BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  WASTE MANAGEMENT OF WASHINGTON, INC. d/b/a WASTE MANAGEMENT – NORTHWEST, WASTE MANAGEMENT- SOUTH SOUND, WASTE MANAGEMENT OF SEATTLE, AND WASTE MANAGEMENT – SNO-KING,  Respondents. |  | Docket No. TG-121265  **answer of waste management of washington, inc.** |

1. Respondent Waste Management of Washington, Inc. d/b/a Waste Management-Northwest, Waste Management-South Sound, Waste Management of Seattle, and Waste Management-Sno-King (collectively “Waste Management”) answers Complainant Washington Utilities and Transportation Commission’s Complaint and asserts affirmative or other defenses as follows:

# PARTIES

1. Waste Management admits the allegations in Paragraph 2.
2. Waste Management admits the allegations in Paragraph 3.

# JURISDICTION

1. Answering the allegations in Paragraph 4, Waste Management admits the Commission has jurisdiction over the Company under some of the statutes cited, and does not have jurisdiction over Waste Management to the extent Waste Management provides solid waste collection services under contract with any city in King and Snohomish counties (“city-contract areas”). Waste Management denies each and every other allegation in Paragraph 4.
2. Answering the allegations in Paragraph 5, Waste Management admits the Commission has subject matter of this Complaint under some of the provisions set forth. Waste Management further admits that the conduct alleged in the Complaint occurred within areas of King and Snohomish Counties where Waste Management does not provide service under contract with a city (“Commission-regulated areas”). Waste Management denies each and every other allegation in Paragraph 5.

# background

1. Waste Management admits that the referenced statutes and rules speak for themselves. Insofar as Paragraph 6 does not contain any factual allegations, no further answer is required. To the extent that Paragraph 6 contains factual allegations not expressly admitted, Waste Management denies those allegations.
2. Waste Management admits that the Complaint makes the allegations summarized in Paragraph 7. To the extent that Paragraph 7 contains factual allegations not expressly admitted, Waste Management denies those allegations.
3. Waste Management denies the allegations in Paragraph 8.

# allegations and causes of action

## First Cause of Action (Documentation Violations – RCW 81.04.080, RCW 81.04.380, RCW 81.77.030(3), and WAC 480-70-071(2))

1. Answering the allegations in Paragraph 9, Waste Management admits that the August 24, 2012 letter speaks for itself. Waste Management denies each and every other allegation in Paragraph 9.
2. Answering the allegations in Paragraph 10, Waste Management admits that it stated that the information Staff requested is not reasonably available because the Company does not track which specific customers have been served. Waste Management further admits that the Strike Contingency Plan speaks for itself. Waste Management denies that data from the referenced GPS units could have allowed Waste Management to determine which customers were not served on each day of the Labor Strike and any subsequent days a GPS unit remained in a given truck. Waste Management denies each and every other allegation in Paragraph 10.
3. Answering the allegations in Paragraph 11, Waste Management admits that each of the referenced statutory and administrative provisions speaks for itself. Waste Management denies each and every other allegation in Paragraph 11.

## Second Cause of Action (Tariff Violations – RCW 81.28.080 and WAC 480-70-236)

1. Answering the allegations in Paragraph 12, Waste Management admits that it was required to provide service pursuant to each of the Tariffs listed in Paragraph 12 and that each of those tariffs speaks for itself. Waste Management denies each and every other allegation in Paragraph 12.
2. Answering the allegations in Paragraph 13, Waste Management admits that it provided reduced levels of service during and immediately following the Labor Strike and that the Strike Contingency Plan speaks for itself. Waste Management further admits that it did not provide residential service from July 26, 2012 through July 31, 2012. Waste Management further admits that its intentions were for all such residential customers to have their accumulated materials collected at no extra charge at their next scheduled pick-up date. Waste Management specifically denies that there are clear requirements in the Company’s tariffs and service subscription schedules regarding frequency of service during a sudden and extended work stoppage. Waste Management denies each and every other allegation in Paragraph 13.
3. Answering the allegations in Paragraph 14, Waste Management admits that its tariffs and the Strike Contingency Plan speak for themselves. Waste Management denies each and every other allegation in Paragraph 14.
4. Answering the allegations in Paragraph 15, Waste Management admits the first sentence. Waste Management admits the Company Data Response speaks for itself. Waste Management denies each and every other allegation in Paragraph 15.
5. Answering the allegations in Paragraph 16, Waste Management admits the first and second sentence, and admits that Staff has generated an estimate of missed pick-ups. Waste Management admits that the Company Data Response speaks for itself. Waste Management denies each and every other allegation in Paragraph 16.
6. Waste Management denies Paragraph 17 for lack of knowledge or information sufficient to form a belief as to its truth.
7. Answering the allegations in Paragraph 18, Waste Management denies the last sentence of the Paragraph for lack of knowledge or information sufficient to form a belief as to its truth. Waste Management admits the remaining allegations in the Paragraph.
8. Answering the allegations in Paragraph 19, Waste Management admits that Item 30 speaks for itself. Waste Management further admits that the absence of language controlling labor strikes was raised for the first time by Staff in 2010. Waste Management further admits that the Commission sent a letter on May 18, 2012, to all regulated solid waste collection companies, including Waste Management, documenting for the first time Staff’s position that companies may not rely on the inclement weather provisions of their tariffs to interrupt service during a labor strike, and advising all companies to revise their tariffs to address strike-related service interruptions. Waste Management denies each and every other allegation in Paragraph 19.
9. Answering the allegations in Paragraph 20, Waste Management admits that it promptly submitted tariff revisions to address strike-related service interruptions on June 6, 2012, in Dockets TG-120840, TG-120842 and TG-120843. Waste Management admits that the Commission suspended its filings and, therefore, its requested tariff revisions were not in effect during the Labor Strike and are not currently in effect. Waste Management denies each and every other allegation in Paragraph 20.
10. Answering the allegations in Paragraph 21, Waste Management admits that RCW 81.28.080 speaks for itself. Waste Management denies that a company violates this statute when it reduces the level of service required by its tariffs during an unexpected and extended labor strike. Waste Management denies each and every other allegation in Paragraph 21.
11. Answering the allegations in Paragraph 22, Waste Management denies that it violated RCW 81.28.080 or that any penalty is warranted. Waste Management admits that it could not and therefore did not provide the information required by the Commission for determining the precise number of missed pick-ups in the Commission-regulated areas for each day of the Labor Strike and each day thereafter until full collection service was restored by Waste Management. Waste Management denies each and every other allegation in Paragraph 22.

## Third Cause of Action (Obligation to Service Violations – RCW 81.28.010 and .020)

1. Answering the allegations in Paragraph 23, Waste Management re-alleges each of the paragraphs set forth above.
2. Answering the allegations in Paragraph 24, Waste Management admits that the Company’s Strike Contingency Plan speaks for itself. Waste Management admits that it stated that it typically activates over 400 Green Team members depending on circumstances and availability when planning its response to a labor strike. Waste Management further admits that it deploys an average of 358 drivers per day. Waste Management denies each and every other allegation in Paragraph 24.
3. Answering the allegations in Paragraph 25, Waste Management admits that it was unable to deploy sufficient numbers of replacement drivers during the Labor Strike to maintain service in accordance with its tariffs. Waste Management admits that its collective bargaining agreement with Teamsters Local 117 terminated on May 31, 2012. Waste Management admits that it could not send out Green Team drivers to the affected area until July 27, 2012. Waste Management denies each and every other allegation in Paragraph 25.
4. Answering the allegations in Paragraph 26, Waste Management admits that it deployed 228 Green Team members to all areas affected by the Labor Strike, that this deployment was below normal operations and the Strike Contingency Plan, and that the numbers of drivers deployed is stated in the chart. Waste Management admits that of the total 228 Green Team members who were deployed by Waste Management during the Labor Strike, 21 replacement drivers were deployed to Commission-regulated areas. Waste Management denies each and every other allegation in Paragraph 26.
5. Answering the allegations in Paragraph 27, Waste Management admits the first sentence. Waste Management denies each and every other allegation in Paragraph 27.
6. Answering the allegations in Paragraph 28, Waste Management admits that RCW 81.28.010 and RCW 81.28.020 speak for themselves. Waste Management denies each and every other allegation in Paragraph 28.
7. Answering the allegations in Paragraph 29, Waste Management admits that RCW 81.04.380 speaks for itself. Waste Management denies each and every other allegation in Paragraph 29.

## Fourth Cause of Action (Unlawful Preference – RCW 81.28.190)

1. Waste Management admits that the numbers and percentages in Paragraph 30 are approximately correct. Waste Management admits the final sentence of Paragraph 30.
2. Waste Management admits Paragraph 31.
3. Answering the allegations in Paragraph 32, Waste Management admits the first and second sentences. Waste Management denies each and every other allegation in Paragraph 32.
4. Answering the allegations in Paragraph 33, Waste Management admits that RCW 81.28.190 and RCW 81.04.380 speak for themselves. Waste Management denies each and every other allegation in Paragraph 33.

## Fifth Cause of Action (Consumer Complaint Violations – WAC 480-70-386(b)(i))

1. Answering the allegations in Paragraph 34, Waste Management denies the first sentence for lack of knowledge or information sufficient to form a belief as to its truth. Waste Management admits the other allegations in Paragraph 34.
2. Answering the allegations in Paragraph 35, Waste Management admits that WAC 480-70-386(b)(i) speaks for itself. Waste Management denies each and every other allegation in Paragraph 35.

## Sixth Cause of Action (Safety Compliance)

1. Answering the allegations in Paragraph 36, Waste Management admits that WAC 480-70-201 speaks for itself.
2. Waste Management admits Paragraph 37.
3. Answering the allegations in Paragraph 38, Waste Management admits that Staff’s Safety Inspection speaks for itself. Waste Management admits that the single alleged violation does not allow the issuance of penalties. Waste Management denies each and every other allegation in Paragraph 38.
4. Answering the allegations in Paragraph 39, Waste Management admits that Staff’s Safety Inspection speaks for itself. Waste Management denies each and every other allegation in Paragraph 39.
5. Answering the allegations in Paragraph 40, Waste Management admits that the Commission should not assess monetary penalties for the safety violations alleged in this Sixth Cause of Action. Waste Management denies each and every other allegation in Paragraph 40.

# AFFIRMATIVE and other DEFENSES

1. Waste Management lacked the ability to control the timing, duration, and circumstances surrounding the Labor Strike.
2. Waste Management’s alleged failure to provide service during and after the Labor Strike is excused by the doctrine of *force majeure* or uncontrollable circumstances.
3. The absence of language addressing missed collections due to labor strikes in Waste Management’s tariff is attributable to the Commission’s actions in directing Waste Management to file for relief, then requesting that Waste Management file for an extension, and then deciding to address the tariff template for the industry as a whole, and Staff should be equitably estopped from pursuing this Complaint.
4. The Commission has failed to properly maintain adequate separations of its investigatory, prosecutory and adjudicatory functions in the docket, in violation of Waste Management’s right to procedural and substantive due process.
5. The Commission has failed to adhere to proper procedures, including the receipt and consideration of unsworn testimony in an adjudicatory proceeding.
6. The Commission’s investigation, prosecution, and adjudication of this matter violate the Appearance of Fairness doctrine under Washington law.
7. Ex parte communications prohibited by RCW 34.05.455 and WAC 480-07-310 have prejudiced Waste Management’s ability to obtain a fair and impartial hearing.
8. Staff’s Investigation Report was factually erroneous in many ways.

# PRAYER FOR Relief

WHEREFORE, Waste Management requests:

* 1. That the Commission dismiss WUTC’s Complaint with prejudice; and
  2. That the Commission grant such other or further relief as is just and equitable.

DATED this 13th day of May, 2013.

By

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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.

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| Washington Utilities and Transportation Commission  1300 S. Evergreen Park Dr. SW  P.O. Box 47250  Olympia, WA 98504-7250  360-664-1160  records@utc.wa.gov | 🗹 Via Legal Messenger  🞎 Via Facsimile  🞎 Via U.S. Mail  🗹 Via Email |
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DATED at Seattle, Washington, this 13th day of May, 2013.

Katie Angelikis