

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

WASTE CONTROL, INC. (G-101),

Respondent.

DOCKET TG-140560

**REPLY BRIEF ON BEHALF OF
COMMISSION STAFF**

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I. INTRODUCTION

1 Commission Staff's ("Staff") Reply Brief responds to the initial briefs filed by Waste Control, Inc. ("WCI" or "Company") and intervener Washington Refuse and Recycling Association ("WRA") as well as arguments brought forward in the evidentiary hearing held before the Washington Utilities and Transportation Commission ("Commission") on March 11, 2015. In order to avoid repeating material already in the record of this proceeding, Staff's Reply Brief does not restate all of its previous arguments and the Commission should still rely on Staff's Initial Brief as an accurate statement of Staff's case.

2 Below are Staff's recommendations for each of the four remaining contested adjustments.

1. Shared Utilities Expense, Adjustment R-6D. Staff recommends the Commission allow WCI to include \$13,975 of shared utilities expenses in rates.¹
2. Affiliate Land Rents, Adjustment R-6E. Staff recommends the Commission allow WCI to include \$85,217 of its affiliate land rent payments in rates.²
3. Rate Case Expenses, Adjustments P-2 and P-3. Staff recommends the Commission allow 100 percent of the rate case expenses incurred prior to the Notice of Prehearing Conference in Docket TG-131794, 50 percent of rate case expenses incurred after the Notice of Prehearing Conference in TG-131794 and 50 percent of rate case expenses from TG-140560, all amortized over five years.³
4. Investigation Fees. Staff recommends the Commission require WCI to pay the costs of Staff's investigation fees, which is a total assessment of \$43,818.82.⁴

¹ Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 2 lines 20:21 (Feb. 2, 2015); Initial Brief on Behalf of Commission Staff, Section II.A. p. 4 ¶9 (Nov. 7, 2014).

² Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 3 lines 7:8 (Feb. 2, 2015); Initial Brief on Behalf of Commission Staff, p. 11 ¶25 (Nov. 7, 2014).

³ Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC13-T), p. 6 lines 1:6 (Feb. 2, 2015); Initial Brief on Behalf of Commission Staff, p. 22 ¶51

⁴ Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 7 lines 8:11 (Feb. 2, 2015); Initial Brief on Behalf of Staff, p. 29 ¶68 (Nov. 7, 2014).

For illustrative purposes, Staff has attached as Appendix A to this brief a table to document the revenue impacts of Staff's recommendations. The table reconciles WCI's and Staff's responses to Bench Request No. 1.

II. CASE NARRATIVE

3 This case is about the burden of proof. At the center of every disagreement between Staff and WCI sits a dispute over the general rate case process and a company's obligation to support its recommended rates. From Staff's perspective, the narrative is clear:

1. WCI did not support its case;
2. Staff asked a number of questions, pieced together available data and built an analytical framework to provide a recommendation to the Commission; and
3. the Company derided Staff's proposals as unfair while at the same time continuing to refuse to put forward a supported or reasonable analytical alternative.

4 The record supports Staff's perspective. WCI's first direct case filing did not meet the statutory requirements.⁵ The Company's second filing did not meet filing requirements and included multiple sets of inconsistent workpapers, triggering discovery disputes and Staff's substantial data requests.⁶ Next, WCI opposed explaining the hardcodes in its MS Excel workpapers, which ultimately led to a motion to compel.⁷ Even the controversy over WCI's Kalama businesses stemmed from the Company's inability to describe its own operations to Staff.⁸ Staff received five different answers to its requests for Kalama

⁵ *WUTC v. Waste Control, Inc.*, Docket TG-131794, Order 05 (Initial Order Granting Motion to Dismiss and Rejecting Tariff Filing), March 25, 2014.

⁶ See Testimony of Melissa Cheesman, Exhibit No. ___ (MC-1T), July 18, 2014, p. 55 line 23 through p. 56 line 6 and 56 line 18 through p. 57 line 5 (describing the nature of WCI's filing and multiple sets of workpapers and testimony which were not consistent with one another).

⁷ *WUTC v. Waste Control, Inc.*, Docket TG-140560, Order 05, July 2, 2014, p. 4 ¶ 9 ("WCI argues that the Commission's rules do not require removal of the controversial hardcodes")

⁸ Supplemental Testimony of Melissa Cheesman, Exhibit No. ___ (MC-13T), pp. 9-10 (Feb. 2, 2015).

customer counts and a route study that the Company acknowledged as flawed.⁹ The Company argues that its mistakes are the result of a lack of guidance and new Staff perspectives,¹⁰ but requirements for consistent and supportable data in a general rate proceeding are hardly new.

5 After nearly two years of proceedings, WCI now calls for the Commission to either modify or reject Staff's proposals without placing any viable alternative into the record. The burden of proof is not optional, and deriding Staff's proposals is not a substitute for a party conducting its own analysis. Where the Company has failed to offer analysis or documented support for its case, Staff provides the best, and only, legitimate proposal for the Commission's consideration.

III. SHARED UTILITIES EXPENSE

A. **The Parties have presented the Commission with three proposals, all of which are based on Staff's three-factor allocator but only two of which provide a fair result.**

6 The final dispute over shared utilities expenses can be broken into three proposals. First, Staff recommends the Commission allocate \$13,975 of shared utilities expenses to WCI.¹¹ Staff's recommendation is the result of its three-factor allocator applied to that portion of shared utilities expenses documented to Staff in discovery.¹² Second, and as discussed thoroughly at the evidentiary hearing, the Commission may choose to allocate \$15,424 of shared utilities to WCI; the \$15,424-allocation is the result of Staff's three factor

⁹ *Id.*

¹⁰ Supplemental Testimony of Joe Willis, Exhibit No. ____ (JW-8T), November 7, 2014, p. 4 lines 22:25 (stating lack of formal guidance or admonition from the Commission); Supplemental Testimony of Jacqueline Davis, Exhibit No. ____ (JD-53T), November 7, 2014, p. 7 lines 8-9 (citing "Staff's new perspective on critical adjustments . . .")

¹¹ Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 2 lines 20:21 (Feb. 2, 2015).

¹² Initial Brief of Commission Staff, November 7, 2014, at p. 4 ¶9. For further discussion and citation *see* Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 3 lines 8:12 and footnote 2.

allocator applied to both those shared utilities expenses previously documented to Staff and the \$6,202 in utilities costs that Waste Control Recycling, Inc. (“WCR”) directly paid in utilities costs for shared facilities.¹³ Staff does not necessarily oppose the \$15,424- allocation. However, as indicated in Ms. Cheesman’s oral testimony, Staff simply believed that the near \$6,000 of WCR’s payments were provided to Staff only as part of a confidential settlement discussion.¹⁴

7 Third is the Company’s illogical allocation of \$27,749.29.¹⁵ The Company wants Staff’s three factor allocator applied to *shared utilities expenses* and to WCR’s approximately \$59,000 of direct payments associated with *non-shared facilities*.¹⁶ Offsetting Staff’s allocator with WCR’s non-regulated, non-shared costs goes against the foundational principles and concepts supporting the three factor allocator. WCI’s rates should not include costs that WCI did not cause. Rather than put forward its own substantive analysis, WCI is requesting that the Commission undermine the purpose and conceptual basis for Staff’s analysis.

B. Staff’s three factor allocator reasonably estimates and allocates costs among WCI and its affiliates.

8 At the March 11, 2015, evidentiary hearing, Ms. Cheesman testified again to the relevance of each of the three factors for estimating each entity’s relative impact on common

¹³ Staff’s three factor allocator applied to discovery-documented utilities expenses equals the \$13,975 allocation to WCI. Staff’s three factor allocator applied to the additional \$6,202 results in another approximately \$1,449 in utilities expense allocated to WCI. $\$13,975 + \$1,449 = \$15,424$. See Supplemental Testimony of Layne Demas, Exhibit No. ____ (LD-2T), p. 6 Table 2 (Nov. 7, 2014).

¹⁴ Redirect Examination of Melissa Cheesman, TR. 298 lines 13:18 and 299 lines 9:12.

¹⁵ Supplemental Testimony of Layne Demas, Exhibit No. ____ (LD-2T), November 7, 2014, p. 6 Table 2.

¹⁶ Supplemental Testimony of Layne Demas, Exhibit No. ____ (LD-2T), p. 2 lines 22:24, (Nov. 7, 2014); Cross-examination of Layne Demas, TR. 51 lines 5:22.

costs.¹⁷ Revenue indicates the size of revenue earning activities, importance to management, and impact on administrative operations.¹⁸ The number of employees also indicates the size of an operation and strain on administrative resources.¹⁹ The net book value of assets is a measurable indicator of a company's investments, the importance or priorities of management, and the overall size of a company.²⁰ The above factors are transparent, easily measured on the companies' financial statements, and tangibly relate to those entities' operations. Taken together, the above three factors thus provide a rational estimate of each entity's overall impact on common costs such as shared utilities expenses.

C. WCI's proposed modification is inconsistent and unreasonable.

9 Staff's "three factor" recommendation allocates indirect, shared costs on the basis of each entity's overall impact on those shared costs. The *overall* impact is measured by each affiliate's *overall* operations. There is nothing inconsistent with Staff's approach. The concept is transparent and reasonable.

10 WCI's proposal is inherently inconsistent and undermines the conceptual basis for Staff's three-factor allocator. Excluding a portion of one entity from an allocation ensures that such an allocation no longer estimates that entity's *total* impact on shared costs. Thus, by effectively carving out a \$59,000 expense in WCR's operations from the three factor allocator, it is the Company's proposed modification that is inconsistent and lacks any conceptual basis in regulatory accounting. WCI's late attempt to manipulate Staff's proposal is thus unreasonable.

¹⁷ *E.g.*, Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), pp. 16-17, (July 18, 2014); Cheesman, TR. 167 lines 8:18; Cheesman TR. 168 lines 7-16; Cheesman, TR. 222-223 25:6.

¹⁸ *See* Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), pp. 15-17; Cheesman, TR. 167 lines 8:18; Cheesman TR. 168 lines 7-16; Cheesman, TR. 230 17:22; Cheesman, TR. 232 4:17.

¹⁹ *See, e.g.* Cheesman, TR. 232 lines 4:17; Cheesman, TR. 300-302.

²⁰ *E.g.*, Cheesman, TR. 302 lines 9:19.

D. Staff's recommendations are the only supported proposals in this proceeding.

11 Staff's proposal is supported by reasonable concepts, documented financial statements, basic regulatory accounting principles and transparent calculations. Conversely, the Company's own expert witness testified that he was unaware of any alternative proposals that WCI has put forward and adequately supported in this case.²¹ Consequently, and as acknowledged by the Company's witness, Staff is the only party who has put forward and adequately supported a proposal on the issue of shared utilities expenses.

IV. AFFILIATE LAND RENTS

A. Overview of Revenue Impacts

12 Staff recommends that the Commission allow WCI to recover an allocation of \$85,217 for Affiliate Land Rents.²² Staff's recommended Affiliate Land Rents expense is calculated by adding an allocation of depreciation expense plus an allocation of operating expense plus a calculated return.²³

B. Capital Structure

1. Staff's recommended capital structures reflect the landlords' actual sources of capital

13 Staff's recommended capital structure is the actual capital structure apparent on the individual balance sheets of Heirborne Investments I ("HBI") and Heirborne Investments II ("HBII") (collectively "landlords").²⁴ Ms. Cheesman explained in written and oral

²¹ Cross-Examination of Layne Demas, TR. 49 lines 17:20.

²² Supplemental Testimony of Melissa Cheesman, Exhibit MC-13T, p. 4, lines 7:8 (Feb. 2, 2015)

²³ Cheesman, TR. 306 lines 4:8.

²⁴ E.g., Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 18 lines 18:20 (July 18, 2014)

testimony that an entity's actual capital structure indicates its sources of financing.²⁵ Staff's recommended capital structure is thus not hypothetical.

14 WCI proposes to selectively apportion its debt and equity levels among specific assets. Regulatory theory generally recognizes that dollars are fungible and particular capital can rarely be apportioned to specific assets.²⁶ Therefore, the Company's proposal is hypothetical and violates traditional ratemaking theory.

15 As Ms. Cheesman explained at hearing, Staff's proposal is straightforward and relies on WCI's and each landlord's actual financial positions.²⁷ The affiliated landlords own the facilities leased to WCI.²⁸ Each landlord's balance sheet shows its sources of financing.²⁹ Staff calculates a return on the basis of those actual sources of financing and associated costs.³⁰ Staff's proposal thus matches affiliate returns to actual capital structures and attendant costs while removing the possibility of cross subsidies between WCI's half dozen affiliated entities. Staff's approach is fair and reasonable to WCI, the affiliate landlords, and regulated ratepayers.

2. The buildings leased to WCI are encumbered with the landlords' debts.

16 HBI's and HBII's assets are not debt-free. Creditors hold claims against the landlords' buildings, including those leased to WCI.³¹ As Ms. Cheesman described at the

²⁵ Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 20 lines 1:3 (July 18, 2014); Redirect Examination of Melissa Cheesman, TR. 303 lines 4:13.

²⁶ LEONARD SAUL GOODMAN, THE PROCESS OF RATEMAKING VOL. I, p. 580 (1988), ("Particular capital rarely associated with particular assets")

²⁷ Redirect Examination of Melissa Cheesman, TR. 303 line 4 through 304 line 8

²⁸ Redirect Examination of Melissa Cheesman, TR. 303 lines 16:20. *See also* Cross Examination of Joe Willis, TR. 66 line 23 through 67 line 22;

²⁹ Redirect Examination of Melissa Cheesman, TR 303 line 21 through 304 line 8.

³⁰ Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 18 lines 17:21 and p. 20 lines 1:3 (July 18, 2014)

³¹ Willis, Exhibit JW-7 (letter from WCI counsel explaining that lenders hold claims against all assets of HBI and HBII as well as the assets of all other affiliates); *see also* Cheesman, Exhibit MC-3.

evidentiary hearing, there is no economic distinction between mortgaging a building to obtain debt financing and pledging those same buildings as collateral to obtain debt financing.³² The distinction is particularly fictional where rental income from the buildings is used to repay the debt financing.³³ The Company's attempt to claim the buildings carry no debt is based on a false distinction. Therefore, Staff's recommendation reflects the landlords' existing financial structures and economic obligations to creditors while WCI effectively argues that the Commission should ignore its landlords' financing arrangements.

3. WCI's request allows the regulated hauler to subsidize non-regulated operations

17 Under WCI's proposal, cash flows from the regulated company through a real estate holding company to repay loans that other affiliates used to finance regulated and non-regulated operations.³⁴ WCI also guarantees the real estate holding companies' (i.e. HBI and HBII) debts.³⁵ The regulated company (i.e. WCI) thus subsidizes the cost of debt to the holding companies through an express guarantee and then pays for that same debt through affiliate rent transactions.

18 Although those affiliated rent transactions between WCI, its landlords, and other non-regulated affiliates are over 90% debt-financed,³⁶ the Company proposes to price rents

³² Cheesman, TR. 305 lines 13:19.

³³ *See id.*

³⁴ *See* Cheesman, Exhibit MC-3, July 18, 2014, at pp. 3-4; Rebuttal Testimony of Layne Demas, Exhibit No. ____ (LD-1T), p. 4 lines 23:25 (describing landlords HBI and HBII as "entities that carry a large amount of debt for projects and investments that have no bearing on the actual properties being leased to WCI.")

³⁵ Willis, Exhibit JW-7 (letter from WCI counsel explaining that lenders hold claims against WCI's assets, including its cash flows); Cross Examination of Joe Willis, TR. 82 line 18 through 83 line 1.

³⁶ HBI is financed with 93.7 percent debt; HBII is financed with 53.8 percent debt. Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 21 lines 1:3 (July 18, 2014). HBI is significantly larger than HBII, though.

for a return on equity.³⁷ WCI effectively asks the Commission to displace actual debt with fictional equity. Even more important, in seeking equity returns on debt financing, WCI is asking the Commission to approve an arrangement where regulated ratepayers pay more than the actual cost of capital incurred by the affiliate.³⁸ The Commission should recognize WCI's proposal for what it is—a request for subsidies and an exemption from RCW 81.16.030.³⁹

C. Cost of Equity

19 Staff's recommended cost of equity relies on the best information available and conforms to Commission precedent. Financial theory and prior Commission orders support Staff's position that the cost of equity is dynamic, or changes over time.⁴⁰ Staff recommends the Commission use 12.5 percent and 13.1 percent for HBI's and HBII's cost of debt, respectively.

20 Ms. Cheesman testified at the evidentiary hearing on her efforts to calculate a present-day cost of equity for real estate investment companies.⁴¹ Ms. Cheesman explained her research in the SEC and ValueLine databases, both of which are among the highest quality sources of financial data.⁴² She then searched for and developed a sample group of companies in the real estate industry with similar capital structures and financial risk profiles

³⁷ See e.g. Supplemental Testimony of Layne Demas, Exhibit No. ____ (LD-1T), p. 4, Table No. 1 (Column labeled "Equity Percentage" under "Company Analysis Source Exhibit JD-43"); Davis, Exhibit JD-43 (renumbered as JD-45); Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 5 lines 13:16 (Feb. 2, 2015).

³⁸ Equity is a more expensive source of capital than debt. See LEONARD SAUL GOODMAN, THE PROCESS OF RATEMAKING, VOLUME I, pp. 606 (1988) (describing "Cost of Equity. General Principles")

³⁹ RCW 81.16.030 allows the Commission to disallow affiliate transactions that are unreasonable.

⁴⁰ CHARLES F. PHILLIPS JR., THE REGULATION OF PUBLIC UTILITIES, p. 380 (1993); *WUTC v. Pacific Power & Light Co.*, Docket UE-130043, Order 05 (Final Order), p. 8 ¶24 (Dec. 4, 2014).

⁴¹ HBI and HBII are real estate investment companies, not solid waste companies. Cheesman, TR. 207 lines 1-6 and 306-307. For full cross-examination of Ms. Cheesman on the topic of cost of equity, see generally Cheesman, TR 203-215.

⁴² Cheesman, TR 307 lines 2:15.

to those of HBI and HBII.⁴³ Lastly, Ms. Cheesman employed a discounted cash flow analysis to estimate the current cost of equity on the basis of her sample group.⁴⁴ Staff's estimate is well-supported, thorough, and reflects a reasonable, fair analytical framework.

21

While again failing to put forward a supported alternative, Waste Control appears to dispute Staff's analysis on the basis that Ms. Cheesman's sample group does not accurately reflect HBI and HBII.⁴⁵ The Company provides no alternative sample group.⁴⁶ Waste Control's expert witnesses even acknowledge that the Company's proposal is not supported by any quantitative analysis.⁴⁷ The Company's proposed cost of equity relies solely on testimony from an unrelated case that is over two decades old.⁴⁸ WCI is asking the Commission to pretend that the cost of equity never changes, non-regulated real estate entities and regulated solid waste companies are entitled to the same return on equity, and Commission precedent on this issue does not exist. The Company's position is unreasonable on its face. The Commission should adopt Staff's recommendation.

D. Cost of Debt

22

Staff's recommended cost of debt relies on the actual, readily observable cost of debt on HBI's and HBII's financial statements.⁴⁹ Staff's recommendation is transparent, measurable, and easily confirmed in the landlords' financial documents. The Company's initial brief and supplemental testimonies argue for apportioned, asset-specific costs of

⁴³ Cheesman, TR. 207, lines 1-6.

⁴⁴ Cheesman, TR. 203, lines 5-9; Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 21 lines 12:17 (July 18, 2014).

⁴⁵ Cheesman, TR. 208 lines 4:7.

⁴⁶ Cheesman, TR. 307 lines 16:20.

⁴⁷ Supplemental Testimony of Layne Demas, Exhibit No. ____ (LD-1T), p. 6 lines 15:17 (Aug. 20, 2014).

⁴⁸ Supplemental Testimony of Layne Demas, Exhibit No. ____ (LD-1T), p. 6 lines 16-18 (Aug. 20, 2014); *see also* Initial Brief on Behalf of Commission Staff, p. 19 ¶44 and footnote 77.

⁴⁹ Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 21 lines 5:9 (July 18, 2014).

debt.⁵⁰ However, as Staff has consistently pointed out, the Company's proposal contradicts traditional regulatory principles and fails to recognize the economic reality that creditors hold equal claims on all of HBI's and HBII's facilities, including the buildings leased to WCI.⁵¹ The Company's proposal is unreasonable and the Commission should adopt Staff's recommendation.

E. Allocation of Depreciation and Average Net Investment

23 Staff allocates depreciation and average net investment using its three-factor allocator.⁵² The rationale for Staff's three factor allocator has been explained above, in Staff's initial brief, and in previous oral and written testimony.⁵³ Most important, the Commission should recognize that Staff has put forward a reasonable analytical methodology while the Company has proposed "1 divided by 3."⁵⁴ WCI has not offered any analysis, documentation, or even an explanatory narrative of its proposal.⁵⁵ Staff is the only party providing analysis on this issue and Staff's proposal remains the only supported recommendation in the record of this proceeding.

⁵⁰ Testimony of Jacqueline Davis, Exhibit No. ____ (JD-43) (renumbered as JD-45) ("Land Rent Calculation" noting Company's cost of debt proposal as "debt specific")

⁵¹ Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 22 lines 12:14 (July 18, 2014); Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 5 lines 13:16 (Feb. 2, 2015); Initial Brief on Behalf of Commission Staff, pp. 17-18 ¶41.

⁵² Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 20 lines 6:9 (July 18, 2014); Supplemental Testimony of Melissa Cheesman, Exhibit No. ____ (MC-13T), p. 5 lines 9:10 (recommending use of the updated three factor allocator).

⁵³ *Supra* pp. 3-6; Initial Brief on Behalf of Commission Staff, pp. 2-3 ¶¶4,5, p. 5 ¶10, and pp. 6-8 ¶¶12:16; Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), pp. 16 line 13 through p. 17 line 6 (citing to Exhibit MC-7); Cheesman, TR. 300 lines 7:16.

⁵⁴ Cheesman, TR. 300 line 20 through 301 line 3.

⁵⁵ Cheesman, TR. 300 line 20 through 301 line 3.

V. GENERAL RATE CASE COSTS

A. Overview of Revenue Impact

24 The Company will presumably update its general rate case costs with filing of its reply brief. Because Staff recommends the allowable expense include a percentage of actual rate case costs, Staff cannot provide a specific expense recommendation until after the Company's update.

B. Staff's recommendation balances ratepayer and shareholder interests and creates a fair result.

25 WCI's shareholders bear a significant responsibility for the delays and costs associated with Dockets TG-131794 and TG-140560. Ratepayers have absolutely no responsibility. But the Company now asks the Commission to require those same ratepayers to pay for the costs of two fully litigated general rate proceedings.⁵⁶ The Company and WRRRA have criticized Staff's recommendation, but neither party has offered any alternative other than to request full reimbursement from the one group who had absolutely nothing to do with the extraordinary costs and delays in this proceeding.

26 Staff balances the competing interests and recommends the Commission allow WCI to recoup the cost of one fully litigated case in rates.⁵⁷ Staff accomplishes its proposal by allowing 50 percent of costs associated with the formal adjudicative processes in both TG-131794 and TG-140560.⁵⁸ The approximately \$28,000 in professional fee discounts is not

⁵⁶ Waste Control Inc.'s Opening Brief, p. 8 ¶15 ("Company seeks to recover all reasonable rate case-related expenses since the original filing of TG-131794 in September 2013 . . .")

⁵⁷ Testimony of Melissa Cheesman, Exhibit No. ___ (MC-1T), p. 47 lines 1:5; Supplemental Testimony of Melissa Cheesman, Exhibit No. ___ (MC-13T), p. 12 lines 13-15 (Feb. 2, 2015).

⁵⁸ Testimony of Melissa Cheesman, Exhibit No. ___ (MC-1T), p. 47 lines 1:5; Cheesman, TR. 308 lines 9:18.

significant enough to serve as a reasonable replacement or substitute for Staff's recommended general rate case adjustment.⁵⁹

C. The Parties' dispute over Kalama goes back to the Company's inability to support its recommended rates.

27 In supplemental testimony, Ms. Davis testified at length that Staff's position on Kalama exacerbated rate case costs.⁶⁰ However, the Commission should also note that Ms. Davis acknowledged having to reconstruct data,⁶¹ providing Staff with multiple and inconsistent versions of that data,⁶² and filing a flawed test year route study.⁶³ In response, Staff justifiably refused to rely on the Company's information. The extensive efforts and costs incurred in late July through August that Ms. Davis describes in her supplemental testimony are thus the direct result of the Company's previous provisions of inadequate and conflicting data. Moreover, Staff did not even contest the number of hours that WCI claims to have spent to correct its own data.

28 The Company's claims of ignorance as to Kalama operations are nonsensical. WCI and its representatives are the experts on WCI's operations. The Company should be able to describe non-regulated operations to Staff without incurring extraordinary costs.

29 WCI's criticisms of Staff's audit relating Kalama are also illogical. Ms. Davis's supplemental testimony criticizes Staff for excessive audit processes,⁶⁴ failing to

⁵⁹ The discounts represent approximately five percent of WCI's general rate case costs, leaving 95 percent to fall on ratepayers. *See* Davis, JD-48.

⁶⁰ Supplemental Testimony of Jacqueline Davis, Exhibit No. ___ (JD-50T)(renumbered as JD-53T) (Nov. 7, 2014).

⁶¹ Cross-Examination of Jacqueline Davis, TR. 109 line 2 through 110 line 20.

⁶² Davis, TR. 110 lines 21:25; Davis TR. 112 line 13 through 116 line 1.

⁶³ Supplemental Testimony of Jacqueline Davis, Exhibit No. ___ (JD-50T) (renumbered as JD-53T) p. 4, lines 2:3 (Nov. 7, 2014).

⁶⁴ Davis Supplemental, JD-53T, p. 6 lines 21:22; Davis, TR. 130 line 22 through 131 line 2.

communicate a formal position prior to filing testimony,⁶⁵ and requiring the Company to furnish copies of documents that Staff reviewed.⁶⁶ But given that even Ms. Davis acknowledged reconstructing Kalama data and providing multiple answers to Staff's questions regarding Kalama, it was perfectly rationale for Staff to ask further questions and seek additional details.⁶⁷ Moreover, the Company's expectation to preview Staff's positions prior to filed testimony is curious given the formal and contentious nature of this case.⁶⁸ Lastly, the Commission is a public agency and must retain documents it uses in the course of public business.⁶⁹ Staff followed the relevant rules, and the Company's complaints about Kalama are the result of WCI's own inadequate processes.

D. WCI is responsible for the dismissal of TG-131794 and the extraordinary costs associated with TG-140560.

30 WCI is solely responsible for the dismissal of the Company's failed rate case in Docket TG-131794.⁷⁰ Ms. Cheesman has also explained why the Company is responsible for the extraordinary costs associated with TG-140560, pointing to the Company's convoluted filing, refusal to explain its hardcodes, and delay in filing supporting information until rebuttal testimony.⁷¹ Staff candidly acknowledged a lapse in communication in late May of 2014, but Staff reasonably disputes the Company's argument that approximately two weeks of delayed communication materially impacted what has become a nearly two-year

⁶⁵ Davis Supplemental, JD-53T, p. 1 at lines 12:20; Davis, TR. 100 lines 15:20.

⁶⁶ Davis, TR. 131 lines 16:19.

⁶⁷ Davis, TR. 110 lines 12:25; Davis TR 115 line 24 through TR 16 line 25.

⁶⁸ In fact, Ms. Davis acknowledged that she did have communication with Staff and understood that Staff had no obligation to provide the Company with Staff's positions prior to filing testimony. Davis, TR. 100 line 15 through 101 line 6.

⁶⁹ RCW Chapter 42.56 ("Public Records Act")

⁷⁰ *WUTC v. Waste Control, Inc.*, Docket TG-131794, Order 05, p. 7 ¶18 and ¶26 (March 25, 2014).

⁷¹ Testimony of Melissa Cheesman, Exhibit No. ___ (MC-1T), pp. 25-26 ¶¶57-60 (July 18, 2014).

proceeding.⁷² The history of a dismissal, an order to compel discovery, not meeting minimum filing requirements, and the significant amount of new information provided on rebuttal testimony were each the fault of the Company and played a far more central role in delaying WCI's general rate filing than Staff's brief lapses in communication.

E. Staff's proposal meets the Commission's fundamental statutory obligation to achieve fair, just, reasonable, and sufficient results.

31 The foundational objective of ratemaking is to achieve a fair result. WCI's argument to effectively penalize ratepayers for the costs of two fully litigated cases cannot possibly be a fair result. Staff's proposal balances the usefulness of the Company's filings and the interests of the various stakeholders. Ratepayers have no say in the formal general rate proceeding and should not pay for multiple litigated cases. WCI should be able to recoup the cost of one litigated general rate proceeding.

VI. INVESTIGATION FEES

32 Staff recommends the Commission require WCI to pay \$43,818.82 in investigation fees.⁷³ The investigation fees should not be included in rates and thus have no impact on revenue requirement.

33 RCW 81.20.020 authorizes the Commission to impose investigation fees.⁷⁴ Staff's recommendation adheres to the statutory requirements. Simply put, the statute authorizes such an assessment as a separate and distinct method for the Commission to recoup the costs of an investigation. As a result, Staff's recommendation is not a double penalty, or any type

⁷² Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 57 lines 13:17 (July 18, 2014); Cheesman, TR. 292 lines 21:22.

⁷³ Testimony of Melissa Cheesman, Exhibit No. ____ (MC-1T), p. 54 line 20 through p. 56 line 12.

⁷⁴ There is no rule or statute that requires Staff to notice the Company regarding the imposition of investigation fees.

of penalty, as the Company has argued.⁷⁵ WCI filed an inadequate case, disputed discovery, and remains responsible for much of the extraordinary time and expense this case has the cost the Commission. Staff thus recommends the assessment of investigation fees as an appropriate and commensurate response to allow the Commission to recoup its extraordinary costs.

VII. CONCLUSION

34 For the foregoing reasons, the Commission should order the following:

WCI to include \$13,975 of shared utilities expenses in rates;

WCI to include \$85,217 of its affiliate land rent payments in rates;

WCI to include 100 percent of the rate case expenses incurred prior to the Notice of Prehearing Conference in Docket TG-131794, 50 percent of rate case expenses incurred after the Notice of Prehearing Conference in TG-131794 and 50 percent of rate case expenses from TG-140560, all amortized over five years; and

WCI to pay the costs of Staff's investigation fees, which is a total assessment of \$43,818.82.

DATED this 27th day of March 2015.

Respectfully submitted,

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⁷⁵ TR p. 237 line 12 through p. 238 line 1 (referring to the investigation penalty as double dipping).

APPENDIX A

TABLE 1
Staff's Adjustments to Waste Control, Inc.'s Revenue Requirement

Line No.	(a)	(b)	(c)	(d)	(e) (c) - (d)
1	Adj.	Description	Revenue Requirement	Less: WCI Test Year Revenue	Revenue Deficiency
2	WCI Response to BR1 as Filed on October 21, 2014		\$ 4,482,243	(3,971,959)	\$ 510,284
3					
4	R-6D	Shared Utilities Expense	(15,985)		(15,985)
5	R-6E	Affiliate Land Rents	(84,582)		(84,582)
6	P-2/P-3	General Rate Case Costs	(69,782)		(69,782)
7	None	Investigation fees	-		-
8					
9	Staff's Four Remaining Contested Adjustments		(170,349)		(170,349)
10					
11	R-9	Cost of Debt*	(23)		(23)
12					
13	Staff Response to BR1 as Filed on October 21, 2014		4,311,871	(3,971,959)	339,912

*WCI's Lurito-Gallagher Cost of Debt is rounded to the hundreds place, Staff's Lurito-Gallagher Cost of Debt is not rounded. This is not a contested adjustment but included to demonstrate Staff's proposed revenue requirement.

Prepared by:
 Melissa Cheesman