

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

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3 WASHINGTON UTILITIES AND) DOCKET TG-140560
TRANSPORTATION COMMISSION,)
4 Complainant,)
5 v.)
6 WASTE CONTROL, INC., G-101,)
7 Respondent.)
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10 **SUPPLEMENTAL TESTIMONY**
11 **OF JOE WILLIS**
12 **IN "PAPER-ONLY" PHASE OF GENERAL RATE CASE**
13 **FOR WASTE CONTROL, INC.**
14 **DOCKET NO. TG-140560**
15 **NOVEMBER 7, 2014**
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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. WOULD YOU PLEASE STATE YOUR NAME AND PROVIDE YOUR**
3 **BUSINESS ADDRESS FOR THE RECORD?**

4 A. Yes. My name is Joseph Willis. My business address is 1150 3rd Avenue, Longview,
5 Washington, 98632. I am president of Waste Control, Inc. and officer and shareholder
6 of various commonly owned affiliate sister companies of Waste Control, Inc. I
7 previously testified in the original TG-131794 matter marked as Exhibit JW-1T in this
8 proceeding and briefly in rebuttal in this docket which testimony was marked as Exhibit
9 JW-4T on August 20, 2014.

10 **Q. ARE YOUR BACKGROUND, RELEVANT EXPERIENCE AND PURPOSE IN**
11 **SUBMITTING TESTIMONY IN THIS RECORD STILL THE SAME AS THAT**
12 **YOU SUBMITTED UNDER EXHIBIT JW-1T ON APRIL 4, 2014 AND JW-6T**
13 **AUGUST 20, 2014?**

14 A. Yes they are.

15 **II. PURPOSE OF TESTIMONY**

16 **Q. AT THIS JUNCTURE AT THE “PAPER-ONLY” STAGE OF THIS NOW**
17 **YEAR-LONG PROCEEDING, WHAT ADDITIONAL COMMENTS DID YOU**
18 **WISH TO MAKE ON THE REMAINING CONTESTED ACCOUNTING**
19 **ISSUES NOW BEFORE THE COMMISSION?**

20 A. As President and Co-Owner of WCI, I wanted the Commission to understand the
21 import and gravity by which I view the decision it will make, particularly on the
22 affiliate land rent issue.

23 **Q. WHAT SPECIFICALLY DO YOU VIEW AS SO PERTINENT ON THAT**
24 **ISSUE?**

25 A. In 2009, during the last general rate case for WCI, the Staff initially attempted to
“commingle” or otherwise combine both WCI and all its affiliates capital structures for
the purposes of deriving a revenue requirement under Lurito-Gallagher. This effort
occurred against the completed backdrop of some extensive financing the affiliated

1 companies had recently entered into in order to secure lower interest rates and issuance
2 of a bond. Under the terms of the financing arrangement, the bond had to be issued in
3 the name of a single entity obligor which in turn was issued to Heirborne Investments.
4 That Company loaned the bonded obligation amount to all the affiliated sister
5 companies in order to procure the items authorized under the bond agreement. The
6 financing arrangement was in no way designed or intended to disturb the relationship of
7 the Companies to each other. Rather, it was intended as a prudent business approach
8 for minimizing the costs of debt and lending arrangements. However, the Commission
9 Staff apparently seized upon this unrelated reality to attempt to combine the capital
10 structures of all affiliated entities for establishing rates for WCI in the 2009 case.

11 **Q. WHAT WAS THE COMPANY'S RESPONSE?**

12 A. We strongly objected, pointing to the Commission's original *Lurito* decision in 1988
13 and its refinement of the principles and data entry points in the 1991 *Sno-King* case and
14 contested the ability of Staff to extend *Lurito* in the manner it sought in protracted
15 negotiations with us during the rate case audit in fall, 2009.
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17 **Q. WHAT WAS THE RESULT OF THAT CHALLENGE?**

18 A. Well, after a number of sessions, including a face-to-face meeting with Staff and
19 counsel we had then retained, the Staff summarily dropped that effort. A "Top-of-the-
20 File" memo, attached here as Exhibit __JW-9, which we obtained in discovery in
21 February, 2014 in the associated TG-131794 case, briefly alludes to that disputed
22 premise. From our sense of that 2009 meeting, we believe the Staff position was
23 subsequently tested higher up the ranks and was ultimately rejected on
24 recommendations of Anne Solwick, then head of Regulatory Services. Thereafter, the
25 Company and the Staff soon reached settlement in that 2009 proceeding.

1 **Q. AND HOW DOES THAT EARLIER STAFF CHALLENGE RELATE TO**
2 **CIRCUMSTANCES AT PRESENT IN THE STILL-CONTROVERTED LAND**
3 **RENT ADJUSTMENT IN THIS CASE?**

4 A. In the present case, Staff is appropriately maintaining separated capital structures for
5 Lurito-Gallagher ratemaking purposes. On land rents however, Staff has taken a new
6 and different approach. Here, Staff is advocating commingling the capital structures of
7 the affiliate landlords for calculating the overall rate of return factors on the leased
8 properties. The Commission has previously authorized separate capital structures for
9 ratemaking purposes as discussed above. The Staff should, though, not be authorized to
10 pick and choose whatever rate of return method it elects in order to derive a lower rate
11 of return on land rents for the regulated company.

12 **Q. IN THIS SITUATION DO YOU SEE PARALLELS WITH THE PREVIOUS**
13 **STAFF POSITION IN THE 2009 GENERAL RATE CASE?**

14 A. Absolutely. In setting allowable rents on commonly-shared buildings, the current
15 auditor has utilized the debt/equity capital structures of Heirborne and Heirborne II
16 which subsumes the balance sheets of nonregulated property-holding entities with
17 significant outstanding debt, particularly owing to the large capital project of a modern
18 transfer facility construction funded by a bond offering incurred by HB I in 2006.

19 **Q. IN ABBREVIATED FORM, WHAT IS THE COMPANY'S POSITION ABOUT**
20 **ESTABLISHING AFFILIATED RENTS BASED ON CAPITAL STRUCTURES**
21 **OF NONREGULATED AFFILIATES?**

22 A. If the Staff will not focus on the capital structure of the regulated entity itself in
23 determining what is a fair and reasonable rent to recover in rates, the Staff and the
24 Commission ought to be governed in their determination by the capital structure of each
25 individual property asset shared/occupied by the regulated company. In other words, an
asset-specific perspective where rents are incrementally established based on the actual

1 capital structure of the property parcel in question and then those calculations would be
2 cumulated to produce an overall allowed rent for WCI to pay its nonregulated landlord
3 affiliate(s) in rates.

4 **Q. WHY DO YOU HAVE CONCERNS IF THIS AGGREGATED CAPITAL**
5 **STRUCTURE APPROACH IS NOT REJECTED BY THE COMMISSION**
6 **HERE?**

7 A. Since our experience in 2009, we have been wary of any “trial balloon”/untested
8 theories deriving affiliate rents that might be employed by Staff in determining rents for
9 the various properties occupied and utilized by WCI. WCI, since its inception decades
10 ago, has never acted as a Landlord nor has it viewed investments in real estate as a
11 necessary or logical use of its regulated resources due to the risks inherent in owning
12 commercial and/or industrial properties. Additionally, if the Commission is going to
13 impute returns on capital structures for all real estate occupied by privately-held
14 companies, it needs to say so formally in advance, not years after the Company and its
15 affiliates have negotiated, acquired and managed a host of commercial and industrial
16 properties and incurred substantial debt to purchase, maintain and improve those
17 properties without any suggestion that those transactions would directly impact the
18 allowance of reasonable rents paid by the regulated company for its use/occupancy of
19 those properties.

20 **Q. WHAT WOULD THE EFFECT BE IN YOUR VIEW IF THE COMMISSION**
21 **WERE TO RATIFY THE STAFF’S CURRENT POSITION ON AFFILIATE**
22 **RENTS?**

23 A. It would be extremely damaging to us since we have never received any formal
24 guidance or admonition from the Commission by rule, order or informal or formal
25 policy statement that total company capital structures would be combined for the
purpose of establishing allowable rents to WCI or regulated solid waste collection

1 companies in general under the affiliated interest statute. This Staff after-the-fact
2 application would significantly upset established management approaches to acquiring,
3 operating and paying for commercial properties utilized by WCI and would
4 retroactively impact individual decisions made years ago by management, lenders and
5 the WEDFA agency to secure financing for a significant bond offering for WCR's
6 transfer station as well as for the assignment and evaluation of risks to real estate
7 holding/management entities affiliated with WCI. It would also be a crucial factor in
8 determining the formation of company entities and broadly impact income tax planning
9 related to the structuring of entities owning real property as our corporate attorney
10 generally alluded to in the exhibit previously sponsored by me in Exhibit JW-6T.

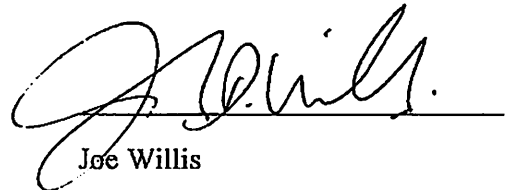
11 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY ON LAND**
12 **RENT ISSUES AND IMPLICATIONS OF THE SIGNIFICANCE OF THIS**
13 **ISSUE FOR WASTE CONTROL?**

14 **A.** Yes it does.

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17 **III. DECLARATION**

18 I hereby swear and affirm under penalty of perjury of the laws of the State of
19 Washington that the foregoing Supplemental Testimony of Joe Willis is true and correct to the
20 best of my knowledge and belief.

21 Signed at Longview, Washington, this 7th day of November, 2014.

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24 
25 Joe Willis