

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE CONTROL, INC.,

Respondent.

DOCKET TG-140560

MOTION TO ALLOW TEMPORARY  
RATES SUBJECT TO REFUND AT  
THE PROPOSED SETTLEMENT  
LEVEL FILED IN OCTOBER, 2014

**I. MOTION**

1           In addition to the written acceptance of a 90-day extension waiver of the statutory suspension period under RCW 81.04.130 which the Respondent Waste Control, Inc. (“WCI” or “Respondent”) has filed in separate correspondence with the Commission Secretary on January 29, it now moves, pursuant to WAC 480-07-375, asking the Commission to allow temporary rates subject to refund in this matter at the proposed \$339,912 annual revenue increase requirement level outlined in the Settlement Agreement filed with the Commission on October 14, 2014 and in Staff Bench Request Response No. 1 of October 21, 2014.

**II. QUESTION PRESENTED**

2           Should Respondent be granted temporary rates fully subject to refund at the stipulated partial settlement agreement level submitted by the parties on October 14, 2014?

**III. BASIS FOR THE REQUEST**

3           Petitioner, Waste Control, Inc., files this motion recognizing the Commission’s standard reluctance to approve temporary rates subject to refund in most general rate cases and the procedural anomalies posed by the request for consideration of a general rate case still being adjudicated. However, Respondent believes that its circumstances are sufficiently unique and unusual in the current posture of the case to merit grant of temporary relief due largely to the prolonged period from the original filing of the initial rate case on or about

September 23, 2013 to the present, well beyond the conventional ten-month statutory suspension period. While the Company originally did not believe it would need to seek such extraordinary relief, the filing on November 18, 2014 of the unsuccessful Staff Motion to Strike supplemental testimony and the requisite responsive and intervening holiday periods have caused an almost three-month delay in the hearing process which has now required a three-month extension of the suspension period from April 1, 2015 to July 1, 2015.

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Over the course of the pendency of the initial and subsequent rate filing intervals<sup>1</sup>, the Respondent's financial and operating cash position has materially declined as addressed in the attached declaration of Jacqueline G. Davis, the Company's lead outside accountant, attached hereto and by this reference incorporated herein. On all but four remaining isolated issues, the Staff and the Company have resolved the numerous accounting issues that divided the parties and have, over 120 days ago, on October 14, 2014, filed a partial settlement agreement and extensive narratives ostensibly supporting that position. As indicated in a Bench Request Response No. 1 supplied by Staff on October 21, 2014 in revised Exhibit MC-6 predicated on the partial settlement, the proposed revenue deficiency

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<sup>1</sup> The Company recognizes that the Staff blames it for the Dismissal Staff sought of the original filing under TG-131794. The Company disputes this claim based on its documented efforts to avoid filing redundancies and reduce costs in its original case in chief filing i.e., as shown in email communications with Staff counsel in early February, 2014 and attached Exhibit JD-42 to the Rebuttal Testimony of Jacqueline Davis of August 20, 2014. Moreover, a recent stakeholder "Bench Bar" session in Fall 2014 with numerous Commission Staff in attendance revealed a widespread misunderstanding on the part of the industry as to what constitutes an official "rate case file" at the Commission. Until that point, the Company and its representatives believed that all workpapers and supporting documents filed with the Records Center became a part of the "official" rate case file for any subsequent adjudication which understanding clearly begs clarification or codification in the current rulemaking under Docket No. A-130355. This may also explain assumptions potentially leading to the unfortunate dismissal outcome in Docket No. TG-131794, which suggests fault attribution may be more nuanced than originally determined. The issue of fault attribution however should not detract from the reality of the time interval after which the Company has suffered a documented and now stipulated revenue requirement deficiency. In other words, neither the fate of Docket TG-131794 nor fault attribution should obscure the consecutive interval of revenue deficiency yielded by the Company's current rates, nor should the dismissal serve as a basis for ignoring the premise that the current tariffs, due to the extension of the suspension period, will exacerbate a revenue shortfall which can never be recouped.

under Lurito Gallagher was presented as \$339,912 on an annual basis.<sup>2</sup> While that figure does not give full recognition, for instance, to the Company's out of pocket rate case costs even on a fully amortized basis, the Company is willing to accept it as the figure for implementation of interim rates on a temporary basis, but notes that only includes rate case costs at the Staff advocated 50% level through July, 2014. If those rate case costs were to be implemented on the basis of the Company proposal, that would raise the interim revenue requirement under Lurito-Gallagher to \$391,779 as shown again in the Staff Pro Forma in Response to Bench Request No. 1. Again, for the purposes of compromise and to allow for necessary, expeditious interim relief, the Company is willing to accept the \$339,912 annualized revenue deficiency figure shown in revised Exhibit MC-6.

#### IV. DECLARATION OF JACQUELINE DAVIS

5 As referenced above, attached hereto is the Declaration of Jacqueline G. Davis in Support of Motion to Allow Temporary Rates Subject to Refund Pursuant to the Partial Settlement Agreement of October 14, 2014 which further details the just cause in Petitioner's view for temporary rate relief. Also attached to Ms. Davis' Declaration are workpapers/schedules and a proposed priceout of the rate design of the proposed additional temporary rates subject to refund increment. Waste Control would also note that it has been working with Staff of the Commission for the past two-plus weeks in attempt to reach a stipulated rate design or priceout, and while it remains hopeful of coming to an agreement, has yet to reach conclusive agreement on the priceout and rate design at the proposed

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<sup>2</sup> Approximately \$176,000 of this amount has already been allowed on a temporary basis subject to refund in the November 27, 2013 Order of the Commission which, under RCW 81.77.160, authorized revised rates for increased disposal fees in Cowlitz County as of December 1, 2013. (See, Docket TG-131794, *In re WUTC v. Waste Control, Inc.* (Nov. 2013)).

\$339,912 annual revenue increase requirement referenced in Staff Bench Request Response No. 1.

**V. CONCLUDING ARGUMENT IN SUPPORT OF MOTION FOR TEMPORARY RATES**

**A. The Commission is well within its jurisdiction to act directly on an Interim Rate Petition, either in an Ongoing Adjudication or at a regular Open Meeting.**

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Respondent understands that moving for temporary rates subject to refund in the course of a pending adjudication is unusual, indeed, it has not been able to locate any authority in the APA or the Commission's procedural regulations that specifically address this issue. Obviously, RCW 81.01.040(1) maintains broad authority for the Commission to act and "exercise all the powers and perform all the duties prescribed by this title and by Title 81 RCW, or by any other law." The Administrative Procedure Act ("APA") at RCW 34.05.020, similarly provides that "every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise." Granting interim rate relief in this matter would implicate the public interest and comports with the purpose of the APA and therefore seems to fall well within the Commission's authority to act in this circumstance avoiding concerns about the authority the presiding officer to issue interim rate relief which traditionally resides in the Commission itself. The procedural dilemma here is that the Commission has chosen not to sit directly on this case and assigned it instead to an administrative law judge under RCW 34.05.425(2), but, the Respondent, in the course of the pendency of the case, is compelled to seek interim rate relief as here suggested.

**B. Granting Temporary Rates Subject to Refund is Consistent with the Public Interest and Commission Case Law in this Circumstance**

7 As the Commission has previously found in Docket No. TO-011472, *Washington Utilities & Transportation Commission (“WUTC”) v. Olympic Pipeline Company* (Jan. 2002), interim relief:

...is a mechanism to provide limited support to a public service company facing an immediate need and whose other immediate options are not viable. The question that the Commission must answer in determining whether to grant a request for urgent relief is whether the grant would be consistent with the public interest - -that is, whether the company needs the relief urgently enough that the Commission should grant it, given the agency’s role as a substitute for the marketplace, balancer of stakeholder interests that sometimes coincide and sometimes do not, and custodian of statutory policy that recognizes that public service companies do serve a public purpose and that the public interest in access to the services may bear on what otherwise might be a mere private disagreement.

Ibid at ¶¶19, 20.

8 Here, as the attached declaration shows, the protracted rate case and the outlay of substantial rate case costs has currently put the Company and its affiliates out of compliance with loan covenants at Union Bank. Interim relief would largely stem that noncompliance and timely infuse badly-needed capital into the Company. Moreover, the Company has not sought any amounts in excess of the stipulated partial settlement revenue requirement which even the Staff would acknowledge would go higher under even their theory of partial relief on ongoing rate case costs which are naturally continuing to a final decision. In light of the above principle and the documented distress that further extension of the statutory suspension period will cause in the wake of a substantiated and now stipulated revenue deficiency, Waste Control, Inc., contends that its request for temporary rates subject to refund is consistent with the public interest in this very unique circumstance.

9 Finally, while interim rate requests are often considered on less than a comprehensive record, this particular request is based on a complete and exhaustive

stipulated record and only seeks interim rates subject to refund at the proposed

Company/Staff partial settlement level:

...while the standards for granting interim relief are high, interim requests are more likely than requests that are independent of a general rate proceeding to be seen in a proper perspective and less likely to constitute “single-issue” requests whose effect might actually be moderated or exacerbated by other aspects of a company’s operation.<sup>3</sup>

WCI’s request is admittedly unusual, as has been frequently noted is this long-pending, suspended rate filing in the annals of solid waste general rate cases in the past more than two decades. Indeed, it appears that the 1991 oft-cited *Sno-King* case<sup>4</sup> is the last litigated solid waste collection company general rate case proceeding to a Final Commission Order. Again, this company has incurred substantial out of pocket rate case costs<sup>5</sup> to prosecute its rate case position and experienced many months of “insufficient” revenue as reflected by the partial settlement agreement establishing an additional revenue requirement well into the \$300,000 range at now uncontested rate levels.

10 For all of the above reasons and those outlined in the attached Declaration of Jacqueline G. Davis, Waste Control, Inc., asks that its request for temporary rate relief subject to refund after review hereinafter be granted.

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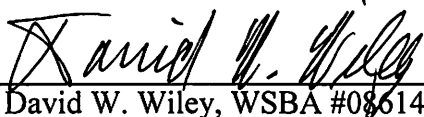
<sup>3</sup> Docket Nos. UE-011163 and 011170 *In re WUTC v. Puget Sound Energy, Inc.*, Sixth Supplemental Order (Oct. 2001), ¶ 27 at p. 10.

<sup>4</sup> “*Sno-King*,” TG-900657 and 900658, *In re WUTC v. Sno-King Garbage Company & WUTC v. Northwest Garbage Company*, Fifth Supplemental Order (Dec. 1991).

<sup>5</sup> *See, i.e.*, Exhibit JD-47 as the most current reflection of rate case costs in the record covering the January-August 2014 time period.

DATED this 23<sup>rd</sup> day of February, 2015.

RESPECTFULLY SUBMITTED,

By   
David W. Wiley, WSBA #08614  
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Attorneys for Waste Control, Inc.

**CERTIFICATE OF SERVICE**

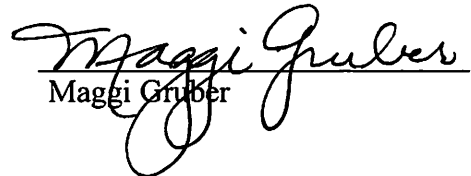
I hereby certify that I have this day served this document upon all parties of record in this proceeding by electronic file containing the foregoing document via [records@utc.wa.gov](mailto:records@utc.wa.gov) to:

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

and served a 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>
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Dated at Seattle, Washington this 24<sup>th</sup> day of February, 2015.

  
Maggi Gruber