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6 BEFORE THE WASHINGTON STATE
7 UTILITIES AND TRANSPORTATION COMMISSION

8 WASHINGTON UTILITIES AND
9 TRANSPORTATION COMMISSION,

10 Complainant,

11 vs.

12 WASTE CONTROL, INC.,

13 Respondents.

Docket No. TG-140560

INTERVENOR WRRRA'S RESPONSE
TO, AND JOINDER IN RESPONDENT'S
DISCOVERY MOTION

14 **COMES NOW** Intervenor Washington Refuse and Recycling Association
15 (WRRRA) and respectfully submits the following:

16 **INTERVENOR'S POSITION AND INTEREST IN MOTION:** Briefly put,
17 WRRRA strongly supports Respondent's Motion and joins in same. An issue such
18 as this is of significant interest to the industry as a whole as, obviously, sooner or
19 later all companies will seek rate adjustments. If a seemingly endless volley of
20 discovery from Staff is to be standard practice, then there must be a precedent
21 set for a practical and cost-effective method of resolving disputes. As the motion
22 points out, there already are at least two procedures in place to deal with this
issue. Since apparently Staff does not intend to agree to either, one or the other
must be ordered. It is really as simple as that.

23 In view of what, at least up to now, has been a somewhat surprisingly
24 adversarial proceeding, Intervenor would favor appointment of a Discovery
25 Master, but certainly would defer to Respondent if the other alternative, a
26 Discovery Conference, is deemed more likely to break this log jam and get this

1 matter to resolution. In our view, a knowledgeable and persuasive Master is
2 what most likely is needed.

3 **ARGUMENT:** As the motion correctly indicates, both the Rules of Civil
4 Procedure (CR 26(i)) and the Commission's own rules, WAC 480-07-425 and
5 480-07-415, encourage resolution by the parties in discovery disputes, and CR
6 26(i) requires it.¹ The question here is not whether there should have been
7 informal and serious "face-to-face" discovery discussions already, but why not?
8 It has been clear for some time there are disagreements which should have been
9 subject at least to direct discussion. Of course, it takes both "sides" to talk, and
10 if Respondent's contentions are to be accepted, it is the only one willing to do so.
11 If that proves to be the case, a clear order directing appointment of a Master, or
12 participation in a Discovery Conference, should be issued.

13 There are several reasons why pre-judicial resolution of discovery issues is
14 either mandated or strongly encouraged, both in Superior Court and
15 administrative proceedings.

16 First, frankly, the Judge has better things to do with his or her time than
17 go through discovery requests and objections one by one and rule on each one.
18 This is particularly true in a case like this which involves literally thousands of
19 pages of technical (and in some instances obscure, to a non accountant or
20 auditor) financial records. The parties and their experts are in a much better
21 position to do so, leaving the Judge to concentrate on the law and evidence that
22 is actually presented in the hearing room.

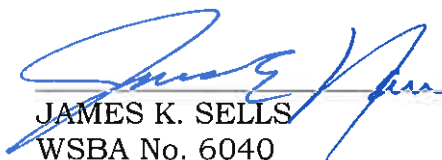
23 Secondly, if, in fact, one party or the other refuses, for whatever reason, to
24 participate in discovery discussions, the ultimate cost in time and money
25 inevitably will go up, which benefits no one, particularly the consumer. Unless
26 we are missing something here, the whole purpose of this exercise is to set fair
rates for the consumer which are compensatory to the Company. The more time
it takes because of lack of a good faith effort by either party to informally resolve
these issues, the further away that goal recedes.

¹ Many hapless lawyers bringing a discovery dispute before a Superior Court Judge without a serious out-of-Court effort at resolution find themselves told in no uncertain terms to "go and talk about it in the hall," and come back after they have done so, when they most certainly will learn they are at the bottom of the calendar next week.

1 Finally, at least the resolution of discovery disputes by the parties
2 themselves, with assistance if necessary, just makes sense. It narrows the
3 issues, reduces costs and helps provide the Judge with a coherent and complete
4 record upon which to make a ruling. It is difficult to understand why there
5 would be opposition to this concept and, thus, to the motion. (Of course, at this
6 point Intervenor at least does not know if there will, in fact, be opposition.)

7 **CONCLUSION:** As indicated, this matter is of significant interest to the
8 industry as a whole. Companies filing for rate adjustment expect to produce
9 documentation, and willingly do so. That's the law, and it is a good one; fair for
10 everyone involved, particularly the consumer. The WUTC is a regulatory agency
11 and rate making is one of its most significant roles. That role should not be
12 compromised by unreasonable and unjustified, adversarial bickering over
13 procedural or discovery matters. That just should not be the sort of distraction it
14 has been thus far in this matter. The parties need to get together, with or
15 without a third party, and get on with the merits of the filing. If that takes an
16 order from the Judge, so be it. It is unfortunate we are at this point, but we all
17 have to move on to either an agreement or a hearing without further unnecessary
18 forays down distracting and unproductive side roads.

19 Respectfully submitted this 23rd day of June 2014.

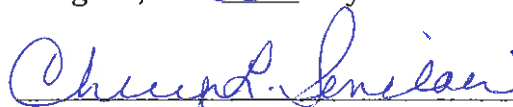
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21 JAMES K. SELLS WSBA 5807
22 WSBA No. 6040
23 Attorney for Washington Refuse and
24 Recycling Association
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360.664.1160 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
Marguerite E. Friedlander <u>mfriedla@utc.wa.gov</u>	<input checked="" type="checkbox"/> Via Email
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Waste Control, Inc. PO Box 148 Kelso, WA 98626	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Email
Brett P. Shearer Office of the Attorney General 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0218 360.664.1187 <u>bshearer@utc.wa.gov</u>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email

DATED at Silverdale, Washington, this 23rd day of June 2014.


Cheryl L. Sinclair