BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. WASTE CONTROL, INC., Respondent.	DOCKET TG-140560 RESPONDENT WASTE CONTROL INC.'S REPLY BRIEF TO INITIAL BRIEF OF COMMISSION STAFF

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I. INTRODUCTION

1 Respondent Waste Control, Inc. ("Respondent," "Company," "WCI or Waste Control"), now responds to the Initial/Opening Brief of the Commission Staff filed on November 7, 2014. In its Reply, the Company will organize its arguments and assertions consistent with the previous Opening Brief addressing, in turn, the disputes over Utility Cost Allocations (Restating Adjustment R-6D), Affiliate Land Rents (Restating Adjustment R-6E), Staff Investigation Fee Imposition and Rate Cost Recovery (Pro Forma Adjustments, P-2, P-3). It will also incorporate topics, interpretations, testimony and reflections from the hearing on Supplemental Testimony of March 11, 2015.

2 Before initiating that analysis however, the Company offers some brief observations for the Commission's benefit. First, the Initial Brief of the Commission Staff, at least in the first 22 pages (or i.e. the first two-thirds of the Brief) appears less of a Brief and more akin to a surrebuttal presentation. The Staff used this opportunity to assail the Company's August 20, 2014 Rebuttal Testimony and restate the majority of it arguments from its original case filing on July 18, 2014. While the Staff is, of course, free to devote its presentation to such an orientation (similar to its previous Settlement Narrative in Support of Partial Settlement), it nonetheless unnecessarily extends the record and potentially increases rate case costs by recapping chronological events and many arguments that have been superseded both on proposed settlement accounting adjustment issues and even on some of the remaining contested/unresolved accounting adjustment topics.

3 More disappointing than this tendency in its Initial Brief though is Staff's failure to acknowledge two stark realities of the context of the current proceeding. First, is the Staff's

unquestioned efforts in this rate case to refine, "modernize" or otherwise modify on its own the Commission's essential ratemaking methodology for the solid waste collection industry as established in 1988, in In re: *The Consolidated Garbage Cases,* TG-2016, 2017, 2018 et al, (Jan 1988), and the formal update for recycling operations in *WUTC v. Sno-King Garbage Company WUTC v. Northwest Garbage Company* TG-900657, TG-900658 Fourth/Fifth Supplemental Orders, (Dec. 1991). Since 1991 and the Commission's subsequent elaboration of recycling rate design by Lurito in *In Re King County Department of Public Works, Solid Waste Division v. Seattle Disposal Company, Rabanco, Ltd. d/b/a Eastside Disposal and Container Hauling* Docket TG-940411, Third Supplemental Order, (Sep. 1994), there has been no Final Order by this Commission to the parties' knowledge in formal adjudicated proceedings that has modified, articulated new dimensions to that solid waste ratemaking operating ratio methodology or data inputs. Hence, for more than two decades, the regulated solid waste industry has worked under the accepted parameters of the "L-G" (Lurito-Gallagher) methodology and relied on principles articulated there for direction in general rate case reviews in that interval.

4 Hundreds of solid waste rate cases have been filed, audited and reviewed during that time but again, no Orders addressing issues like data inputs, "temporal" returns on equity,[1] calculation of affiliate rents, or other broader operating or allocation factors associated with industry-wide implications have been announced. The industry thus has those benchmark decisions to continue to rely on in its case filings, and while acknowledging that solid waste cases that are approved through the Open Meeting Agenda are not formally adjudicated precedent, must appropriately ground its understanding of how the Commission approaches rate filings on those decisions. The consequence of that reliance should provide objective standards for any solid waste general rate

[1] Apparently Staff believes because returns on equity are "temporal" numbers, it can unilaterally and subjectively update its quantification recommendation of allowable returns on equity for solid waste general rate cases whenever it wants. Cheesman, TR. 306:16-25, TR. 307:1.

case proponent which would rightfully not expect the selection of a particular auditor or Staff representative to have any impact on its historic pattern of treatment by previous Staff, consistent with formal pronouncements by the Commission on solid waste ratemaking through rule, codified policy or formal case adjudication.

A. Departure from the Norm: Staff Here Would Convert its Unprecedented, Untested Approaches to the Contested Solid Waste Rate Accounting Adjustments into a Statutory Proof Burden Equivalent that the Company must either Independently and Alternatively Accommodate or Ostensibly Fail in Meeting its Statutory Burden.

5 Moreover, using that lack of precedent and absence of substantiation for its unilateral position recommendations as a sword, not a shield here, the Staff boldly asserts simply that the Company has failed to meet its statutory burden as a general rate case proponent under RCW 81.04.130 in not alternatively supporting its accounting positions on the remaining contested adjustments on utilities and affiliate land rents.

6 The Staff's questions and exhibits at hearing for Mr. Demas and Mr. Willis for the Company appeared to center on the burden of proof issue that no one contests as being initially on a company which files a general rate case under RCW 81.04.130, and similarly, for establishing the reasonableness of affiliated transactions at RCW 81.16.030. That burden is why a company files supporting workpapers, schedules, data, invoice copies, original cost data, etc. with its initial case and proposes various adjustments upon filing and during the course of audit/review. What the Staff's questions at hearing seemed to confuse however, is what happens after that threshold/prima facie showing is made. In the case of the utility expense allocations here, Layne Demas articulated the shift in proof at that stage of the proceeding, on cross-examination: "[t]he Company always has the burden of proof to prove the utility expenses are

there and that they're allocated correctly."[2] But in the wake of the Commission Staff's rejection of the Company's proposed and previously-accepted allocations for utility expense and affiliate land rents in this filing, and substituting in its stead wholly unproven and unprecedented theories for adjustment, the Company confronted, critiqued and attempted to refute the basis and validity of these allocation and valuation theories. In the case of land rents, as an alternative to the traditional one-third allocation and the cost-plus return analysis posited in its case originally, the methodology from a previous Title 81 RCW adjudicated case was offered as an alternative, as explored in more detail below.[3]

7 The Staff's facile claim and persistent implication that "the Company has not supported its proposed adjustments" for utility costs and affiliate land rents ignores the initial filing documentation now formally admitted into the record, the previous general rate case workpapers (Exhibit MC-15), reflecting past accepted expense allocations and return on equity factors, Exhibit JD-34. Workpaper 12, "Utilities," Exhibit JD-43 on Land Rents specifically, and, more generally, the Initial, Rebuttal and Supplemental Testimonies submitted by the Company. In doing so, the Staff now converts its own unilateral challenges to and dismissals of these contested accounting adjustments via formulation of untried methodologies as somehow tantamount to a failure to meet statutory proof burdens.

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[2] Demas, TR. 54:1-3.

[3] The historical allowance of a one-third allocation for land rents among affiliates is further supported by analysis of the actual space occupied by each of the three affiliates in shared and non-shared facilities. WCI and WCE each are almost the same size in revenues and number of employees, (allocation factors advocated by Staff, *infra*) and occupy all the same facilities. During the test period, approximately 25% of the space WCR occupied was shared. WCR also exclusively occupied three other properties: the transfer station, the material recycling facility ("MRF") and Building "E," (Exhibit JD-41T, p. 16, lines 23-26), used exclusively for its recycling operations. This "actual use factor" equation thus also supports the reasonableness of the land rent allocation historically proposed and accepted by the Commission Staff.

8 By relying on its workpaper support, Commission Title 81 RCW case law precedent, past general rate case treatment of the Company's previous rate case filings and finally, by critiquing and distinguishing Staff premises such as its "three-factor allocators" for utility and land rent expense and "temporal adjustments" for factors such as return on equity, the Company has clearly successfully confronted its evidentiary burden. The Staff's reaction in response would ostensibly require the Company, well after the expiration of the test period, to compile data and supply workpaper analyses addressing Staff's novel renditions of accounting adjustments such as combining revenues, employee numbers and depreciated net book value of assets to allocate utility expense and compute returns on depreciated book value on investment for affiliate land rents.

9 In addition to confronting its burden in refuting those analytical criteria in pointing to Commission case law precedent, past WCI general rate case treatment such as reflected in Exhibit MC-15 and the previous Staff audit workpapers addressing the Company's proposed treatment of utility cost and land rent computations, the Staff would also apparently have the Company anticipate a new auditor's approaches to accounting adjustments in providing independent corroboration for utility expense allocations and land rent computations in order to meet Staff's novel and fluid rendition of a rate case proponent's evidentiary burden. Ratifying such an approach here would allow one Staff analyst's theorizing to trump both Commission case law precedent and past Company audit treatment, equating individual auditor trial balloons with statutory proof burdens for regulated solid waste collection companies.

10 In this proceeding, the Staff has unilaterally departed from, announced and/or insisted upon with the Company various theories of ratemaking, revised data inputs and factors, rates of

return and other criteria.[4] To the Company's knowledge and certainly in its own experience, those theories, input and factors are untested, formally unrecognized by the Commission and act to consistently diminish the Company's overall revenue requirement in an obvious concerted fashion.

B. The Staff's Timing in Advancing its Novel Approaches to Contested Accounting Adjustments Here is neither Propitious nor Prudent in Light of Broader Industry-wide Rule and Policy Initiatives now Pending at the Agency.

11 In filing the current rulemaking in Docket No. TG-131255, *Inquiry to Consider Methods for Setting Rates for Solid Waste Collection Companies Pursuant to WAC 480-70,* in 2013, this Commission consciously opted to explore possible changes to the existing rate-setting methodology, eschewing for now, a case-by-case approach, a policy statement, or a consolidated or generic case docket such as was employed originally in the Lurito-Gallagher case in 1987. Throughout this proceeding, in confronting such Staff positions on accounting adjustments, the Company has repeatedly alluded to the fact that on such contested issues, neither the Company nor any other regulated solid waste collection company to its knowledge had positions asserted, for instance, such as that here maintained by Staff on affiliate land rents. As the record reflects, in 2009, the Company confronted a related initiative by Staff which sought to utilize, under the Lurito-Gallagher ratesetting process, consolidated capital structures from company-wide operations including all nonregulated affiliates.[5] While it successfully fended off that initiative in 2009 in arguing its conflict with the original Lurito-Gallagher *Sno-King* cases, in 2013 up to the present, it has here confronted unprecedented theories heretofore unrecognized as appropriate methodologies for this or any other solid waste rate case application.

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[4] Staff itself admitted, for example, that for its central theory on land rents return, there is no precedent for the Staff capital structure proposal in the solid waste general rate field. Cheesman, TR. 175:8.

[5] The Prefiled Direct Testimony of Joe Willis of February 18, 2014, Exhibit No. JW-1T, pp. 5, 6; Exhibit JD-1T, pp. 10, 11 and 12; Exhibit JD-8; Exhibit JD-41, pp. 19, 20 and 25; Willis, TR. 73, 74.

12 While the Company, as a result, has marshaled its presentation on various issues in opposition to these approaches, it continues to ask why, with the current rulemaking pending, the Staff persists in aggressively pushing, without acknowledging, obvious changes to the Lurito-Gallagher solid waste ratemaking methodology model in this case when a broader industry forum is already pending which could evaluate many, if not all of the theories and accounting adjustments posed in this filing? With all due respect to the Staff throughout this protracted case, there is in the Company's view, a sense of prematurity and even presumptuousness with respect to established Commission precedents in its positions. Staff is well-aware and admits they are positing unprecedented perspectives on numerous accounting adjustments here despite their alleged reliance in defense upon basic Lurito and analogous utility ratemaking principles. Certainly the Staff should consider the Commission may itself look comprehensively at ratemaking theory, methodology, data inputs[6] and other factors which could have broad applications for **all** regulated solid waste companies in the pending rulemaking docket. As a result, the trails Staff seeks to blaze here are potentially preemptive and conflicting with current rulemaking outcomes.

13 This case arises at a particularly unsettled time in over two decades of the Commission's rate regulatory regime for this industry. While the Staff continues to appear to want to relegate this case to an isolated, case-by-case, routine general rate case, the backdrop of this rulemaking in the Company's view colors all other developments and outcomes in the proceeding.[7] While Staff assiduously avoids ever even mentioning or responding to the Company's repeated references to the rulemaking in any of its prefiled testimony or legal arguments to date, those

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[6] Apparently the Commission Staff also believes that while the Lurito-Gallagher rulemaking proceeding is pending, it can unilaterally make temporal adjustments to data point factors such as returns on equity and make broad recommendations affecting those long-accepted inputs which will be discussed more specifically, below. Cheesman, TR. 214, lines 11-15 and TR. 215, lines 14-19.

[7] Not to mention, the current General Rate Case Procedures Rulemaking in Docket No. A-130355, also pending.

rulemakings are unquestionably "the elephant in the room" here. The Company again urges that any previously untested or formative Staff accounting adjustment and ratemaking theories in this case await adoption and evaluation in a broader, more industry- and public-involved forum.

II. UTILITY EXPENSE ALLOCATIONS: RESTATING ADJUSTMENT, R-6D

A. Staff's now Familiar Three-Factor Allocation Cannot be Defended on General Cost Causation Principles, Relies on Inappropriate Criteria such as Asset Net Book Values Yielding Inconsistent Results, Cites Unrelated, Isolated Testimony Snippets and Formulas from Energy Rate Cases which are Inapplicable and Picks and Chooses Shared v. Exclusive Utility Expenses, Invalidating its Conclusions.

14 Despite all the Staff's rhetorical arguments on Initial Brief, allocation of expenses to avoid cross-subsidies on the basis of cost causation is not the disputed issue on utility expense allocations here. The issue is and remains the proper *selection* of allocators to accurately determine those cost allocations for shared utility expenses which the Staff has not done in its proposal for company utility expense allocation.

15 In support of that basic premise, the Company has submitted the testimony of a former Staff analyst (expert) with almost 25 years audit experience in regulated solid waste collection companies at the WUTC, Layne Demas. He pointedly critiques the "three-factor allocators" chosen by the recent Staff auditor finding that, (in the case of net book values), as allocators: "...there is nothing to uniformly measure that has anything to do with the separate entities' [affiliates] paying their fair share of common costs as is the goal of allocated expense categories..."[8]

16 Staff has nevertheless dug in and attempted to aggressively defend its unprecedented cost allocation methodology in its original, supplemental and hearing testimony. Its three-factor

[8] Exhibit LD-1T, lines 7-20, p. 7.

method appears to be based loosely and anecdotally on a multi-factor allocation method used periodically for the utility/energy industry by the Commission Staff. Staff, as will be noted, mentions briefly, in passing, analogies to these utility case allocation factors, which, unfortunately, do not represent any rational or acceptable method for allocation of expenses in this industry or this case.

17 For the Staff in its defense to suggest that **only its** testimony properly applies cost causation principles to derive appropriate allocations and that its "three-factors" "…provides a reasonable and accurate estimate of each entity's relative size and impact as common resources"[9] is not a self-fulfilling prophecy. Indeed, when it goes on in its Brief to attempt to bootstrap and defend net book value of assets as an obviously appropriate allocator, the defensive analytical tone reaches a high pitch: "...the aggregate book value of an entity's assets suggests the size of its operation and amount of its investments, which indicate that entity's role in contributing to overhead costs..."[10] There are numerous examples of businesses where this statement is simply inaccurate and inapplicable. For instance, a manufacturing company which, say, produces transportation equipment and which has a financing or leasing affiliate. The latter, (such as a G.E. Finance, now known as "Synchrony Financial"), might well generate far higher revenues and profits in contribution to actual company-wide overhead costs, yet the manufacturing entity would have a far larger net investment in plant and equipment.

18 Another "closer to home" example involves the intrastate solid waste and recycling industry. Solid waste, recycling and yard waste services all contribute to the bottom line of regulated solid waste collection companies in Washington State. Thus, allocations as to costs and revenues must be made among them in a general rate case, particularly because commercial

[9] Initial Brief of Commission Staff, ¶¶ 12,13, p. 6.
[10] Id., ¶14, p. 7.

recycling is not currently a regulated activity. As a consequence, the Commission Staff has typically required that each of the three services include their own operating ratio calculations under the Lurito-Gallagher methodology. Deriving operating ratios for solid waste, recycling and yard waste services can involve some fairly disparate computations and allocations. For instance, conventional solid waste services by a company may entail substantially depreciated trucks and containers with a small average investment. If on the other hand, the curbside recycling service is either a new or expanded service to the company or the company has recently acquired new trucks and toters/containers, that service line could derive much lower operating ratios under Lurito-Gallagher. In this circumstance, it would be entirely possible to have the net book value of assets for the recycling operations exceed those of the solid waste operations. Under the Staff's defense of its three-factor allocation formula focusing on net book value of assets, that snapshot formula would likely depict the recycling operation as far larger in size and more contributory to overhead costs when in fact, the more fully depreciated asset value of the solid waste operations is actually larger. In other words, the statement from Staff's Initial Brief quoted above is not at all accurate, particularly considering an example possibly more pertinent than GE Finance. In reality though, these types of anecdotal examples advocated by Staff are hardly supportive of or useful to its unprecedented utility cost allocation formula.

19 Additionally, Staff's recurring digression in its Brief to the basic textbook principles of cost accounting in attempting to identify appropriate cost drivers and assign direct costs wherever possible is not contested by the Company, nor is Staff's description of the goals of allocating common, indirect costs. For instance, where it says:

> ...Staff's proposed calculation assigns shared utility expense in a fair, transparent manner that is consistent with the regulatory principle of cost causation.[11] ... Fundamental

[11] Initial Brief of Commission Staff, ¶10, p. 5.

accounting principles dictate the direct cost should be directly assigned rather than allocated....The entire purpose of an allocation is to fairly allocate common, indirect costs such as shared facilities..." [12]

20 While these rather "platitudinous" pronouncements are fine as far as they go, the problem with the Staff approach is in its subsequent execution of its "three-factor" formula. The major cost drivers in its now infamous "three-factor allocators" of employees, adjusted revenues and fixed assets <u>must also be consistently applied</u>.

21 The Staff witness had a rather difficult time explaining the consistency of her allocator formula which unilaterally excludes all utility costs in affiliate exclusive use buildings but still includes all revenues generated by affiliate companies in postulating its allocator formula. At TR. 170:18-25, TR. 171:1-19:

> Q. So when you - - it comes to one of the factors, revenues, you're not being consistent, though, in including them all, are you?
>
> A. I've used all of the revenues, adjusted appropriately.
>
> Q. And you're using all the utility expenses?
>
> A. All the utilities expenses incurred by all three companies.
>
> Q. But not in any shared-use building, correct - - exclusive-use building?
>
> A. That's correct.
>
> Q. Okay. Wouldn't a more consistent approach, Ms. Cheesman, be that either all WCR's revenues and expenses need to be included for allocation purposes or that WCR revenues would have to be proportionately reduced to match with or conform to the exclusive-use utility expenses you removed?
>
> A. I can't speak to that, You - - Your Honor. I haven't fully reviewed it or analyzed the data to make an informed decision about that.
>
> Q. So you would at least acknowledge the possibility that there may be a more consistent approach in order to reach your allocation factor accurately?

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[12] Id. ¶24, p. 10.

A. No. I will admit that there are different factors we could have used to build a three-factor allocation and that it's the average percentage together that makes it reasonable, not any one factor...

TR. 172:

Q. So are you saying that you don't have to be consis - - don't have to include all the revenues and all of the expenses to be consistent with your three-factor allocation?

A. No.

22 This is precisely the type of inconsistent rationale the Staff uses to buttress its heretofore unrecognized and, frankly, unrecognizable three-factor allocation for utility expenses. It not only rejects actual WCR expenses which are critical to the proper application of their allocator because those were supplied during what it now terms "the settlement phase" of the proceeding, but it illogically defends its underlying formula on the basis of "throwing the factors all together" and claiming they work on a combined basis when isolating each of the three factors, particularly the revenue and net book value elements, wholly fail to support their untried premise.[13] In other words, the sum of the parts is workable but isolating the individual elements and seeking internal consistency therein is a lost cause. Not exactly a convincing sounding methodology to allocate costs.[14]

23 While all of its cost drivers are unquestionably involved in the entire operations of all three companies, under Staff's formula, the total utility costs for allocations are not, and thus the execution/application of Staff's rendition for utility expense fails. As reluctantly noted in its Opening Brief and Supplemental Testimony, the Company can nevertheless accept the three-

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[13] A rather unique conclusion corroborated again by the Staff witness at Cheesman, TR. 231:1, 6-10: "A. And none, by themselves - - and I know I've said this already, but I think it's important to say that no - - none - - none of these factors on their own, I think, would provide a fair result, but because they are combined and they are weighted equally, they do."

[14] As Jackie Davis plainly testified in contrast: "...It feels like the picking part of one allocation method that would work [number of employees] and then combining in another one with it, the two don't go together to yield a reasonable result." Davis, TR. 147:12-15. Layne Demas had testified as well "...but I could not find any part of the three-factor - - or those two parts acceptable." Demas, TR. 60:20-22.

factor formula, for settlement purposes on utility expense here, because of the relative insignificance between the Staff and Company's current dollar amount positions as the Company understands them at present on utility cost allocations.[15] Nonetheless, the utility costs to be allocated *must* include total utility costs paid by all three companies. Staff's formula only allocates the utilities expense portion paid by WCI to the three companies and ignores utility charges paid by WCR for both shared and unshared facilities which is arbitrary, unreasonable and does not even conform to the allocation method Staff is espousing.[16]

24 Moreover, Staff's argument's insistence upon the purity of its cost accounting and cost assignment eventually loses the forest in the trees.[17] The utility cost allocation exercise under its "three-factor" formula is ultimately designed to properly allocate costs "company-wide," not simply shared costs. As Mr. Demas testified, otherwise the computation reflecting company-wide utility costs would be artificial, over-allocating utility expenses to the nonregulated affiliate

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[15] Not, however, in the Land Rent computation formula context critiqued, below. Accepting the quantitative allowed adjustment for utility expense need not require any endorsement of the methodology used to arrive at that figure.

[16] With respect to accepting the Staff position, WCI notes the Initial Brief of the Commission Staff proposes to allocate only $13,975 in shared utility expense. Initial Brief, ¶17, p. 8. The Company understood, as set forth in the Supplemental Testimony of Layne Demas, (Exhibit LD-2T, Table 2, p. 6) that figure to be $15,424, hence the asserted final difference of $12,325.25. Again Staff has failed to allocate, under its three-factor theory, $6,202 in shared utility expense paid by WCR in the test year and provided to Staff in August, 2014 which explains the discrepancy and which the Staff defended on cross-examination as removed due to "settlement discussions" (Cheesman, TR. 159). In other words, despite establishing that the amount was in fact paid by WCR for WCI utility expenses, the Staff rejects it due to its previous negotiating position. In contrast, the Company maintains its last compromise offer position on utility expense of $27,749.29 as set forth in the Supplemental Testimony of Layne Demas of November 7, 2014, (Exhibit LD-2T, p. 6, Table 2).

[17] Another example of a thoroughly unconvincing defense without foundation by Staff in its Initial Brief is the multi-state utility cost analogy it unexpectedly cites at footnote 24, page 7 of its Opening Brief. There, for example, some hearing testimony from a Company witness by the name of "Liz Andrews" in *WUTC v. Avista Corp d/b/a Avista Utilities,* Docket No. UE-140188/UG-140189 (2014), is noted. Despite the implication of Staff's citation and argument, the witness there discussed four, not three factors to allocate common costs that were applied under very different circumstances. In Ms. Andrews' testimony, she apparently allocates costs between two *regulated* activities (gas and electric service) of the multi-state energy company, for "net direct plant" costs computations. Her testimony simply does not support inaugurating a three-factor allocation for utility expenses for three different companies affiliated with a solid waste collection company that operate in both regulated and nonregulated Washington State-based services. Random selection of testimony proffered by Staff, Company or public witnesses in support of indirect isolated cost allocations in previous utility general rate cases needs far more context here than the present Staff's utility cost three-factor formula can possibly muster.

yet simultaneously including 100% of that same affiliate's overall operations in Staff's utility expense allocation formula. The principle of direct cost assignment cannot override the importance of internal consistency of cost allocations such as for utility expense, and the Staff's "pick-and-choose" alternative cost accounting exercise selects an outcome without establishing any proof of the accuracy of its approach in achieving that result.

III. AFFILIATE LAND RENTS, RESTATING ADJUSTMENT R-6E.

A. Staff's Discussion of Basic Cost Accounting Principles on Land Rents, Capital Structures and the BKA's Asset-Specific Approach to Affiliate Rent Ratesetting Commingles Theory and Practical Application in Contradictory and Unconvincing Fashions with Significant Implications for Ratesetting under Lurito and with Unprecedented Accusations of Intentional Manipulation of Asset Capital Structures by the Company.

25 The now very familiar land rent dispute is addressed by the Staff in its Initial Brief, not only in reiterating its unprecedented positions in its July 18, 2014 case filing, but also in now devoting over a third of its Brief to both previous and newly-hatched theories in support of the land rents position.[18] In its opening salvo defense of combining the capital structures of nonregulated affiliates to arrive at allowable rents, the Staff also raises one claim for the first time. The Commission, for policy reasons, should endorse its approach to prevent an inherent ability: "to manipulate debt and equity levels between nonregulated and regulated facilities. Use of an asset-specific capital structure, as WCI proposes, would allow an entity to shift equity to assets associated with regulated operations while shifting debt to assets associated with nonregulated operations."[19]

26 This charge is astounding both to the Company and undoubtedly to others in the industry. First of all, the Company has previously proposed tariffs and historically always submitted and

[18] As a reminder, the Company's current position on aggregate land rent expense is $164,302 (Exhibit JD-43, p. 1). In contrast, Staff's recommendation on total recovery of affiliate land rents is currently $85,217, (Exhibit MC-13T, p. 4, line 7).

[19] Initial Brief of Commission Staff, ¶30, pp. 12, 13.

had its regulated rates approved (including affiliate rents) on the basis of the regulated company (WCI's) capital structure and a return on the cost basis of the rented assets not considering depreciation.[20] Once again, confronted by new Staff's refusal to accept yet another previously-accepted approach for deriving regulated rates, the Company, during the audit, cited to the *Bremerton-Kitsap Airporter* [21] case as a plausible alternative and incurred considerable time, effort and expense to perform the necessary calculations to rework the entire premise of allocation of rents in this case on that basis.

27 Although Staff accepted the depreciation and net investment calculations related to *BKA*, it has repeatedly rejected the asset-specific capital structure, claiming the *BKA* case did not authorize any of the holdings upon which the Company posited its alternative asset–specific capital structure proposal. Again, it seems that Staff picks and chooses portions of arguments and cases it wants to apply to the Company while rejecting other portions that may not serve its purpose.[22] Here however, the Staff goes much further, denigrating and/or distinguishing *BKA's* holdings and claiming an asset-specific approach would simply facilitate the cross-subsidy, debt-shifting "boogey-man" it says a failure to utilize nonregulated capital structures would create. It then tries to support its theory, recognizing it lacks any corroborative support in this record, by charging that the fact that WCI's primary assets are older and have more accumulated depreciation than the nonregulated HBI and HBII's newer assets with far more encumbered debt, is tantamount to asset debt and equity manipulation.[23] In Staff's view, this "conspiracy theory" of manipulation is proven simply by virtue of this potential operative fact, overlooking in the

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[20] Davis, TR. 144:24-25, TR. 145:1-3.

[21] *WUTC v. Bremerton Kitsap Airporter, Inc. ("BKA"),* Docket No. TC-001846, Fifth Supplemental Order, (Aug. 2002), Appendix C: "Facility's Debt/Equity Portions."

[22] For a summary critique of the effect of Staff's capital structure theory and its misapplication of affiliate debt, *see*, the testimony of Jackie Davis at TR. 245:11-25, TR. 246:1-10.

[23] Initial Brief of Commission Staff, ¶31, p. 13.

process some obvious countervailing facts. Considering its historic operations' pattern and the longstanding functioning of its inter-company relationships well-known to Staff and the Commission in previous rate filings and its mortgage certificate application filing [24] this claim is particularly disturbing to the Company, including as it does, implications of misapplication of public service company resources to gain financial advantage. While Staff observes correctly that only two of the five HBI rented facilities are debt encumbered, that is not due to any intentional manipulation as Staff charges in its Opening Brief.[25]

28 As noted, it is particularly unsettling for the Company to be accused of asset and debt manipulation after the hundreds of hours incurred in responding to and propounding discovery in this proceeding in which it has attempted to be cooperative, forthcoming and transparent. The Staff's Initial Brief portrays a company with prevailing motives to manipulate and obfuscate, which again, is totally unfounded. Moreover, the Company has calculated the effective capital structure of HBI being used in the affiliate rent calculation at 55% debt and 45% equity which hardly suggests a manipulative intent to derive an unfair or maximized advantage. Nevertheless, it is forced to defend its positions on the basis of untoward accusations which again, have never before been leveled about its company structuring and inter-relationships.

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[24] *See,* Order 01, Docket No. TG-070396 (Apr. 2007).

[25] Related debt has been applied in the ordinary course of business where and when it arises which is appropriate to the newer company assets. *See* for illustration and details "Waste Control Affiliated Rent Calculations," Exhibit JD-43, pp. 2-5, (Excel Spreadsheet). For example, the new truck shop which was placed into service just after the test current year ended was financed with the 2006 bond proceeds and is appropriately reflected as 100% debt-encumbered. The covered parking facility, constructed a few years earlier with bond proceeds also has a high 75% debt ratio due to the relatively recent payments made on the obligation debt proportionately allocated to the covered parking as is true of all other bond-financed expenditures which calculations have been provided earlier in this record. In contrast, the WCI office building was purchased in the 1980's and is naturally a heavily-depreciated asset. This asset has been owned and operated for over 30 years and obviously has been greatly depreciated in that interval and, under the alternative BKA method addressed above, the building has no existing debt tied to it. Applying the capital structure of HBI is not appropriate to this particular office building nor did it use any of the proceeds of the recent bond issuance to HBI. Again, a focus on the specific calculation for the Staff-proposed return on the office building reveals it is wholly unreasonable and artificial. (*See also* Exhibit JD-44 for asset depreciation information by property and parcel).

29 The second argument in Staff's Brief supporting capital structure consolidation in computing affiliate rents is a claim that analogizes the pledging or cross-collateralization of assets to the actual mortgaging/encumbering of a specific property.[26] For the Staff to argue there is "no economic distinction" between pledging and mortgaging assets, equating cross-collateralization to proportionate mortgage encumbrance is surprising.[27] While this premise is advanced in support of consolidating nonregulated capital structures with that of the regulated company, the logic escapes. Contingent liabilities are not the same as actual. Guarantors are not direct borrowers and the fact that lenders seek to take blanket security interests in all company and affiliate assets for loans does not automatically convert the cross-collateralized obligor into a primary debtor. Again, the Staff constructs a theory to support its untried approach that is singularly unconvincing in application.

30 Finally, the consolidated capital structure for deriving affiliate rents theory is supplanted by a third premise in Staff's Initial Brief: "...that the nonregulated affiliate capital structures reflect those companies' actual risk profiles and costs of capital..."[28] Again, this type of financial accounting principle and aphorism sounds appealing at first glance. However, the academic theory goes awry in the Staff's subsequent attempt at applying it to the real world.

31 The Company interprets this specific quotation from Staff in the context of equating "risk profile" with "equity." In that case, it is true, for instance, that a return on equity reflects a company's risk captured by its rate of return. For example, junk bonds are quite risky securities and thus demand a high return. However, the immediate subsequent sentence in Staff's Initial

[26] Initial Brief of Commission Staff, ¶32, p. 14.
[27] On redirect at hearing, the Staff went further, at TR. 305, testifying that there were no "substantive economic differences between mortgaging a building directly and pledging a building as security for a loan..." Residential mortgagee homeowners who cross-collateralize their business debts by granting lenders security in their homes should take note.
[28] Id., ¶33, p.14.

Brief that "...[a]n asset-specific capital structure is not indicative of an entity's risk profile and thus cannot be used to calculate an accurate cost of capital or adequate return..."[29] is more revealing. Affiliated rents are, after all, by nature, asset-specific. Any individual leased property for instance, has its own capital structure profile. But to broadly then impute a high debt load capital structure on a property that, for instance, is debt-free is nonsensical, artificial and "manipulative" similar to the converse situation of imputing zero debt to a property that is highly leveraged. Once more, Staff's entire critique of the asset-specific perspective in *BKA,* as alternatively proposed by the Company, seems to contravene one of the fundamental tenets of Lurito ratemaking methodology.[30] In theory, the L-G methodology seeks to ultimately derive rates and allowed returns by relying on asset-specific capital structures. Staff is again correct when it says that largely-depreciated assets garner a negligible return, that's in fact why the L-G methodology has always incentivized industry investment in equipment and capital assets. L-G does not work, however, by artificially consolidating company-wide assets to establish regulated rates and then calculating an allowed return for rents through aggregating nonregulated and regulated capital structures.

B. The Staff Cost of Debt and Return on Equity Criteria Analysis for Company Affiliate Land Rents Transposes Large, Publicly-Traded Entities and Regulated Utility Factors by Preempting, Ignoring and/or Discarding Lurito Ratemaking Criteria.

32 Staff's cost of debt and cost of equity/return on equity argument is again classic surrebuttal in rearguing positions it advanced in its case in chief and in responding to arguments

[29] Initial Brief of Commission and Staff, ¶33, p. 14.

[30] As noted in this Brief, the Staff and Company disagree about the *Bremerton-Kitsap Airporter* case implications. There should be no question that in setting the cost plus return reasonable affiliated rent allowance there, the Commission looked at the building in question, the regulated companies' terminal and administrative offices and computed a rent based on the terminal's capital structure. At no point in that record or Order is there any suggestion as here that in order to establish that reasonable rent, all of the owners' personal holdings and balance sheets should be included in that capital structure calculation or that by looking only at the building's capital structure, the shareholder-affiliates could somehow manipulate debt and equity levels between nonregulated and regulated holdings to the detriment of ratepayers. *See* Order, TC-001846, *WUTC v. Bremerton Kitsap Airporter* (Aug 2002) at ¶36 and Appendix C.

raised by the Company in rebuttal. In its Opening Brief, the Company, in contrast, simply incorporated by reference the Rebuttal Testimony of Layne Demas and referenced the Rebuttal Testimony of Jackie Davis on these points.[31]

33 Essentially, for both cost of debt and return on equity positions now asserted in its Initial Brief, the Commission Staff seeks "temporal updates" and cites to a *Pacific Power & Light* case from 2013 in support.[32] Despite Staff's simultaneous criticism of the age and relevance of Dr. Lurito's testimony,[33] it must realize the L-G ratemaking methodology was largely developed in knowing contrast to costs of debt, costs of equity, risk profiles and returns in the publicly-traded utility industry. In other words, Dr. Lurito, after thorough examination, testing and study, broadly rejected use and application of such factors to the regulated Washington solid waste collection industry. In Staff's concerted effort to draw upon parallels to the regulated utility industry, it loses sight of the fact that Lurito-Gallagher is a modified operating ratio rate methodology that conclusively evaluated and rejected many criteria traditionally relied upon by regulators for ratemaking for the energy and telephone industries. For the Staff to now continually seek to analogize and inject for instance, real estate investment company costs of debt or regulated utility returns on equity, exceeds any recognized criteria for solid waste ratemaking heretofore acknowledged and accepted by this Commission. Mr. Demas, in frank terms, tried to articulate this in his rebuttal testimony where he criticizes Staff's cost of debt premise and explains its inherent inapplicability to privately-held solid waste companies and the Staff's failure to perform weighted cost of debt study in its analysis.[34]

[31] Exhibits LD-1T, p. 5 and Exhibits JD-41T, pp. 20, 21.
[32] Initial Brief of Commission Staff., ¶42, p. 18.
[33] Id., ¶44, p. 19.
[34] Exhibit LD-1T, August 20, 2014, pp. 5, 6.

34 Staff nevertheless compounds its misapplication of the cost of debt theory discussion on Brief by announcing "...[t]hus, a company-wide cost of debt accurately reflects both the underlying costs and an appropriate return tied to an entity's level of risk..."[35] Actually not. A company-wide cost of debt accurately reflects the true cost of debt while the company's return on equity reflects the appropriate risk return for the specific capital structure. For example, if a company has 100% equity, it would naturally be less risky and not need much risk premium added to its higher equity return. Conversely, if a company capital structure is mostly debt, say 95% debt/5% equity, it would require a higher return on its lower equity percentage due to the added risk of carrying so much debt. The "fundamental principles" guidance of Staff needs some reworking, at least on cost of debt precepts.

35 And, as noted repeatedly on its cost of debt discussion for its cost-plus-return calculations, the Staff also seeks to "modernize" or update the recommended return factors in "ROE" (return on equity) calculations. It does so without reference to any expert testimony in this or any other reported solid waste general rate case supporting its "adjustments" here. In so doing, it ignores the costs of equity previously applied by Staff auditors in past rate cases for the Company, denies the Title 81 case endorsed a 15% return on equity, and boldly, again, seeks to unilaterally revise Lurito ratemaking theory by transplanting current publicly-traded regulated energy company return factors onto the Washington solid waste industry.

36 To the Company's knowledge, the Commission has never authorized revisions to Lurito-Gallagher and Title 81.77 RCW rate regulation along such broad or even incremental analogous lines. Perhaps the current rulemaking will consider and endorse some or all of these featured return factors being engrafted onto solid waste rate cases. But for now, the Staff's "seamless"

[35]Initial Brief of Commission Staff, ¶39, p. 17.

transposition is premature. While it may well be true that the Company's testimony relies on "historical capital costs"[36] it does so consistently with Title 81 case precedents, previous WCI rate case treatments and does not presuppose a conclusion in an individual general rate case while an industry-wide rulemaking is pending. That is the more appropriate forum to decree such sweeping changes to material elements of solid waste general ratemaking and one which can far more comprehensively study and weigh those topics.

C. Staff's Omission of Any Actual Analysis of Risk Premiums, Particularly in the Context of the Lurito-Gallagher Modified Operating Ratio Methodology, Invalidates its Cost-Return Theory.

37 Two final points to remember here on land rents are that the capital structure the Staff is seeking for affiliate rents would necessitate a considerably higher ROE, reflecting the risk premium associated with a highly-leveraged company often several times higher than a debt-free entity. The publicly-traded entities Staff relies on would typically generate a lower return on equity due to their inherent "less risky" qualities as compared to small, privately-held companies like WCI. One of the essential missing elements in Staff's return on equity recommendations for affiliate land rents is, of course, comparing investments to evaluate higher or lower risk factors to set a return. Staff witness Ms. Cheesman was asked at hearing about whether she had engaged in such a comparison:

> Q: "No I'm saying did you -- did your return-on-equity recommendation also evaluate factors that generally bear on the rate of return, such as whether higher amounts of debt equate to higher risk factors necessitating a higher rate of return?"
>
> A: "No, and apologies for my last answer. I was confused."[37]

38 Yet as Dr. Lurito had said in his original prefiled testimony in the *Sno-King* case…

> "[the] relationship between risk and anticipated return applies not only to alternative

[36] Initial Brief of Commission Staff, ¶45, p. 19.
[37] Cheesman, TR. 212:1-7.

forms of investment, but also to companies that exhibit different risk characteristics. As a result, the fair rate of return for a relatively risky company would be higher than for a less risky one. For example, the fair rate of return for a solid waste hauling operation, if it could be directly measured, would potentially be higher than the return for an electric or telephone utility."[38]

39 While Staff, in 2014, apparently did not think it important to evaluate factors such as risk factors bearing on the rate of return, it is clear that Dr. Lurito, in advancing the Lurito-Gallagher modified operating methodology for solid waste ratemaking, did.

40 Indeed, Staff's testimony on this point of risk comparison indicates that "I'm not sure about that. I - - I wouldn't know." [39] This is its answer to whether returns on equity for closely-held asset companies would typically yield higher returns on equity than publicly-traded entities. Again, this basic misperception or lack of inquiry on risk premiums permeates the Staff's entire position on affiliated land rents in this proceeding which, as noted above, also seeks to engraft theories and allocation factors from "megawatt" public utility cases onto affiliate relationships involving a $5 million-a-year regulated solid waste collection company. Dr. Lurito's previous testimony would obviously challenge Staff's current premise.

41 The Company contends that its stance on reasonable returns on affiliate rents merely seeks to impute a reasonable capital structure in its cost plus return analysis rather than Staff's extreme rendition that attempts to mask lack of support in the record for its artificial capital structure. By simply alluding to and relying upon generic finance and accounting principles again in defense, Staff simply cannot overcome an absence of support for its hybridized capital structure and punishing advocated returns on debt and equity for affiliate rental properties.

D. Staff's Three-Factor Allocation Approach Resurfaces in its Concluding Discussion of the Allocation of Depreciation and Net Investment in Calculating Affiliate Land Rents

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[38] Exhibit LG-1T, Dockets TG-900657 and 900658, *WUTC v. Sno-King Garbage Co. Inc. and WUTC v. Northwest Garbage Co., Inc.*, p. 8 (Jan. 1991).

but Encounters the Same Flawed Assumptions and Inconsistent Criteria Applications Noted Previously on Utility Expense Allocations.

42 Despite its concerted defense on Initial Brief, Staff's proposed three-factor allocation is not at all analogous to or appropriate for allocating rents in shared space. This is due to a simple fact: the Staff's three-factor allocation does not include cost-drivers relevant to the costs being allocated. Under Staff's basic theory of cost plus returns on rental property, it would be necessary to apply the three-factor allocation to all of the buildings occupied by any of the three companies since the cost drivers Staff utilizes are number of employees, fixed assets and adjusted revenue as included its three-factor formula.[40] Applying Staff's theory literally, WCI would then receive a portion of the return on the net investment in the transfer station and MRF as well as the locations it actually *does* occupy, but would only receive the three-factor allocation percentage based on its overall share of all rented facilities. Thus, the percentage applied would be smaller than what the Company has calculated, but would be applied to a far larger net investment and depreciation amount. Although this latter calculation has not been performed, the Company asserts it could yield a greater return on rents than the approximate $164,000 Company has even asked for in its current rate case. As witnessed, the Staff's logic is fundamentally flawed in applying its allocation factors to compute appropriate rents.[41]

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[39] Cheesman, TR. 210:23

[40] As Jackie Davis attempted to distill: "... But if you're using 100 percent of a company's drivers for their allocator and then only a tiny portion of that company is actually in shared space, it creates a very unreasonable allocation of rent to that larger entity who's not truly occupying that space." Davis, TR. 147:2-7.

[41] To recap, the Company proposed in its case that the office building, outside parking area, wash area and Boneyards Improvements utility costs all be shared by the three entities on a one-third allocation basis as had been done in previous WCI rate cases. The Woodland property and cart container storage rental parcels shared by WCI and affiliate Waste Control Equipment were proposed to be allocated on a 50% basis. The warehouse across the street from WCI is also allocated one-third to each of the three entities WCI, WCE and WCR. The new truck shop is also shared by those three entities and is allocated upon a new basis of the number of trucks at the time the truck shop entered service which appeared to be acceptable to Staff and was an updated methodology for allocating shared rental properties. *See* Exhibit No. JD-41T, pp. 19-20, and for the Company's support, the detailed computations and calculations in Exhibit JD-43 for specific land rent calculations which include various affiliate companies and importantly, allocations to noted properties and average investment computations. While harshly criticized by Staff as "unsupported" and "overly-simplistic" (Exhibit MC-13, p. 3), this Company allocation methodology had not only

43 Staff's concluding flourish for applying its three-factor allocators to depreciation/average net investment computations for affiliate cost plus return rents then appears to come full circle. Citing what it claims are appropriate tenets of GAAP, it repeats the maxim that shared costs be allocated based on cost-driving factors. Then, after chiding previously-accepted WCI rate case allocation bases it dismisses now as "unsupported," it simply references its previous testimony in support of utility expense allocations announcing, without further analysis, that apportioning average net investment and depreciation for affiliate rent returns based on number of employees, revenue and net book value of assets must necessarily be reasonable and appropriate.[42] This is yet another example of Staff's self-fulfilling prophecy rationale. The vacuum or ellipsis here is the failure to evaluate whether the cost drivers it advocates (mistakenly), for allocation of utility expenses, in fact include drivers appropriate to the actual costs being allocated in shared properties. Again, the theory in isolation appears credible and potentially relevant in application, but upon closer examination, completely collapses for lack of consistency and pertinent relationship to Staff's preordained cost drivers.

IV. REPLY TO INVESTIGATION COSTS ARGUMENT

A. The Staff Converts RCW 81.20.020 into an Automatic Statutory Penalty but Fails to Defend the Provision's Specific Verbiage, Lack of Prior Notice to WCI, Recognition in any of the Commission's Cases nor Explains why it Implies a Case Must be Adjudicated to Invoke the Provision.

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been previously accepted in prior filings but is mathematically far more logical and accurate than a "three-factor formula" which factors, individually or in the aggregate, make no sense and are internally inconsistent as noted.

[42] Initial Brief of Commission Staff, ¶¶47, 48, pp. 20, 21. But again, the Staff would caution against isolating any of those three factors individually to "provide a fair result." Cheesman, TR. 231:8, 9.

44 Staff once again on Initial Brief strains to defend its unprecedented recommendation to the Commission that WCI suffer the imposition of a $43,818 investigation fee for its filing in these two dockets.[43]

45 The Initial Brief of Commission Staff also surprisingly suggests there is some contradiction in the Company arguing as it has (as is also actually echoed by the Staff) that this is the first formally contested adjudicative solid waste rate case in over 20 years and at the same time claiming it knows of no other case where investigation fees have been imposed. That argument is hardly "irrelevant" nor does it impact the statutory authorization (**not** "statutory directive") in RCW 81.20.020.[44] As the Company noted in its Opening Brief, there are numerous solid waste rate case suspension orders of the Commission over the last 20 years where a proponent Company is notified that it may or will be "assessed investigation fees" for the rate case audit investigation. Not only was that not included in any of the orders in either Docket Nos. TG-131794 or TG-140560, but the Staff apparently erroneously assumes here that an investigation fee will only be imposed if there is an "adjudicated solid waste general rate proceeding."

46 Staff's interpretation of the statute wants it both ways. It seeks RCW 81.20.020 to be a "directive" where the Commission would have no discretion but to impose the investigation fee but then also omits any analysis of where it has ever been applied in any contested or **uncontested** solid waste rate case. In the *Bremerton-Kitsap Airporter* case that Staff selectively critiques throughout its Initial Brief, the isolated investigation fee imposition in a Final Commission Order there was imposed upon a respondent which had filed and withdrawn five

[43] A recommendation Staff admitted at hearing was a first for a solid waste general rate case proponent. TR. 245:1, 4.
[44] Initial Brief of Commission Staff, ¶69, p. 30.

separate rate cases in ten years and was defending its current rate levels in a **complaint proceeding**, not in a conventional general rate case. The Staff simply fails to provide any legal or factual support for its unprecedented effort to impose an investigation fee even had this particular respondent been notified of that potential.

47 There is also a very recent Title 81 RCW precedent to note which underscores the Staff's "selective" interpretation and enforcement of RCW 81.20.020. *In re Washington Utilities v. Shuttle Express, Inc.*, Docket TC-120323, Order No. 04 (Mar 2014), the Commission there imposed a $60,000 fine for repeat prolonged violations of Commission rules in a regulated carrier's second show cause proceeding for "knowing and willful" violation of Commission rules in contravention of its prior settlement agreement with Commission Staff. Significantly, the Staff in that case apparently did not seek any investigation fee for Staff's considerable work and time over a period of years in investigating the allegations and for the numerous and repeat violations of Commission rules nor does the Commission's Final Order impose any investigation fee in addition to the penalty for the violations of law and rule it finds. In this case recall, the Staff is seeking to impose an approximate $43,000 investigation fee (about seven to eight percent of the total revenue requirement increase) against a long-serving public service company under Title 81 RCW uncharged with any violation of Commission law and rule who has simply pursued a statutorily-authorized general rate case(s) in exercise of its due process rights and Commission law and rule. The punitive contrast could not be clearer and the Company, not unsurprisingly, views that as "retributive," which its Opening Brief charged.

48 Finally, the Staff never seems to acknowledge the discretionary nature of the investigation fee language which Commission case law would suggest is rarely applied but which context is also contained in the statutory verbiage. Indeed, the Staff omits any reference

in its argument to the conditional nature of the imposition of the fine in the statute itself which provides "...[**w]henever** the Commission in any proceeding upon its own motion or upon its complaint **shall deem it necessary** (emphasis added) in order to carry out the duties imposed upon it by law..." The statute, by its very terms, is discretionary to the Commission and it is not the Staff's prerogative to make law here by implying the recommended imposition of the investigatory fee is routine, mandated or in any way justified in this circumstance.

V. RATE CASE COSTS

A. The Staff's Continuing Advocacy to Slash Rate Cast Cost Recovery is Arbitrary, Punitive, and Blames Only the Company for those Costs' Magnitude without any Countervailing Examination of its Own Role in Contributing Thereto.

49 The Commission Staff on Initial Brief echoes all if its now familiar arguments about why the punitive and wholly unsupported 50% rate case cost denial recommendation is warranted, including its previous references to a "failed case" and equating recovery of rate case expense with a burden-shifting "lose/lose" proposition for ratepayers. But it also adds sharper edges to its previous rationale to which the Company here now responds. The Company and its representatives continue to be struck by the tone of Staff's theory in this regard. Without reconstructing past history, the Order dismissing the rate case in Docket TG-131794 gave the Company a ten-day window to maintain its temporary rates subject to refund or risk loss of approximately $173,000 in current revenue requirement subject to refund. The Staff approvingly cites that Order of Dismissal in its Initial Brief at page 26, and the bulk of Staff's discussion of principles, rationale and motivation for its recommendation of cutting rate case costs for the Company includes liberal attribution of blame for the original "failed case," continuing admonition of the Company for complexity and protraction of the rate case,[45] including

[45] The Company also finds ironic in the continual demand for punishment for a "failed case" and attribution of blame for the case dismissal, *infra*, Staff's suggestion in its Opening/Initial Brief that it therefore needs to "share"

subjective description of the Company as "pursuing illogical positions"[46] and other pejorative terms characterizing the Company's stance throughout. It also includes a novel claim that not to slash rate case cost recovery "possibly incentivizes Company shareholders to make inadequate filings, pursue illogical positions and prolong rate cases."[47] Based on the totality of evidence and exchanges between the parties submitted in this record, that latter statement seems particularly intemperate and should not be acceptable to this Commission.

B. The Staff's Argument on Initial Brief once again Focusing on the "Failed Case" and Prior Order of Dismissal Merits Further Focus due to the After-Acquired Knowledge about Exclusions from the Commission Official File when Contrasted with the Company's Numerous Efforts to Communicate on Formatting and Presenting its Case in Chief Months After the Staff's Audit.

50 It is past time to address the Staff's repeated references to the so-called "failed case" which reference was also foreshadowed and addressed in footnote 1 to the Company's Motion for Temporary Rates Subject to Refund on February 24, 2015. As noted, these claims surround the original dismissal of the initial WCI general rate case in TG-131794 and that earlier reference to the Order 05 of Dismissal.[48] The Company now flatly disputes the Staff's frequent and recurring attribution of blame in this circumstance. As the previous reference in that Motion for Temporary Rates explains, it was not until fall 2014 (just after the Opening Brief was filed) that

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rate case costs between the shareholders and ratepayers (and thereby receive no recognition for more than half of its professional fees in rates) when it was actually the **Company** and its representatives who actually tried to **save** ratepayer expense by concerted and documented efforts at reaching out to Staff and the other side prior to filing its case in chief in TG-131794 in February 2014. The goal in those attempts should have been mutual in seeking to mitigate the expense for presentation of uncontested accounting issues. Thus, in originally seeking ratepayer expense mitigation by addressing the fact that the original rate filing was fully reviewed, vetted and analyzed for almost five months prior to its case in chief filing and focusing instead on the rate case adjustments that then divided the parties, the Company's object was one of saving expense and avoiding duplication of costs, which Staff met in turn with non-communication and ultimately, an adversarial dispositive motion.

[46] Initial Brief of Commission Staff ¶54, p. 24.

[47] Id., ¶54, p. 24.

[48] What was not understood, at least by the Company upon Dismissal, was that when it filed its support for the initial rate case in September, 2013, all of the voluminous workpapers, schedules and documented accounting adjustment explanations were excluded/deflected from the evidentiary record file. The alternative of seeking "official notice" to be taken of documents in its Response to an attempt to dismiss the filing presupposes that the Company and its representatives are aware that its original rate case support was not contained in the file.

the Company, its counsel, the intervenor and representatives realized that the entirety of the original Company workpapers and voluminous support for its filing from September 2013 were not contained in the "official file" for the adjudication.[49]

51 As with all filings at the Commission's Records Center, the Company reasonably believed (apparently at its peril) all paperwork served upon the Records Center would become a part of the official file and record upon which the Commission would decide its case.[50] As repeatedly noted in this proceeding, because solid waste general rate cases are subject to thorough review, vetting, analysis and data requests long before any formal suspension Order is typically entered, the assumption that the Commission file contains all support marshaled by the Company and submitted to and filed with the Records Center would seem natural. Indeed, without the Company's initial filing, it is difficult to see how even a prima facie showing for changes in rate levels could ever be made. That basic assumption is why Exhibit JD-42 was written in anticipation of the Company's case presentation in chief 12 days prior thereto seeking thoughts on presenting a case with an already developed file without wasting too many additional resources on non-contested adjustments. Clearly, had the Staff ever raised the issue of Company workpaper filing exclusion which is apparently not memorialized in any known statute, rule or policy of the Commission, either in response to Exhibit 42 or in status

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[49] A problem which ironically recurred in that very same recent Motion for Temporary Rates when the Company's accompanying schedule/workpapers to support the proposed rate spread in the Motion were apparently excluded by the Records Center, unbeknownst to the Company. It only learned of this official filing issue "glitch"/ "failure" through footnote 3 of the Staff's Response to the Company Motion filed on March 6, 2015. Unlike February 2014, however, the Staff alerted the Company to this anomaly by express reference in its pleading in lieu of filing a Motion for Dismissal or Motion to Strike the entire pleading.

[50] And the Company's primary accounting witness Ms. Davis confirmed that essential understanding at Davis, TR. 142:8.

conferences, the Company's focus and presentation in its original filing in chief on February 18, 2015 would have been far broader.[51]

52 The ensuing Motion and Order of Dismissal and the subsequent workload duplications of both Company and Staff were entirely unfortunate, avoidable and hardly solely attributable to the Company under these circumstances. Due process clearly must depend on fairness and transparency which the Company now believes was lacking in this situation. Moreover, in its view, when coupled with the documented, acknowledged "material gaps" in Staff communication in this case, again, blame is inappropriately dropped at the Company's doorstep.

C. The Staff's "Half a Loaf" Rate Case Cost Recovery is Unscientific, not Tied to any Real Analysis of when Costs were Incurred and in which Docket and Transfers its "Failed Case," Ill-Founded Theory to Actual Rate Case Cost Reductions.

53 In the midst of its descriptions of the Company's filing seeking to defend its alleged "arbitrary" position, the Staff also buttresses its random selection of December 24, 2013 as the measuring point of the 50% cost reduction by the rationale that is the date upon which the Prehearing Conference Notice issued, the date at which "the Company began preparing its formal case."[52] This isolated and random benchmark is obviously not reflective of any support for why a 50% reduction in rate case costs from that point on in the two proceedings is either fair or logical.[53]

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[51] Moreover, the precise basis, as reflected in footnote 1 of the Prehearing Conference Order 02 in TG-140560, for Granting that Motion for Dismissal was "insufficient support for its request." That support again, would have been far differently modulated had the Company understood at the filing of its March 2014 Response that its entire original support for the filing was in fact excluded from the official adjudicative file.

[52] Initial Brief of Commission Staff, Fn. 96, p. 24.

[53] The Company would note that the "50% reduction description" is also by now hardly mathematically accurate since the bulk of the Company's accounting and legal costs have been incurred after the December 24, 2013 benchmark on which Staff begins its rate case expense-slashing prescription. *See, (i.e. Exhibit JD-47).* By November, 2014, that proposal likely represents an approximate 70% or more reduction to rate case expenses which, even under Staff's punitive rationale, disproportionately "shares" overall rate case expense even assuming Staff's non-communication and non-cooperation episodes and Motion to Strike are not found to have contributed to any procedural missteps/pitfalls/delays in this proceeding to date.

54 The irony of Staff's rate case cost recovery position is heightened in relation to the motivation for cost reduction as the backdrop of the original case dismissal. The entire goal of the Company's attempt to coordinate, streamline and condense original case filing in TG-131794 was directed to the anomaly of this solid waste case being prefiled and thoroughly audited and reviewed almost five months before the initial contested case submission.[54] As echoed frequently by the Staff as well in its Initial/Opening Brief, this was the first contested solid waste general rate case adjudication in over 20 years and the current procedural rules and precedents have thus not confronted this circumstance for at least two decades. Even aside from the conundrum of what was contained in the official file, it was out of concern for minimizing costs, avoiding redundancy and ultimately, judicial economy that the Company, through its representatives, made repeated overtures to the Staff in the critical period prior to the filing of its original case in chief in February.

55 As Exhibit No. JD-42 again reflects clearly, there were specific communiques to Staff representatives seeking to resolve the perceived procedural and formatting dilemma posed by how the initial filing in September 2013 should be treated and an expressed concern to avoid "add[ing] to rate case expenses by refilling (sic) documents that haven't changed or are not new." While, as has been repeatedly noted, it is certainly not up to the Staff to assist the Company in presenting its case, there are on the other hand express affirmative cooperative obligations on all counsel under the Civil Rules of Procedure to which the Commission looks to for guidance in interpreting its own rules.[55] WUTC procedural rules also mandate parties' good faith efforts to informally resolve disputes i.e., (WAC 480-07-425) in discovery, which

[54] For an additional discussion of the "flawed/failed case theory," *see also,* footnote 1, Waste Control, Inc.'s Motion to Allow Temporary Rates subject to Refund et al., February 24, 2015 at p. 2.
[55] Order M.V. No. 140273 *In re Thomas C. Kolean and James B. Stewart d/b/a Olympic Transport,* App. P-72389 (Sept. 1989) at p. 6.

encourage cooperation between Staff and Company representatives which had always been the undersigned's 35-year experience, unfortunately, until this case. Again, the sad irony here is those specific efforts were expended to avoid exactly the outcome that arose in March 2014.

56 In that regard, one need only review again the Appendix of email and written formal correspondence between the parties and its representatives in the April-June interval attached to the "Declaration of David Wiley in Support of Waste Control Inc.'s Motion for Appointment of Discovery Master and Alternatively Scheduling a Discovery Conference." That includes a trail of over 20 separate exhibits and exchanges between April 16, 2014 and June 3, 2014 which undeniably reflects efforts by the Company to resolve, in good faith, on-going discovery disputes and communication concerns that were largely ignored or deflected and against which the Commission Staff was forced to defend in its Staff case filing on July 18, 2014 at pages 56, 57.[56]

57 The Staff also now appears to be justifying its partisan advocacy for disallowing much of the Company's rate case costs by seeking to neutralize its previous non-cooperative behavior and, potentially, incentivizing it. While no one ever suggested the Staff is responsible for aiding the Company's case, the attitude reflected by the Staff at least up until change in counsel in early June 2014 and until the successfully-convened Discovery Conference of July 11, 2014, simply

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[56] *See,* Exhibit MC-1T, pp. 56, 57. The Company would also dispute that this non-cooperative phase lasted just two weeks in the latter half of May which the Staff witness in written and live cross-examination (*see, i.e.* Cheesman, TR. 267) testimony asserted. Again, the email trail referred to above, and Exhibit JD-42's non-response by Staff confirm an uncooperative characteristic of Staff well before mid-May, 2014 which the Company repeatedly sought to ameliorate. The fact that Staff even felt a need to defend its lack of responsiveness is noteworthy as is continuing reference to the retirement of prior counsel as excuse for its lack of communication which retirement was well-known to all parties and was discussed on the record of the Prehearing Conference of April 30, 2014 along with appreciation for that retiring counsel. Moreover, the five-business day acceleration in the retirement of the Assistant Attorney General was communicated in a telephone call to the Company the day before his departure on or about May 22, 2014, which communication and content astoundingly appears to be unknown to Staff. This is obviously hard to fathom. For a synopsis of the prior challenges to the "change of counsel" excuse for Staff non-communication/cooperation, *see again,* Waste Control, Inc.'s Response in Opposition to Staff Motion for Extension of Time, Delay of Hearing Schedule (June 17, 2014), pp. 6,7.

does not reflect the tone of case management and cooperation between Company and Staff in the Company's or its representative's long experience.

D. The Staff's Rate Case Cost Position is Outdated, Obfuscating of Causation and Mitigation Efforts, Ultimately Unfair and Unreflective of Company-Staff Cooperation Obligations.

58 One of the final ironies of the current rate case cost recovery dispute is that it reflects, in the Company's view, past division that no longer exists in cooperation and communication between the parties, and Staff's continuing recommendation for denying rate case costs ignores causation and resuscitates and perpetuates conflicts regarding fast cooperation that are no longer relevant.[57] Again, engaging in a "blame game" as has Staff both in its Initial Brief and recent submissions such as its "Narrative Statement in Support of Partial Settlement," is obviously not constructive nor relevant. Staff's proposal to cut rate case cost recovery remains unwarranted and unreflective, in the Company's view, of a consistent good-faith, "clean hands" strategy on Staff's part to cooperate and resolve the rate case audit or contested case process.

59 In a late aside in its Brief to its defense of its rate case cost-slashing advocacy, the Staff asserts that WCI's rebuttal testimony also fails to consider "the extraordinary magnitude of rate case costs in this proceeding..."[58] Again, that is a stunning and overreaching assertion which completely ignores the Company's prior testimony and exhibits or the express acknowledgment by Staff that it does not contest the amount of time or expense invested by the Company for rate case costs to date. The Company has referred previously to the "considerable costs" this rate

[57] An exception to that being the Staff's recent Objection to and Motion to Strike Supplemental Testimony which again represents, in the Company's view, cooperation and communication issues which it believed were settled prior to that adversarial Motion and which Order 10 found, in rejecting Staff's Motion: "...[a]s is evident from the email exchange between counsels for both parties, the filing of testimony by WCI should not have come as a surprise to Staff." That Motion, devoid of supporting facts or legal arguments as it was, is difficult to characterize as good faith adversarial process and is not a rate case expense which even the Staff could credibly argue the Company should now "share."

[58] Initial Brief of Commission Staff, ¶65, p. 28.

case has involved,[59] and in its original case filing in JD-1T, also characterized the "unusually high" professional fees in this particular rate case. At Exhibit JD-1T, lines 11, 12 it further acknowledged the high level of the fees and expressed regret at their size, including a description of accounting fees as "twice as high" as the last rate case by November 13, 2013, alone. Any allegation that the Company has not regretted nor repeatedly acknowledged the size of the professional fees incurred to date is false.

60 Moreover, those professionals have also documented appropriate unilateral reduction/concessions to partially mitigate those costs (*See* updated Exhibit JD-48) which total through March 2015 billings, professional fee discounts of $45,953.00 and which are continuing to the present. Thus, the Company not only **did** consider and acknowledge these costs, it took frequent opportunity to attempt to mitigate them. It did so not only in its failed efforts to streamline its case presentation in its original case but also in utilizing the same test year in Docket No. TG-140560 and most of the previous workpapers as exhibits (subsequently criticized by Staff as unduly complicating and duplicative) and ultimately in reaching tentative settlement with the Staff in September 2014 on the majority of contested accounting issues, thereby avoiding public hearings on the bulk of the accounting issues and even greater outside professional costs in this matter. In light of the evolved circumstances surrounding the original case dismissal and the subsequent recognized communication gaps attributed to and acknowledged by Staff, it is unreasonable and unwarranted for the Staff to accuse the Company either of not recognizing the extraordinary magnitude of rate case costs incurred on both sides in this case or not acknowledging the concrete steps the Company has unilaterally initiated to mitigate those costs throughout the proceeding.

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[59] Exhibit JD-42, Lines 13, 14, p. 47.

61 In contrast, the Commission Staff ostensibly dedicated at least one full-time analyst for over a year and a half to this case, incurring 1,595 hours of accounting time alone through June 2014.[60] It also filed an unprecedented 41-page Initial Settlement Narrative in this matter which obviously required significant time and, which again, appeared primarily directed to explaining why the Staff's change in major accounting positions and revenue requirement recommendation was largely the fault of the Company for a multitude of sins cited in the Partial Settlement Narrative.[61] Accountability for rate case costs in the Staff's view is again unilateral.[62]

62 Pressed repeatedly at the recent hearing on whether Staff's continuing attribution of blame to the Company for extraordinary rate case costs was fair, Staff steadfastly refused to budge. Pointing to the various "communication gaps," disputes resulting in a discovery conference, the Motion to Strike, Company email documentation of Notice and overtures to Staff to head-off disputes and the critical overture in TG-131794 to address formatting of an extensively audited case to avoid cost increases and confusion in February, 2014, were all dismissed out of hand by the Staff witness. In a series of questions beginning at TR. 259 continuing to TR. 268, the Staff witness did not waiver in expressing her "qualified opinion" that those escalating costs were the Company's fault.[63] Indeed, even after the Staff itself had highlighted in its Response to the Motion for Temporary Rates less than a week before the

[60] *See* Company Opening Brief, footnote 27, p. 12. That works out to be 159.5 hours a month which suggests a full-time occupation. Indeed, that concentrated time allotment continued into 2015 where the Staff witness indicated she had been dedicating 10-30 hours a week on this case and clearly more in the last two weeks prior to hearing. Cheesman, TR. 258:17, 20, 21. Updated Exhibit JD-47, again, would also suggest the Company's incurred professional time increments is considerably less.

[61] The length of that Narrative and the obvious expense involved in preparing it are particularly concerning when one considers that a recent Settlement Stipulation in the *Avista* matter filed in August, 2014 involving six separate parties was only 16 pages in length for a full, not partial settlement agreement. *See, WUTC v. Avista Corporation d/b/a Avista Utilities,* UE-140188 and UG-140189 (Aug 2014).

[62] Moreover, the Company notes that the Staff has utilized two counsel either separately or together often during this current rate case while the company has basically relied upon a single counsel. The professional in-house "resource deployment" by Staff has clearly not been insignificant nor has the Company attempted to be anything but judicious in its use of professionals' time.

[63] Cheesman, TR. 259. The Company believes the adjective put to the witness on cross-examination initially was correct. As her subsequent answers reflect, she placed no "qualifications" on that opinion.

hearing the issue of whether the Company's supporting workpapers had been officially filed, the witness maintained total Company blame attribution and failed to testimonially acknowledge another material episode of Company workpaper exclusion from official Records Center filings.

63 Ms. Cheesman even maintained her original characterization of the Company filing overture in Exhibit JD-42 in February, 2014, in that cross-examination interchange:

> Q. Do you view those attempts as equivalent to asking the Staff's assistant to present the Company's case - - assistance to present the Company's case, or do you in fact, potentially view that as an effort to resolve disputes between the Company ad the Staff prior to filing the case in chief?
>
> A. I see it as the Company seeking or soliciting advice in how to file its case.[64]

64 The expression "damn the torpedoes" comes to mind here. Exhibit JD-42's language alone fails to support such stubbornly harsh characterizations of the Company-Staff communiques at that pivotal point. In the Company's mind, Staff testimony here almost approaches a level of "stonewalling," particularly in ignoring its own recent revelation of Company workpaper and supporting schedule exclusions in the Response to Motion for Temporary Rates Subject to Refund.

65 In contrast, in the Company's and undersigned's experience, the Commission traditionally values and anticipates that all parties appearing before it work cooperatively to communicate and resolve procedural and substantive issues to the betterment of regulated ratepayers and Companies alike. The Company earnestly believes it has done so throughout this case even in its prior persistent dispute about hardcodes and externally-linked sources, where the email trail referenced, above, clearly establishes multiple attempts to resolve disputes short of more formal, adversarial process. It also does not believe procedurally-sanctioned Motions to Dismiss or to Strike should become the norm for resolving case disputes nor does it consider

[64] Cheesman, TR. 266:25, TR. 267:1-8.

efforts to clarify and seek the opposing side's perspective on formatting, presentation or cost duplication avoidance is "seeking or soliciting advice on how to file [or prosecute] its case."

66 In short, being vindicated on a prior litigation position blaming the Company for "extraordinary rate case costs" for a "failed case" should at least by now have been replaced by objective recognition not only of mutuality of causes for this case's protraction, but also by good-faith admission that the "failed case, blame the Company for all costs" mantra is unfair, outdated and unjustified. The Company therefore asks that the Commission reject such contentions, denying rate case cost reduction here and reaffirm its support for adversary parties working cooperatively and communicating on all matters which act to streamline process and reduce costs.

67 Finally, the failure of the Staff to acknowledge the use of this general rate case as a veritable "incubation lab" for many novel, unrecognized accounting adjustment theories and recommendations and the costs and burdens attendant thereto is significant in this cost equation. Indeed, rather than castigating the Company for extraordinary rate case cost expense, the Staff should appropriately be asked what it offered in the way of concrete mitigation of these costs at critical junctures in the case.[65] As noted above, the Company has repeatedly acknowledged the unfortunate and unprecedented level of rate case costs here and presented concrete examples of mitigation itself, but what point is served by continuing to point fingers rather than offering examples of cooperative efforts to control costs to an optimal degree during a natural adversary

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[65] Indeed, the Staff's recent ill-fated Motion to Strike Testimony is another example of delay occasioned at such a pivotal point, just three days before the original deadline for filing the instant Reply Brief of November 20, 2014. Not only did pleadings and process to respond to that Motion cause rate case costs to again naturally rise, but that process, subsequent Order and now hearing on the remaining contested issues not only unavoidably raised costs but also served to prolong the interval for final action on this filing, costing the companies and ratepayers alike. The Company cites this example again, not to reciprocally attribute blame to the Staff, but to suggest that prescribing the "meat ax" 50% reduction approach in allowed rate case costs is not only technically inaccurate, but completely oversimplifies any fair evaluation of why rate case costs reached the high levels unfortunately experienced in this proceeding.

process? Again no one, least of all the Company, wants a repeat anytime soon of the financial hardships imposed to defend itself in this protracted proceeding, but mandating a harsh "half loaf" in rate case recovery hardly ameliorates nor fairly accounts for the time and procedural twists and consequences of the various accounting issue challenges raised to date in this proceeding.

VI. CONCLUSION

68 It is indisputable this docket has been an "arduous" general rate case filing for all parties, their representatives, and the presiding officer, and as just described, one with sizeable and unfortunate financial burdens and consequences for all concerned and specifically, the Company. What may have started as a fairly "garden variety" general rate case filing soon escalated into an audit, document and discovery-intensive proceeding.

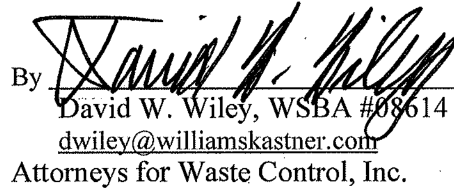
69 In the current suspension interval, the Company (except for fuel and disposal costs relief), has seen its legitimate need for increased rates unrealized pending final resolution of the tentatively-resolved accounting adjustment items and the remaining sharply contested topics which are the focus at this stage of the proceeding.[66] For its part, the Company also sincerely appreciates the Commission's efforts and attention to this proceeding, and as expressed earlier, regrets and does not anticipate a recurrence of the time, divisiveness, costs or sheer number of challenges arising here any time soon. Indeed, as noted in the introduction to this Reply Brief, it anticipates the Lurito-Gallagher and general rate case procedural rulemakings now underway will address and potentially resolve many of the contested accounting adjustments themes, disputes and arguments raised in this filing. Based on its recent experience, the Company has a growing list of concerns and contentions to advance in those dockets which it will seek to raise

[66] The Company would also now appreciatively acknowledge, as this Reply Brief was being finalized, the grant of additional interim rates subject to refund authorized by Order 11 on March 25, 2015.

independently or in conjunction with the Intervenor, Washington Refuse & Recycling Association. Finally, this case has unquestionably highlighted an urgent need for reconciliation and resolution of accounting issues confronting solid waste general rate case proponents at present, and time is truly of the essence.

Dated at Seattle, Washington on this 27th day of March, 2015.

RESPECTFULLY SUBMITTED,

By 

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