Service Date: September 18, 2025

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. WASTE MANAGEMENT OF WASHINGTON, INC., Respondent.	DOCKET TG-240189 ORDER 05 FINAL ORDER GRANTING PETITION FOR ADMINISTRATIVE REVIEW; INCREASING PENALTY; AMENDING ORDER 04

BACKGROUND

1 In February 2023, Washington Utilities and Transportation Commission (Commission) staff (Staff),[1] opened an investigation to determine Waste Management of Washington, Inc.'s (WM or Company) compliance with its tariff and Commission rules after receiving a complaint in April of 2022 from a customer in Douglas County who requested and was paying for bi-weekly container pickup service for a 4-yard dumpster but only receiving monthly pickup services.[2]

2 On May 20, 2024, the Commission on its own motion through Staff filed in this docket, Docket TG-240189, a Complaint and Notice of Prehearing Conference (Complaint) against WM, for alleged violations of state law and Commission rules under Washington

[1] In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[2] *Washington Utilities and Transportation Commission (W.U.T.C.) v. WM*, Docket TG-240189, Exhibit to Testimony of Brigit Feeser, Staff Investigation Report dated April 30, 2024, Feeser, Exh. BF-1T at 5:7-10 (October 22, 2024), Feeser, Exh. BF-3r at 11-36 (February 10, 2025), and the informal consumer complaint attached to Staff's Investigation Report as Attachment A.

Administrative Code (WAC) 480-70-236, and Wenatchee Tariff No. 14, Item 240, of Waste Management's Certificate No. G-237.[3]

3 An Administrative Law Judge (ALJ) led adjudicative process followed, culminating in an evidentiary hearing on February 18, 2025, followed by a round of post-hearing briefs. ALJs Bonfrisco and Kruszewski presided.

4 On May 12, 2025, the ALJs entered Order 04 in this docket proposing the imposition of penalties on WM.[4] Order 04 proposes imposing penalties of $600 per violation on 154 violations, for a total penalty of $152,400, of which $76,200 would be suspended for a period of two years.

5 Order 04 is an initial order.[5] This Order would have become final by operation of law on June 2, 2025.[6] However, on June 2, 2025, Commission Staff petitioned for administrative review of Order 04 by the Commission pursuant to WAC 480-07-825(2).[7] This action prevented the Initial Order from becoming final.[8]

6 "Staff's Petition asks the Commission to modify the provisions of Order 04 that omit Staff's filing of its post-hearing brief, reduce a company's culpability if senior management is unaware of violations, and recognize that catastrophic harm is not necessary for violations to be serious."[9]

7 In its answer to Staff's Petition, WM challenges portions of the Initial Order and requests the Commission exercise its discretion to find that WM is eligible for penalty mitigation consistent with WM's interpretation of the Commission's enforcement policy.[10]

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[3] *W.U.T.C v. WM*, Docket TG-240189, Complaint and Notice of Prehearing Conference (Complaint) ¶ 2-23 (May 20, 2024).

[4] *Wash. Utils. & Transp. Comm'n v. Waste Management of WA, Inc.*, Docket TG-240189, Order 04, Order Imposing Penalties (May 12, 2025) (Order 04 or Initial Order).

[5] WAC 480-07-820(1)(a).

[6] WAC 480-07-825(1). *See also* WAC 480-07-130.

[7] Docket TG-240189, Staff's Petition for Administrative review (June 2, 2025) (Petition).

[8] WAC 480-07-825(1)(b).

[9] Petition at ¶¶ 11-12.

[10] *See*, *e.g.*, Order 04 at ¶¶ 41, 43; Response at ¶ 46. See also *In re Matter of the Enforcement Policy of the Wash. Utils. & Transp. Comm'n,* Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (Jan. 7, 2013) (Enforcement Policy).

8 WM argues that the Initial Order did not provide sufficient analysis of the overall penalty amount, such that the order is legally insufficient.[11] WM asserts that the Initial Order did not sufficiently engage with the case law the Company presented in its post hearing briefs.[12] WM further argues that a violation of a tariff should not be considered a *per se* violation sufficient to justify the maximum penalty.[13]

9 WM contends that the use of penalties to force compliance makes no sense under the circumstances presented, and argues that the Commission has reasonable grounds to determine that WM is entitled to further mitigation.[14] WM does not provide a citation for the contention that its management should not be held responsible for the actions and knowledge of one of its agents, when citing to the Initial Order's conclusion.[15] Indeed, WM acknowledges "that it is responsible for the actions of all of its employees".[16]

DISCUSSION

10 We grant Staff's Petition for Administrative Review; as discussed below, we amend Order 04 in part.

I. Standard of Review

11 We review petitions for administrative review *de novo*.[17]

12 In reviewing the decisions reached in an Initial Order, the Commission may exercise all discretion available to the presiding officer, except as limited by law.[18] In this review, the Commissioners personally consider the whole record or such portions as the parties cite in post-hearing pleadings.[19] In reviewing findings of fact, we give due regard to the

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[11] Response at ¶ 21.

[12] Response at 22 (asserting noncompliance with RCW 34.05.461(3)).

[13] Response at ¶ 17.

[14] Response at ¶¶ 19.

[15] Response at ¶ 7, 11-14,

[16] Response at ¶ 14.

[17] RCW 34.05.464(4); *City of Kennewick v. Port of Benton*, Order 04, Den. Pet. for Recons., Pet. for Stay, and Pet. for Reh'g (June 24, 2014).

[18] RCW 34.05.464(4).

[19] RCW 34.05.464(5)("The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.") *See also Bowing v. Board of Trustees*, 85 Wn.2d 300, 534 P.2d 1365 (1975)(finding the statutory term "personally review the record" does not mean to "read" the record.").

presiding officer's opportunity to observe witnesses as expressed in findings of credibility.[20]

13 Because agency heads have the decision-making power to decide and enter a final order, it follows that they are authorized to modify an initial order's conclusions of law;[21] and findings of fact. While we are not legally required to provide reasons for doing so,[22] in order to facilitate the greater understanding by regulated companies and their representatives of the Commission's Enforcement Policy and the mitigation of Commission penalties, we endeavor to explain our legal reasoning in making modifications to the Initial Order under review.

14 As a result of our review of an Initial Order, we may dispose of the proceeding or remand the matter with instructions to the ALJ for further proceedings, along with temporary relief as is authorized and appropriate.[23]

II. Issues Raised on Review

15 Staff identifies three errors over six paragraphs in the Initial Order for the Commission's review. For the reasons discussed below, we grant Staff's Petition and modify the Initial Order. Our discussion of each error will begin with the text of the Initial Order paragraph(s) at issue in this review, followed by our analysis, and concluding with our modifications to the Initial Order. We address the following issues raised in the Petition: (1) Staff's filing of its initial Brief; (2) the ALJs' reduction of culpability for senior management's ignorance of imputable knowledge; and (3) the nature of the conduct as unlawful. We also discuss WM's challenges to the Order,[24] as relevant.

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[20] RCW 34.05.464(4).

[21] *Northwest Steelhead v. State Dep't of Fisheries*, 78 Wn. App. 778, 785 (1995)(finding agency head "authorized under RCW 34.05.464(4) to substitute his own findings of fact for those of the ALJ.").

[22] *Northwest Steelhead*, 78 Wn. App. at 785-786 (observing that "[g]iven this authorization, there simply is no need for agency heads to provide reasons for modifying").

[23] RCW 34.05.464(7).

[24] WAC 480-07-825(2)(c)(iii)("Challenge to order in response. A party that did not petition for administrative review of an initial order may challenge the order or portions of the order in its response to the petition of another party if that challenge is in response, or otherwise reasonably related, to the issues raised in the petition."); Response at 19-45. WM's Response does not offer numbered challenges. *But see* WAC 480-07-825(2)(b)(i) ("Every petition must identify with specificity the nature of each challenge to the initial order. The petitioner must separately state and number every contention").

A. Error 1: Staff's filing of its post-hearing brief

16 Staff notes in its Petition that Order 04 appears to overlook Staff's post-hearing brief.[25] WM does not object to the Commission correcting Order 04 to reflect the timing of Staff's brief. [26]

1. Paragraph at issue

17 Staff asserts that "[i]n paragraph 20, Order 04 states that Waste Management filed its post-hearing brief and that Public Counsel submitted a letter. The Order makes no reference to Staff's post-hearing brief, which was timely filed on March 18, 2025."[27]

2. Full Consideration of Record

18 We agree with Staff that the Final Order should properly reflect the consideration of the arguments made by Staff. The record is inclusive of all filed "briefs."[28]

19 To remove any ambiguity as to whether all arguments were reviewed, we amend Paragraph 20 as recommended, so as to clarify that the Commission has taken this portion of the record into consideration in coming to a final determination.

3. Modification

20 We modify paragraph 20 as follows: "On March 18, 2025, Waste Management filed its post-hearing Brief, Staff filed its post-hearing brief, and Public Counsel filed a letter indicating that it did not intend to file a post-hearing brief."

B. Error 2: Imputed Knowledge

21 Staff challenges the Initial Order's analysis of harm as overly restrictive and not properly accounting for the unlawful nature of the conduct. WM disagrees, challenges the application of factors, and argues the record supports a lower penalty.

22 Staff argues that the Initial Order errs in giving undue weight to WM's distinction between local staff and senior management, creating an untenable situation where parent

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[25] Petition at ¶¶ 11-12.

[26] Response at ¶ 7 n.13.

[27] Petition at ¶ 3.

[28] RCW 34.05.476(1)(c).

companies can push culpability to local staff.[29] Staff argues such a result is contrary to the public interest. Instead of assessing whether senior management had knowledge of the violations as a mitigating factor, the swiftness of their response should be considered as a mitigating factor.[30]

23 WM argues that the four factors listed in the Commission's Enforcement Policy under Enforcement Factor 2 support the finding in Order 04.[31] While WM agrees it is responsible for the actions of all employees, it argues that "it also matters whether and how leadership responds to a tariff violation…"[32]

24 We agree with Staff.

1. Paragraphs at issue

25 Paragraph 41 of Order 04 states, "While the record clearly establishes that Waste Management's local operations staff ignored the technical assistance Staff provided between April and May 2022, and did not promptly remedy the 14 informal violations, we agree with Waste Management that assessing a larger penalty here would not have improved or expedited compliance. Further, no evidence was provided in the record suggesting that Waste Management willfully hid or obscured facts. Rather, after Senior Management received Staff's April 20, 2023, data request, it restored the every-other-week collections as of May 20, 2023, to all the customers affected in Tariff 14, Item 240, was forthcoming, admitted to the violations, and agreed to implement all of Staff's non-monetary recommendations."[33]

26 Order 04, paragraph 42 states: "….However, because the Company's local operations staff knew about the tariff violation and failed to promptly take corrective action until a year later, a larger penalty is warranted, but we do not find that the intent and decision making of the local operations staff can be transferred Company-wide. Primarily because the record demonstrates that Senior Management did take the necessary corrective measures upon being made aware of the violations at issue. For these reasons, in balancing each of the above factors, we find that Waste Management's conduct does not

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[29] Petition at ¶¶ 13-15.

[30] Petition at ¶ 15.

[31] Response at ¶ 14. These factors include 1) how serious or harmful the violation is to the public; 2) whether the violation is intentional; 3) whether the company self-reported the violation; and 4) whether the company was cooperative and responsive. Enforcement Policy at ¶ 15.

[32] Response at ¶ 14.

[33] Petition at ¶ 6

rise to the level of an intentional violation but may be more aptly characterized as demonstrative of its negligence. We thus weigh this factor in favor of a larger penalty."[34]

27 Paragraph 43 of the order states: "However, we do consider Senior Management's lack of knowledge during the informal investigation in 2022 to be a mitigating factor for two reasons. First, Waste Management did restore every-other-week service by May 20, 2023, shortly after receiving Staff's April 20, 2023, data request; and (2) on November 15, 2024, reported to Staff that the Company identified 'an additional 0.14 percent (17 customers) out of the 12,000 customers under Item 240 that it investigated who were receiving non-complaint service frequencies. Therefore, we weigh this factor in favor of a lesser penalty.'"[35]

2. Imputed Knowledge and Intentionality Factor of the Enforcement Policy

28 The Washington State Supreme Court has acknowledged that the knowledge of an agent is imputed to the principal:

> The general rule is that an agent's knowledge is imputed to the principal if the agent has 'actual or apparent authority in connection with the subject matter 'either to receive it, to take action upon it, or to inform the principal or some other agent who has duties in regard to it.'[36]

29 Even if the principal had no right to control the agent, the conduct would still be attributable to WM because the actions were unlawful, not negligent.[37]

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[34] Petition at ¶ 7

[35] Petition at ¶ 8

[36] *Denaxas v. Sandstone Ct. of Bellevue, LLC*, 148 Wn.2d 654, 666 (2003) (internal quotation marks omitted) (quoting *Roderick Timber Co. v. Willapa Harbor Cedar Prods., Inc.*, 29 Wn. App. 311, 317 (1981)); *see also*, *Interlake Porsche + Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 518, 728 P.2d 597 (1986) (holding that an officer's knowledge is imputed to the corporation).

[37] *Chi. Title Ins. Co. v. Office of Ins. Comm'r*, 178 Wn.2d 120, 143("Here, Land Title's actions were unlawful, not negligent. Land Title did not wine and dine the real estate middlemen by accident. Rather, whether out of overzealousness or ignorance of the law, Land Title engaged in *intentional* conduct that violated the law.").

30 Tariffs have the effect of law.[38] The violations of this tariff were therefore violations of law.[39]

31 The law asks if the low-level employees had the power to take action or inform someone who did have power to take action. Here, the evidence leads to a reasonable conclusion that the answer is yes, an employee knew of the unlawful conduct and was not encumbered from alerting his superiors.[40]

32 Staff informed WM local operations staff in 2022 that they "must provide and bill for ... service in a manner consistent with the conditions described in its approved tariff."[41] Staff issued its Data Request 28 to WM Senior Management on April 20, 2023.[42] Thus, the issue existed "over a year not being fixed."[43] WM's actions, through its agents, amounted to a unilateral adjustment of a rate charged that was inconsistent with the language of the approved tariff.[44]

33 WM 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."[45] WM had a right to control the conduct of its agents.[46] Thus, WM's knowledge is imputed, and its

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[38] *General Tel. Co. v. City of Bothell*, 105 Wash. 2d 579, 585 (1986) ("Once a utility's tariff is filed and approved, it has the force and effect of law.").

[39] Brooks, Tr 123:1-4 ("Staff is unaware of other complaints against companies for not providing service to customers under Tariff 14, Item 240, permanent container pickup service, which requires every-other-week pickup service").

[40] Feeser, Exh. BF-1T at 14:2-4; Exh. BF-4T at 6:5-7; Exh. BF-3r at 13-14.

[41] Stanosky, TR. 136:4-5 (describing notice received by WM's agents "management must provide and bill for our service in a manner consistent with the conditions described in its")

[42] Brooks, Tr. 75:18

[43] Brooks, Tr: 98:21-23. Feeser, Exh. BF-1T at 14:2-4; Exh. BF-4T at 6:5-7; Exh. BF-3r at 13-14.

[44] Brooks, TR. 137:24 – 138:3.

[45] WM Post-Hearing Brief at ¶ 49 *citing* Brooks, Exh. CB-1T at 5:7-11; Docket TG-240189, Compl. (May 20, 2024).

[46] *Chi. Title Ins. Co. v. Office of the Ins. Comm'r*, 166 Wn. App. 844, 854-855 (2012)("When the facts are not in dispute and not susceptible to more than one interpretation, we determine vicarious liability in a business relationship as a question of law. . . . We consider several factors before imposing vicarious liability, but the most crucial factor is the right to control the manner, method, and means by which the work and the desired result was to be accomplished.").

attempt to characterize Staff's case as deficient is not well founded.[47] Indeed, "WM concedes that its tariff violations in Douglas County were, in one sense, intentional . . ."[48]

34 Order 04 found violations of the tariff;[49] the conduct was therefore found to be unlawful. The conduct was also intentional. The employees had the apparent authority to inform its management group; to reward its failure to do so here would create a perverse incentive.

35 Nothing in the record supports the Commission straying from the principle and its prior orders that an agent's or contractor's knowledge and actions are imputed to the principal – to do otherwise would encourage employees or contractors failure to uphold tariff provisions or safety requirements as a regulatory cost mitigating strategy.[50] If a Company can be held accountable for the negligent actions of an employee, then the Company can be held accountable for the intentional, unlawful actions of that same employee.

36 WM is expected to maintain adequate managerial controls to ensure the tariff is enforced. That senior management maintained ignorance of the unlawful conduct of its agent for a year should not be a mitigating factor. Indeed, it is the type of behavior that heightens the Commission's scrutiny under Factors 5 and 10.[51] We are, however, encouraged that WM has "investigated the service frequency of all 12,000 Item 240 customers statewide to identify other potential violations, added required WUTC compliance training for relevant managers, and instituted new regular review of informal complaints by senior management and legal staff to ensure prompt correction of any identified compliance issues . . ."[52]

37 However, WM's various arguments challenging the penalty assessed as inconsistent with precedent are misplaced.[53] The Commission is an independent agency empowered by the legislature to assess fines for violations of law. The Commission's Enforcement Policy

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[47] Brooks, Exh. CB-1T at 12:11-15. Post-Hearing Brief at ¶ 3 ("Staff's recommendation also lacks basis because Staff's cursory investigation led to numerous faulty assumptions and gaps in its testimony."). Order 04 at ¶ 28.

[48] Post-Hearing Brief at ¶ 46 *citing*

[49] Order 04 at 65

[50] WUTC v. Puget Sound Energy, *Final Order Accepting Settlement Agreement on Conditions*, Docket PG-060215, ¶ 29, (Apr. 3, 2008).

[51] Enforcement Policy at ¶ 15, subparagraph (10): ("more likely to take enforcement action if the company does not have an active and adequate compliance program in place[.]").

[52] WM Post-Hearing Brief, at ¶ 9; Brooks, Exh. CB-1T at 16:8-10, 18:10-13, 20:13–21:14.

[53] WM Response at ¶¶ 18-45.

and past cases are persuasive and can provide the framework necessary to explain a multifactored judgment – but the Commission must consider each case based on its own facts and circumstances.

38 WM suggests that Initial Order's 11-page analysis of the Enforcement Factors fails to adequately synthesize the concepts discussed, such that the Initial Order is legally insufficient under RCW 34.05.461(3).[54] We disagree. WM's conduct was unlawful. The legislature has empowered the Commission to penalize such conduct. Our discretion is broad and therefore we decline to give much weight to the comparative analysis presented by WM in its briefs.

39 There are often reasons to mitigate and not default to the maximum. However, we find that in reviewing the factors in the Commission's Enforcement Policy, the Initial Order overestimated the presence of such mitigating factors.[55] As a matter of law, WM is imputed to know what its agents know.[56] The Company failed to respond to Staff's notification of local operations staff for over a year, follows that WM's continued conduct was knowingly unlawful. Further, it follows that the Initial Order miscalculated the period of time it took WM to correct the errors. The time should be calculated from the time the Company knew of the violations, not from the time Senior Management became aware of the violations.

40 To clarify, WM argues its "violations did not jeopardize the Commission's core goal of safe, adequate, and efficient service at just and reasonable rates."[57] We disagree. The tariff set an exchange of services for money, which WM knowingly did not honor. It was unlawful and therefore quintessentially not "adequate," nor at "just and reasonable

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[54] Response ¶ 22.

[55] Order 04 ¶ 55. Order 04 ¶ 43 (3: whether the company self-reported the violation), ¶ 44 (4: whether the company was cooperative and responsive); ¶ 47 (5: whether the company promptly corrected the violations and remedied the impacts), ¶ 49 (7: the number of customers affected), ¶ 51 (8: the likelihood of recurrence), ¶ 53 (9: the company's past performance regarding compliance, violations, and penalties).

[56] WAC 480-07-345(3). *C.f.* Tr at 144:18-24 ("Q Is it Waste Management's position that the violations are not intentional unless senior management is aware of the company's local level activities?· ·A· We believe this situation is very isolated to the district staff at this piece.· And we're not running from the fact that they made an incredible error as it relates to the tariff."). WM's witness's failure to answer the question presented on cross-examination implied a premise contrary to law, and impacted the Initial Order's analysis multiple Factors.

[57] Response, at ¶ 37.

rates."[58] "There is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation."[59]

41 As mentioned herein, we are encouraged that WM has since investigated the service frequency for all Item 240 customers statewide to identify other potential violations, added compliance training on Commission statutes and rules for managers, and instituted regular review of informal complaints by senior management and legal staff to ensure prompt correction of any identified compliance issues. However, that does not change the fact that such systems were not in place prior. To the extent that there was a gap between knowledge imputed to the Company, and the knowledge management had, under Factor 10 such gaps in control systems heighten the scrutiny applied because they reflect poorly on internal controls as they existed.

42 Accordingly, we agree with Staff and do not find that WM's arguments for lower penalties in this instance are persuasive.

3. Modification - Processing Penalty to Properly Protect Public Interests

43 From the above discussion we conclude that the Initial Order inadequately weighed a number of factors as a result of the acceptance of WM's premise that its principals did not know what its agents knew. This affected the "Intentionality" factor (Factor 1); the speed of curing (Factor 5); and the strength of the compliance program (Factor 10), of the enforcement policy. Instead of weighing these factors more heavily, as discussed above, the Initial Order improperly used them as mitigating factors. This resulted in an overall penalty evaluation that was too generous in mitigation. The record supported a finding management was imputed to know the violations reported to their agents. The appropriate penalty on this record is closer to the top end of the penalty spectrum, than the Initial Order's $600 per violation. As a result, we modify paragraphs 41-44, 47, 50 as follows:

> 41. ~~While t~~The record clearly establishes that Waste Management's local operations staff ignored the technical assistance Staff provided between April and May 2022, and did not promptly remedy the 14 informal violations, ~~we agree with Waste Management that assessing a larger penalty here would not have improved or expedited compliance.68 Further, no evidence was provided in the record suggesting that Waste Management~~

[58] *C.f. Nat'l Union Ins. Co. v. Puget Power,* 94 Wn. App. 163, 174 ("absolving Puget Power of liability for its negligent failure to utilize available backup equipment would be at odds with its statutory duty").

[59] Order 04 at 38 citing Commission Enforcement Policy at 8 ¶ 15.

~~willfully hid or obscured facts. Rather, a~~After Senior Management received Staff's April 20, 2023, data request, over a year after Waste Management had constructive notice of the issue, it restored the every-other-week collections as of May 20, 2023, to all the customers affected in Tariff 14, Item 240,69 ~~was forthcoming,~~ admitted to the violations, and agreed to implement all of Staff's non-monetary recommendations.

42: However, because the Company's local operations staff knew about the tariff violation and failed to promptly take corrective action until a year later, a larger penalty is warranted. ~~, but we~~ We ~~do not~~ find that the intent, knowledge and decision making of the local operations staff can be ~~transferred~~ imputed to the Company~~-wide~~. Primarily, the record demonstrates that Senior Management did not take the necessary corrective measures upon being made constructively aware of the violations at issue. For these reasons, in balancing each of the above factors, we find that Waste Management's conduct does ~~not~~ rise to the level of an intentional, unlawful violation ~~but may be more aptly characterized as demonstrative of its negligence~~. We thus weigh this factor heavily in favor of a larger penalty.

43: Under Factor 3, the Commission may be more lenient if a company self-reports its violations. Unfortunately, that did not occur here because neither the Company's local operations staff nor Senior Management self-reported the violations before Staff opened both its informal and formal investigation in the matter before filing its complaint. ~~However, we do consider Senior Management's lack of knowledge during the informal investigation in 2022 to be a mitigating factor for two reasons. First,~~ Waste Management did restore every-other-week service by May 20, 2023, shortly after receiving Staff's April 20, 2023, data request, over one year after becoming constructively aware of the violation; and (2) on November 15, 2024, reported to Staff that the Company identified "an additional 0.14 percent (17 customers)" out of the 12,000 customers under Item 240 that it investigated who were receiving non-complaint service frequencies. Therefore, we weigh this factor in favor of a ~~lesser~~greater penalty.

44. Although Staff acknowledged Waste Management "was sufficiently responsive and cooperative" to its request for data and throughout the investigation, we ~~dis~~agree with Staff's proposition that maximum penalties are warranted under this factor. ~~Instead, w~~While we find that Waste Management did eventually own up to its failures, was eventually responsive, and that its Senior Management subsequently took ~~proactive~~ measures to incorporate systemic improvements to its existing unlawful business processes and procedures to prevent recurrence~~.~~, ~~For~~ these reasons do not warrant weighing~~,~~ this factor ~~weighs in favor of~~against leniency.

47. As we noted above in paragraph 41, we agree with Staff that local operations staff disregarded the technical assistance provided, and that their failure to take the appropriate corrective actions at the time resulted in the violations continuing to persist for a year. ~~Further, w~~While we recognize that the 17 customers Waste Management identified as receiving non-compliant service and additional efforts the Company made after June 1, 2023, were outside the scope of Staff's investigation, we ~~dis~~agree with Staff that local management disregarding technical assistance is a serious concern. ~~the remedial measures taken. The reason for this is that it demonstrates the subsequent actions Waste Management took to remedy the adverse impact of its tariff violations, namely, to ensure it provided the correct service levels moving forward.~~ Therefore, in weighing both prongs of this factor, we ~~do not~~ agree that the maximum penalty is warranted and weigh this factor in favor of a ~~lesser~~ greater penalty.

50. Factor eight weighs whether a company has changed its practices to prevent future violations. While Staff argues that Waste Management did not take the violations seriously until it was faced with a formal investigation and is not confident the Company will comply absent Commission intervention, Waste Management argues that the record establishes that: (1) it "undisputedly corrected the service to that route" by May 20, 2023;~~84~~ (2) it "implemented new compliance monitoring procedures to…better prevent, identify, and correct future violations;" and (3) it added new trainings for local operations managers and staff to "fully understand tariff requirements." Waste Management further ~~argues~~ admits that when it conducted its own investigation of its service frequency of 12,000 customers "no customers with non-compliant service in 10 of the 16 counties where [it] holds Commission solid waste collection authority" were identified. ~~Finally, Waste Management emphasizes that "nothing in the record shows that such decision making ever extended beyond the one collection route directly at issue[,]" and that it made "multiple systematic improvements since."88~~

51. Based on the record before us, we disagree with Waste Management ~~and find its arguments compelling~~. As we noted above in paragraph 47, the evidence before us shows that only after ~~after~~ the Company's Senior Management was made constructively aware of the tariff violations – over one year after initial notiuce to local operations staff, did it ~~took its regulatory obligations seriously,~~ correct~~ed~~ its service levels, and take ~~took proactive~~ steps to ensure multiple systematic improvements were integrated to prevent recurrence. For this reason, we are ~~not~~ persuaded by Staff that that the maximum penalty is appropriate and thus weigh this factor in favor of a ~~lesser~~ greater penalty.

C. Error 3: catastrophic harm is not necessary for violations to be serious.

44 Staff argues that the conduct at issue here is intentionally unlawful.[60]

45 WM posits that the intentionally unlawful conduct at issue is not serious under Factor 1 and only affects a small portion of their overall regulated activity.[61]

46 We agree with Staff.

1. Paragraphs at issue

47 Paragraph 36 in Order 04 states: "In comparing the magnitude of the harm and quantity of customers adversely affected in the case to that in Docket TG-210689, we agree with Waste Management that the resulting harms caused cannot be characterized as: (1) a major company-wide disruption in the affected service area; (2) causing unsafe conditions that endanger the health and safety of these customers; or (3) interrupting access to critical services akin to the CenturyLink 911 emergency outage."[62]

48 Paragraph 37 of Order 04 states: "Rather, we find that the harms can be more aptly characterized as undermining the Company's reputation, public trust, responsiveness, reliability, and overall level of customer service. While we recognize that household waste materials sitting for a month at a time can become a public nuisance, this issue has not been alleged to be the case by Staff. Further, despite demonstrating that one customer was unduly harmed over an 18-month period and inappropriately charged for an overfilled container, the record reflects that Waste Management refunded the customer. Therefore, in balancing the seriousness of the violations and harm to the public, we do not believe the maximum penalty is warranted for this factor but are in favor of a larger penalty."[63]

2. Nature of Harm under Factor 1

49 The nature of the harm here is intentional conduct contrary to law.

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[60] Petition at ¶¶ 16-18.

[61] Response at ¶¶ 16-17 ("This hyperbolic framing is Staff's invention.") *See also* Post Hearing Br. at (p!) 52 ("the number of affected customers is small".).

[62] Petition at ¶ 4.

[63] Petition at ¶ 5

50 "The Enforcement Policy cannot be applied mechanically across the diverse industries and situations that come before the Commission."[64] Yet, WM offers comparisons to previous cases in different industries, and offers a mechanical, mathematical analysis which focuses on final penalties divided by the maximum potential penalty.[65]

51 WM's arguments of case law algebra[66] are of limited persuasive value – as they do not account for the time value of money, or the elasticity of 'highest possible charge' with the mechanics of continuous violations, nor do they adequately control for the size of the company.[67]

52 For example, WM attempts to frame the $500 per violation assessed in 2017 in *Ghostruck* as an example of a lesser punishment for similar unlawful conduct – but we do not agree the cases are so similar as to warrant identical treatment.[68] To begin, *Ghostruck* involved a penalty and classification proceeding for a company operating as a household goods carrier without a permit to do so.[69] The company disputed it was not aware of the need to obtain a permit and was operating accordingly. Here, WM is very familiar with its status as a regulated company and is further aware of the need to comply with Commission rules and the provisions of its tariffs. The companies are simply not alike and the violations are accordingly dissimilar and should be treated as such.

53 Moreover, the size and scope of the regulated activity of WM and those of *Ghostruck* make such comparisons of limited value under Factor 11 (size). An organization of WM's size is able to absorb a penalty of a different magnitude more than the organization in *Ghostruck*. The Initial Order did not engage with WM's arguments in its briefing on these points, but we disagree with WM's characterization of that lack of engagement as in error.[70]

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[64] Response at ¶ 31.

[65] Response at ¶¶ 36, 43, 45

[66] WM Response at ¶¶ 17, 34, 36.

[67] *C.f.* RCW 81.04.405 ("[I]n case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation."); RCW 81.04.380 ("Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.").

[68] WM Response at ¶ 17 fn35

[69] *In re Ghostruck, Inc.*, Docket TV-161308, Order 05 at ¶¶ 7-13 (May 31, 2017).

[70] *See* WM Response at pg. 27.

3. Modification

54 We edit paragraph 37, as follows:

> *37* Rather, we find that the harms can be more aptly characterized as an unlawful breach of the regulatory compact, in which a regulated entity unilaterally adjusted the monopoly service it provides without authority. ~~undermining the Company's reputation, public trust, responsiveness, reliability, and overall level of customer service. While we recognize that household waste materials sitting for a month at a time can become a public nuisance, this issue has not been alleged to be the case by Staff. Further, despite demonstrating that one customer was unduly harmed over an 18-month period and inappropriately charged for an overfilled container, the record reflects that Waste Management refunded the customer. Therefore, in balancing the seriousness…~~

D. Penalty Modification.

55 Having determined above that Staff's Petition should be granted and Order 04 modified, we also find that the penalties assessed in Order 04 should be modified. Accordingly, we find that rather than $600 being assessed per violation, an amount of $800 should be assessed for each violation, raising the total penalty assessment to $203,200.

56 Consistent with our finding that the overall penalty amount should be increased, we also find the amount due should be increased. Accordingly, we increase the amount due and payable from $76,200 to $101,600. We agree with Order 04 that one half of the penalty amount should be due now, with one half suspended in accord with the provisions of Order 04. Our increase in penalties is due to, and consistent with our findings of error contained in this Order, along with our findings that certain factors should warrant a harsher penalty where Order 04 found those factors to be mitigating,

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ORDER

THE COMMISSION ORDERS THAT:

58 (1) Staff's Petition for Administrative Review is GRANTED.

59 (2) Waste Management of Washington, Inc.'s Petition for Administrative Review is DENIED.

60 (3) A total penalty of $203,200 shall be assessed against Waste Management for 254 violations of WAC 480-70-236, of which $101,600 is suspended for a period of two years from the date of this Order and then waived if Waste Management complies with this Order over the two-year period.

61 (4) Waste Management must pay the $101,600 that is not suspended within 30 days of the effective date of this Order.

62 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective September 18, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BRIAN RYBARIK, Chairman

ANN E. RENDAHL, Commissioner

MILTON DOUMIT, Commissioner

NOTICE TO PARTIES: This is a Commission final order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 81.04.200 and WAC 480-07-870.