliance. In 2019, ALJ Pearson relied on WMW's overall service and compliance history in denying an application for competing solid waste collection authority.[19] After discussing WMW's occasional past violations, ALJ Pearson concluded: "Overall, and also

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[15] Brooks, Exh. CB-1T at 15:9-12.
[16] *Id*. at 15:13-19.
[17] Brooks, Exh. CB-1T at 16:8-10, 20:13-21:3.
[18] Brooks, Exh. CB-1T at 18:10-13, 21:8-14.
[19] *See generally* Docket TG-181023, *Superior Waste & Recycle LLC*, Order 04, Initial Order Denying Application (erroneously marked as Order 03), ¶¶ 29-35 (Nov. 13, 2019). This initial order is not precedential as to the law, WAC 480-07-825(1)(c), but this is a final finding of fact on the merits of the case—specifically, the finding that WMW "will [ ] provide service to the satisfaction of the [C]omission" under RCW 81.77.040.

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as compared to other large companies the Commission regulates, Waste Management has an ***exemplary history*** of complying with Commission rules, Commission orders, and its tariffs."[20]

12 Even the two WMW enforcement cases cited by Staff show that when WMW makes mistakes, it takes its regulatory obligations seriously and responds proactively. Staff first points to Docket No. TG-210689.[21] During the extraordinary circumstances of the COVID-19 pandemic, WMW, like many companies, faced an unprecedented shortage of qualified drivers. This resulted in repeated failures to collect customers' solid waste in one of WMW's districts.[22] Staff notes that WMW settled the case, paying $40,000 in customer credits and an $83,150 penalty.[23]

13 But Staff's omissions are telling. Staff does not mention that WMW admitted all alleged violations and accepted Staff's monetary penalty recommendation in full.[24] Staff also does not mention that WMW had already voluntarily issued about $450,000 in credits to customers in the affected areas.[25] Nor does Staff mention that WMW, with Staff and intervenor Kitsap County, developed a company-wide plan addressing major disruptions to Commission-regulated services and a contingency plan for ensuring adequate staffing levels in Commission-jurisdictional areas of Kitsap County.[26]

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[20] *Id.*¶ 35 (Nov. 13, 2019) (emphasis added).
[21] Feeser, Exh. BF-1T at 17:6-9.
[22] *See* Docket TG-210689, *Waste Mgmt. of Wash. Inc.*, Narrative in Support of Settlement Agreement (parties requesting Commission approval of settlement because the parties negotiated a compromise on all issues in dispute),¶ 8, https://apiproxy.utc.wa.gov/cases/GetDocument?docID=66&year=2021&docketNumber=210689.
[23] Feeser, Exh. BF-1T at 17:6-9.
[24] Docket TG-210689, *Waste Mgmt. of Wash. Inc.*, Order 02, Initial Order, ¶ 9, https://apiproxy.utc.wa.gov/cases/GetDocument?docID=74&year=2021&docketNumber=210689.
[25] *Id.* ¶ 12.
[26] *Id.* ¶ 11; *see also* Settlement Agreement, Attach. A to Order 02, ¶¶ 17-18, https://apiproxy.utc.wa.gov/cases/GetDocument?docID=70&year=2021&docketNumber=210689.

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14 Staff also cites Docket No. TG-121265, which resulted from a labor strike 13 years ago. Staff notes only that WMW "was assessed a $20,000 penalty and . . . paid approximately $620,000 in customer credits for failure to collect solid waste in King County and Snohomish County during and immediately following" the strike.[27] But as ALJ Pearson noted, WMW also "worked with Staff and other certificated carriers to modify tariff Item 30 on an industry-wide basis to provide remedies for customers when pickups are missed due to labor disputes."[28]

15 As Mr. Brooks testified, WMW maintains this longstanding commitment to Commission compliance, including identifying and implementing systemic solutions when problems arise.[29] Unfortunately, unlike in past cases, WMW has been unable to settle with Staff. Thus, the Commission must arrive at a reasonable penalty without the benefit of a well-grounded Staff recommendation.

IV. Staff insists on an unprecedented penalty, but fails to justify it.

16 The facts of this case, viewed through the lens of the Commission's Enforcement Policy, do not justify the maximum penalty Staff demands. Staff offers the Commission neither a record nor reasoning meaningfully tied to the record that could justify this penalty. And the Commission's precedent in applying the Enforcement Policy—which Staff never once mentions—points in the opposite direction.

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[27] Feeser, Exh. BF-1T at 17:10-14.
[28] Docket TG-181023, *Superior Waste & Recycle LLC*, Order 04, Initial Order Denying Application (erroneously marked as Order 03) ¶ 35 (Nov. 13, 2019) (citing *Wash. Utils. & Transp. Comm'n v. Waste Mgmt. of Wash., Inc.*, Dockets TG-120840, TG-120842, and TG-120843, Order 03 (Mar. 20, 2014)).
[29] *See, e.g.*, Brooks, Exh. CB-1T at 4:13-15 (tariff noncompliance and failure to correct in response to technical assistance were unacceptable); 13:8-9 (violations in this case were "inconsistent with WMW policy and practice").

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A. Staff fails to connect its recommended maximum penalty to the record.

17 It emerged at hearing that Staff's recommendation of the maximum penalty is a long-standing default position that ignores most of the Commission's enforcement factors and the facts of individual cases. This may explain the perfunctory and disjointed nature of Staff's attention to the record here.

18 In cross examination, Staff testified that for at least a decade, it has recommended less than the maximum penalty only in cases with thousands of violations (corresponding with enforcement factor six, the number of violations) and cases where the maximum could put a small company out of business (factor eleven, the size of the company).[30] Staff seems to be properly applying enforcement factor eleven, the size of the company.[31] However, it gets factor six, the number of violations, backward, as discussed below in Section V.B.5.

19 If Ms. Feeser's testimony is accurate, none of the other nine factors would lead to a lower monetary penalty recommendation from Staff. Nor would the specifics of underlying complaints, other than the number of violations. Staff does not explain this practice, which seems both arbitrary and contrary to the Enforcement Policy.

20 Pushing for the maximum penalty may be routine—even reflexive—for Staff, but it would be unprecedented for the Commission to assess this penalty based on the facts of this case. Staff

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[30] TR. at 63:22-64:7 (in a decade of compliance dockets, "I think you will find that in the majority of those cases, [S]taff did recommend max[imum] penalties. When [S]taff did not, it was in cases where there were thousands of violations, or it was a small company that the penalty amount could put the company out of business.").
[31] *See* Section V.B.10, *infra* (discussing factor eleven, the size of the company).

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conducted only a "very narrow" investigation[32] and does not claim that it tailored its recommendation even to its own narrow subset of facts.[33]

21 Staff also has not proven that a higher penalty is necessary to obtain compliance with Commission regulations—a failing for which the Commission will reject a penalty recommendation. For example, in Docket No. PG-160924, Puget Sound Energy ("PSE") did not ensure that a disused gas supply line was properly abandoned in the heart of Seattle's historic Greenwood neighborhood. That led to a "massive fireball," injuring nine firefighters, leveling two buildings, and damaging almost three dozen other businesses.[34]

22 By the time of the Commission's final order, PSE and Staff had settled, but Public Counsel pushed for the maximum penalty. Even with dozens of buildings flattened or damaged and first responders injured, the Commission rejected the maximum penalty because there was not "sufficient evidence to prove that this amount would be more effective in achieving the Commission's primary objective of obtaining compliance with its pipeline safety regulations."[35]

23 Here, the record lacks ***any*** evidence that a large penalty would improve the prospect of WMW compliance. Staff has neither disputed WMW's overall "exemplary" history of Commission compliance,[36] nor its acceptance and implementation of Staff's proposed corrective measures.

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[32] TR. at 65:1-2.
[33] *See, e.g.*, Feeser cross, TR. at 64:8-15 (Staff recommends the maximum penalty absent a small company or thousands of violations. The ***Commission*** must then review, apply the enforcement factors, and decide the penalty).
[34] Evan Bush & Christine Clarridge, *Seattle Explosion Leaves Heart of Greenwood Neighborhood a Gigantic Mess*, SEATTLE TIMES (Mar. 9, 2016, updated Mar. 10, 2016), https://www.seattletimes.com/seattle-news/greenwood-explosion-destroys-buildings-injures-9-firefighters/ (last visited March 17, 2025).
[35] Docket PG-160924, *Wash. Utils. & Transp. Comm'n. v. Puget Sound Energy, Order Approving Settlement Agreement,* Order 04, ¶ 49 (June 19, 2017).
[36] *See* Feeser, Exh. BF-1T, at 17:3-16 (mentioning past cases, discussed *supra*, ¶¶ 12–14, but not negatively characterizing WMW's compliance history, nor arguing that this factor disfavors WMW).

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24 Instead, as discussed in relation to individual enforcement factors below, Staff has consistently focused on finding and presenting negative facts, but not evidence in WMW's favor.[37] When Staff didn't know or ask what ***was*** happening, it consistently speculated against WMW about what ***could*** be happening.[38]

25 Discussing each enforcement factor, Staff mostly offers a factual assertion or speculation, but does not mention whether the factor points toward a larger or small penalty or has no impact.[39] Summing up, Ms. Feeser barely tries to connect her discussion of the enforcement factors to Staff's penalty recommendation. She claims her evaluation "demonstrates" the need for the maximum penalty[40] and concludes that the maximum penalty "corresponds with the violations committed and impact on customers[,]" without further explanation.[41] Staff does not clarify how the factors are balanced or weighted, nor how the Commission's reasoning in other cases support any penalty, let alone the maximum.

B. Staff fails to connect its recommended maximum penalty to Commission precedent, which points the other direction.

26 Staff fails to tie its recommendation for the maximum penalty to Commission precedent.[42] The Commission's cases support a more reasoned approach to assessing monetary penalties.

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[37] Beyond Staff's "very narrow" investigation, TR. 65:1-2, Staff would not investigate facts or compliance factors that would favor the company, TR. at 78:7-11.
[38] *See, e.g.* Section V.B.7, *infra* (discussing factor eight, the likelihood of recurrence).
[39] *See, e.g.* Feeser, Exh. BF-1T at 13:11-14-6 (failing to explain "[***h***]***ow*** serious or harmful" Staff believes the violations were, given the immense range of harms that may arise from Commission violations) (emphasis added); 15:18-16:12 (noting 25 customers were affected, speculating incorrectly that "it is likely that [WMW] is also withholding every-other-week pick-up service to customers . . . in other Company tariffs,[,]" but not explaining whether 25, or any other number of affected customers, points toward a larger or smaller penalty).
[40] *Id*. at 13:9-10.
[41] *Id*. at 18:19-21; *see generally id.* at 11:10-18:21.
[42] It is possible Staff, in its post-hearing brief, will discuss Commission enforcement precedent. If so, WMW will never have had an opportunity, prior to that, of understanding how Staff reads the Commission's precedent, let alone an opportunity to respond to Staff's interpretation.

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Precedent also supplies crucial context—none of which Staff recognizes—by allowing comparison of the violations here with the application of the Enforcement Policy to the range of far more severe violations and recalcitrant companies the Commission oversees.

27 One recent case involving CenturyLink, Docket No. UT-181051, highlights the truly harmful and widespread nature of violations that can come before the Commission for enforcement. In 2023, the Commission penalized CenturyLink for a "major outage" of 911 and other telecommunication service in 2018.[43] Over three days, all Washington residents and all of the state's public safety answering points (PSAPs; essentially, 911 call centers) experienced interruption of 911 service calls for 49 total hours, including a complete outage of nearly 42 hours.[44] Thirteen thousand 911 calls failed.[45] Evaluating the number of affected customers, the Commission noted that, beyond 13,000 ***actual*** failed 911 calls, "all 7.4 million residents of Washington were at risk during the 49 hours and 32 minutes that [911] service was compromised."[46]

28 Public Counsel recommended the maximum penalty of $1,000 per violation for each failed call, totaling $13 million. Staff recommended only $100 per violation, totaling $1,315,000 (including maximum penalties of $1,000 each for CenturyLink's failure to notify the 15 PSAPs it served of the outages).[47]

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[43] Docket UT-181051, *Wash. Utils. & Transp. Comm'n v. CenturyLink Commc'ns, LLC*, Final Order 08 (June 9, 2023), *reconsideration denied*, Order 10 (Nov. 13, 2023), ¶ 2 (citing WAC 480-120-021 definition of "major outage").
[44] *Id.* ¶ 2.
[45] *Id.* ¶¶ 72, 78.
[46] *Id.* ¶ 78.
[47] *Id.* ¶ 72.

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29 Echoing the Enforcement Policy, the Commission explained that its "goal is to obtain compliance and ensure that services within the Commission's jurisdiction are delivered safely, adequately, and efficiently, not simply to punish businesses operating in Washington."[48] The Commission rejected the maximum penalty as "unduly punitive" and adopted Staff's recommendation of a $100 penalty for each of the 13,000 failed 911 calls.[49]

30 Similar to the CenturyLink case, the Commission's penalty assessment here, together with non-monetary relief and given WMW's overall compliance record, should "not simply . . . punish" WMW but set conditions for continued tariff compliance.[50]

31 A 2017 case against Shuttle Express offers an important counterpoint to WMW's good record of Commission compliance. In Docket No. TC-143691, the Commission penalized Shuttle Express for illegally referring passengers to drivers Shuttle Express did not employ and in vehicles it did not own, on over 35,000 Commission-jurisdictional trips.[51]

32 Shuttle Express provided those services with no Commission oversight—Staff could not even determine whether the independent contractors were licensed or insured because "Shuttle Express was not forthcoming about [their] identities."[52] "[B]ecause nonregulated vehicles and drivers are not held to the same safety standards as regulated carriers[,]" the Commission held that these 35,000 violations were "serious and potentially harmful to the public[.]"[53]

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[48] *Id.* ¶73 (citing Exh. BF-13X, Enforcement Policy, ¶ 15).
[49] *Id.* ¶¶ 85-86.
[50] *Id.* ¶ 73.
[51] Docket TC-143691, Initial Order 19 *et al*. (consolidated) (Aug. 25, 2017), ¶¶ 23, 115, 160, 169, *In re the Application of Speedishuttle Wash., LLC*, 2017 WL 3718636, at *29, *aff'd in substantial part*, 2017 WL 5659811, at *4-*7 (Final Order 20 *et al*. Nov. 17, 2017).
[52] *Id.* ¶ 136, at *29 (*adopted in Final Order*, Order 20 *et al*.).
[53] *Id.* ¶ 135 (*adopted in Final Order*, Order 20 *et al*., ¶ 66 and n.85).

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33 By 2017, Shuttle Express—"the largest auto transportation company regulated by the Commission"[54]—was a "third-time offender" after receiving two previous penalties ($9,500 and $60,000) for thousands of violations of the same rule for over 15 years.[55]

34 Not only that, but in sworn statements by both its President and Director of Compliance, the company "falsely represented to the Commission . . . that it was no longer using independent contractors[.]"[56] The Commission only learned of the ongoing violations through a competitor's complaint.[57] After these many years of violations, the Commission held that "the company has demonstrated no willingness or ability to comply with applicable laws and rules."[58]

35 Staff recommended a penalty of $30 per violation for each of 35,351 violations, which would have totaled $1,060,530.[59] The Commission reduced that recommendation by 89 percent, to $120,000 total, about $3.39 per violation.[60] That amount was a "conservative estimate of the total revenue and avoided fees the company retained from its 35,351 unlawful trips," and double the penalty imposed four years earlier, the ***second*** time the Commission penalized the same conduct, for 5,715 violations.[61]

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[54] *Id.* ¶ 146 (*adopted in Final Order*, Order 20 *et al*., ¶ 66 and n.85).
[55] *Id.* ¶¶ 23, 117-118, 121, 147 (*aff'd in substantial part*, 2017 WL 5659811, at *19 (Final Order 20 *et al*. Nov. 17, 2017).
[56] *Id.* ¶122 (*adopted in Final Order*, Order 20 *et al*., ¶ 43 n.49) (citing transcript of testimony by company witnesses Marks and Kajanoff). *See also* Docket No. TC-143691, TR. 86:9-13 (Kajanoff was President); Marks, Exh. WAM-1T in Docket Nos. TC-143691 and TC-160516 (Dec. 21, 2016) at 2:3-5 (Marks was Director of Compliance and Shared Services).
[57] *Id.* ¶ 138 (*adopted in Final Order*, Order 20 et al., ¶ 66 and n.85).
[58] *Id.* at ¶ 147 (*adopted in Final Order*, Order 20 et al., ¶ 66 and n.85).
[59] *Id.* at ¶ 133 (Initial Order 19 *et al*. (consolidated), 2017 WL 3718636, at *29 (Aug. 25, 2017)).
[60] *Id.* at ¶ 147 (*adopted in Final Order*, Order 20 et al., ¶ 66 and n.85).
[61] *Id.* at ¶¶ 144, 147 (*adopted in Final Order*, Order 20 et al., ¶ 66 and n.85).

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V. The Commission should set the penalty in light of its stated objectives in enforcement consistent with past enforcement actions.

36 In the Enforcement Policy, the Commission begins with its fundamental aim: "The Commission's objective when enforcing statutes, rules, orders, and tariffs is to ensure services within the Commission's jurisdiction are delivered safely, adequately, efficiently, and at rates and charges that are just and reasonable."[62] WMW and Staff agree that "the gravity of a rule violation should be judged by the extent to which the violation undermines the purposes of the rule[.]"[63]

A. The violations here do not directly implicate the Commission's core enforcement objective.

37 Notwithstanding Staff's attempt to backfill concerns about the Service Qualities in reply testimony,[64] there is no evidence that the service WMW provided was unsafe, inadequate, inefficient, unreasonably priced, or even generally unreasonable.

38 Beginning with safety: Ms. Feeser speculated about "***potentially*** unsafe service (overflowing containers)" if a customer received service monthly rather than every other week.[65] But under cross examination, she conceded that the underlying customer complaint related only to ***charges*** for overfilled containers.[66] And, though Ms. Feeser testified that "at least one customer reported" this issue to Staff, she clarified at hearing she meant exactly one customer, with no evidence that anyone else experienced or reported the same issue.[67] Moreover, WMW offers

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[62] Exh. BF-13X, Enforcement Policy, ¶ 9.
[63] Feeser cross, TR. 54:1-4.
[64] Feeser, Exh. BF-4T at 5:8-14 (emphasis added).
[65] *Id*. at 5:13-14.
[66] TR. 66:24-67-15; *see also* Exh. BF-3 at 13.
[67] *See* TR. 69:17-70:10 (citing Feeser, Exh. BF-4T at 6:5-9).

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service in a wide range of containers.[68] Though Staff resisted the point at hearing,[69] any container obviously might end up overfilled if the customer selected an undersized container for its needs. In sum, there is evidence that one customer complained of overfilled container charges, but no evidence of any safety issue.

39 Moving to adequacy and efficiency of service: Staff concedes that it "has not alleged that [WMW] has provided" inadequate or unreasonable service "in any respect" other than violating the tariff.[70] Staff's testimony never mentions WMW's rates and charges in a general context.[71] Rather, Staff only notes WMW inconsistency with the tariff[72] and one customer's complaint about receiving overfill charges,[73] with—as discussed—no evidence that the customer had selected a large enough container, nor that the amount charged was unreasonable.

40 Staff's overall case focuses entirely on the technicalities of the violations and ***not*** on the Service Qualities that are the aim of Commission enforcement. Staff disclaims any opinion about whether monthly service under Item 240 would be reasonable if allowed by the tariff.[74] In fact, Staff disclaims knowledge of the "reasons behind ***anything*** included in the tariff[,]" and believes understanding those reasons is "not a part of a compliance investigator's role."[75] Staff's "expertise and focus" in this case "is on ensuring companies comply with laws, rules, and

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[68] *See, e.g.*, Exh. BF-2r at 26 (Item 100, residential collection), 37 (Item 240, container service) (available containers in unincorporated Douglas County range from 20 gallons (2.67 ft^3) to 80 times larger, 8 cubic yards (216 ft^3)).
[69] TR. 68:14-69:10.
[70] Exh. BF-10X, subparts a (adequate service) and b (reasonable service).
[71] *See generally* Feeser, Exhs. BF-1T and BF-4T.
[72] Feeser, Exh. BF-4T at 5:8-13.
[73] *Id*. at 6:7-10.
[74] *See* Exh. BF-5X at 1, 6 (Staff responses to WMW Data Request Nos. and 14) ("Compliance Investigation Staffs' [sic] expertise and focus is on ensuring companies comply with laws, rules, and tariffs. Staff has no opinion on if monthly service might be reasonable for residential garbage collection under Item 240.").
[75] TR. 69:7-10 (emphasis added).

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tariffs."[76] Because Staff does not understand the reasoning behind anything in WMW's tariff, the Commission should put little stock in Staff's penalty recommendation.

41 Contrasting with Staff's focus, WMW has shown that—unlike some large companies like Shuttle Express—large monetary penalties are not needed to spur improved compliance. Applying the eleven enforcement factors in light of the of the Commission's core objective of maintaining the Service Qualities thus points toward a far lower penalty than Staff recommends.

B. The enforcement factors point to a penalty far less than the maximum.

42 Below, WMW discusses the proper approach to each enforcement factor where WMW and Staff take significantly different views.

1. Factor One: How serious or harmful the violation is to the public.

43 Staff does not allege that WMW's service to its customers was inadequate or unreasonable in any regard other than failure to comply with its tariff.[77] WMW recognizes that the violations were not harmless because WMW's "customers have a right to receive service in accordance with our tariffs,"[78] and "the failure to immediately correct the errors affects the Commission's ability to achieve its enforcement objectives."[79] But as Mr. Brooks explained, WMW's customers were not harmed from a health, safety, or public nuisance standpoint.[80]

44 The CenturyLink case discussed above provides valuable context. Evaluating factor one, the Commission held that "911 service is a telecommunications company's highest duty, and there is no more serious violation than the inability of Washington residents to make a 911 call in an

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[76] Exh. BF-5X.
[77] Exh. BF-10X, subparts a (adequate service) and b (reasonable service);
[78] Brooks, Exh. CB-1T at 12:6-9.
[79] *Id.* at 9:15-16.
[80] *Id.* at 12:7-8.

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emergency."[81] Those violations were both serious and widespread, "threaten[ing] the health and safety of everyone in Washington."[82] Events that could not be reported through 911 included "a bank robbery, . . . medical emergencies, and a vehicular accident."[83]

45 WMW's violations here did not approach that extent of harm and risk to the public, nor violate the "highest dut[ies]" of a solid waste company. The Commission should find that factor one supports a lesser penalty.

2. Factor Two: Whether the violation is intentional.

46 WMW concedes that its tariff violations in Douglas County were, in one sense, intentional,[84] though it is not clear that WMW's failures here meet the Commission's standard of intentionality under this factor.[85] Regardless, WMW senior management has always intended to comply with its tariffs. This is in stark contrast to a case like Shuttle Express, where the company's President and its Director of Compliance both falsely represented that the company had ended a practice that led to thousands of violations in earlier cases, showing the "great lengths" the company would take "to evade compliance with any law or rule it views as inconsistent with its business operations."[86]

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[81] Docket UT-181051, *Wash. Utils. & Transp. Comm'n v. CenturyLink Commc'ns*, Final Order 08, ¶ 75.
[82] *Id.*
[83] *Id.* (citing Staff investigation report in that case).
[84] Brooks, Exh. CB-1T at 12:11-15.
[85] *See, e.g.*, Docket No. UT-240078, *Wash. Utils. & Transp. Comm'n v. CenturyLink Commc'ns*, Order 04, Order Granting Motion to Amend Post-Hearing Brief and Imposing Penalties, ¶ 36 (Dec. 20, 2024). (Note: this initial order became final by operation of law, not by Commissioner action.) There, Staff provided relevant technical assistance in June 2021 and in May 2022 before bringing a complaint when the violations persisted to December 2022. Docket No. UT-240078, Investigation Report (Mar. 7, 2024) at 14-15. Yet "no evidence was provided in the record suggesting that the Company willfully hid or obscured facts, or blatantly ignored Staff's data requests and technical assistance provided." Order 04, ¶ 36. The company's conduct thus did not "rise[] to the level of an intentional violation but rather should be treated as demonstrative of its negligence." *Id.*
[86] Docket No. TC-143691, Order 19 et al. (consolidated), ¶¶ 122-123 (*adopted in Final Order*, Order 20 et al., ¶ 43 n.49).

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47 Staff seems to view all intentional violations the same under this factor, whether a violation results from a departures from policy for a company whose leadership intends to comply or adherence to policy in a company whose leadership intends to evade and mislead. The Commission's evaluation of this factor should recognize the difference and find that this factor supports a lesser penalty.[87]

3. Factor Four: Whether the company was cooperative and responsive.

48 WMW has, at all times, been cooperative and responsive to Staff's investigation, as Staff acknowledges.[88] However, Ms. Feeser dismisses WMW's good conduct as "expected," "required," and "not remarkable[.]"[89] The same "heads-I-win-tails-you-lose" logic could apply to virtually any enforcement factor that would weigh in a company's favor. The Commission should reject Staff's treatment of the enforcement factors only as a menu of potential negatives, and should find that this factor supports a lower penalty amount.

4. Factor Five: Whether the company promptly corrected the violations and remedied the impacts.

49 WMW brought service into compliance for the 25 customers in less than a month after receiving Staff's information request, almost a year before the Complaint.[90] Staff has no reason to doubt that these corrections occurred,[91] but it did not investigate[92] and its testimony does not reflect the

[87] Even if Staff is technically correct about the scope of this factor, the Commission's evaluation is not limited to the eleven enumerated factors. Exh. BF-13X, Enforcement Policy, ¶ 15. The Commission should take WMW senior management's positive intent into consideration, whether under factor two or otherwise.
[88] Feeser, Exh. BF-1T at 15:9-10.
[89] Feeser, Exh. BF-4T at 8:1-10.
[90] *See* Brooks, Exh. CB-1T at 5:7-11; Docket TG-240189, Compl. (May 20, 2024).
[91] TR. at 79:18-80:5.
[92] TR. 79:1-4, 80:20-81:5.

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corrections.[93] Accordingly, Staff's recommendation does not reflect the record on this factor, and the Commission should find that it supports a lesser penalty.

5. Factor Six: The number of violations.

50 The Commission is more likely to take enforcement action the greater the number of violations and the number of customers affected.[94] Yet the number of violations only causes Staff to recommend less than the maximum penalty in cases with "thousands of violations[.]"[95] All other factors being equal, this subverts the goal of encouraging compliance by recommending harsher penalties for each violation simply because violations are few. Turning to the record, Staff merely states the number of violations, offering no opinion on how it should affect the penalty.[96] The relatively small number of violations supports a lesser penalty.

6. Factor Seven: The number of customers affected.

51 The Commission is also more likely to take enforcement action the more customers are affected.[97] On this factor, Staff correctly identified 25 affected customers and then speculated that "it is likely that [WMW] is also withholding every-other-week pick-up service to customers with permanent containers covered by Item 240 in other Company tariffs, resulting in more than 25 customers being affected[]"[98] and that "the non-compliance could be spread across [WMW's] entire service area[.]"[99] In fact, WMW voluntarily investigated and self-reported providing less than every-other-week service to a further 17 out of about 12,000 Item 240 customers.[100] There

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[93] Feeser, Exh. BF-4T at 9:9-12 (Though WMW had reported the corrections, Staff "could not testify" on the point).
[94] Exh. BF-13X, Enforcement Policy, at 9 ¶ 15, subparagraph (6).
[95] Feeser cross, TR. at 63:22-64:7.
[96] Feeser, Exh. BF-1T at 15:16-17.
[97] Exh. BF-13X, Enforcement Policy, at 9 ¶ 15, subparagraph (7).
[98] Feeser, Exh. BF-1T at 16:7-12.
[99] *Id*. at 16:21-17:2.
[100] Brooks, Exh. CB-1T at 15:9-19.

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is no indication that any were denied service at frequencies they wanted (discussed more fully below under factor eight).

52 The number of affected customers is small, and the violations did not risk harm to anyone those else (unlike in the CenturyLink case, where 13,000 violations directly affected 911 callers, but "all 7.4 million residents of Washington were at risk" from the underlying failures[101]). This factor clearly points toward a lesser penalty.

7. Factor Eight: The likelihood of recurrence.

53 Factor eight weighs whether a company has changed its practices to avoid future violations.[102] Recognizing the critical importance of doing so, Mr. Brooks testified that WMW has implemented multiple new compliance training and complaint tracking to better prevent, identify, and correct future violations.[103]

54 In response, Ms. Feeser testified: "Staff's investigation focused on Douglas County services, and the root cause of the violations was a Company decision that it was too far to drive to provide tariff-compliant service to these customers. Staff . . . had a reasonable (and now confirmed) concern that [WMW] may be making similar decisions in those other rural service areas."[104] This one passage has multiple assumptions of the sort that typify Staff's approach to this case when facts were not immediately available.

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[101] Docket UT-181051, Final Order, *supra* n.43, at ¶ 78.
[102] Exh. BF-13X, Enforcement Policy, ¶ 15, subparagraph (8).
[103] Brooks, Exh. CB-1T at 16:8-14, 20:13-21:14.
[104] Feeser, Exh. BF-4T at 10:20-11:4.

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55 Staff's suspicion of widespread violations seems to rely entirely on experience from other, unidentified cases.[105] WMW's investigation identified ***no customers*** with non-compliant service in 10 of the 16 counties where WMW holds Commission solid waste collection authority—and only one or two each in five of the six other counties (Benton, Douglas, Kittitas, King, Snohomish).[106] And there is no evidence that what Staff refers to as WMW's "practice" with respect to the 25 affected customers was ever applied to any other customer.[107]

56 Mr. Brooks' testimony did not "confirm" Staff's suspicion of widespread denial of tariff-compliant service. Ms. Feeser admitted under cross examination that Staff did not investigate and had no knowledge of WMW's decisions regarding the 17 additional customers, and offered no reason to believe any of them were receiving less frequent service than they wanted.[108]

57 Mr. Brooks' testimony also did not confirm problems in "other rural service areas" as Ms. Feeser claims. Ms. Feeser "do[es]n't know" how she would determine if an area is rural[109] (though parts of Seattle might qualify[110]), nor whether any of the 17 additional customers was actually

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[105] *See* Feeser cross, TR. at 117:12-14 ("What we generally find in investigations is if an area is impacted, it generally does creep into other areas."); Exh. BF-7X (Staff responses to WMW Data Request No. 21 and Public Counsel Data Request No. 3) (Staff "does not have documentation showing that there are issues in the other rural counties served by" WMW.). WMW identified no Commission precedent on reasonable suspicion. In the criminal context, reasonable suspicion must be individualized to the subject, not based only on generalities about typical activities in a place or past conduct of friends, family, or associates. *See State v. Weyand*, 188 Wn.2d 804, 811-12, 816-17, 399 P.3d 530 (Wash. 2017) (citations omitted).
[106] TR. at 112:3-9.
[107] *See* TR. at 99:6-11.
[108] *See* TR. at 87:12-17 (no information about the customers' preferences), 99:20-25 (no knowledge of any of WMW's decisions), 103:21-104:16 (no investigation).
[109] TR. at 88:6-89:25.
[110] TR. 95:6-10.

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rural,[111] despite receiving and reviewing information including their service addresses months before hearing.[112]

58 In sum, Staff testifies that its concern of possible recurrence "centered around [WMW's] decision-making, its reasoning, and the impact rural customers would experience."[113] It claims its investigation focused on "the root cause of the violations[,] a Company decision that it was too far to drive to provide tariff-compliant services to these customers."[114] Nothing in the record shows that such decisionmaking ever extended beyond the one collection route directly at issue. WMW undisputedly corrected service to that route in 2023 and made multiple systemic improvements since. Before it had any evidence, Staff's testimony on recurrence focused on the notion that distance-based withholding of service "***could*** be spread across the Company's entire service area" and "***could*** continue" without intervention.[115] Now that the evidence shows the opposite, Staff believes those factors are irrelevant to recurrence.[116] Putting aside Staff's unfounded assumptions and shifting reasoning, factor eight supports a lesser penalty.

8. Factor Nine: The company's past performance regarding compliance, violations, and penalties.

59 The Commission will treat companies with a history of non-compliance more severely.[117] Past decisions have looked for ***similar*** violations, not just a history of past violations. In Docket No. TG-091292, ALJ Moss approved Allied Waste's and Staff's settlement agreement that mitigated

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[111] TR. at 95:11-14.
[112] TR at 94:4-13 (service location addresses for the 17 customers are redacted from Exh. BF-16X at 4); TR. at 93:3-8 (Ms. Feeser received and reviewed a confidential, unredacted version of Exhibit BF-16X).
[113] Feeser, Exh. BF-4T at 10:18-20.
[114] Feeser, Exh. BF-4T at 10:20-11:1.
[115] Exh. BF-1T at 16:21-17:2 (emphasis added).
[116] TR. at105:14-20.
[117] Exh. BF-13X, Enforcement Policy ¶ 15, subparagraph (9).

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its penalty assessment because, in part, "there is no evidence that [Allied Waste] has been the subject of similar complaints about tariff misapplication[.]"[118]

60 Staff apparently does not assess whether past violations are similar and does not analyze whether a past case is too old or dissimilar to be relevant under this factor.[119] Rather, Staff leaves this assessment to the Commission[120] and does not know how broadly the Commission considers a company's compliance program.[121] Given WMW's exemplary record of Commission compliance, history of addressing compliance issues promptly, and lack of similar violations beyond the narrow circumstances of this case, this factor supports a lesser penalty.

9. Factor Ten: The company's existing compliance program.

61 The Commission is "more likely to take enforcement action if the company does not have an active and adequate compliance program in place[.]"[122] The Enforcement Policy gives a holistic view of the Commission's expectations:

> A compliance program should include personnel whose stated job responsibilities include understanding and implementing Commission statutory and regulatory requirements. The program also should designate personnel responsible for interacting with the Commission on enforcement matters and should also include systems and programs to detect and correct violations and to report those violations to company management.[123]

62 Mr. Brooks testified to WMW's pre-existing, multi-layered approach to ensure tariff compliance,[124] which closely resembles the Commission's stated expectations. Before this case,

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[118] Docket TG-091292, *In re Penalty Assessment Against Rabanco, Ltd.*, Order 01, Corrected Initial Order Approving and Adopting Settlement Agreement Mitigating Penalty Assessment (July 23, 2010) , ¶7.
[119] TR. at 125:3-7 ("We report on the compliance history, no matter what the subject or topic" was); *id*. at 126:8-20.
[120] TR. at 124:5-6.
[121] Exh. BF-12X (Staff response to WMW Data Request No. 35.a).
[122] Exh. BF-13X, Enforcement Policy ¶ 15, subparagraph (10).
[123] Exh. BF-13X, Enforcement Policy, ¶ 8.
[124] *See* Brooks, Exh. CB-1T at 18:1-21:12, 21:15-21, and Exh. CB-2.

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WMW's compliance program helped ensure compliance with Commission requirements through ***millions*** of annual waste pickups for many years.[125] In response to this proceeding, WMW has further improved its program, with new Commission-specific training for local managers and regular review of complaints by senior management and legal staff.[126]

63 Staff's inquiry into this factor is too narrow to be useful. Staff searches its own compliance investigation database, "the docket history," and the Commission's consumer complaint database[127] to "see if [Staff has] anything on record that shows the company had something in place to address the issue"[128]—in this case, specifically Item 240 service frequency.[129] WMW has not had similar violations, so Staff's narrow search left it "unaware of a compliance program to ensure the Company provides services to its customers as outlined in [its] tariff."[130] Thus, Staff's recommended penalty effectively ignores WMW's regulatory compliance program. The Commission should discount Staff's recommendation and find that this factor favors a lesser penalty.

10. Factor Eleven: The size of the company.

64 The Commission will consider a company's size to maintain consistency with similar penalties against companies of similar size and to avoid "enforcement actions disproportionate to a company's revenues."[131] In a recent order assessing penalties against CenturyLink—"not a small Company"—ALJ Bonfrisco held that this factor "d[id] not weigh heavily" in either

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[125] Brooks, Exh. CB-1T at 16:6-8.
[126] *See supra*, ¶ 11.
[127] Feeser cross, TR. 122:3-14.
[128] TR. at 121:23-25.
[129] Exh. BF-9X (Staff response to WMW Data Request No. 24).
[130] Feeser, Exh. BF-1T at 17:19-20.
[131] Exh. BF-13X, Enforcement Policy, ¶ 15, subparagraph (11).

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direction, as the factor mainly exists to protect small companies from unduly large penalties.[132] Similarly here, WMW's size supports neither a larger or smaller penalty.

VI. The Commission should suspend 75 percent of the penalty, more than Staff requests.

65 WMW and Staff agree that the Commission should suspend part of the penalty.[133] When deciding on suspended penalties, the factors the Commission considers include whether: (1) "the company has taken specific actions to remedy the violations and avoid the same or similar violations", (2) "the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties", and (3) "Staff and the company have agreed that Staff will conduct a follow-up investigation at the end of the suspension period and that if a repeat violation is found, the suspended penalties are re-imposed."[134] Though Staff recommends suspending no more than 50 percent of the monetary penalty,[135] the Commission should suspend 75 percent because WMW meets all three of those factors.[136] Further, the record shows that large penalties are not needed to spur WMW to compliance improvements.

VII. Conclusion – Relief Requested

66 WMW supports a reasonable monetary penalty.[137] But what's reasonable must be tied to the Commission's underlying rationale for enforcement: ensuring safe, adequate, efficient service at just and reasonable rates. It must also reflect a fair evaluation of all relevant enforcement factors,

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[132] *See* Docket UT-240078, *Wash. Utils. & Transp. Comm'n v. CenturyLink Commc'ns,* Initial Order 04 at ¶ 50 (Dec. 20, 2024).
[133] *See* Feeser, Exh. BF-4T at 13:2-3 ("Staff . . . believes that suspending a portion of the penalty is appropriate to provide an incentive to achieve and continue compliance going forward.").
[134] Exh. BF-13X, Enforcement Policy, ¶ 20.
[135] Feeser, Exh. BF-1T at 2:17-20, 10:15-18, 19:9-11.
[136] Brooks, Exh. CB-1T at 24:17-25:14.
[137] Brooks, Exh. CB-1T at 8:10-12.

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which WMW has offered and Staff has not. The maximum penalty here is $254,000, $1,000 for each of 25 affected customers for ***each*** month that WMW collected their waste once instead of twice. A $254,000 penalty on these facts would eliminate the Commission's headroom to make distinctions between cases like this and ones where a company endangers life, health, safety; causes a public nuisance; or violates Commission regulation unrepentantly.

67 Staff seems to have abdicated such signaling by recommending the maximum penalty in all cases not involving a small company or a large number of violations. The Commission should not follow Staff down that arbitrary and unreasoned path. Instead, it should show that it values long-standing commitments to regulatory compliance by WMW and companies like it, and should assess a penalty suitable for a company that acknowledges its mistakes, fixes them, and learns from them as it strives to set and maintain a high standard of regulatory compliance.

DATED this 18th day of March, 2025

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