

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE CONTROL, INC.,

Respondent.

DOCKET TG-140560

WASTE CONTROL, INC.'S REPLY  
TO COMMISSION STAFF'S  
RESPONSE TO WRRRA'S RESPONSE  
AND JOINDER IN WASTE CONTROL  
INC'S DISCOVERY MOTION

**I. INTRODUCTION/OVERVIEW OF CURRENT STAGE OF PROCEEDING**

- 1 Waste Control, Inc. files this Reply to the Commission Staff's Response to WRRRA Motion/Response in the above-captioned matter. As the Commission is aware, the Commission Staff had previously filed its own Answer to WCI's (the "Company's," WCI's) Motion, on June 18, 2014. Without intending to precipitate an unending pleading cycle, the Company nevertheless wishes to correct some unanticipated characterizations, statements and/or inferences in the Staff's June 23 "Response," which directly implicate the Company's position in its Discovery Motion and Response to the Staff's Motion to Compel Discovery.
- 2 First, we note the Staff has here filed a "Response" after previously filing its own Discovery Motion, an Amended Motion, and, its Answer to WCI's Discovery Motion. It would not appear there was any implicit or express provision for answering or replying to the Intervenor's Response noted in the Administrative Law Judge's letter of June 13, 2014 nor would a movant/respondent appear eligible to so file. The only remaining "Responses," for the June 23 deadline were those to Waste Control's and Staff's Discovery Motions and again, Staff filed its on June 18.

3 Disagreement with broad statements, or even hyperbole and alleged misstatements by an  
Intervenor in its Response should not provide a ready forum for yet another bite of the apple  
by Staff.

4 Because the Company believes the Commission will nonetheless consider the latest  
submission of the Staff and wishes to avoid further procedural delays occasioned by a  
Motion to Strike and replies in recognition of the extensions in the current proceeding, the  
Company files the following comments in reply.

## II. ARGUMENTS IN OPPOSITION OF THE STAFF'S RESPONSE TO INTERVENOR RESPONSE

### A. Response To Staff Characterization of The Discovery Record to Date.

5 This is not the first time in this pleading cycle that Staff has taken an apparent unsanctioned  
opportunity for additional “rejoinder.” In its Amended Motion of June 13, at ¶3, instead of  
limiting its Amendment to Commission Staff Motion simply to correcting the inaccurate  
Data Request Response receipt date, the Amended Motion specifically includes two  
additional sentences unrelated to that technical correction with the concluding salvo: “[t]he  
events described above demonstrate the disruption created by an unexpected substitution of  
counsel in such a complex case and further indicate the necessity for an extension of time.”<sup>1</sup>

6 While the Company did not respond to that “dual purpose” Motion, it now asks how many  
repeat opportunities initiated by the Staff to either directly, or by aside, add to its cumulative  
legal argument is permissible? Here, under the premise that it is responding to the WRRRA’s  
Response and Joinder, it once again takes the opportunity to supply additional substantive

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<sup>1</sup> See, Staff Motion to Amend ¶3 at 2.

arguments in behalf of its Motion to Compel and in opposition to the Company's Motion for Appointment of Discovery Master to which the Company responds.<sup>2</sup>

**B. The Paucity of Data Requests Premise.**

7 The reference to propounding of just 19 Data Requests since the inception of the [new] case needs some context. The Data Requests issued to the Company in this matter may in fact individually total 19, but they include scores of multiple detailed subparts. The Commission need only review, as examples, the Data Requests 7 and 8 which both the Staff's Discovery Motion and the Company's Response attached, to understand that the quantification of the number of individual Data Requests says little about the volume, complexity and seemingly cumulative nature of Staff discovery propounded to date.

8 Moreover, that reference to the refiled rate case consciously omits referring to the prior proceeding, where Data Requests have previously been characterized in this record as including at least 80 some separate subparts and thousands of pages of responses in a case that is substantially the same as the refiled case, except for the forecast period/rate year.

**C. Discovery and Statutory Burdens.**

9 For the Staff to now characterize the Company's position in this matter as "refusing to accept that it is required both by statute and rule to provide certain information to Staff" also misstates the Company's posture and the issue now before the Commission in the Discovery Motion. It is hardly fair or accurate to characterize the Company's position as a "refusal to accept its burden of proof." Rather, the current dispute involves a technical analysis and review of the Commission's discovery and procedural rules and whether the Commission Staff's position in attacking Data Request Responses is consonant therewith, which does not

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<sup>2</sup> And, actually concludes its Response at ¶8's last sentence with yet another entreaty to deny the Company's Discovery Motion.

constitute a refusal to accept either the qualitative or quantitative aspects of the statutory burden of proof burden or broad discovery obligation.

D. The Alleged Cooperative Attitude of Staff in Resolving Discovery Disputes to Date.

- 10 Most egregious however, is the portrayal at ¶4 of its Response by the Staff of its role “engag[ing] in extensive telephone, technical conferences with the Company on May 9, 12, 13, 14...” as somehow evidencing the Staff’s willingness and cooperation to meet and confer, or its equivalent, as required by Commission and Civil Rules.
- 11 There is a proof ellipsis here. The Staff fails to address or defend i.e., its failure to attend the proposed meeting before the prehearing conference, to respond to emails asking for submission of the dispute on DR 11 to a Discovery Master which could have expeditiously resolved the dispute (after initially indicating it was an idea “worth exploring” and then failing to pursue same)<sup>3</sup>, and summarily, limiting the subjects and possible breakthrough at the critical technical conference in mid-May.
- 12 Moreover, the Staff never explains why, since May 16, it has failed to communicate whatsoever on disputes on format or content of spreadsheets provided in response to discovery and why it has never raised any concerns, objections or otherwise communicated about any of the discovery request responses served since May 23.<sup>4</sup> Conversely, the email and letter evidence attached to its June 9 Discovery Motion hardly reflect a company “unwilling” to engage either in discovery or good faith informal resolution of discovery

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<sup>3</sup> See, Attachment 7, S. Smith email of May 9, 2014 in Declaration of David W. Wiley in Support of WCI’s Discovery Motion.

<sup>4</sup> For example, on first learning that the staff was dissatisfied with the comprehensiveness of its DR 7 Responses in the Staff Motion to Compel, the Company responded with supplemental answers without waiver and attached them to its Response to the Motion to Compel. This exemplifies why informal discovery resolution should at least be attempted. WAC 480-07-425(1) and CR 26(i).


disputes notwithstanding the Staff's opposition to "discussion"<sup>5</sup> and other forms of "meet and confer" resolution before initiating adversarial motions.

### III. CONCLUSION

13 In its inability to resist submitting a Response to the WRRRA's Response, Staff has failed to proffer any independent evidence supporting its "new and improved" contentions of Company resistance or its of its own cooperative approach to the present discovery disputes. Were that so, the only material discovery dispute before the Commission currently might be the construction of WAC 480-07-520(4).

DATED this 25<sup>th</sup> day of June, 2014.

RESPECTFULLY SUBMITTED,  
WILLIAMS, KASTNER & GIBBS PLLC

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<sup>5</sup> Staff Motion to Clarify the Scope of WAC 480-07-520(4), Compel Discovery et al., ¶1, at 1.

## CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2014, I caused to be served the original and two (2) copies of the foregoing document to the following address via first class mail, postage prepaid to:

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
Attn.: Records Center  
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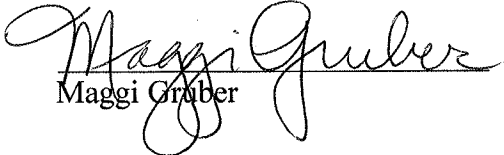
I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to:  
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