

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TG-121265
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	ORDER 03
v.)	
)	
WASTE MANAGEMENT OF)	
WASHINGTON, INC., d/b/a WASTE)	
MANAGEMENT - NORTHWEST,)	FINAL ORDER APPROVING
WASTE MANAGEMENT - SOUTH)	SETTLEMENT AGREEMENT
SOUND, WASTE MANAGEMENT)	
OF SEATTLE, and WASTE)	
MANAGEMENT - SNO-KING,)	
)	
Respondent.)	
.....)	

1 **Synopsis.** *The Commission approves the Settlement Agreement, executed by Commission Staff and Waste Management of Washington, Inc., resolving the Commission’s six count complaint against the company. Under this agreement, Waste Management acknowledges that it failed to provide pick-up service to its customers during a labor strike from July 25, 2012, through August 2, 2012, and will pay a \$20,000 monetary penalty for violating RCW 81.28.080 and WAC 480-70-236. Waste Management also agrees to provide one-time bill credits ranging from \$1.50 to \$25.00 to its customers in those areas of King and Snohomish counties where its service is regulated by the Commission. Within thirty days of the issuance of this Order, the company will submit a report to the Commission certifying the correct application of credits to its approximately 128,000 residential, multi-family, and commercial customers. Finally, Waste Management agrees that it will not seek recovery of the one-time bill credits or the monetary penalty from customers in a future rate case.*

SUMMARY

- 2 **PROCEEDING:** On April 23, 2013, the Washington Utilities and Transportation Commission (Commission) on its own motion, and through its regulatory staff (Staff),¹ filed a complaint (Complaint) against Waste Management of Washington, Inc., d/b/a Waste Management – Northwest, Waste Management – South Sound, Waste Management of Seattle, and Waste Management – Sno-King (collectively, Waste Management). The allegations in the Complaint arise from a Commission investigation into the business practices of Waste Management related to missed services during and immediately following a labor strike from July 25, 2012, through August 2, 2012. On May 13, 2013, Waste Management filed an answer to the Complaint.
- 3 **PARTY REPRESENTATIVES:** Robert D. Cedarbaum, Assistant Attorney General, Olympia, represents Staff. Polly L. McNeill, Summit Law Group, Seattle, represents Waste Management.

MEMORANDUM

I. Background and Procedural History

- 4 The Complaint alleges that the company violated its legal obligations under Title 81 RCW with respect to rates, services, facilities, and practices, including:
- Violations of RCW 81.28.080 and WAC 480-70-236 by failing to provide service during the labor strike in accordance with the company's filed tariffs then in effect.²

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See*, RCW 34.05.455.

² Waste Management operates under tariffs requiring "weekly garbage, recycling and yard waste collection services to all residential properties where the occupant is billed directly, including single family dwellings, duplexes, apartments, mobile homes and condominiums." Complaint,

- Violations of 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 information³ during and after the labor strike until all missed collections were made and normal service resumed.⁴
- Violations of 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.⁵
- Violations of 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.⁶

¶ 12. Similarly, the company's tariffs also mandate regular collections for multi-family and commercial customers. *Id.* The Commission alleged 208,890 violations of RCW 81.28.080, resulting in a potential penalty of \$2,088,900.

³ On August 24, 2012, the Commission directed Waste Management to report, for each customer for each day of the labor strike and for each day thereafter until all missed collections were made and normal service resumed: (1) the date of each missed pick-up; (2) the date each missed pick-up was collected; and (3) the number of business days between the date of the missed service and the date that service was provided. Complaint, ¶ 9.

⁴ Waste Management failed to file its report by the extended October 1, 2012, deadline. The Complaint alleged 30 violations of RCW 81.04.380, which mandates that public service companies obey, observe and comply with every direction, demand or requirement made by the Commission under the authority of Title 81 RCW. The potential penalty for this cause of action amounts to \$30,000.

⁵ RCW 81.28.010 requires that common carriers furnish and maintain adequate and sufficient service facilities and equipment to enable it to promptly, expeditiously, and properly receive, transport, and deliver all property offered to or received by it for transportation, and to promote the comfort and convenience of the public. RCW 81.28.020 requires that common carriers promptly and expeditiously receive, transport and deliver all property offered to or received by it for transport. The Commission alleged one violation of RCW 81.28.010 for every day of the labor strike and one violation of RCW 81.28.020 for every day of the labor strike, resulting in a potential penalty of \$18,000.

⁶ Waste Management is prohibited from making or giving undue preference to any person, locality, or description of traffic, pursuant to RCW 81.28.190. The Commission alleged one violation of the statute for every day of the labor strike, resulting in a potential penalty of \$9,000.

- Violations of WAC 480-70-386(b)(i) by failing to transmit the company's investigation report into an informal consumer complaint to Staff within two business days.⁷

5 The sixth cause of action alleged violations of various state and local safety rules. These violations were of a technical nature and were first-time offenses for a specific driver. Therefore, the Complaint did not recommend any specific enforcement action or monetary penalty.

6 The Commission convened a prehearing conference on June 6, 2013, before Administrative Law Judge Marguerite E. Friedlander. In Order 02 – Prehearing Conference Order, Notice of Hearing, the Commission established a procedural schedule.

7 The parties filed a full Settlement Agreement on August 8, 2013. Waste Management and Staff filed a Joint Narrative Supporting the Settlement Agreement (Joint Narrative) on August 13, 2013. On that same day, the Commission suspended the procedural schedule.

II. Settlement

8 In the Settlement Agreement, Waste Management “acknowledges that it failed to provide service during the [l]abor [s]trike in accordance with its filed tariffs then in effect in its Certificate G-237 service territory in King and Snohomish counties.”⁸ The company agrees to pay a penalty in the amount of \$20,000 within ten business days of the date of this Order.⁹ In addition, Waste Management will provide one-time bill credits to its residential, multi-family, and commercial customers in that service

⁷ WAC 480-70-386(b)(i) requires every solid waste to investigate any informal consumer complaint referred to it by Staff and report the results to Staff within two business days of the referral. Waste Management did not provide Staff with its investigation report into a labor strike-related consumer complaint until October 30, 2012, seven business days after it was due. The Commission alleged one violation of WAC 480-70-386(b)(i) for each of the seven business days Waste Management failed to file its report, resulting in a \$700 penalty.

⁸ Settlement Agreement, ¶ 18(C).

⁹ *Id.*, ¶ 19.

territory. The amounts of these credits are based, at least approximately, on the scheduled services customers did not receive but paid for through bills previously issued.¹⁰ The agreed-upon credits are as follows:

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

9 Within thirty days of issuing the customer credits, Waste Management will report to the Commission, certifying the correct application of the bill credits.¹¹ The agreement provides that both the one-time bill credit and the penalty will be funded exclusively by the company's owners and not by the customers.¹²

10 Both parties agree that the proposed bill credits are fair and in the public interest as the credits compensate customers for the scheduled service they did not receive but paid for through previously-issued bills.¹³ The one-time bill credit to customers is a

¹⁰ Of course, the credits cannot compensate customers for the inconvenience associated with the missed service. However, the Commission believes this is a reasonable amount of compensation given that, in general, Waste Management did eventually collect the garbage, albeit after the scheduled pick-up date.

¹¹ *Id.*, ¶ 16.

¹² *Id.*, ¶¶ 15, 19.

¹³ Joint Narrative, ¶¶ 17, 24.

better solution, according to the parties, than if the company had been required to pay a much greater penalty into the Public Service Revolving Fund.¹⁴

- 11 Staff and Waste Management agree that the approximately \$620,000 bill credit and the monetary penalty imposed on the company serve to capture the severity of the underlying complaint and represent a compromise of litigation positions to avoid further expense and delay.¹⁵ As the company points out, “protracted litigation and appeals could delay by years the issuance of credits, if any, to customers.”¹⁶ The parties highlight that none of the money will come from ratepayers and will, instead, be borne by the company’s owners.¹⁷
- 12 Staff contends the company’s admission, that its failure to serve customers during the labor strike was a violation of its tariffs, is significant.¹⁸ This acknowledgement assists Staff with its responsibility to ensure that companies subject to the Commission’s jurisdiction comply with the applicable rules and statutes and allows the Commission to “properly evaluate the terms of the [Settlement Agreement].”¹⁹ Waste Management “apologizes to its customers and the Commission for the problems arising from the [l]abor [s]trike.”²⁰

III. Discussion and Decision

- 13 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information

¹⁴ *Id.*, ¶¶ 17, 23.

¹⁵ *Id.*, ¶¶ 18, 21, 26.

¹⁶ *Id.*, ¶ 26.

¹⁷ *Id.*, ¶ 20,

¹⁸ Joint Narrative, ¶ 16.

¹⁹ *Id.*

²⁰ *Id.*, ¶ 22.

available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

14 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

15 We approve the Settlement Agreement without condition as a reasonable resolution of the complaint proceeding. The terms of the agreement compensate aggrieved customers for service pick-ups they paid for but did not receive and also impose a significant monetary penalty upon Waste Management. Coupled with the company’s admission that it is required to continue services during a labor strike, we believe these provisions are sufficient to deter future violations of Commission rules in this regard. By providing a mechanism for Staff to monitor Waste Management’s compliance with the customer credit provision, the Settlement Agreement ensures that customers will receive the benefit Staff negotiated for them.

16 The terms in the Settlement Agreement are not contrary to law, are supported by an appropriate record, and offer a result that is consistent with the public interest. We approve the agreement as filed and without condition.

FINDINGS AND CONCLUSIONS

17 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including solid waste companies.

- 18 (2) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 19 (3) 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), is a solid waste collection services corporation in King and Snohomish counties.
- 20 (4) The drivers employed by Waste Management that collect residential recycling and materials and residential yard waste, represented by Teamsters Local 117, called a labor strike from July 25, 2012, to August 2, 2012, in King and Snohomish counties. The labor strike was also honored by Waste Management drivers that provide garbage pick-up and are represented by Teamsters Local 174.
- 21 (5) Waste Management’s tariffs require the company to provide pick-up service to customers during a labor strike.
- 22 (6) Waste Management failed to provide the requisite services during the labor strike, and the Commission brought a Complaint against the company.
- 23 (7) The parties in this Complaint proceeding, Commission Staff and Waste Management, reached a Settlement Agreement that is supported by adequate record evidence, is consistent with the public interest, and should be approved.
- 24 (8) As part of the agreement, Waste Management will pay a penalty of \$20,000 for its failure to provide pick-up services during the labor strike. The company will not seek recovery of this penalty from its customers.
- 25 (9) Waste Management will also provide its residential, multi-family, and commercial customers with a one-time bill credit ranging from \$1.50 to \$25.00. The bill credits will be funded exclusively by the company’s owners and not recovered from customers.

- 26 (10) Waste Management will submit a report to the Commission, within thirty days of issuing the bill credits, certifying the correct application of credits to each residential, multi-family, and commercial customer.

ORDER

THE COMMISSION ORDERS:

- 27 (1) The Settlement Agreement executed by Commission Staff and Waste Management, attached as Appendix A, is approved without condition and adopted as part of the final order of the Commission.
- 28 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective September 4, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

**Appendix A
(Settlement Agreement)**