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6 BEFORE THE WASHINGTON STATE
7 UTILITIES AND TRANSPORTATION COMMISSION

8 WASHINGTON UTILITIES AND
9 TRANSPORTATION COMMISSION

Docket No. TG-140560

10 Complainant,

11 vs.

12 WASTE CONTROL, INC.,

13 Respondents.

REPLY BRIEF OF
INTERVENOR WASHINGTON
REFUSE AND RECYCLING
ASSOCIATION

14 **COMES NOW** Intervenor Washington Refuse and Recycling Association
15 (WRRRA) and respectfully submits the following:

16
17 **SCOPE OF REPLY:** As in its Opening Brief, WRRRA will primarily revisit
18 the two issues of Investigation Fees and Rate Case Costs. However, other issues
19 appearing at page 11, et seq. of Staff's Initial Brief, raise questions which are of
20 significant concern to the regulated solid waste industry as a whole and, thus,
will also be addressed below.

21 **INVESTIGATION FEES:** This issue appears to be one of first impression
22 for the Commission, at least to the memories of counsel and staff involved.
23 Perhaps the most important aspect of this is, of course, application of the statute,
24 RCW 81.20.020. Staff is correct that the statute clearly gives "the Commission"
25 the right to impose fees. What Staff seems to ignore is that the statute also gives
26

Reply Brief of Intervenor Washington
Refuse & Recycling Association - 1

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1 the Commission the right not to impose fees. This is why WRRRA in its previous
2 arguments describes the statute as permissive, rather than mandatory.

3 In fact, it appears that these fees have never been imposed in a solid waste
4 rate case, whether adjudicated or not. The Commission always has the right to
5 "investigate" a regulated company and impose costs if appropriate. Historically,
6 this authority seems to have been applied in enforcement or other actions where
7 actual wrongdoing is suspected and may be ultimately proven. That is not the
8 case here; this is not an enforcement action, it is a general rate case which
9 admittedly has involved much more time and effort for all concerned than was
10 anticipated, but is a general rate case just the same. Staff and the Company are
11 clearly in disagreement as to the reason for the delay, but that hardly is a basis
12 for dusting off a statute which apparently has never been applied in this sort of
13 situation, and never should be.

14 Staff's prefiled testimony and cross-examination of Staff's auditing witness,
15 Ms. Cheesman, shed little, if any, light on this issue. The entire basis for
16 imposition of fees appears to be that this case took a long time. That certainly is
17 true; but it is also true that, first, Waste Control has acted throughout the
18 process in good faith as Ms. Cheesman readily acknowledges at *Tr.* (Vol. II), p.
19 297:

20 Q. Are you saying hereto day that the Company acted in any manner in
21 bad faith in either of these dockets?

22 A. No, I - I am not implying any negative connotation of [sic] the
23 Company's character.

24 Q. All right. No cheating, no trying to get something by the ratepayers?

25 A. No, sir.

26 Q. Just a disagreement on what is appropriate as far as rate setting
and these other peripheral issues?

A. Yes, sir.

Hardly the basis for imposition of what, for all intents and purposes, is a punitive
fine. In essence, Staff is recommending that the Company be financially

1 sanctioned for exercising its right (and responsibility) to file for rate revision.
2 That is not the purpose of any statute, rule or policy of which Intervenor is aware.

3 Of equal importance here is that Staff itself has been responsible for
4 significant delays in the progress of these Dockets. There was an at least two-
5 week delay in the proceeding in May, 2014, apparently occasioned by the
6 somewhat abrupt retirement of the assigned Assistant Attorney General, Steve
7 Smith. These things happen, we all realize that. However, Staff's responsibility
8 for this hiatus is of significant concern, not only because of the impact on
9 progress in the Docket, but because of the failure to even advise the Company's
10 representative of the situation and, of most concern to Intervenor, the
11 characterization of the delay as "immaterial" by Ms. Cheesman. *Tr.* (Vol. II) at p.
12 292-293. When asked under cross-examination if she advised the Company's
13 negotiating/expert CPA of the reason for the delay, the following question and
14 answer took place:

15 Q. During that two or so week time, did you make any communication
16 with Ms. Davis, or anybody at the – I'm sorry, anybody at the
17 Company, saying, "We've got a problem up here. We can't return
18 your calls. We don't have a lawyer," whatever it was?

19 A. It's not my – no, I didn't.

20 So the Company went for two plus weeks with no communication from Staff; yet
21 Staff places the "blame" for "delay" on the Company. Somehow that particular
22 scenario does not fit within the goal of the fair and informed rate making process
23 which we all have come to expect from Staff, and from the Commission itself.¹
24

25 **RATE CASE COSTS:** Intervenor continues to admit to being perplexed
26 over Staff's confusing and completely unsupported proposal to halve some of the
case costs incurred by Waste Control. Specifically, Staff seeks to allow 100% of
costs "associated with the informal auditing process in TG-131794," 50% of
"costs associated with the formal adjudicative proceeding in TG-131794," and

¹ Intervenor also cannot help but note Staff's "Motion to Strike" which resulted in Order 10. This was another completely ill advised and unnecessary exercise which only served to delay progress in this Docket even further.

1 "50% of all costs associated with Docket TG-140560."² The Company's position,
2 which Intervenor supports, is that 100% of costs in both Dockets be allowed.

3 Once again, Staff's position here just makes no sense and is unsupported
4 by Commission precedent; in fact, it seems to be without any basis at all. The
5 records, evidence, written testimony and cross-examination in both Dockets is all
6 before the Commission, by agreement of both the primary parties. We trust that
7 the Commission will, in fact, consider both records fully in reaching a decision on
8 all the issues here. Legitimate rate case costs were incurred by the Company to
9 create both these records.

10 In fact, Staff does not contest the legitimacy of costs incurred by the
11 Company for outside legal and accounting services, and acknowledges the fact
12 that both the attorney and accountant have voluntarily made significant
13 reductions in their bills. Nor is there an issue over the hourly rates charged. So
14 the question remains, why would only a percentage (any percentage) be allowed,
15 particularly when that percentage has neither a legal nor factual basis? This
16 most important of questions remained unanswered in Staff's Initial Brief but was
17 addressed in cross-examination.

18 Ever since Staff revealed its "percentage plan" for allowance of recovery of
19 rate case costs, Intervenor has wondered about, and pondered over, the obvious
20 question of "where did this come from?" Now, thanks to the opportunity to
21 question Staff's auditor, Ms. Cheesman, we have at least a partial answer. The
22 following portion of Ms. Cheesman's testimony on cross-examination, at *Tr.* (Vol.
23 II), pp. 294-297 confirms that this truly extraordinary proposal has no basis,
24 either factually or legally.

25 Q. The 50 percent on the rate case costs, who came up with that 50
26 percent?

A. I did.

Q. Anybody else involved in that decision?

A. Well, I talked to several different Staff members to think – just
discuss, kick around, the re – reasonability [*sic*] of that fifty percent.

² Initial Brief of Staff, at p. 22.

1 Q. So it was your idea, though?

2 A. Yes, sir.

3 Q. Okay. How come 50 percent? Why not 40? 60? 70? 30?

4 A. Again, and that's highlighted in my supplemental testimony, we were
5 just talking about that.

6

7 Q. What is your answer here today?

8 A. My answer here today is that 50 percent of one failed litigated rate
9 case and 50 percent of this complicated rate case makes one – the
10 cost for one – the cost of one fully litigated rate case, and then also
11 in my – my dir – testimony filed July – July 18, 2014, we are also
12 trying to balance both the ratepayer and the Company's interests.

13 Q. Very well.

14 Is that – was that based upon any rule, any policy, any
15 memorandum here within the Commission, that that's something
16 that should happen, the 50%?

17 A. No, sir.

18 Q. Was it based upon any portion of the Washington Administrative
19 Code?

20 A. No, sir.

21 As previously noted – without basis at all.

22 It is perhaps too obvious to reiterate that one of the most important, if not
23 the most important, aspects of rate making is the ability of both Staff and a
24 Company to rely upon established "rules of the game." These rules may be actual
25 rules, statutes, policy statements or years of experience dealing with audit staff.
26 This is how fair and compensatory rates get made, and why fully adjudicated rate
filings are so rare as to be virtually nonexistent. Neither the industry nor the
Commission can have any one staff member or a particular group thereof simply
coming up with unsupported and unprecedented theories on how rates should be
set. If that is allowed to happen, we will see many more of these two-year

1 exercises in futility which serve neither the ratepayer nor the Company, and
2 unduly stretch the limits of the Commission's rate making responsibility, budget
3 and authority to the breaking point. There is ample room for the law,
4 Commission policy, and simple common sense to be applied.

5 **OTHER ISSUES IN RATEMAKING:** As noted above, WRRRA did not address
6 some issues in its Initial Brief. However, after review of Staff's Brief and
7 testimony, a discussion of these issues is not only appropriate but necessary, as
8 Staff's position, once again, seems to plough new ground in defiance of
9 Commission precedent, long-standing process and accepted substantive
10 application.

11 Perhaps of most concern to the industry here is the "us and them" attitude
12 which is pervasive in Staff's position. A rate making has a simple and hopefully
13 understandable purpose; that being to set rates which are fair to the
14 consumer/ratepayer and compensatory for the regulated service provider. It is
15 perhaps a much more simple process than Staff here would have us believe,
16 particularly when it involves a company like Waste Control which not only has a
17 literally unblemished compliance record with the Commission and has retained
18 highly experienced and credible professionals to provide guidance in the process.

19 This is why it is disturbing, at best, to review Staff's Initial Brief and
20 testimony and comprehend the apparently hostile attitude towards the Company,
21 and the industry itself, which comes through loud and clear. A prime example is
22 Staff's use of the unfortunate metaphor "Heads, the Company wins. Tails, the
23 ratepayers lose"³ when discussing "fundamental principles" of affiliate cost
24 allocation. This sort of hyperbole is unsupported, arbitrary, punitive and plain
25 insulting to this company. It is the kind of language which may well be
26 appropriate in an enforcement action (although even that is questionable, coming
from a professional staff), but has no place in a rate case in which everyone
involved has, or should have, the same goal.

³ Initial Brief at p. 24.

1 Staff's argument that somehow ratepayers do not have appropriate
2 influence on rate setting and design⁴ as opposed to "shareholders" is completely
3 misplaced. First, ratepayers do have the opportunity to be heard, and over the
4 years have come through loud and clear when they feel rates are inappropriate,
5 almost always meaning too high. It must be understood, appreciated and
6 considered that there literally are no ratepayer complaints in this record, and
7 shareholders do not have "complete control over the decision making process . . ."
8 as suggested by Staff. "Control" over rates is shared with the Commission which
9 is nothing if not obvious in this Docket. That is what regulation is, and if the
10 regulators and the regulations are consistent and provide a measure of
11 predictability, the "system" works very well and in the best interests of the
12 consumer, the service provider and everyone else involved. What does not work
13 is Staff using a particular rate filing to impose new "rules of the game" without
14 the benefit of the rule making process or a thoroughly vetted policy
15 pronouncement. The industry certainly is not opposed to productive and
16 collaborative ideas which may well change both the process and results, but not
17 if those ideas come from Staff in a particular case without those absolutely
18 necessary processes being followed. Staff does not, and should not, make policy
19 to fit its views of one specific filing, whatever those views may be. Policy making
20 is the Commission's job and must be done with a firm view on the "big picture."

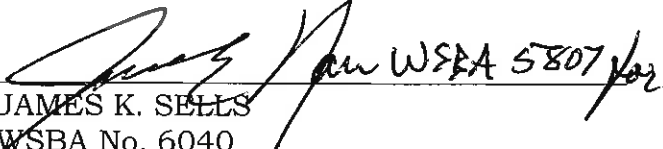
17 Here, and in other matters before the Commission, Staff must understand
18 that these same "ratepayers" are our "customers," and in the case of a family-
19 owned company like Waste Control, our neighbors. Our companies may be
20 regulated, but we are in business. That means our customers and their
21 satisfaction with our services are our primary asset. No business can survive
22 with dissatisfied customers, regulated or not. To insinuate, as Staff does in its
23 Brief, that the best interests of our customers are compromised by a desire for
24 undeserved profits is not only insulting, but just plain wrong. Waste Control has
25 not been in business successfully for over 60 years by ignoring the needs of its
26 customers; it has maintained its business by providing the best possible service
at reasonable (and approved) rates. To suggest otherwise, as Staff seems to do, is

⁴ Initial Brief at p. 24.

1 to ignore the historical facts and the current reality. Suffice it to say that Waste
2 Control, and every other regulated service provider, has a much greater interest
3 in keeping its customers happy and fairly served than does Staff, which
4 admittedly of necessity, deals with the customer/ratepayer only in the abstract,
5 as opposed to daily/weekly personal contact. This is not a criticism of Staff, but
6 is a simple recognition of the realities of rate regulation, and the business
7 necessity for many regulated companies to utilize affiliated interests, the benefit
8 of which eventually accrues to the ratepayer/customer.

8 **CONCLUSION:** The technical aspects and arguments in this action are
9 significant and complicated, and are well addressed by the primary parties.
10 There is no need for Intervenor to repeat them. There is, however, in WRRRA's
11 view, a genuine need for the Commission to appreciate the impact of this case,
12 not only on Waste Control, but on the regulated community as a whole. This
13 particular case may be something of an anomaly, but Staff's apparent desire to
14 venture into what is the bailiwick of rule and policy making is taking this far
15 beyond the reasonable or even the sensible. If the rules are going to change, let it
16 be done in an orderly and proper process by the Commission itself, not by a
17 single auditor who may not understand that there must be a legal and factual
18 basis for the Commission to change the rules in the middle of the game to
19 accommodate Staff's own view of a particular rate filing.

18 Respectfully submitted this 27th day of March, 2015.

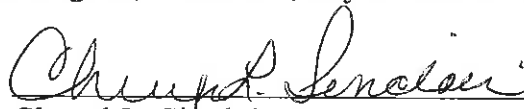
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24 Recycling Association

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360.664.1160 records@utc.wa.gov	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email
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DATED at Silverdale, Washington, this 27th day of March 2015.


Cheryl L. Sinclair