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6 BEFORE THE WASHINGTON UTILITIES  
7 AND TRANSPORTATION COMMISSION

8 WASHINGTON UTILITIES AND  
9 TRANSPORTATION COMMISSION,

10 Complainant,

11 v.

12 WASTE MANAGEMENT OF  
13 WASHINGTON, INC. d/b/a WASTE  
14 MANAGEMENT – NORTHWEST, WASTE  
15 MANAGEMENT- SOUTH SOUND, WASTE  
16 MANAGEMENT OF SEATTLE, AND  
17 WASTE MANAGEMENT – SNO-KING,

18 Respondents.

Docket No. TG-121265

**ANSWER OF WASTE  
MANAGEMENT OF WASHINGTON,  
INC.**

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

24 **I. PARTIES**

- 25 2. Waste Management admits the allegations in Paragraph 2.  
26 3. Waste Management admits the allegations in Paragraph 3.

## II. JURISDICTION

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2 4. Answering the allegations in Paragraph 4, Waste Management admits the  
3 Commission has jurisdiction over the Company under some of the statutes cited, and does not  
4 have jurisdiction over Waste Management to the extent Waste Management provides solid waste  
5 collection services under contract with any city in King and Snohomish counties (“city-contract  
6 areas”). Waste Management denies each and every other allegation in Paragraph 4.

7 5. Answering the allegations in Paragraph 5, Waste Management admits the  
8 Commission has subject matter of this Complaint under some of the provisions set forth. Waste  
9 Management further admits that the conduct alleged in the Complaint occurred within areas of  
10 King and Snohomish Counties where Waste Management does not provide service under  
11 contract with a city (“Commission-regulated areas”). Waste Management denies each and every  
12 other allegation in Paragraph 5.

## III. BACKGROUND

13  
14 6. Waste Management admits that the referenced statutes and rules speak for  
15 themselves. Insofar as Paragraph 6 does not contain any factual allegations, no further answer is  
16 required. To the extent that Paragraph 6 contains factual allegations not expressly admitted,  
17 Waste Management denies those allegations.

18 7. Waste Management admits that the Complaint makes the allegations summarized  
19 in Paragraph 7. To the extent that Paragraph 7 contains factual allegations not expressly  
20 admitted, Waste Management denies those allegations.

21 8. Waste Management denies the allegations in Paragraph 8.

## IV. ALLEGATIONS AND CAUSES OF ACTION

22  
23 **A. First Cause of Action (Documentation Violations – RCW 81.04.080, RCW**  
24 **81.04.380, RCW 81.77.030(3), and WAC 480-70-071(2))**  
25  
26

1           9.       Answering the allegations in Paragraph 9, Waste Management admits that the  
2 August 24, 2012 letter speaks for itself. Waste Management denies each and every other  
3 allegation in Paragraph 9.

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

11           11.       Answering the allegations in Paragraph 11, Waste Management admits that each  
12 of the referenced statutory and administrative provisions speaks for itself. Waste Management  
13 denies each and every other allegation in Paragraph 11.

14           **B.       Second Cause of Action (Tariff Violations – RCW 81.28.080 and WAC 480-**  
15           **70-236)**

16           12.       Answering the allegations in Paragraph 12, Waste Management admits that it was  
17 required to provide service pursuant to each of the Tariffs listed in Paragraph 12 and that each of  
18 those tariffs speaks for itself. Waste Management denies each and every other allegation in  
19 Paragraph 12.

20           13.       Answering the allegations in Paragraph 13, Waste Management admits that it  
21 provided reduced levels of service during and immediately following the Labor Strike and that  
22 the Strike Contingency Plan speaks for itself. Waste Management further admits that it did not  
23 provide residential service from July 26, 2012 through July 31, 2012. Waste Management  
24 further admits that its intentions were for all such residential customers to have their accumulated  
25 materials collected at no extra charge at their next scheduled pick-up date. Waste Management  
26 specifically denies that there are clear requirements in the Company's tariffs and service

1 subscription schedules regarding frequency of service during a sudden and extended work  
2 stoppage. Waste Management denies each and every other allegation in Paragraph 13.

3 14. Answering the allegations in Paragraph 14, Waste Management admits that its  
4 tariffs and the Strike Contingency Plan speak for themselves. Waste Management denies each  
5 and every other allegation in Paragraph 14.

6 15. Answering the allegations in Paragraph 15, Waste Management admits the first  
7 sentence. Waste Management admits the Company Data Response speaks for itself. Waste  
8 Management denies each and every other allegation in Paragraph 15.

9 16. Answering the allegations in Paragraph 16, Waste Management admits the first  
10 and second sentence, and admits that Staff has generated an estimate of missed pick-ups. Waste  
11 Management admits that the Company Data Response speaks for itself. Waste Management  
12 denies each and every other allegation in Paragraph 16.

13 17. Waste Management denies Paragraph 17 for lack of knowledge or information  
14 sufficient to form a belief as to its truth.

15 18. Answering the allegations in Paragraph 18, Waste Management denies the last  
16 sentence of the Paragraph for lack of knowledge or information sufficient to form a belief as to  
17 its truth. Waste Management admits the remaining allegations in the Paragraph.

18 19. Answering the allegations in Paragraph 19, Waste Management admits that Item  
19 30 speaks for itself. Waste Management further admits that the absence of language controlling  
20 labor strikes was raised for the first time by Staff in 2010. Waste Management further admits  
21 that the Commission sent a letter on May 18, 2012, to all regulated solid waste collection  
22 companies, including Waste Management, documenting for the first time Staff's position that  
23 companies may not rely on the inclement weather provisions of their tariffs to interrupt service  
24 during a labor strike, and advising all companies to revise their tariffs to address strike-related  
25 service interruptions. Waste Management denies each and every other allegation in Paragraph  
26 19.

1           20.     Answering the allegations in Paragraph 20, Waste Management admits that it  
2 promptly submitted tariff revisions to address strike-related service interruptions on June 6,  
3 2012, in Dockets TG-120840, TG-120842 and TG-120843. Waste Management admits that the  
4 Commission suspended its filings and, therefore, its requested tariff revisions were not in effect  
5 during the Labor Strike and are not currently in effect. Waste Management denies each and  
6 every other allegation in Paragraph 20.

7           21.     Answering the allegations in Paragraph 21, Waste Management admits that RCW  
8 81.28.080 speaks for itself. Waste Management denies that a company violates this statute when  
9 it reduces the level of service required by its tariffs during an unexpected and extended labor  
10 strike. Waste Management denies each and every other allegation in Paragraph 21.

11          22.     Answering the allegations in Paragraph 22, Waste Management denies that it  
12 violated RCW 81.28.080 or that any penalty is warranted. Waste Management admits that it  
13 could not and therefore did not provide the information required by the Commission for  
14 determining the precise number of missed pick-ups in the Commission-regulated areas for each  
15 day of the Labor Strike and each day thereafter until full collection service was restored by  
16 Waste Management. Waste Management denies each and every other allegation in Paragraph  
17 22.

18           **C.     Third Cause of Action (Obligation to Service Violations – RCW 81.28.010**  
19           **and .020)**

20          23.     Answering the allegations in Paragraph 23, Waste Management re-alleges each of  
21 the paragraphs set forth above.

22          24.     Answering the allegations in Paragraph 24, Waste Management admits that the  
23 Company's Strike Contingency Plan speaks for itself. Waste Management admits that it stated  
24 that it typically activates over 400 Green Team members depending on circumstances and  
25 availability when planning its response to a labor strike. Waste Management further admits that  
26

1 it deploys an average of 358 drivers per day. Waste Management denies each and every other  
2 allegation in Paragraph 24.

3 25. Answering the allegations in Paragraph 25, Waste Management admits that it was  
4 unable to deploy sufficient numbers of replacement drivers during the Labor Strike to maintain  
5 service in accordance with its tariffs. Waste Management admits that its collective bargaining  
6 agreement with Teamsters Local 117 terminated on May 31, 2012. Waste Management admits  
7 that it could not send out Green Team drivers to the affected area until July 27, 2012. Waste  
8 Management denies each and every other allegation in Paragraph 25.

9 26. Answering the allegations in Paragraph 26, Waste Management admits that it  
10 deployed 228 Green Team members to all areas affected by the Labor Strike, that this  
11 deployment was below normal operations and the Strike Contingency Plan, and that the numbers  
12 of drivers deployed is stated in the chart. Waste Management admits that of the total 228 Green  
13 Team members who were deployed by Waste Management during the Labor Strike, 21  
14 replacement drivers were deployed to Commission-regulated areas. Waste Management denies  
15 each and every other allegation in Paragraph 26.

16 27. Answering the allegations in Paragraph 27, Waste Management admits the first  
17 sentence. Waste Management denies each and every other allegation in Paragraph 27.

18 28. Answering the allegations in Paragraph 28, Waste Management admits that RCW  
19 81.28.010 and RCW 81.28.020 speak for themselves. Waste Management denies each and every  
20 other allegation in Paragraph 28.

21 29. Answering the allegations in Paragraph 29, Waste Management admits that RCW  
22 81.04.380 speaks for itself. Waste Management denies each and every other allegation in  
23 Paragraph 29.

1           **D. Fourth Cause of Action (Unlawful Preference – RCW 81.28.190)**

2           30. Waste Management admits that the numbers and percentages in Paragraph 30 are  
3 approximately correct. Waste Management admits the final sentence of Paragraph 30.

4           31. Waste Management admits Paragraph 31.

5           32. Answering the allegations in Paragraph 32, Waste Management admits the first  
6 and second sentences. Waste Management denies each and every other allegation in Paragraph  
7 32.

8           33. Answering the allegations in Paragraph 33, Waste Management admits that RCW  
9 81.28.190 and RCW 81.04.380 speak for themselves. Waste Management denies each and every  
10 other allegation in Paragraph 33.

11           **E. Fifth Cause of Action (Consumer Complaint Violations – WAC 480-70-  
12 386(b)(i))**

13           34. Answering the allegations in Paragraph 34, Waste Management denies the first  
14 sentence for lack of knowledge or information sufficient to form a belief as to its truth. Waste  
15 Management admits the other allegations in Paragraph 34.

16           35. Answering the allegations in Paragraph 35, Waste Management admits that WAC  
17 480-70-386(b)(i) speaks for itself. Waste Management denies each and every other allegation in  
18 Paragraph 35.

19           **F. Sixth Cause of Action (Safety Compliance)**

20           36. Answering the allegations in Paragraph 36, Waste Management admits that WAC  
21 480-70-201 speaks for itself.

22           37. Waste Management admits Paragraph 37.

23           38. Answering the allegations in Paragraph 38, Waste Management admits that  
24 Staff's Safety Inspection speaks for itself. Waste Management admits that the single alleged  
25 violation does not allow the issuance of penalties. Waste Management denies each and every  
26 other allegation in Paragraph 38.

1 39. Answering the allegations in Paragraph 39, Waste Management admits that  
2 Staff's Safety Inspection speaks for itself. Waste Management denies each and every other  
3 allegation in Paragraph 39.

4 40. Answering the allegations in Paragraph 40, Waste Management admits that the  
5 Commission should not assess monetary penalties for the safety violations alleged in this Sixth  
6 Cause of Action. Waste Management denies each and every other allegation in Paragraph 40.

## 7 V. AFFIRMATIVE AND OTHER DEFENSES

8 41. Waste Management lacked the ability to control the timing, duration, and  
9 circumstances surrounding the Labor Strike.

10 42. Waste Management's alleged failure to provide service during and after the Labor  
11 Strike is excused by the doctrine of *force majeure* or uncontrollable circumstances.

12 43. The absence of language addressing missed collections due to labor strikes in  
13 Waste Management's tariff is attributable to the Commission's actions in directing Waste  
14 Management to file for relief, then requesting that Waste Management file for an extension, and  
15 then deciding to address the tariff template for the industry as a whole, and Staff should be  
16 equitably estopped from pursuing this Complaint.

17 44. The Commission has failed to properly maintain adequate separations of its  
18 investigatory, prosecutory and adjudicatory functions in the docket, in violation of Waste  
19 Management's right to procedural and substantive due process.

20 45. The Commission has failed to adhere to proper procedures, including the receipt  
21 and consideration of unsworn testimony in an adjudicatory proceeding.

22 46. The Commission's investigation, prosecution, and adjudication of this matter  
23 violate the Appearance of Fairness doctrine under Washington law.

24 47. Ex parte communications prohibited by RCW 34.05.455 and WAC 480-07-310  
25 have prejudiced Waste Management's ability to obtain a fair and impartial hearing.  
26




1 48. Staff's Investigation Report was factually erroneous in many ways.

2 **VI. PRAYER FOR RELIEF**

3 WHEREFORE, Waste Management requests:

- 4 a. That the Commission dismiss WUTC's Complaint with prejudice; and  
5 b. That the Commission grant such other or further relief as is just and equitable.

6  
7 DATED this 13<sup>th</sup> day of May, 2013.

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9  
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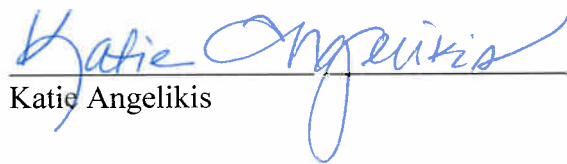
20 Attorneys for Waste Management of  
21 Washington, Inc.

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 P.O. Box 47250 Olympia, WA 98504-7250 360-664-1160 <a href="mailto:records@utc.wa.gov">records@utc.wa.gov</a>	<input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
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DATED at Seattle, Washington, this 13<sup>th</sup> day of May, 2013.



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Katie Angelikis