

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

SETTLEMENT AGREEMENT

1 This Settlement Agreement is entered into for the purpose of resolving all issues raised in this docket. This Settlement Agreement is subject to approval by the Washington Utilities and Transportation Commission (“Commission”) and is not effective before such approval. This Settlement Agreement is a “Full Settlement” as defined by WAC 480-07-730(1).

I. PARTIES

2 The parties to this Settlement Agreement are the Respondent, Waste Management of Washington, Inc., d/b/a Waste Management – Northwest, Waste Management – South Sound, Waste Management of Seattle, and Waste Management – Sno-King (“Waste Management” or the “Company”), and the Staff of the Commission (“Staff”) (collectively, “the Parties”). Waste Management and Staff are the only parties to this docket.

II. BACKGROUND

3 Waste Management is a corporation providing solid waste collection services in King County, Washington, and Snohomish County, Washington under Certificate of Public Convenience and Necessity G-237 (“Certificate G-237”) granted by the Commission. The Company’s services include the collection of residential and commercial garbage, residential recyclable materials, and residential yard waste. 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. Waste Management is subject to supervision and regulation by the Commission under RCW Chapters 81.04, 81.28 and 81.77.

4 On April 23, 2013, the Commission issued its Complaint in this docket following a Staff investigation and report into the business practices of the Company regarding service during and immediately following a labor strike from July 25, 2012, through August 2, 2012 (“Labor Strike”). The Labor Strike was called by drivers that collect residential recyclable materials and residential yard waste and are represented by Teamsters Local 117, and was honored by drivers that collect garbage and are represented by Teamsters Local 174.

5 The Complaint alleged violations in the following five areas:

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 particular customer-specific information during and after the Labor Strike until all missed collections 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 Staff the results of a Company investigation of a customer complaint.

Monetary penalties for each of these violations were recommended by the Complaint.

6 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.

7 The Company answered the Complaint on May 13, 2013, denying each of the six causes of action alleged in the Complaint. The Company also raised affirmative defenses including that it lacked the ability to control the timing, duration, and circumstances surrounding the Labor Strike, and that its alleged 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 alleged that the Staff Investigation Report was factually erroneous in many ways.

8 A prehearing conference in this docket was convened on June 6, 2013, before Administrative Law Judge Marguerite E. Friedlander. No one sought intervention.

III. AGREEMENT

9 The Parties have reached agreement on how to resolve the issues in this docket and present their agreement for the Commission's consideration and approval. The Parties voluntarily enter this Settlement Agreement without hearing or adjudication of any issues of fact or law to resolve the matters in dispute between them in what each Party believes is an appropriate manner, and to avoid the expense, time and uncertainty of litigation.

A. Customer Credits

10 The Company's collection services can be categorized as follows, with the approximate number of customers within its Certificate G-237 service territory in King and Snohomish Counties indicated as of the date of execution of this Settlement Agreement by the Parties:

- Residential garbage and/or recycling with yard waste (56,657 customers);
- Residential garbage and/or recycling without yard waste (66,640 customers);
- Residential yard waste only (422 customers);
- Commercial and multi-family garbage with cart or can service (795 customers);
- Commercial and multi-family garbage with container service (excluding roll-off) (3,951 customers);

11

The Company agrees to provide the following one-time bill credits to each customer in these categories that, on the “Credit Issue Date” (as defined below), are served by 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

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In total, this Settlement Agreement will require the Company to pay approximately \$620,000 to implement these credits. The Parties agree that the numbers of customers indicated above are reasonable estimates based on the best information currently available, but may be different on the Credit Issue Date, as defined below; therefore the Parties agree that the Company shall be deemed to satisfy this Settlement Agreement by issuing credits based on the actual number of customers on the Credit Issue Date. The “Credit Issue Date” is defined as the date on which the Company compiles its list of active accounts of residential, multi-family and commercial customers within its Certificate G-237 service

territory in King and Snohomish Counties, which date shall be on or before THIRTY (30) calendar days after the date of a Commission order approving this Settlement Agreement.

13 WMW shall apply a one-time credit in the above amounts to each residential, multi-family, and commercial customer account that is active on the Credit Issue Date for each category listed above. For residential customers, which are billed quarterly, such credits shall then be included on the next quarterly invoices issued to the customer on or after the Credit Issue Date. For commercial and multi-family customers, which are billed monthly, such credits shall then be included on the next monthly invoice issued to the customer on or after the Credit Issue Date. The Parties agree that the credits provided for in this Section shall be provided only to those accounts that are active on the Credit Issue Date.

14 The Parties acknowledge that the intent of this Settlement Agreement is to provide credits to customers receiving regular (*e.g.*, daily, weekly, or every-other-week) collection services under the Company's tariffs in the Certificate G-237 service territory and that the Company's obligation to provide credits shall apply only to those accounts receiving regular collection services and shall not apply to other accounts, including but not limited to those accounts receiving on-call or temporary drop-box container collection services.

15 The Company agrees that the credits provided to customers in accordance with this Settlement Agreement will be funded exclusively by its owners and the Company will not seek to recover any of these funds from its customers in any Commission-regulated area.

B. Reporting

16 Within THIRTY (30) calendar days after the Credit Issue Date, the Company shall submit a report to the Commission certifying the correct application of credits to each

residential, multi-family, and commercial customer account that is active on the Credit Issue Date for each category listed above.

17 Such report shall include a summary of the credits applied by type of customer/service (*i.e.*, a summary similar to Table 1 above), representative examples of customer invoices showing the applicable credit, and representative examples of database printouts showing individual customer records with applicable credits. The Company shall provide to the Commission such other information as reasonably requested by the Commission to verify the correct application of credits in accordance with this Settlement Agreement.

18 The Parties acknowledge that this report will be submitted prior to the receipt of invoices by many commercial and residential customers in which the credit will be issued; however, the report shall nonetheless certify that the correct credit has been applied to each account and will be reflected on the customer's next invoice.

C. Penalty

RCW 81.28.080 and WAC 480-70-236 require the Company to provide collection services in accordance with its tariffs on file with the Commission and in effect. The Company acknowledges 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.

19 Therefore, in addition to the customer credits discussed above, Waste Management agrees to pay a monetary penalty of \$20,000. The Company will make this payment to the Commission within TEN (10) business days after the date of a Commission order approving

this Settlement Agreement. Waste Management agrees that it will not seek to recover this monetary penalty from its customers in any Commission-regulated area.

IV. GENERAL PROVISIONS

A. Nature of the Agreement

20 The Parties agree that this Settlement Agreement is an appropriate settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement Agreement is subject to Commission approval and it is not effective unless and until it is approved by the Commission.

21 The Parties agree that this Settlement Agreement does not constitute and shall not be construed as an admission by Waste Management of violation of any Commission statutes or rules other than as set forth above with respect to tariffs. The Parties acknowledge that this Settlement Agreement represents a compromise intended to avoid further dispute over the issues related to the Labor Strike.

22 Nothing in this Settlement Agreement is intended to limit or bar any other entity not a party to this Settlement Agreement from pursuing legal claims, or to limit or bar the Company's ability to assert defenses to such claims.

23 Nothing in this Settlement Agreement limits or bars the Commission from pursuing enforcement action for violations of Commission statutes and rules unrelated to the Labor Strike that is the subject matter of this Settlement Agreement.

24 The Parties have entered into this Settlement Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Settlement Agreement represents a compromise of the Parties' positions. As such, any conduct, statements, and documents disclosed during negotiations of this Settlement Agreement shall

not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement Agreement or any Commission Order fully adopting those terms. This Settlement Agreement shall not be construed against either Party because it was a drafter of this Settlement Agreement.

B. Integrated Terms of Settlement

25 The Parties have negotiated this Settlement Agreement as an integrated document to be filed with the Commission only upon execution. Once the Settlement Agreement is executed, the Parties agree to support the Settlement Agreement in its entirety. This Settlement Agreement supersedes all prior oral and written agreements on issues addressed herein, if any.

C. Publicity

26 Each Party agrees to provide the other Party the right to review in advance of publication any and all announcements or news releases that any Party intends to make about the Settlement Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements). Each Party also agrees to include in any news release or announcement a statement to the effect that Staff's recommendation to approve the Settlement Agreement is not binding on the Commission itself.

D. Manner of Execution

27 This Settlement Agreement is considered executed when all Parties sign the Settlement Agreement. A designated and authorized representative may sign the Settlement Agreement on a Party's behalf. The Parties may execute this Settlement Agreement in counterparts. If the Settlement Agreement is executed in counterparts, all counterparts shall

constitute one agreement. A Settlement Agreement signed in counterpart and sent by facsimile or in PDF via email is as effective as an original document. A faxed or emailed signature page containing the signature of a Party is acceptable as an original signature page signed by that Party. Each Party shall indicate the date of its signature on the Settlement Agreement. The date of execution of the Settlement Agreement will be the latest date indicated on the signatures.

E. Procedure

28 Once this Settlement Agreement is executed, the Parties agree to cooperate in promptly filing this Settlement Agreement with the Commission for approval. The Parties agree to support approval of this Settlement Agreement in proceedings before the Commission, through a narrative statement and, if required by the Commission, with testimony and briefing. However, if there is an applicable provision of law (e.g., statute, order, rule, or policy statement), effective after the date this Settlement Agreement is executed but before it is approved, and that provision of law changes the posture of the Settlement Agreement in either Party's view, comments may be made to the Commission as to how the Settlement Agreement should be viewed in light of that statute, order, rule or policy statement.

29 The Parties understand that the Commission will decide the appropriate procedures for presentation and consideration of the Settlement Agreement.

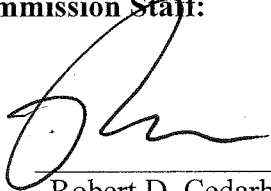
30 In the event that the Commission rejects all or any portion of this Settlement Agreement, each Party reserves the right to withdraw from this Settlement Agreement by written notice to the other Party and the Commission. Written notice must be served within TEN (10) business days of the date of the Commission order rejecting all or any portion of

this Settlement Agreement. In such event, neither Party will be bound or prejudiced by the terms of this Settlement Agreement. The Parties will jointly request a prehearing conference for purposes of establishing a procedural schedule to complete the case.

F. No Precedent

31 No Party shall be deemed to have agreed that this Settlement Agreement is precedent for resolving any issues in any other proceeding, other than a proceeding for enforcement of this Settlement Agreement.

For Commission Staff:

By: 
Name: Robert D. Cedarbaum
Title: Assistant Attorney General
Counsel for the Staff of the
Washington Utilities and
Transportation Commission
Date: 8/7/13

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

By: _____
Name: Joeseph Krukowski
Title: Vice President and Assistant
Secretary
Date: _____

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For Commission Staff:

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

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

By: Joseph Krukowski
Name: Joseph Krukowski
Title: Vice President and Assistant
Secretary
Date: 8/7/2013