

BEFORE THE WASHINGTON STATE UTILITIES AND  
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE CONTROL, INC.,

Respondent.

DOCKET TG-140560

RESPONDENT WASTE CONTROL,  
INC.'S OPENING BRIEF AND  
SWORN SUPPLEMENTAL  
TESTIMONY ON REMAINING  
CONTESTED ACCOUNTING  
ADJUSTMENT ISSUES

## Opening Brief Topic Contents

I. INTRODUCTION.....	1
II. UTILITY EXPENSE ALLOCATIONS: RESTATING ADJUSTMENT, R-6D.....	2
Any Application of the Untested Three-Factor Allocation Formula Must Include <i>All</i> Utility Costs Paid by the Nonregulated Affiliate Companies in Order to Reasonably Reflect Aggregate Costs for Allocation Purposes.....	2
III. THE LAND RENTS ISSUE: RESTATING ADJUSTMENT, R-6E.....	3
Staff’s Consolidated Capital Structure Adjustment for Computing Allowable Rents in a Regulated Affiliate’s Rates Utilizes an Inaccurate Rendition of Combined Capital Structures of the Affiliates, a Cost of Debt that is Unrelated to Actual Costs and Pertinent Rental Properties and Hypothesizes a Return on Equity Factor Having No Applicability to a Privately-held Solid Waste Collection Company in Washington. ....	3
IV. INVESTIGATION FEE. ....	6
The Investigation Fee Sought to be Imposed Here Not Only is Punitive but was Neither Previously Noticed to the Company Nor Supported by any Referenced General Rate Case Known to the Parties. ....	6
A. Background to Staff Investigation Fee Issue .....	6
B. Analysis/Argument in Opposition to Fee Imposition.....	7
V. RATE CASE COST RECOVERY: PRO FORMA ADJUSTMENTS, P-2, P-3. ....	8
The Staff Recommendation to Cut the Company’s Rate Case Cost Recovery from December 24, 2013 to the Present is Arbitrary, Unsupported by Statute and Reflective of a Retributive Attitude for Challenging Untried Staff Accounting Adjustments. ....	8
A. Factual Background .....	8
B. Jackie Davis Supplemental Testimony on Rate Case Cost Recovery.....	10
C. Argument and Applicable Law .....	11
VI. CONCLUSION/PRAAYER FOR RELIEF .....	15

## I. INTRODUCTION

1 Waste Control, Inc. (“WCI,” “Company” or “Respondent”) files the following opening brief and supplemental testimony on the remaining contested accounting adjustment issues pursuant to the Commission’s decision granting Joint Motion to Modify the Procedural Schedule of October 27, 2014. This final phase of the protracted general rate filing by WCI focuses upon the four remaining accounting issues as set forth in the Joint Motion to Modify the Procedural Schedule: utility cost allocations, which is restating adjustment R-6D; land rents, restating adjustment R-6E; rate case expense, pro forma adjustments P-2 and P-3 and the related additional issue of imposition of investigation fees sought to be imposed by the Commission Staff.<sup>1</sup>

2 As the record in this matter will reflect as well, the parties have proposed partial settlement on all remaining issues with settlement narratives and agreement filed on October 13, 2014 which represent the proposed resolution of the majority (by adjustment number and dollar amount) of the disputed accounting adjustments and revenue requirement disputes between the parties. In filing this opening brief and supplemental testimony, the Respondent relies upon the Company’s direct case filing on April 4, 2014 and, to an even more significant degree, its rebuttal case filing on August 20, 2014, which responded to the Commission Staff’s case of July 18, 2014. The substantial record in this file which at present also includes 49 exhibits from the Company in TG-140560 and nine exhibits to the Commission Staff’s testimony, suggest the depth and volume of the data produced and analyzed in this filing to support both the original filing in September 2013 and the refiled Company case in April 2014. The Company thus will not here detailedly replicate the

---

<sup>1</sup> Joint Motion to Amend Procedural Schedule, ¶¶ 5-8  
RESPONDENT WASTE CONTROL, INC.’S OPENING  
BRIEF AND SUPPLEMENTAL TESTIMONY - 1  
5189928.1

chronological or jurisdictional facts that bring the parties to this juncture in the belief that the record (particularly the prefiled testimony) fully amplifies these procedural and jurisdictional facts. This Opening Brief will focus instead on the four remaining contested accounting issues dividing the parties at present.

**II. UTILITY EXPENSE ALLOCATIONS: RESTATING ADJUSTMENT, R-6D. Any Application of the Untested Three-Factor Allocation Formula Must Include All Utility Costs Paid by the Nonregulated Affiliate Companies in Order to Reasonably Reflect Aggregate Costs for Allocation Purposes.**

3 At the filing of the Staff's case on July 18 and the presentation of its novel "three-factor allocation" formula to derive appropriate utility costs to be allocated to the Company, the Staff was proposing an allocation to the Company expenses to reduce its recommended revenue requirement by \$24,757. The Company, as shown in Exhibit No. JD-41T, disputed the Staff's "three-factor allocators"<sup>2</sup> and at page 13, Exhibit JD-41T, proposed an increase to the utility cost allowance to a \$28,926 amount which involved an increase of \$15,890 in allowable operating costs in the pro forma results of operations and a \$16,990 increase to the revenue requirement to that proposed by Staff in its case filing.

4 Attached hereto and incorporated by this reference is supplemental testimony setting forth the Company's recommendations to resolve the ongoing utility expense allocation dispute. This proposal reflects the latest position of the Company following the filing of its rebuttal case and discussions with Staff. As shown at Table 2, page 6 of the Supplemental Testimony of Layne Demas, Exhibit LD-2T, the Company is now willing to accept a final allocation of utility expense to the regulated company of \$27,749.29 in the test period. This compromise is contrasted with what the Company understands to be the Staff's position

---

<sup>2</sup>Staff admitted it was unaware of ever utilizing such allocations in any previous solid waste general rate case, in its response to Company Data Request No. 13, of Aug. 7, 2014.

currently of \$15,424.04, representing a present \$12,325.25 differential between the Company and Staff. The Supplemental Testimony of Mr. Demas thoroughly explains the Company position at this stage on the utility cost allocators formula and the Company intends that its explanation constitutes the balance of its premise and argument on this important contested accounting adjustment issue.

**III. THE LAND RENTS ISSUE: RESTATING ADJUSTMENT, R-6E.**  
**Staff's Consolidated Capital Structure Adjustment for Computing Allowable Rents in a Regulated Affiliate's Rates Utilizes an Inaccurate Rendition of Combined Capital Structures of the Affiliates, a Cost of Debt that is Unrelated to Actual Costs and Pertinent Rental Properties and Hypothesizes a Return on Equity Factor Having No Applicability to a Privately-held Solid Waste Collection Company in Washington.**

5           The contentious land rent issue has persisted in both WCI rate dockets particularly to the extent of Company anticipation of Staff's ultimate position in this matter. In the original filing, the Company, at impasse in December, 2013, understood the Staff position on affiliated land rents was comparable to that initially advocated by the Staff in 2009, i.e. that the derivation of the proposed revenue requirement for tariff rates would be based on having WCI and all of its nonregulated affiliates' capital structures combined. By July, 2014, the Staff position had changed in TG-140560. As Exhibit MC-1T reflects, the Staff here proposes to use the nonregulated affiliate landlords', (HB I and HB II's), "...financial information to calculate a reasonable return on their respective investments. Staff used each company's balance sheet and income statement to calculate a capital structure and the cost of debt for each company. Staff then used the discounted cash flow (DCF) method for HB I's and HB II's cost of equity."<sup>3</sup>

6           The Rebuttal Testimony of Layne Demas, Exhibit LD-1T, August 20, 2014, comprehensively presents the Company position on this approach including the Staff "three-

---

<sup>3</sup> Exhibit MC-1T, lines 17-21, p. 18.

factor allocation” method for depreciation, operating expenses and average net investment amongst the affiliates<sup>4</sup> and will not be critiqued again here. However, the Supplemental Testimony of Joe Willis, Exhibit No. JW-8T, is attached and by this reference incorporated herein, directed to the policy implications for WCI if affiliated land rents are to be calculated based on a combined capital structure of nonregulated as well as regulated companies, without regard to the specific rental property asset capital structure in question.

7           The policy and legal implications of the land rent calculation issue are substantial and not just for WCI. WCI has already alluded to erroneous assumptions and flawed analyses of the capital structure, cost of debt and return on equity factors utilized by the Staff in this case both on a computational and practical application basis. If nonregulated company capital structures are to be combined in setting affiliate rents under RCW 81.16, then that premise and far more refinement of the concept, criteria and accuracy of appropriate inputs need to be formally noticed to the industry.

8           In calculating fair rental payments based on capital structure, the Commission has previously required a regulated affiliate to use the actual reasonable individual company capital structure (and debt costs). Alternatively, for publicly-traded companies, the Commission has used the parent’s actual consolidated capital structure.<sup>5</sup> Where there is no parent company, the debt to equity/capital structure issue/reasonable rent issue should either be derived based on the regulated company’s capital structure, here of 60% equity/40% debt,<sup>6</sup> or on the basis of the rental property’s capital structure as the oft-cited, *WUTC v.*

---

<sup>4</sup> “Rebuttal Testimony of Layne C. Demas for Waste Control, Inc.”, Exhibit LD-1T, Aug. 20, 2014, pp. 3-8.

<sup>5</sup> See, for example, *WUTC v. Waste Management of Washington, Inc. d/b/a Sno-King Garbage*, TG-900657 and TG-900658, Orders No. 4 & 5 (Dec. 1991) at p. 8.

<sup>6</sup> See, Partial Settlement Agreement of October 13, 2014, at ¶4, p. 4.

*Bremerton Kitsap Airporter, Inc.*, Docket TC-001846, Fifth Supplemental Order, (Aug. 2002), Appendix C: “Facility’s Debt/Equity Portions,” suggests.

9 On calculating the cost of debt for rental properties, again, both Jackie Davis<sup>7</sup> and Layne Demas,<sup>8</sup> on rebuttal, demonstrate why the Staff-calculated debt factor is both too low and divorced from WCI’s actual cost of debt. Even in applying its own formula of the combined debt of HB I and HB II, Staff uses debt for projects and investments that have no relation to the properties actually used and occupied by WCI as an affiliated tenant. The Commission should instead apply the actual debt encumbering the property in question, as advocated by the Company since the inception of this case.

10 Return on equity factors, as Mr. Demas explains, have long been recognized by the Commission at 15% for affiliated transactions.<sup>9</sup> Again, *Bremerton-Kitsap Airporter* utilized such a return factor and that was the precise input factor used for the Company’s last rate case calculating affiliate rental returns in 2009. To the Company’s knowledge, no adjudicated Title 81 general rate case has contravened this return on equity formula. Further, as Mr. Demas points out, “Dr. Lurito, in his testimony supporting the Lurito-Gallagher operating ratio formula, justified a much larger equity return for solid waste companies [as compared to Title 80 companies] as is readily observed in the formula itself.”<sup>10</sup>

11 The Staff’s “belief” that there should be a “temporal component based on the most current information possible”<sup>11</sup> includes a tortuous discounted cash flow analysis that seeks

---

<sup>7</sup> “Rebuttal Testimony of Jacqueline G. Davis for Waste Control, Inc.,” Aug. 20, 2014, Exhibit JD-43.

<sup>8</sup> “Rebuttal Testimony of Layne C. Demas for Waste Control Inc.,” Aug. 20, 2014, Table No. 1, p. 4. Both Davis and Demas thus advocate using the cost of debt encumbering the specific commercial property in question for calculating allowable affiliate rents.

<sup>9</sup> Exhibit LD-1T, p. 6.

<sup>10</sup> *Id.* at lines 17-19, p. 6.

<sup>11</sup> Exhibit MC-1T, lines 17, 18, p. 22.

to engraft a “Value Line” analysis from publicly-traded companies onto a small, closely-held regulated solid waste company that would lower that return effectively by some two-plus percentage points. While that may indeed be temporal, it provides far less accuracy, pertinence to privately-held solid waste companies and no certainty as a guide for ratemaking in the future and should be rejected here as the Company’s testimony on rebuttal contends.

#### IV. INVESTIGATION FEE.

**The Investigation Fee Sought to be Imposed Here Not Only is Punitive but was Neither Previously Noticed to the Company Nor Supported by any Referenced General Rate Case Known to the Parties.**

##### A. Background to Staff Investigation Fee Issue

12 In the July 18, 2014 Staff case, one of its concluding miscellaneous recommendations was an unprecedented imposition of an investigation fee which it advocated the Commission impose on the Company in the amount of \$43,818.82 or 1% of its annual regulated revenues for 2013, to defray a portion of the costs incurred by Staff in auditing this matter.<sup>12</sup> That amount is the statutorily-allowed maximum. The Staff again predicated its position on the basis of its characterization of the case as “highly complicated,” particularly with regard to the contested, ultimately resolved issue under WAC 480-07-140(6)(b), as to the definition of “hardcodes” and whether they constituted “locked” or “password-protected” cells as specified in that rule.<sup>13</sup>

---

<sup>12</sup> MC-1T, p. 54-55.

<sup>13</sup> Also absent from the rationalization of the imposition of the investigation fee in Staff’s case was the immediately subsequent discussion of “Staff communication with WCI” in which the Staff admitted critical lapses in communication which protracted and exacerbated the ability of the Company to work together with Staff in this audit. Exhibit MC-1T, pp. 56, 57. In the Company’s view, those communication lapses undoubtedly resulted in some of the additional Staff costs Staff seeks to impose on the Company through its argument for recovery of investigation fees.



13

The Company, on rebuttal, particularly in Exhibit JD-1T pp. 45-46, describes its reaction to the investigation fee imposition advocacy, finding it unfortunately consistent with the tendency of the Staff to seek to punish or single out WCI for its numerous challenges to accounting treatments sought by Staff throughout this proceeding. Along with its unprecedented position about rate case cost recovery, the Company highlights the punitive nature of Staff's proposal, which as will be argued in Section V, below, has the natural effect of discouraging exercise of due process rights in presenting, advocating and ultimately litigating a Company's good faith case in support of fair, just, reasonable and sufficient rates under RCW 81.28.230.

#### **B. Analysis/Argument in Opposition to Fee Imposition**

14

The issue of Staff investigation fee imposition is admittedly nuanced. As the Company acknowledged on rebuttal,<sup>14</sup> the Commission, under RCW 81.20.020, has the absolute right to impose an investigation fee after suspension. Indeed, the Commission, in sections of form orders suspending solid waste general rate cases, often cites that statutory provision, and warns typically that it "may" or "will" impose investigation fees for the audit and Staff costs associated therewith.<sup>15</sup> However, even when actual notice is provided, this admonition has been honored in the breach and neither Staff nor the Company are aware of it ever being imposed on a general rate case proponent previously.<sup>16</sup>

---

<sup>14</sup> Exhibit JD-41T, p. 49.

<sup>15</sup> Interestingly, Order No. 1 (April 10, 2014) in this matter makes no such reference whatsoever to the prospect of imposition of any Staff investigation fees. While, again, that provision has been noted in previous transportation industry orders on suspension, it was not so ordered in this case. *See in contrast, WUTC v. Pacific NW Transportation Service, Inc, C-862, Complaint and Order Suspending Tariff Filing* (Aug. 2000); *WUTC v. Brem-Air Disposal, Inc, G-38, Order No. 1, Docket TG-010611*, (June 2001). "Brem-Air may be required to pay the expenses reasonably attributable and allocable to the Commission's investigation..."

<sup>16</sup> Indeed, in its response to Company Data Request No. 18 on August 7, 2014, the Staff noted it had no memory of such a fee ever being imposed upon a solid waste company. The Company is unaware of investigation fees ever being imposed on a solid waste collection company either, nor is it even aware of an

**V. RATE CASE COST RECOVERY: PRO FORMA ADJUSTMENTS, P-2, P-3.  
The Staff Recommendation to Cut the Company's Rate Case Cost Recovery from  
December 24, 2013 to the Present is Arbitrary, Unsupported by Statute and Reflective  
of a Retributive Attitude for Challenging Untried Staff Accounting Adjustments.**

**A. Factual Background**

15 As for the remaining sharp dispute about rate case cost recovery in this matter, the Staff's position and that of the Company have been succinctly framed in the October 23, 2014 Joint Motion filed by the parties, to wit: the Staff seeks to allow rate case cost recovery at 50%, only, after December 24, 2013 and only over a five-year amortization period. The Company seeks to recover all reasonable rate case-related expenses since the original filing of TG-131794 in September, 2013 and recover them over a four-year period. Prior to November, 2013, those expenses amounted only to outside accounting costs, as the Staff and the Company engaged in extensive audit informal discovery, site visits and other back and forth exchanges which are very typical of solid waste general rate filings at that stage.<sup>17</sup> But, by mid-November/early December 2013 and the November 27, 2013 initial suspension of TG-131794, special counsel was formally retained for work on the increasingly contested rate filing.<sup>18</sup>

16 As of September 1, 2014, rate case costs for accounting amounted to \$200,229.70 and for legal fees amounted to \$223,337.79. The Company seeks to recover these rate case expenses in rates proposing a four-year amortization period for recovery to reflect a recent

---

instance of investigation fees being assessed on energy company rate case proponents which obviously entail an assignment of massive amounts of internal Staff resources to analyze.

<sup>17</sup> Due to its relatively modest size, Waste Control does not employ inside CPA staff and instead relies on its outside CPAs, Booth Davis of Longview, for all regulated rate related filings and computations, fuel surcharges and annual reports, etc. and thus there is no in-house staff dedicated to such tasks which must in turn be performed by outside accountants.

<sup>18</sup> Additionally, the Company's outside counsel, Walstead Mertsching of Longview, does not have attorneys regularly appearing before the Commission and thus the Company retained outside counsel who had assisted it in Commission rate matters previously.

pattern of intervals between general rate case filings for WCI.<sup>19</sup> The Staff recommendation of 50% rate case cost recovery from December 24, 2013,<sup>20</sup> is apparently pursuant to a professed theory that the Company should be assessed from that point on for the complexity of the case brought about largely on the occasion of the Staff's filing of the Motion to Dismiss on March 5, 2014, granted March 25, 2014 by the Commission.<sup>21</sup>

17 Both parties have previously specifically addressed the theory of rate case cost disallowance in Exhibit MC-1T pages 46-49, and, for the Company particularly on rebuttal, in Exhibit JD-41T at pages 44-51 and in Exhibits JD-47 and 48, which exhibits provide calendar year 2014 rate case expenses from January 1, 2014 through the end of July (the last complete calendar month before rebuttal testimony was filed), and in Exhibit JD 48, a summary of "Professional Fee Unilateral Reductions Applied" which present unilateral reduction of rate case costs to that point.<sup>22</sup> The Staff, for its part again, does not contest the

---

<sup>19</sup> The Company, as referenced at ¶7 of the Joint Motion to Amend Procedural Schedule, also seeks to add "updated amounts" of time/rate case costs that are deemed reasonable through the conclusion of this proceeding.

<sup>20</sup> That December 24, 2013 cutoff would also, of course, mean almost the entirety of the Company's legal fees comprised in the rate case costs would be recovered at 50 cents on the dollar, since only minimal legal work was performed in Fall, 2013.

<sup>21</sup> There was a previous episode of communication lapse in this case that had significant adverse consequences for the Company. In early February (*see* Exhibit JD-42) the Company, through counsel, had sought to communicate its concerns about formatting the upcoming Company case presentation in emails and telephone contacts with Staff counsel, including asking for a telephone status conference with the administrative law judge on February 10, 2014. The issue then was the concern that, unlike other Title 80 RCW rate cases, the Company had filed its direct case almost six months previously. Thereafter, it was subjected to substantial Staff audit, Staff memos and pro forma results of operations revisions. How would that amassed work product to date affect the identification of exhibits and, more importantly, presentation of the parties' cases and avoid costly duplication of issues to be presented to the Commission on non-contested adjustments? That pivotal question was never resolved, due to Staff's non-communication in the critical February interval prior to the Company's original case submission on February 18, 2014. Then, a little more than a month later, the Commission dismissed TG-131794 on the Staff's Motion, which argued largely that the Company had not sufficiently presented the **non-contested** accounting adjustments, precisely the issue which the Company had sought to defuse by its attempted communications with the Staff. The Company had tried, (consistent with analogous rules such as WAC 480-07-425(1)), to resolve, in good faith, the formatting dilemma posed by the previous exhaustively-analyzed case without the need for adversary motions and procedural contests and the accompanying expense all, ultimately, for naught.

<sup>22</sup> The unsolicited professional fee reductions reflected in the Exhibit are an appropriate concession to the time, substantial expense and vicissitudes that are associated with a year-long plus case which became an almost daily focus of the parties' representatives in this interval.

cumulative total amount of time or the hourly rates assessed. Nevertheless, Staff uses other means to reduce the amounts allowed, which are arbitrary and lacking any rational basis. It proposes halving rate case costs from December 24, 2013 forward (to whatever the future date the case is concluded).<sup>23</sup> As noted, the parties also disagree about the appropriate period for amortizing rate case costs.

### **B. Jackie Davis Supplemental Testimony on Rate Case Cost Recovery**

18           The Company's accountant, Jacqueline Davis, testified previously in Exhibits JD-1T and JD-41T on all various issues either proposed for settlement or still contested in this proceeding. Attached hereto as proposed Exhibit JD-50T, however, is supplemental testimony illustrating how Company rate case expenses increased over this year. In the supplemental testimony, she focuses on one example of rate case cost expense increase as symptomatic of some of the "moving parts" alternative ratemaking theories the Company confronted. Here, on the Kalama operations issue (Restating Adjustment 10 and Reclassification Adjustment R-C-1A now omitted after commingling), following submission of the Staff case in July. The Company views this as a compelling example of the volume of focused analytical work performed to defend the Company position since September 2013, much of the analyses of which were never ultimately utilized by Staff.<sup>24</sup>

19           To summarize, as Ms. Davis recounts: the Company initially filed its original case in September with Kalama commingled in all of WCI operations. It did so for two reasons. First, nonregulated Kalama operations were considerably less than 10 percent of overall operations and thus did not require separation, per WAC 480-07-420(4)(d). Secondly, the

---

<sup>23</sup> Joint Motion to Amend Procedural Schedule, ¶ 7.

<sup>24</sup> One other such example was an exercise in test year overtime normalization that required exhaustive review of payroll data going back to 2009 by individual employee and by year but which was ultimately jettisoned as an adjustment theory by the Staff in its July, 2014 case, (*see*, Exhibit JD-1T ((February 18, 2014)), pp. 21-24).

previous UTC Staff auditor instructed WCI to file commingled in the next rate case, meaning the present case. Current Staff, however, assumed a position early in its review that “required” Kalama to be separated, and then attempted to use its unprecedented “three-factor allocation” to facilitate separation of expenses in Kalama while surprisingly (and almost a year later) rejecting the Company’s initial route study and, using instead, cursory information obtained directly from the City of Kalama. After the Staff’s case was filed proposing this unanticipated separation of results, the Company then spent countless hours attempting to revise and supplement its original route study which it ultimately found largely accurate in allocations, only to discover at the eleventh hour after rebuttal and submission of its revised study, Staff had opted to commingle Kalama operations, in a classic “back-to-square-one” about-face.

### **C. Argument and Applicable Law**

20

Recovery of conventional rate case expenses starts from the “hornbook” premise such as set forth in Goodman, The Process of Ratemaking: “[t]he costs of litigating commission and court proceedings arising in the normal course of business including penalty actions and prudence reviews are generally allowed...”<sup>25</sup> While recognizing this basic premise, the Company acknowledges the Commission’s longstanding and appropriate consideration of the nature, kind and amounts of rate case costs. It is also aware of circumstances where the Commission has admonished against costs which are “exorbitant and imprudent.”<sup>26</sup>

---

<sup>25</sup> Goodman, The Process of Ratemaking, (1998), Volume I, p. 329.

<sup>26</sup>See i.e., TG-900657, *Washington Utilities and Transportation Commission v. Sno-King Garbage Company, et al.*, Fifth Supplemental Order, (Dec. 1991), at 19.

21           The Company fully believes, however, as reinforced by the joint qualification at ¶ 7 of the Joint Motion to Amend Procedural Schedule, that the cumulative total and hourly rates associated with this rate case professional fees are not excessive.<sup>27</sup> Admittedly, this has been a very protracted and expensive case and one characterized by some unusual, but hopefully good-faith disputes about accounting treatments, proposed adjustments to the Lurito-Gallagher ratemaking methodology and experimental or fledgling theories of solid waste ratemaking posited by Staff. It is also historically unusual for a solid waste rate case to proceed to an adjudicative hearing and indeed, based on the Company’s research, the last contested solid waste rate case going to a final adjudicated order after hearing appears to have been in 1994.<sup>28</sup>

22           Nevertheless, as the Commission is well aware, due to its pending rulemaking in Docket No. TG-131255, “Inquiry to Consider Methods for Setting Rates for Solid Waste Collection Companies Pursuant to WAC 480-70,” there are forces of internal evaluation “percolating” within the agency currently which may well be impacting some of the more established approaches to solid waste case ratesetting and accounting adjustments in the present era. Indeed, in the past year or two, there were relatively unusual formal settlements and/or Orders after suspension entered by the Commission in a number of regulated solid waste rate cases perhaps reflecting an increasing level of scrutiny and/or disagreements between companies and Staff on various solid waste rate case accounting adjustment

---

<sup>27</sup> Interestingly, through June 30, 2014, for total accounting (non-legal time), the Staff had recorded 1,595 hours for the case since its inception in September 2013 as Staff Data Request Response to Company Data Request No. 10, March 20, 2014 (TG-131794) and Staff Data Request Response to Company Data Request No. 4, July 9, 2014 (TG-140560) cumulate. For that period in the August 2013 through June 2014 period, the Company recorded 911.1 hours of corresponding accounting time.

<sup>28</sup> *In re King County Department of Public Works, Solid Waste Division v. Seattle Disposal Co, Rabanco, Ltd., d/b/a Eastside Disposal and Container Hauling*, Third Supplemental Order, TG-940411 (Sept. 1994).

issues.<sup>29</sup>

23           There is also some inherent conflict in the Staff rationale for paring rate case cost recovery in this matter. In its testimony,<sup>30</sup> the Staff expressly acknowledges the foundation provided by the dismissed case, TG-131794, for the current filing, TG-140560. Indeed, the successive refiled case, as the Company has repeatedly noted, utilizes the same test period and refiled almost all the same accompanying workpapers, calculations, etc. only appropriately changing the forecast/ “rate” year for reconciliation and, including little if any duplication of effort and redundancy of costs other than that associated with formatting a refiling. In its Order of Dismissal, the Commission had expressly provided a ten-business-day interval for the refiling and there is thus no basis for claiming any duplication of efforts upon which to sanction the Company for a “failed case.”<sup>31</sup>

24           The “complexity” that arose in this case also has little to do with the association of the two rate case filings and workpapers covering the same test period, rather it was the scores of data requests and thousands of pages of responses, telephone and in-person meetings, site visits and sheer volume of supporting documentation and data which explored and tested numerous ratemaking theories particularly directed to the nonregulated affiliates’ capital structures and nonregulated service within the City of Kalama.<sup>32</sup> Those in fact are the fodder for any of the “complexity” in this rate case. Moreover, the Staff and the Commissioners themselves are very attuned to detailed and voluminous general rate cases in the energy and pipeline industries and the concept of penalizing “complexity” for general

---

<sup>29</sup> See i.e. TG-130501 &TG-130502, *In re WUTC v. Murrey's Disposal/American Disposal* (Oct. 2013) and TG-130938, *In re WUTC v Waste Management, Inc. d/b/a Waste Management-Northwest* (Dec. 2013).

<sup>30</sup> Exhibit No. MC-1T, July 18, 2014, p. 48.

<sup>31</sup> *Ibid.*, at 48.

<sup>32</sup> The Company prepared revised pro forma results of operations for updates and was subsequently pointedly criticized for successive submissions originally intended as a courtesy to Staff to reflect incremental progress to resolving material accounting adjustments in the discovery phase.

rate cases in any field seems contrary to the expertise, mission and acclimation of the Commission to evaluate detailed financial case demonstrations by public service companies.

25           The Commission has previously recognized a need for regulated solid waste companies to recover appropriate expenses “associated with unregulated competition and rate proceedings which were reasonably expended...” Docket Nos. TG-2152, 2153, 2154, *In re WUTC v. Twin City Sanitary Service, et al.*, Fourth Supplemental Order, (Sept. 1988).

26           The key issue here though, in terms of the parties’ positions is whether the unilateral cost recovery reduction proposal of Staff seeks to punitively sanction the Company for litigating the case and for perceived “complexity” blamed on the Company by Staff which Staff purports to defend by largely alluding to alleged flaws in the formatting of spreadsheets and in the involuntary dismissal of the initial TG-131794 general rate case in broad-brush form which footnote 21, above, backgrounds.

27           The Company believes that the blunt and unscientific proposal to halve its rate costs as a result, is arbitrary and unsupported in law. As the Commission previously ruled in, *In re WUTC v. Puget Sound Energy, Inc*, Docket Nos. UE-040640 & UE-040641, and Docket Nos. UE-031471 and UE-032043, (Feb. 2005), rejecting a similar argument about sharing of rate case expenses on a 50/50 percent basis in that case in denying the argument by the intervenor, Industrial Customers of Northwest Utilities, and noting there:

...[w]e find no basis in our record upon which to adjust the amount both PSE and Staff recommend be allowed for general rate case expense. [ICNU’s expert’s] sharing proposal is not grounded in statute. His proposal is not based on any expert analysis that would provide a factual basis for not allowing the Company to recover half of the costs it has, in fact, incurred. Accordingly we will not adjust PSE’s rate case expense as ICNU proposes.<sup>33</sup>

---

<sup>33</sup> *WUTC v. PSE*, Docket No. UG-040640 et al. (Feb. 2005) at ¶ 176, page 119.



One major flaw in Staff's proposal to dilute and disallow recovery of legitimately-incurred Company reasonable rate case costs is its obvious arbitrariness. There is no real logic to its selection of December 24, 2013 as an "embarkation point" (the date on which the Prehearing conference Notice issued and the adjudication formally commenced) nor is there any logical symmetry to its premise that from that point on the Company should only receive "half a loaf" in rate case expense recovery. The measurement from that point on when the matter appeared destined for contest could only be justified as a trigger point for reducing rate case costs if the overriding goal were to sanction the Company for refusing to accept what the Company then viewed as unprecedented, unfair and/or inaccurate renditions of accounting adjustments and also apparently having the temerity to formally challenge these Staff positions before the agency. The Company believes instead, RCW 81.77, 81.28 and WAC 480-07-500 et seq. all guarantee basic due process procedures codifying that right in any respondent with the statutory burden of proof. Telling a rate case proponent finding the final Staff-recommended revenue requirement insufficient under law that it risks subjective, material disallowance of subsequent rate case cost recovery by proceeding through the various due process hearing avenues is unquestionably chilling to the exercise of such rights for any regulated public service company, and, concomitantly, contrary to the public interest.

## **VI. CONCLUSION/PRAAYER FOR RELIEF**

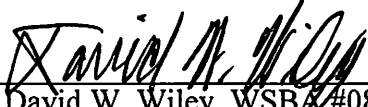
For all of the foregoing reasons, Waste Control, Inc. asks the Commission to reject the Staff positions on utility cost allocations, land rent return, investigation fee imposition and diluted rate case cost recovery and find in the Company's favor based on the facts and

legal arguments above and the Company's Supplemental Testimony supporting these remaining contested accounting adjustments.

DATED this 7<sup>th</sup> day of November 2014.

Respectfully submitted,

WILLIAMS, KASTNER & GIBBS PLLC

By  \_\_\_\_\_  
David W. Wiley, WSB# #08614  
[dwiley@williamskastner.com](mailto:dwiley@williamskastner.com)  
Attorneys for Waste Control, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 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  
P.O. Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504-7250

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: [records@utc.wa.gov](mailto:records@utc.wa.gov)

and an electronic copy via email and first class mail, postage prepaid, to:

Marguerite Friedlander, Administrative Law Judge  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504-7250  
Email: [mfriedla@utc.wa.gov](mailto:mfriedla@utc.wa.gov)

Brett P. Shearer  
Office of the Attorney General  
Washington Utilities and Transportation Commission  
1400 S. Evergreen Park Dr. SW  
PO Box 40128  
Olympia, WA 98504-0128  
Email: [bshearer@utc.wa.gov](mailto:bshearer@utc.wa.gov)

James K. Sells  
Attorney at Law  
PMB 22, 3110 Judson St.  
Gig Harbor, WA 98335  
E-mail: [jamesells@comcast.net](mailto:jamesells@comcast.net)

  
Maggi Gruber, Legal Assistant