

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TG-140560
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 11
)	
v.)	
)	
WASTE CONTROL, INC. (G-101),)	ORDER GRANTING WASTE
)	CONTROL’S MOTION FOR
Respondent.)	TEMPORARY RATE RELIEF,
)	SUBJECT TO REFUND
.....)	

1 NATURE OF PROCEEDING. On April 3, 2014, Waste Control, Inc. (WCI or Company) filed with the Washington Utilities and Transportation Commission (Commission) new Tariff No. 16 reflecting a general rate increase that, if approved, would generate approximately \$532,000 (15.4 percent) in additional revenue. The Company is currently collecting additional, temporary revenues, which are subject to refund, for increased disposal fees in Cowlitz County.¹ On October 14, 2014, WCI, the Commission’s regulatory staff (Staff),² and intervenor, Washington Refuse and Recycling Association (WRRRA) filed an all-party, partial settlement which resolved all but four contested adjustments in the proceeding.

2 MOTION TO ALLOW TEMPORARY RATES SUBJECT TO REFUND.³ On February 24, 2015, WCI filed a request to allow temporary rates, subject to refund, at

¹ *WUTC v. Waste Control, Inc.*, Docket TG-131794, Order 01, Complaint and Order Suspending Tariff; and, *Allowing Rates on a Temporary Basis, Subject to Refund* (November 27, 2013). The temporary rates were implemented on December 1, 2013. See also, Docket TG-131794, Order 05, *Initial Order Granting Motion to Dismiss and Rejecting Tariff Filing*, ¶ 20 (March 25, 2014).

² In a formal proceeding, such as this, the Commission’s 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.

³ The parties recognize the procedural awkwardness of requesting imposition of temporary rates subject to refund in an adjudicated general rate case. Although this procedural Motion would typically be addressed prior to the Commission’s suspension of the Company’s tariff, RCW

the stipulated partial settlement agreement level of \$339,912 (Motion).⁴ The Company states that the prolonged duration of the proceeding has contributed to the decline of WCI's financial and operating cash position.⁵ WCI points to its three-month extension of the suspension period from April 1, 2015, to July 1, 2015, as evidence of the procedural delays this case has experienced.⁶ It has already been allowed to collect, subject to refund, approximately \$176,000 of the \$339,912 on an annual basis to recover increased disposal fees in Cowlitz County.⁷ The Company states that it is willing to accept the \$339,912 amount "for implementation of interim rates on a temporary basis, but notes that [the amount] only includes rate case costs at the Staff advocated 50 [percent] level through July, 2014."⁸

3 Along with its Motion, WCI filed a Declaration of Jacqueline G. Davis (Declaration), the Company's lead outside accountant. Ms. Davis asserts that the Company has been out of compliance with its loan covenant responsibilities for WCI's and its affiliates' loans with Union Bank as of the third quarter ending September 30, 2014.⁹ While she has not fully reviewed the most current informal financial data available, Ms. Davis believes the "loan covenant violation has continued past the fourth quarter 2014 and continues today."¹⁰ Ms. Davis argues that the continuing violation is the result of "non-realization of the additional revenue requirement for the regulated solid waste company of [WCI], and particularly, the ongoing outlay of material legal and accounting costs to defend the Company's general rate filing in these

80.01.060 and WAC 480-07-330(2) does confer broad authority on administrative law judges to enter interlocutory and initial orders.

⁴ Motion, ¶ 1. WCI bases this calculation on the partial settlement agreement and Staff's Response to Bench Request No. 1.

⁵ *Id.*, ¶ 4. The Company concedes that Staff attributes much of the fault for the rate request's extended processing time to WCI. WCI challenges this assertion and states that, regardless of the source of the delay, "the Company has suffered a documented and now stipulated revenue requirement deficiency." *Id.*, n. 1.

⁶ *Id.*, ¶ 3.

⁷ *Id.*, n. 2. See, *WUTC v. Waste Control, Inc.*, Docket TG-131794, Order 01, Complaint and Order Suspending Tariff; and, *Allowing Rates on a Temporary Basis, Subject to Refund* (November 27, 2013).

⁸ *Id.*, ¶ 4.

⁹ Declaration, ¶ 3.

¹⁰ *Id.*

proceedings.”¹¹ Despite the interim rate relief, subject to refund, of approximately \$176,000, the owners of WCI have had to infuse capital into the Company to stave off further operating losses.¹²

4 On March 6, 2015, Staff filed a response to WCI’s Motion (Staff’s Response). Staff does not object to the Company’s Motion, although it requests that the Commission utilize Staff’s proposed rate design should it grant WCI’s Motion.¹³ Appended to its Response, Staff filed Attachment A1 explaining its rate design methodology. Staff calculates a \$317,649 revenue deficiency for regulated operations and \$22,264 assigned to non-regulated Kalama operations.¹⁴

5 WRRRA also filed a Response to the Company’s Motion (WRRRA’s Response). WRRRA argues in favor of WCI’s Motion as there are safeguards, in the form of possible refunds to customers, should the Commission decide the rates are inappropriate.¹⁵ WRRRA asserts that the requested temporary rates are the result of an agreed upon partial settlement.¹⁶

6 On March 19, 2015, WCI filed its Reply to Staff’s Response (WCI’s Reply). The Company agrees to Staff’s rate design methodology “rather than continue to dispute computations and analyses that will require even more delay and time to resolve.”¹⁷

¹¹ *Id.*

¹² *Id.*, ¶ 4.

¹³ Staff’s Response, ¶ 3.

¹⁴ *Id.* Staff states that it cannot take a position on the Company’s claim that it has violated its affiliates’ loan covenants as WCI has not provided the specific loan details. *Id.*, ¶ 6. Instead, Staff argues that the Company’s Motion and supporting Declaration support Staff’s broader contention that WCI and its various affiliates are entangled.

¹⁵ WRRRA’s Response at 2.

¹⁶ *Id.*

¹⁷ WCI’s Reply, ¶ 3. WCI does take issue with Staff’s characterization “that the loan covenants affecting all six Waste Control Companies are intertwined to the extent that cross-collateralization or interdependent financing arrangements enable ‘piercing of the corporate veil’ for the purpose of constructing theories in allowing aggregation of capital structures for affiliate returns on rental properties.” *Id.*, ¶ 4.

7 **DISCUSSION/DECISION.** The parties have agreed, in the partial settlement agreement, that the Company is experiencing *some* revenue shortfall. Given the unique circumstances surrounding this proceeding, the lack of any opposition to WCI's request, and perhaps most importantly, the ability of the Commission to order a full refund of the temporary rates should it reject the partial settlement, we find the Company's request reasonable. We grant the Company's Motion and approve the temporary rates, subject to refund, effective April 1, 2015. WCI should file conforming tariffs, utilizing Staff's rate design methodology, no later than Monday, March 30, 2015.

ORDER

THE COMMISSION ORDERS That:

- 8 (1) Waste Control, Inc.'s request for temporary rates, subject to refund, at the stipulated partial settlement agreement level, and utilizing Staff's rate design methodology, is approved, effective April 1, 2015.
- 9 (2) Waste Control, Inc. will file conforming tariffs, utilizing Staff's rate design methodology, no later than March 30, 2015.

Dated at Olympia, Washington, and effective March 25, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.