

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE CONTROL, INC.,

Respondent.

DOCKET TG-140560

DECLARATION OF DAVID W.  
WILEY IN RESPONSE TO  
COMMISSION STAFF'S MOTION TO  
STRIKE WASTE CONTROL INC.'S  
SUPPLEMENTAL TESTIMONY

1 David W. Wiley hereby declares and states as follows:

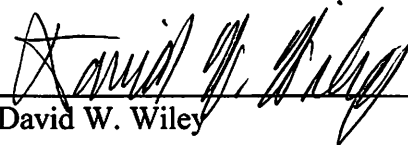
2 I am an attorney for Waste Control, Inc. in the above-captioned matter and, in  
support of Waste Control, Inc.'s Response to Motion to Strike, provide the following:

3 Attached as Exhibit 1 is a true and correct copy of an email exchange between the  
undersigned and Commission Staff's lead counsel on this case setting forth the Company's  
concerns about a "paper-only" record in response to a circulated draft Joint Motion on  
October 21, 2014, more than two weeks prior to the submission of the Initial Briefs. The  
initial draft of the Joint Motion did not include a reference to the filing of supplemental  
testimony which the Company required.

4 Additionally, on the issue of discrepancy in the parties' presentation of their  
quantitative positions on initial briefing on rate case test year utility expense allocation, the  
undersigned called Staff counsel on Monday, November 10, 2014, (the first business day  
after Initial Briefs were served and filed), to initially raise the quantitative discrepancy  
reference in the respective Opening Briefs with Commission Staff counsel. Attached as  
Exhibit 2 is a true and correct copy of an email of November 12, 2014 from Staff counsel on  
the subject of the Amended Motion to Include Evidence from TG-131794 in the record but

which also responds to contacts and the inquiry from the undersigned which had requested, in part, followup to the utility cost discrepancy reference issue initiated by the Company.

Signed at Seattle, Washington, this 5<sup>th</sup> day of December, 2014.

  
\_\_\_\_\_  
David W. Wiley

**EXHIBIT 1**

DECLARATION OF DAVID W. WILEY

**From:** Shearer, Brett (UTC) [<mailto:bshearer@utc.wa.gov>]  
**Sent:** Wednesday, October 22, 2014 10:54 AM  
**To:** Wiley, Dave  
**Subject:** RE: Revisions

Understood. I don't have a problem with supplemental testimony accompanying the briefs, per se. I'm just not willing to waive an objection to novel arguments, testimony, calculations, etc. beforehand.

We could add "the parties reserve the right to object to information provided in briefing or supplemental testimony." Or something to that effect.

**From:** Wiley, Dave [<mailto:dwiley@williamskastner.com>]  
**Sent:** Wednesday, October 22, 2014 9:59 AM  
**To:** Shearer, Brett (UTC)  
**Subject:** RE: Revisions

The problem I have is implying that we will only file briefs when I know I will have accompanying testimony/declarations and which I have been mentioning to you all along, i.e. during the "Melissa" hiatus when we awaited her "testimony" for two weeks. As you saw, I didn't object to that testimony despite finding it often objectionable. I view this as precisely the same sort of "supporting" testimony issue and don't think staff can have it both ways, particularly when the testimony coming up is only directed to the contested issues. I can't agree not to allude to the fact that in the "paper-only" phase I'm filing something in addition to a legal brief.

**From:** Shearer, Brett (UTC) [<mailto:bshearer@utc.wa.gov>]  
**Sent:** Wednesday, October 22, 2014 9:52 AM  
**To:** Wiley, Dave  
**Subject:** RE: Revisions

If the testimony is limited as you describe, I generally won't have an objection. But I don't want the joint request to waive my right to object. That's why I don't want to include the sentence.

If there aren't new substantive issues that would require cross, then I won't object anyway so we don't need the language in the proposal.

Hope that makes sense. We can chat about it if that helps.

Brett

**From:** Wiley, Dave [<mailto:dwiley@williamskastner.com>]  
**Sent:** Wednesday, October 22, 2014 9:11 AM  
**To:** Shearer, Brett (UTC)  
**Subject:** RE: Revisions

My problem then is that we need the option by declaration or testimony to support the legal issues raised in the briefs which are limited to the contested adjustments of land rents, rate case and investigation costs and utility charges. None of those topics are "new." For instance, Jackie's description of the "Kalamity" that was Kalama cost wise in July and August is NOT a new topic but provides updated, supplemented information since our rebuttal case filing in reaching partial settlement

after you dropped the “commingled bomb” in early September when you expressly acknowledged we could address the increased cost effect of that in the “paper only” stage. Likewise, Layne describing why we can conditionally accept the staff 23.4 percent allocator v. the 24.3 percent we argued for on rebuttal is only put in context if we now describe what we want included in the denominator of utility expense v. what staff wants, again, following rebuttal. Joe’s filing will be directed to the import of the land rent decision on future property acquisitions by the combined company and the structuring and tax ramifications if the land rent approach sought by staff were to be the norm from this point forward. These are not novel issues and arguments and I doubt you would even want the right to cross examine but we have the uphill burden of proof here and we need to explain our position with reference to facts emerging after rebuttal that are only on the contested adjustment topics. None of this would be “new information” as far as I understand. Maybe we should talk later on this morning.

**From:** Shearer, Brett (UTC) [<mailto:bshearer@utc.wa.gov>]  
**Sent:** Wednesday, October 22, 2014 8:21 AM  
**To:** Wiley, Dave  
**Subject:** RE: Revisions

Dave,  
I’m not comfortable with the supplemental testimony line. Do you want to work through it or drop it from the filing?

I am fine with supplemental testimony that is not new/bringing up novel issues and arguments, but if the testimony offers new information, I do not want to forgo my ability to object. Basically, I’d rather remove the sentence from the filing and deal with it when/after we file. If the testimony reiterates previous arguments or provides updates to certain costs, it will be a non-issue anyway.

Brett

**From:** Wiley, Dave [<mailto:dwiley@williamskastner.com>]  
**Sent:** Tuesday, October 21, 2014 3:49 PM  
**To:** Shearer, Brett (UTC)  
**Subject:** Revisions

Here are my proposed edits. Thanks, Dave.

**David W. Wiley**  
Attorney at Law  
Williams Kastner  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
Main: 206.628.6600  
Direct: 206.233.2895  
Fax: 206.628.6611  
[dwiley@williamskastner.com](mailto:dwiley@williamskastner.com)  
[www.williamskastner.com](http://www.williamskastner.com)

**WILLIAMS KASTNER™**  


## **EXHIBIT 2**

**DECLARATION OF DAVID W. WILEY**

**From:** Shearer, Brett (UTC) [<mailto:bshearer@utc.wa.gov>]

**Sent:** Wednesday, November 12, 2014 2:04 PM

**To:** Wiley, Dave

**Subject:** RE: Update on motion to get 131794 into the record?

Hi Dave,

Thanks for putting together the last of the amendment to motion. We're all better off with everything in the record.

I don't have any updates to the utility cost allocation other than what we previously discussed. It's likely something for your reply brief to include.

I don't know anything about a cost of debt issue.

Brett

## CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2014, I 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: <a href="mailto:mfriedla@utc.wa.gov">mfriedla@utc.wa.gov</a>	Brett 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: <a href="mailto:bshearer@utc.wa.gov">bshearer@utc.wa.gov</a>
Sally Brown Senior Assistant Attorney General Washington Utilities and Transportation Commission 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128	James K. Sells Attorney at Law PMB 22, 3110 Judson St. Gig Harbor, WA 98335 E-mail: <a href="mailto:jamesells@comcast.net">jamesells@comcast.net</a>

  
Maggi Gruber