

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC., d/b/a WASTE
MANAGEMENT – NORTHWEST,
WASTE MANAGEMENT – SOUTH
SOUND, WASTE MANAGEMENT OF
SEATTLE, and WASTE MANAGEMENT
– SNO-KING,

Respondent.

DOCKET TG-121265

JOINT NARRATIVE OF
COMMISSION STAFF AND WASTE
MANAGEMENT OF WASHINGTON,
INC. IN SUPPORT OF SETTLEMENT
AGREEMENT

1 On August 8, 2013, Waste Management of Washington, Inc., (“Waste Management”
or the “Company”) and the Staff of the Washington and Utilities and Transportation
Commission (collectively, the “Parties”) filed a Settlement Agreement resolving all issues
between them in Docket TG-121265. This Joint Narrative is submitted pursuant to WAC
480-07-740(2)(a) as supporting documentation for the Settlement Agreement.

I. SCOPE OF UNDERLYING DISPUTE

2 Waste Management of Washington, Inc. provides garbage, recyclable material and
yard waste collection services in King County, Washington, and Snohomish County,
Washington. Waste Management provides these services under the registered trade names
Waste Management - Northwest, Waste Management - South Sound, Waste Management of
Seattle, and Waste Management - Sno-King. The Company is subject to supervision and

regulation by the Commission under RCW Chapters 81.04, 81.28 and 81.77. The Company provides Commission-regulated service under Certificate of Public Convenience and Necessity G-237.

3 The dispute between the Parties concerns the practices of the Company regarding Commission-regulated collection services in King and Snohomish Counties during and immediately following a labor strike from July 25, 2012, through August 2, 2012 (“Labor Strike”). The Labor Strike was called by union drivers that collect residential recyclable materials and residential yard waste. The Labor Strike was honored by union drivers that collect garbage.

4 After investigation of the Company’s practices by Commission Staff, the Commission, on April 23, 2013, issued a Complaint in this docket recommending penalties with respect to five causes of action that define the scope of the Parties’ dispute and are summarized as follows:

1. The Complaint alleged that Waste Management violated RCW 81.04.080, RCW 81.04.380, RCW 81.77.030(3), and WAC 480-70-071(2) by failing to comply with a Commission directive to report customer-specific information during and after the Labor Strike until all collections that were missed during the Labor Strike were made and normal service resumed.
2. The Complaint alleged that Waste Management violated RCW 81.28.080 and WAC 480-70-236 by failing to provide service during the Labor Strike in accordance with its filed tariffs then in effect.
3. The Complaint alleged that the Company violated RCW 81.28.010 and RCW 81.28.020 by failing to deploy a sufficient number of replacement drivers during the Labor Strike to be able to satisfy its public service obligations.
4. The Complaint alleged that the Company violated RCW 81.28.190 by focusing service restoration efforts in city-contract areas of King and Snohomish counties to the detriment of Commission-regulated areas.

5. The Complaint alleged that Waste Management violated WAC 480-70-386(b)(i) by a delay in reporting to Commission Staff the results of a Company investigation of a customer complaint.

5 The Complaint also alleged violations of safety rules. However, these violations were of a technical nature and were first-time offenses for a particular driver. Therefore, no specific enforcement action or monetary penalty was recommended.

6 The Company answered the Complaint on May 13, 2013, denying each of the alleged causes of action. The Company also raised the affirmative defenses that it lacked the ability to control the timing, duration, and circumstances surrounding the Labor Strike, and that its failure to provide service during and after the Labor Strike is excused by the doctrine of force majeure or uncontrollable circumstances. The Company further raised affirmative defenses related to allegations of procedural infirmities giving rise to equitable estoppel, unconstitutional blending of administrative functions, appearance of fairness, and ex parte communications. The Company also alleged that the Staff investigation upon which the Complaint was based was factually erroneous.

II. SCOPE OF SETTLEMENT AND ITS PRINCIPLE ASPECTS

7 The Settlement Agreement resolves all issues raised by the Complaint in this docket by the Parties. The Settlement Agreement, therefore, is a "Full Settlement" as defined by WAC 480-07-730(1).

A. Customer Credits and Reporting

8 There are two principle aspects of the Settlement Agreement:

9 The Company agrees to provide the following one-time bill credits to each customer receiving regular service from Waste Management - Northwest, Waste Management - South Sound, Waste Management of Seattle, and Waste Management - Sno-King under the

regulatory authority of the Commission in the service territory authorized by Certificate G-237 in King and Snohomish Counties:

Type of Customer/Service	Approximate Number of Customers	Credit per Customer	Approximate Total Credits
Residential garbage and/or recycling with yard waste	56,657	\$5.00	283,285
Residential garbage and/or recycling without yard waste	66,640	\$3.50	233,240
Residential yard waste only	422	\$1.50	633
Commercial and multi-family garbage with cart or can service (less than 3 cans/carts)	693	\$3.50	2,426
Commercial and multi-family garbage with cart or can service (3 or more cans/carts)	102	\$25.00	2,550
Commercial and multi-family garbage with container service (excluding roll-off)	3,951	\$25.00	98,775
Total			\$620,909

10 The above table shows the approximate number of customers; however, the Settlement Agreement requires that Waste Management issue credits to every customer with an active account on the date defined as the “Credit Issue Date,” which will be within 30 days of final approval of the Settlement Agreement by the Commission. Therefore, the actual total amount of credits issued will likely be different from the numbers above. Once the active customer accounts are determined, the Settlement Agreement requires Waste Management to issue the applicable credit on each customer’s next regular bill.

11 The Parties have also agreed to specific and timely reporting to the Commission by the Company to ensure that these obligations have been satisfied.

12 The Company also agrees that these customer credits will be funded exclusively from its owners and the Company will not seek to recover any of these funds from its customers.

B. Admission of Violation and Penalty

13 Waste Management acknowledges in the Settlement Agreement that it did not provide service during the Labor Strike in accordance with its filed tariffs then in effect, in violation of RCW 81.28.080 and WAC 480-70-236. Waste Management agrees to pay a monetary penalty of \$20,000 in addition to the customer credits shown above.

14 The Company will pay this monetary penalty to the Commission within 10 business days after the date of the Commission order approving this Settlement Agreement. Waste Management agrees that it will not seek to recover any of this penalty from its customers.

III. EXPLANATION WHY THE SETTLEMENT AGREEMENT SATISFIES THE PUBLIC INTEREST AND EACH PARTY'S INTEREST

A. Staff Statement

15 There are several reasons why the Settlement Agreement satisfies both the public interest and Commission Staff's interest.

16 First, Waste Management has acknowledged that it failed to provide service during the Labor Strike in accordance with its filed tariffs then in effect in its Certificate G-237 service territory in King and Snohomish Counties. This is an important element of the Settlement Agreement in light of Commission Staff's role to ensure that companies subject to Commission regulation comply with the applicable laws and rules the Commission is obligated to enforce. The admission of violations by the Company is also consistent with Commission practice and policy requiring an acknowledgement so the Commission can properly evaluate the terms of a settlement.

17 Second, Waste Management's agreement to provide credits to all current customers compensates customers for the scheduled service they did not receive but paid for through

bills previously issued. The credits are based on the cost to the Company to provide garbage service (less disposal) and yard waste service (less processing), and the net cost to the customer for recycling service (less processing and less the recycling commodity credit) for each customer class, residential and commercial. This provision in the Settlement Agreement for customer credits supports Commission Staff's interest in consumer protection and is a better outcome than if Waste Management had instead been required to pay a substantially higher penalty to be deposited in the Public Service Revolving Fund.

18 Third, Waste Management has agreed to pay a monetary penalty of \$20,000. Commission Staff is satisfied that this penalty, along with the agreed credits that total approximately \$620,000, appropriately captures the severity of the underlying Complaint proceeding.

19 Fourth, the Settlement Agreement specifies the methodology for identifying customers who will receive credits and when the credits will be paid to those customers, along with requiring specific reporting to the Commission to ensure the Company's obligations are timely fulfilled. These elements should eliminate any controversy over implementation of the credit provisions and will assist Commission Staff in confirming the credits have been paid to customers as required by the Settlement Agreement.

20 Likewise, the Settlement Agreement should eliminate controversy in future rate cases because it states expressly that the Company will not seek to recover the agreed penalty and credits from its customers. All funds to pay these amounts will be provided by the Company's owners.

21 Finally, the Settlement Agreement represents a compromise of the positions of the Parties and avoids the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. The Settlement Agreement, therefore, provides a remedy that benefits consumers directly in a more expeditious manner than full litigation of the Complaint.

B. Waste Management Statement

22 Waste Management believes that this settlement is a fair resolution of this matter and strikes an appropriate balance that recognizes the inconvenience to its customers during the Labor Strike and the efforts of the Company to respond to the Labor Strike and restore service to its customers as soon as reasonably practicable. Waste Management regrets the inconvenience to all its customers for the disruption in collection service from last summer. The Company prides itself in providing quality dependable service to all its customers and apologizes to its customers and the Commission for the problems arising from the Labor Strike.

23 Waste Management believes that the Settlement Agreement is fair for a number of reasons. First, it provides monetary credits to Waste Management's customers – those actually impacted by the Labor Strike. While Waste Management does not agree that credits should always be required for missed collections due to a work stoppage, the Company acknowledges that its missed collections due to the Labor Strike were not permitted under the Company's tariffs in effect at the time. If the Company is required to make payments to resolve this matter, it is in the public's best interests that the payments go to its customers instead of the State's account.

24 Second, Waste Management believes that the amounts of the credits are roughly proportionate to the service-related component of the charges for the missed garbage,

recycling, and yard waste collection services during the Labor Strike. In Waste Management's view, credits would not be fairly calculated if they were to include the component attributable to disposal or processing, which the Company actually incurred, and if they did not account for the net cost to the customer for missed collection of recyclables (i.e., collection costs minus commodity credit).

25 Third, because it involves payment of the same amount to similar customers with the same type of service, the proposed credit process is simple and straightforward to administer and verify. While Waste Management and Commission Staff recognize that uniform credits do not differentiate among customers within the various service types (*e.g.*, can size, frequency of service, number of service misses, etc.), it would be complex and unworkable to implement credits based on the dozens of different permutations of service levels, can sizes, collection frequency, degrees of inconvenience, etc. The proposed credits will provide a workable, consistent, and generally fair means for crediting customers. The reporting requirements will also allow for easy verification by the Commission that the credits have been correctly issued to over 128,000 customers.

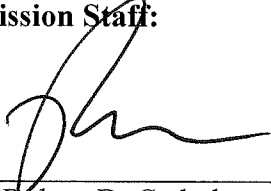
26 Finally, the Settlement Agreement represents a final resolution that will avoid costly, uncertain, and protracted litigation that would drain the resources and attention of Commission Staff, the assigned Administrative Law Judge, the Commissioners, and the Company. Furthermore, protracted litigation and appeals could delay by years the issuance of credits, if any, to customers. This settlement will instead allow for credits to be issued within the next few months.

IV. LEGAL ISSUES

27

The Parties are not aware of any legal issues that bear on the proposed settlement. Counsel for each Party will respond to any legal issues that may be contemplated by the Commission.

For Commission Staff:

By: 
Name: Robert D. Cedarbaum
Title: Assistant Attorney General
Counsel for the Staff of the
Washington Utilities and
Transportation Commission
Date: August 13, 2013

**For Waste Management of
Washington, Inc.:**

By: _____
Name: Andrew Kenefick
Title: Counsel for Waste Management of
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Date: August 13, 2013

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By: _____
Name: Robert D. Cedarbaum
Title: Assistant Attorney General
Counsel for the Staff of the
Washington Utilities and
Transportation Commission
Date: August 13, 2013

By: Andrew M. Kenefick
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Title: Counsel for Waste Management of
Washington, Inc.
Date: August 13, 2013