

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TG-140560
TRANSPORTATION COMMISSION,)	
)	ORDER 12
Complainant,)	
)	INITIAL ORDER REJECTING
v.)	TARIFF FILING, ACCEPTING
)	PARTIAL SETTLEMENT
WASTE CONTROL, INC. (G-101),)	AGREEMENT, AND
)	AUTHORIZING AND
Respondent.)	REQUIRING TARIFF FILING
)	
.....)	

Synopsis: The Commission rejects the tariff sheets filed by Waste Control, Inc. (WCI or the Company) on April 3, 2014, by which the Company requested to increase rates by approximately \$532,000, or 15.4 percent. Instead, the Commission approves and adopts a Partial Settlement Agreement filed on October 14, 2014, and entered into by WCI and the Commission’s regulatory staff (Staff) resolving all but four contested issues.

We adopt Staff’s three-factor allocation methodology for the shared utility expense adjustment and allow \$15,424 into WCI’s revenue requirement. The Commission also approves Staff’s calculation of the land rents adjustment, allowing recovery of \$85,217. We find Staff’s recommended rate case disallowances reasonable, and approve Staff’s request for the assessment of investigation expenses in the amount of \$43,818.82 against WCI.

SUMMARY

1 NATURE OF PROCEEDING. On April 3, 2014, Waste Control, Inc. (WCI or Company) filed with the Washington Utilities and Transportation Commission (Commission) new Tariff No. 16 reflecting a general rate increase that, if approved, would generate approximately \$532,000 (15.4 percent) in additional revenue. The Company is currently collecting temporary revenues for increased disposal fees in Cowlitz County,¹ and temporary revenues

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

for rates agreed to as part of the partial settlement agreement (Partial agreement) filed on October 14, 2014, both subject to refund.

- 2 **PARTY REPRESENTATIVES.** David W. Wiley, Williams, Kastner & Gibbs PLLC, Seattle, Washington, represents WCI. Brett Shearer, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).² James K. Sells, Gig Harbor, Washington, represents the Washington Refuse and Recycling Association (WRRRA).

MEMORANDUM

I. Background and Procedural History

- 3 WCI originally requested approximately \$392,000 in rate relief on September 23, 2013, in Docket TG-131794. The Commission suspended the Company's tariff revision on November 27, 2013, and effective December 1, 2013, allowed WCI to collect rates to recover increased disposal fees on a temporary basis and subject to refund.³ The Commission also authorized the Company to collect a temporary fuel surcharge to recoup its increasing fuel costs.⁴
- 4 On March 25, 2014, Staff filed a Motion to Dismiss (Motion) the Company's rate request, alleging that WCI, in its prefiled direct testimony and exhibits, "failed to make a prima facie case for its requested rate increase."⁵ The Commission granted Staff's Motion in Order 05 and ordered that the Company refund the temporary disposal fee rate increase unless WCI

² In a formal *proceeding*, such as this, the Commission's Staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

³ *WUTC v. Waste Control, Inc.*, Order 01, Complaint and Order Suspending Tariff; and, Allowing Rates on a Temporary Basis, Subject to Refund, Docket TG-131794 (November 27, 2013).

⁴ Order 03, Order Approving Temporary Special Fuel Surcharge on Less Than Statutory Notice (January 24, 2014). The Commission has approved numerous extensions of this temporary fuel surcharge in Docket TG-140560 as well.

⁵ Staff's Motion, ¶ 7.

refiled its rate request, including the original temporary disposal fee increase, within ten business days from the effective date of Order 05.⁶

5 WCI refiled its rate request in this docket, including the temporary disposal fees increase, on April 3, 2014. The Company's requested tariff revision increases rates approximately \$532,000. In Order 01, the Commission suspended WCI's tariff revision and the Company was "allowed to continue to recover the rates related to the increased disposal fees on a temporary basis, subject to refund, pending the Commission's final order."⁷ On April 30, 2014, the Commission convened a prehearing conference before Administrative Law Judge Marguerite E. Friedlander and granted the intervention request of the WRRRA.⁸

6 On July 11, 2014, the parties engaged in a discovery conference to resolve their discovery concerns informally and directly.⁹ Staff filed its response testimony and exhibits on July 18, 2014.¹⁰ On August 15, 2014, Staff filed its supplemental testimony and exhibits, and the Company filed its rebuttal case on August 20, 2014.

7 Staff and WCI¹¹ filed a Partial agreement on October 14, 2014, purporting to resolve all but four of the contested issues in the proceeding.¹² These four contest issues, which will be discussed in detail below, are:

- Shared Utility Expenses
- Affiliate Land Rents
- Rate Case Costs
- Investigation Fees

⁶ Order 05, Initial Order Granting Motion to Dismiss and Rejecting Tariff Filing, ¶ 20 (March 25, 2014).

⁷ *WUTC v. Waste Control, Inc.*, Order 01, Complaint and Order Suspending Tariff; and, Allowing Rates to Continue on a Temporary Basis, Subject to Refund, ¶ 3 (April 10, 2014).

⁸ Order 02, Prehearing Conference Order; Notice of Hearing (May 2, 2014).

⁹ Order 05, Order Granting in Part and Denying in Part Staff's Motion to Clarify the Scope of WAC 480-07-520(4) and Motion to Compel; Granting in Part and Denying in Part WCI's Motion for Discovery Master and/or Alternatively, Scheduling of a Discovery Conference and Notice of Discovery Conference (July 2, 2014).

¹⁰ Staff filed *an* errata to this testimony on July 24, 2014.

¹¹ While WRRRA did not sign the Partial Agreement, it has also not objected to the filing.

¹² The Commission commends Staff, and specifically Ms. Cheesman, on the thorough and well-written testimony provided in support of the Partial Agreement.

8 While the parties initially suggested evaluating the four contested issues on a ‘paper record,’ this proved unworkable given the complexity of the issues involved and the acrimony of the parties. Staff, WCI, and WRRRA filed initial briefs on the four remaining issues on November 7, 2014.¹³ On February 2, 2015, Staff filed limited supplemental testimony, and the Commission convened a limited-scope evidentiary hearing, which focused solely on the four remaining issues, on March 11, 2015. At this time, the Commission admitted, without objection, all exhibits filed in Dockets TG-131794 and TG-140560.

9 On March 25, 2015, the Commission granted WCI’s unopposed motion to allow temporary rates, subject to refund, at the stipulated Partial agreement level of \$339,912, effective April 1, 2015.¹⁴ Staff, WCI, and WRRRA filed reply briefs addressing the four contested issues on March 27, 2015.

II. Partial Agreement

10 The Partial Agreement, filed on October 14, 2014, and attached as Appendix A to this Order, resolves 11 contested issues, including:

- Asset Useful Lives Reflect USOA/Depreciation Expense, Adjustment R-1A
- Property Tax Expense, Adjustment R-6G
- Spare Trucks Expense, Adjustment R-6H
- Capital Structure in Lurito-Gallagher, Adjustment R-8
- Cost of Debt in Lurito-Gallagher, Adjustment R-9
- Allocation of Average Investment to Non-regulated Operations, Adjustment R-10
- Labor Expense, Adjustment P-1
- Fringe Benefit Expense, Adjustment P-1A
- Fuel Expense, Adjustment P-4
- Residential and Commercial Disposal Expense, Adjustments RC-1A and P-5A
- Remove Non-regulated City of Kalama Operations, Adjustment RC-1

11 *Asset Useful Lives/Depreciation.* The parties have agreed to a final expense amount for the useful lives of depreciable assets like garbage trucks, service cars, and drop box trucks in the

¹³ WCI’s initial brief contained the unsolicited supplemental testimony of Layne Demas, Jacqueline Davis, and Joseph Willis. In an effort to guarantee Staff and WRRRA the same due process consideration of their positions on the four remaining issues, both parties were allowed to file supplemental testimony on February 2, 2015.

¹⁴ Order 11, Order Granting Waste Control’s Motion for Temporary Rate Relief, Subject to Refund (March 25, 2015).

amount of \$209,766.¹⁵ This expense amount reflects the standards outlined in the Uniform System of Accounts (USOA), which Staff asserts, “reflect[s] the common industry and Commission standards.”¹⁶ Use of the USOA standards for WCI’s depreciation expense and average net investment provides for “a fair and reasonable treatment of assets.”¹⁷ The Company accepted Staff’s position as part of a compromise during settlement negotiations.¹⁸

12 *Property Tax.* The Partial Agreement includes an adjustment of \$9,007 for property tax expense.¹⁹ Specifically, the parties agreed to add truck shop facilities that were placed into service after WCI’s filing on April 3, 2014, and adjusted Staff’s three-factor allocation method by removing West Coast Paper Fiber’s (WCPF) operations from the calculation and reducing Waste Control Recycling’s (WCR) gross revenues for the cost of recycled materials.²⁰ While Staff was not advised of the truck shop facilities until August of 2014, its review of the property concluded that the facility is used and useful to WCI, and the allocated property tax expenses should be included in rates.²¹ Staff agreed to the removal of WCPF’s operations from the three-factor allocation method since WCPF does not share facilities with WCI.²²

13 *Spare Trucks.* The parties agreed to an adjustment in the amount of \$36,000 for spare trucks expenses.²³ Staff states that the Company provided additional information on August 14, 2014, in the form of landfill tickets associated with three spare trucks to calculate WCI’s usage at 64 percent of the time during the test year.²⁴ WCI agrees, for purposes of the Partial Agreement, to use the unadjusted lease payment amount of \$36,000.²⁵ Staff also included the state sales tax calculation in arriving at the adjustment figure.²⁶

¹⁵ Partial Agreement at p. 3.

¹⁶ Cheesman, Exh. No. MC-11T at 18:2-3.

¹⁷ *Id.* at 18:3-4.

¹⁸ Narrative Statement of WCI in Support of Partial Settlement, ¶5.

¹⁹ Partial Agreement at p. 3.

²⁰ Cheesman, Exh. No. MC-11T at 18:12-19. Both WCPF and WCR are affiliates of the Company.

²¹ *Id.* at 21:3-9.

²² *Id.* at 21:11-12.

²³ Partial Agreement at p. 3.

²⁴ Cheesman, Exh. No. MC-11T at 25:10-15.

²⁵ *Id.* at 25:4-5.

²⁶ *Id.* at 26:7.

- 14 *Capital Structure in Lurito-Gallagher.* The Partial Agreement includes a capital structure for WCI composed of 40 percent debt and 60 percent equity.²⁷ Staff originally advocated the use of the Company's actual capital structure which, as of its December 31, 2013, balance sheet, was 42.75 percent debt and 57.25 percent equity.²⁸ WCI provided more recent balance sheet numbers on August 27, 2014, which showed the Company's capital structure closer to the hypothetical advocated by WCI: 39.6 percent debt and 60.4 percent equity.²⁹ The Company explained that this increase in equity relates to Additional Paid-in Capital.³⁰
- 15 *Cost of Debt in Lurito-Gallagher.* The parties agreed to a 3.66 percent cost of debt for use in the Lurito-Gallagher calculation.³¹ This percentage stems from the cost of debt on Heirborne Investments, LLC's (HBI) term loan including interest expense and amortized term loan fees expense for the period ending June 30, 2014.³² HBI is an affiliate of WCI and borrows funds before then lending those funds to the Company and its other affiliates.³³ WCI's debt consists entirely of loans from HBI.³⁴ The Company had originally proposed a 5.25 percent cost of debt, while Staff proposed a 1.93 percent cost of debt.³⁵ However, Staff reviewed WCI's August 2014 cost of debt calculation and identified a 3.63 percent cost of debt.³⁶ With this *de minimus* difference between Staff's calculation and the actual cost of debt for HBI's term loan debt, Staff acquiesced to 3.66 percent.³⁷
- 16 *Allocation of Average Investment to Non-Regulated Operations, Removal of Non-Regulated City of Kalama Operations, and Residential and Commercial Disposal Expense.* The Partial Agreement proposes a final residential and commercial Disposal Fee expense of \$757,552, a final Average Net Investment of \$1,548,613 for use in the Lurito-Gallagher calculation, and does not separate revenue, expenses, or Average Net Investment into regulated and non-regulated operations.³⁸ Staff asserts that it agreed to commingle non-regulated Kalama operations with regulated operations because Staff does not have a reliable allocation

²⁷ Partial Agreement at p. 4.

²⁸ Cheesman, Exh. No. MC-11T at 27:15-16.

²⁹ *Id.* at 28:10-12.

³⁰ *Id.* at 28:13-14.

³¹ Partial Agreement at p. 4.

³² Cheesman, Exh. No. MC-11T at 29:17-19.

³³ *Id.* at n.13.

³⁴ *Id.*

³⁵ *Id.* at 30:6, 10.

³⁶ *Id.* at 32:3-4.

³⁷ *Id.* at 32:6-7.

³⁸ Cheesman, Exh. No. MC-11T at 6:5-9, 9:4-5 and Partial Agreement at pp. 3-5.

factor.³⁹ According to Staff, WCI's new route study is insufficiently supported to be used as an allocation factor.⁴⁰ Staff also states that non-regulated Kalama operations account for only 5.5 percent of total Company revenues.⁴¹ WCI and Staff propose including non-regulated Kalama operations "as a component to rate design, and a portion of the final revenue requirement calculation will be directly assigned to non-regulated Kalama operations."⁴² Staff argues that this practice will avoid "double recovery of costs from both regulated and non-regulated ratepayers."⁴³

- 17 *Labor Expense.* The parties agreed to a Labor Expense in the amount of \$860,325, including a pro forma adjustment of \$6,162 for cost-of-living adjustment (COLA) wage increases provided to all employees on July 1, 2014.⁴⁴ The Company granted a 2.67 percent COLA wage increase, and Staff states that this "increase to labor expense results in rates that are fair, just, reasonable, and sufficient."⁴⁵
- 18 *Fringe Benefit Expense.* The Partial Agreement proposes an adjustment, in the amount of \$9,060, to allow for the Company's contributions to employee Health Savings Accounts plans.⁴⁶ Staff asserts that WCI provided clarification regarding these contributions in its August 20, 2014, rebuttal testimony.⁴⁷ Staff contends that this additional adjustment will result in rates that are fair, just, reasonable, and sufficient.⁴⁸
- 19 *Fuel Expense.* The parties agreed to a final Fuel Expense of \$291,472, adding fuel data based on the most recent 12-month period as required under WAC 480-70-346.⁴⁹ This adjustment amounts to an additional \$778 in Fuel Expense, which reflects WCI's most recent 12-month period fuel costs.⁵⁰ Staff states that this adjustment will result in rates that are fair, just, reasonable, and sufficient.⁵¹

³⁹ Cheesman, Exh. No. MC-11T at 14:21-15:2.

⁴⁰ *Id.* at 14:17-20.

⁴¹ *Id.* at 14:22-23.

⁴² *Id.* at 15:18-20.

⁴³ *Id.* at 15:21-22.

⁴⁴ Partial Agreement, p. 4.

⁴⁵ Cheesman, Exh. No. MC-11T at 34:11-12.

⁴⁶ Partial Agreement, p. 4.

⁴⁷ Cheesman, Exh. No. MC-11T at 36:10-12.

⁴⁸ *Id.* at 36:19-21.

⁴⁹ Partial Agreement, p. 5.

⁵⁰ Cheesman, Exh. No. MC-11T at 39:11-12.

⁵¹ *Id.* at 39:13.

- 20 **DISCUSSION/DECISION.** WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:
- Whether any aspect of the proposal is contrary to law.
 - Whether any aspect of the proposal offends public policy.
 - Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.
- 21 The Commission must determine one of three possible results:
- Approve the proposed settlement without condition.
 - Approve the proposed settlement subject to conditions.
 - Reject the proposed settlement.
- 22 The terms and conditions within the Partial Agreement are consistent with law and policy and reasonably resolve the issues in this proceeding. Each of the adjustments are supported by an appropriate record and will result in rates that are fair, just, reasonable, and sufficient. Accordingly, the Commission approves the Partial Agreement without condition.

III. Four Contested Issues

A. Shared Utility Expenses⁵²

23 The parties have failed to agree on an appropriate methodology for allocating shared utility expenses to WCI. The Company and its affiliates share employees, facilities, and equipment.⁵³ WCI initially proposed a one-third allocation method that is based on the number of sharing entities. The Company subsequently presented additional alternative approaches, including one that combines square footage of shared land and buildings, number of employees, and previously assigned costs.⁵⁴ In contrast, Staff proposes the use of a three-factor allocation methodology. This methodology identified facilities that WCI and its affiliates share,⁵⁵ and Staff then selected three cost drivers or factors “that recognize common activities that consume costs and are based on information provided by the Company, [namely] number of employees, revenue, and fixed asset per book value.”⁵⁶ Staff argues that these three factors combine into “a reasonable indicator of the size and scope of each affiliate entity’s operations relative to WCI and one another.”⁵⁷ As Staff explains, “the relative size and scope of each entity’s operations reasonably estimates the proportional costs each entity places on common resources.”⁵⁸

24 For each of these three factors, Staff calculated a percentage, which aggregated, becomes the ‘Total Percentages.’⁵⁹ The Total Percentages are divided into thirds for a ‘three-factor combined cost allocation factor.’⁶⁰ Staff arrives at a 23.36 percent three-factor allocator for WCI associated with three properties: 950 3rd Avenue, 1150 3rd Avenue, and 1152 River

⁵² These shared expenses include electricity, water, and sewer. Cheesman, Exh. No. MC-13T at 3:8.

⁵³ Staff’s Initial Brief, ¶ 9.

⁵⁴ In addition, WCI advanced another concept of allocating overhead costs which the Company claimed was more simplistic. It is implemented by taking the percentage of regulated to non-regulated operating expenses to be applied to allocable expenses. *See* Demas, Exh. LD-1T at 7:25-8:1.

⁵⁵ Cheesman, Exh. No. MC-1T, at 16:14-15. The Company’s affiliates include: WCR, Waste Control Equipment, Inc. (WCE), and WCPF.

⁵⁶ *Id.* at 16:16-17.

⁵⁷ Staff’s Initial Brief, ¶10 (citing Cheesman, Exh. No. MC-1T at 16-17).

⁵⁸ *Id.*

⁵⁹ Cheesman, Exh. No. MC-1T at 16:18-20.

⁶⁰ *Id.* at 17:1-2.

Road.⁶¹ Staff recommends allocating \$13,975 of the shared utility expenses to the Company based on its three-factor allocator.⁶² The three-factor methodology is supported by generally accepted accounting principles which, according to Staff, “dictate that shared costs should be allocated based on cost-drivers.”⁶³ Staff asserts that these principles are intended to avoid cross-subsidization between affiliates by supporting the allocation of expenses based on the principle of cost causation.⁶⁴

25 The Company disagrees with Staff’s use of “either gross revenues or fixed asset values of nonregulated affiliate operating propert[ies]” in its three-factor allocator because these factors are not relevant to allocating regulated expenses.⁶⁵ While acknowledging that Staff’s inclusion of the number of employees in the three-factor methodology “does have some value in separating certain shared overhead costs,”⁶⁶ the Company asserts that other factors, such as square footage of shared land and buildings, would be a more simplistic approach for determining allocation of certain overhead accounts.⁶⁷

26 WCI also argues against the inclusion of fixed asset per book value in any allocation since this could result in the net book value of assets for recycling operations exceeding the net book value of assets for solid waste operations.⁶⁸ The Company explained this disparity by stating that a solid waste company will likely have substantially depreciated trucks and containers with a small average investment, while curbside recycling, as a new or expanded service to the company, involves new trucks and containers.⁶⁹ Thus, the operating ratio of the recycling operations would be much lower under Lurito-Gallagher than the operating ratio of the solid waste operations.⁷⁰

27 In its opening brief, the Company proposes a compromise by suggesting that the Commission allow \$27,749.29 of shared utility expenses, instead of Staff’s proposed allowance of

⁶¹ Staff’s Response to Bench Request No. 1, Schedule 4, revising Cheesman, Exh. No. MC-7. While Staff’s exhibit indicates the allocation percentage for WCI is 23, the percentage is more precisely defined as 23.36, or as WCI rounds to the nearest tenth, 23.4 percent.

⁶² Staff’s Initial Brief, ¶ 9 and Cheesman, TR 152:11-14.

⁶³ *Id.*, ¶12.

⁶⁴ *Id.*

⁶⁵ Davis, Exh. No. JD-43T at 10:17-19.

⁶⁶ Demas, Exh. No. LD-1T at 7:25.

⁶⁷ *Id.* at 7:25-8:3.

⁶⁸ WCI’s Reply Brief, ¶18.

⁶⁹ *Id.*

⁷⁰ *Id.*

\$13,975.⁷¹ WCI calculates this figure using the “23.4 [percent] derived Staff allocator for utility costs [as] applied to the \$118,586.73 cumulative cost total rather than Staff’s aggregate utility expense of \$66,024.77.”⁷² Specifically, this difference results from the Company’s inclusion of all of WCR’s utility expenses in the total shared expense. Staff argues that the additional expense is exclusively WCR’s, a non-regulated company, and as such, should not be included in the calculation.⁷³ The Company counters that Staff has included all of WCR’s revenues in the calculation of the 23.4 percent allocation factor and none of WCR’s exclusive utility costs.⁷⁴

28 Staff asserts that inclusion of WCR’s utility expenses from buildings it retains exclusive use of in the allocation formula violates “[f]undamental accounting principles [which] dictate that direct costs should be directly assigned rather than allocated.”⁷⁵ As Staff argues, the purpose of allocation is to distribute fairly common, indirect costs,⁷⁶ and the Company has failed to meet its burden to demonstrate the reasonableness of its proposed modification to Staff’s allocation methodology.

29 Staff also attacks WCI’s originally allocation proposal, which provided for allocating one-half expenses to WCI when the Company shares allocation with one other affiliate and one-third when WCI shares allocation of the expense with two other affiliates.⁷⁷ It contends that a one-half or one-third approach is unreasonable since it does not attempt to estimate relevant cost drivers and is unsupported by the evidentiary record.⁷⁸ With regard to WCI’s argument that Staff’s proposed methodology would benefit from including square footage in its calculation, Staff states that this would prove particularly challenging since the utility expenses were incurred in shared facilities, mutual employees, using shared equipment.⁷⁹ Staff argues that the Company has not demonstrated that its preferred factor, square footage, is more reasonable than any of the factors chosen by Staff.⁸⁰

⁷¹ *Id.*, n. 16. Demas, Exh. No. LD-2T at 6, Table 2.

⁷² Demas, Exh. No. LD-2T at 6:12-14.

⁷³ Staff’s Initial Brief, ¶ 22.

⁷⁴ Demas, Exh. No. LD-2T at 6:10-14.

⁷⁵ Staff’s Initial Brief, ¶ 24. (Citation omitted).

⁷⁶ *Id.*

⁷⁷ See Cheesman, Exh. No. MC-1T at 18:3-7.

⁷⁸ *Id.*, ¶ 18.

⁷⁹ *Id.*, n. 31.

⁸⁰ *Id.*, ¶ 19.

- 30 WCI adds that Staff’s calculation failed to allocate \$6,202 in shared utility expense paid by WCR in the test year. Staff excluded the expense, not because doing so was proscribed or the amount was not subject to sharing, but because Staff received the information only during confidential settlement discussions.⁸¹ Staff asserts that it does not necessarily oppose allocation of a portion of the costs to WCI but is concerned about the confidentiality of issue.⁸² Applying Staff’s three-factor allocator to the \$6,202 shared expense results in an increase of \$1,449 in utility expense allocated to WCI, for a total of \$15,424.⁸³
- 31 Finally, the Company argues that “Staff persists in aggressively pushing, without acknowledging, obvious changes to the Lurito-Gallagher solid waste ratemaking methodology model in this case.”⁸⁴ WCI recommends “any previously untested or formative Staff accounting adjustment and ratemaking theories” should be explored in the existing Lurito-Gallagher rulemaking forum, instead of the instant rate case.⁸⁵
- 32 **Discussion/Decision.** This issue revolves around the appropriate allocation method to achieve a fair distribution of common expenses incurred by WCI and its affiliates. During the course of the proceeding, the Company presented several different allocation concepts intended to achieve the sharing objective. As discussed above, these concepts drew intensive opposition from Staff. The Company’s final position adopts the three-factor allocation method proposed by Staff but applied it to a revised group of costs that differ in nature and magnitude relative to Staff’s.
- 33 As a general cost allocation principle, costs should be directly assigned to affiliates, where identifiable. Non-directly assignable costs should be allocated on bases that are reflective of relationships of the costs to the entities concerned. Any residual should be allocated using a multi-factor formula that recognizes the areas of management concern, including employees, revenues, and plant investment. We find that the Company’s final allocation position contravenes this standard because it treats directly assignable costs, *i.e.* costs not shared and only incurred by the non-regulated entity, as indirect costs which WCI proposes to share among its ratepayers and its affiliates.⁸⁶ The other alternatives proposed by WCI also lack substantive justification, in particular the one-third allocation methodology. The Company’s idea of including square footage in a three-factor allocation has some appeal, but WCI failed to sufficiently resolve the issues Staff raised with this approach. Neither the Company nor

⁸¹ TR 153:18-158:20.

⁸² Staff’s Reply Brief, ¶ 6.

⁸³ *Id.*, n. 13.

⁸⁴ WCI’s Reply Brief, ¶ 12.

⁸⁵ *Id.*, ¶ 13.

⁸⁶ Davis, Exh. JD-41T at 12:10-17.

future solid waste service providers are forestalled from proposing this factor in a subsequent rate filing allocation methodology, but any such proposal must address the concerns Staff raised the use of square footage.

- 34 Unlike WCI, Staff provided the underlying basis for its three-factor proposal. The revenue allocator indicates the size of revenue earning activities, importance to management, and impact on administrative operations. The number of employees also indicates the size of an operation and strain on administrative resources. The new 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. We determine that Staff's three-factor allocator is consistent with generally accepted allocation principles and is more reasonable than any of the Company's unsubstantiated proposals.
- 35 Further, Staff's belief that legitimate shared utility expenses cannot be included in the allocation to the regulated utility because the figures happened to be provided to Staff during confidential settlement negotiations is misguided. While WAC 480-07-700(4)(b) provides that statements, admissions, and offers of settlement made during negotiations are not admissible in evidence, a strict reading of the regulation, such that all figures discussed are excluded from consideration by the Commission, would lead to absurd results where opponents to a rate increase would have merely to mention a line item on the applicant's spreadsheet to forestall its inclusion by the Commission in any rate recovery. Staff has not shown that the \$6,202 figure is excessive, inappropriate, or unrelated to the Company's operations. Likewise, while this utility expense may have been presented to Staff during negotiations, it has not been demonstrated that the information could have only been exchanged within a settlement context. Therefore, we accept Staff's proposed Adjustment R-6D, including \$1,449 allocated to WCI for shared utility expenses, totaling \$15,424 as fair, just, reasonable, and sufficient.

B. Land Rents

- 36 Although the parties have agreed on a general methodology for calculating the Company's allowed affiliated rents,⁸⁷ there is disagreement concerning the appropriate calculation of capital structure, cost of debt, and return on equity (ROE) for this adjustment.⁸⁸ The Company proposes using an asset-specific hypothetical capital structure, a flat 15 percent return on equity (ROE),⁸⁹ and an asset-specific cost of debt for this affiliate transaction, resulting in an adjustment of \$164,303.⁹⁰ For its part, Staff proposes using the actual capital structures of WCI's affiliates and the property landlords, Heirborne Investments, LLC (HBI) and Heirborne Investments II, LLC (HBII), a discounted cash flow (DCF) methodology for determining a 12.5 percent and 13.1 percent ROEs, respectively, and actual debt of HBI divided by test period interest expense to arrive at a cost of debt figure. Based on its proposal, Staff recommends an adjustment of \$85,217 for these affiliate transactions.⁹¹
- 37 *Capital Structure.* WCI proposes applying a flat 15 percent ROE to "each individual property asset shared/occupied by the regulated company."⁹² WCI argues that an asset-specific approach, "[e]nsures that the actual capital structure of the rented asset will be calculated into the return equation but does not factor in debt and return of all other unrelated properties which the nonregulated affiliate may own but which have no relevance to the regulated affiliate's operations."⁹³
- 38 Staff cites to RCW 81.16.030, which permits the Commission to disallow payments to an affiliate in whole or in part if those payments are unreasonable.⁹⁴ Explaining that the Commission's policy is to price affiliate transactions at the lower of cost or market value,⁹⁵ Staff proposes to price the affiliate land rents at cost plus a return.⁹⁶ Staff, in calculating a

⁸⁷ WCI rents facilities from its affiliates, Heirborne Investments, LLC (HBI) and Heirborne Investments II, LLC (HBII). Davis, Exh. No. JD-8.

⁸⁸ Partial Agreement, ¶ 8. We note that the Company and Staff agreed to capital structure and cost of debt for WCI, as applied to the Lurito-Gallagher formula, in the Partial Agreement.

⁸⁹ For this discussion, ROE and cost of equity have the same meaning and will be used interchangeably.

⁹⁰ Demas, Exh. No. LD-1T at 6:15.

⁹¹ Staff's Initial Brief, ¶ 25.

⁹² Willis, Exh. No. JW-8T at 3:22-24.

⁹³ Davis, Exh. No. JD-43T at 15:14-17.

⁹⁴ WCI's Initial Brief, ¶ 26.

⁹⁵ Cheesman, Exh. No. MC-1T at 18:15.

⁹⁶ *Id.* at 19:11-12.

return in the cost plus a return valuation, used the actual, company-wide capital structures for HBI and HBII.

39 Staff asserts that all of HBI's and HBII's facilities, including the facilities leased to and used by WCI, secure the debts of HBI and HBII.⁹⁷ An actual, company-wide capital structure for determining a reasonable ROE "removes HBI's and HBII's ability to manipulate debt and equity levels between non-regulated and regulated facilities."⁹⁸ Specifically, Staff argues that the Company's proposal to use an asset-specific capital structure allows WCI "to shift equity to assets associated with regulated operations while shifting debt to assets associated with non-regulated operations."⁹⁹ Utilizing a company-wide capital structure will also reflect HBI's and HBII's actual risk profiles and costs of capital.¹⁰⁰

40 Staff asserts that the nonregulated affiliates' capital structures are relevant to the Company's operations since the affiliate rent transactions between WCI, HBI and HBII, as well as the other nonregulated affiliates, are over 90 percent debt-financed.¹⁰¹ In fact, HBI is financed with 93.7 percent debt, while HBII is financed with 53.8 percent debt.¹⁰²

41 The Company criticizes Staff's approach of aggregating the affiliate landlords' capital structures in arriving at a reasonable rent,¹⁰³ stating it:

skews WCI's revenue requirement which, since [HBI's] debt structure is heavily debt-laden due to the bond offering for the WCR construction and operation of the transfer station in 2006, dramatically alters the allowable returns on all rental properties to be recouped in rates by [WCI] in a fashion never before employed in a WCI general rate case.¹⁰⁴

42 *Return on Equity.* WCI cites to *Bremerton-Kitsap Airporter* in support of its proposition that the Commission has long recognized the use of a 15 percent ROE for land rents.¹⁰⁵ Mr. Layne Demas, testifying on behalf of WCI, also states that, "Dr. Lurito, in his testimony

⁹⁷ *Id.*, ¶ 32 (citing to Willis, Exh. No. JW-7 at 2).

⁹⁸ Staff's Initial Brief, ¶ 30.

⁹⁹ *Id.*

¹⁰⁰ *Id.*, ¶ 33 (citing to Cheesman, Exh. No. MC-1T at 20:1-3).

¹⁰¹ Staff's Reply Brief, ¶ 18.

¹⁰² *Id.*, n. 36.

¹⁰³ Davis, Exh. No. JD-43T at 14:21-24.

¹⁰⁴ *Id.* at 20:20-25.

¹⁰⁵ WCI's Initial Brief, ¶¶ 8, 10 (citing *WUTC v. Bremerton-Kitsap Airporter*, Docket TC-001846, Fifth Supplemental Order, Appendix C (August 2, 2002)).

supporting the Lurito[-]Gallagher Operating Ratio formula, justifies a much larger equity return for solid waste companies as is readily observed in the formula itself.”¹⁰⁶ The Company argues that the Commission has employed a flat 15 percent ROE to solid waste general rate cases for at least the previous 13 years when the Commission entered its decision in *Bremerton-Kitsap Airporter*.¹⁰⁷ WCI claims that no subsequent Commission decisions have contravened this principle.¹⁰⁸

43 Using HBI and HBII’s capital structures, Staff proposes that the Commission use DCF to calculate ROEs of 12.5 percent for HBI and 13.1 percent for HBII.¹⁰⁹ Staff criticizes WCI’s flat 15 percent ROE proposal since it lacks any quantitative analysis.¹¹⁰ The Company’s only defense of its proposal is the decision which allowed a 15 percent return on equity nearly 13 years ago.¹¹¹ The ROE in that case was based on testimony given by Dr. Lurito in the *Sno-King Garbage Co.* decision¹¹² Staff argues that any precedential value from this 1990 case and the 1993 *Bremerton-Kitsap Airporter* decision are far outweighed by the Commission’s view that cost of capital is dynamic with constantly changing capital markets.¹¹³

44 In order to obtain these ROEs for HBI and HBII, Staff applied the DCF model to the projected earnings growth plus current dividend yield of publicly traded rental property companies, with similar capital structures, listed in ValueLine Investment Survey and with the United States Securities and Exchange Commission.¹¹⁴ Staff disputes WCI’s preferred asset-specific capital structure as particularly inapposite where much of the assets are old and do not reflect the ownership entity’s financial position.¹¹⁵ The cost plus a return methodology “has declining cost recovery when assets are fully depreciated and no new improvements are placed into service ... [because otherwise] ratepayers would have to pay for a fully depreciated asset forever.”¹¹⁶

¹⁰⁶ Demas, Exh. No. LD-1T at 6:17-19.

¹⁰⁷ WCI’s Initial Brief, ¶ 10.

¹⁰⁸ *Id.*

¹⁰⁹ Staff’s Initial Brief, ¶ 43.

¹¹⁰ Staff’s Initial Brief, ¶ 44.

¹¹¹ *Id.*

¹¹² *WUTC v. Sno-King Garbage Co.*, Dockets TG-900657 and TG-900658 (consolidated), Fourth Supplemental Order (December 10, 1991).

¹¹³ *Id.* (citing *WUTC v. Pacific Power & Light Co.*, Docket UE-130043, Order 05 (December 4, 2013)).

¹¹⁴ *Id.* See also, Cheesman, Exh. No. MC-1T at 21:12-13.

¹¹⁵ *Id.*

¹¹⁶ Cheesman, Exh. No. MC-1T at 20:12-15.

- 45 Staff explains that its calculations on return on equity compared the affiliates, HBI and HBII, with other Real Estate Investment Trusts (REITs), namely Annaly Capital and Realty Income Corporation.¹¹⁷ Staff acknowledges that ValueLine and the Securities and Exchange Commission do not have data on similarly situated privately-held corporations like HBI and HBII.¹¹⁸ As a result, Staff selected five companies and compared their capital structures against HBI and HBII,¹¹⁹ then narrowed the comparison to the two companies with the closest capital structure to HBI and HBII, namely Annaly Capital and Realty Income Corporation.¹²⁰
- 46 The Company asserts that Staff's DCF calculations "enraft a 'Value Line' analysis from publicly-traded companies onto a small, closely-held regulated solid waste company that would lower that return effectively by some two plus percentage points."¹²¹ WCI argues that the comparison is unfair since publicly-traded companies will typically earn lower returns than privately-held asset companies such as WCI.¹²² Further, the Company contends that both Annaly Capital and Realty Income Corporation, two rental property companies Staff used for comparison, have assets in the billions of dollars and are unsuitable comparisons to a small, regulated, closely-held solid waste company.¹²³
- 47 Mr. Joe Willis, owner of the Company and affiliates, acknowledged that WCI does not own the commercial real estate it leases from HBI because of the "inherent financial riskiness in owning commercial real estate."¹²⁴ Mr. Willis confirmed, however, that each of the affiliates including WCI has guaranteed, or cross-collateralized, the loans entered into by HBI and HBII with WCI and affiliate assets.¹²⁵
- 48 *Cost of Debt.* The Company applied a 2.635 percent bond interest rate to the covered parking and the new truck shop facility, which is the current rate for the Heirborne bond issuance.¹²⁶

¹¹⁷ Exchange between Melissa Cheesman, regulatory analyst for Staff and Dave Wiley, attorney for WCI, TR 205:4-11.

¹¹⁸ *Id.*, TR 206:19-25.

¹¹⁹ *Id.*, TR 207:1-5.

¹²⁰ *Id.*, TR 207:5-6.

¹²¹ WCI's Initial Brief, ¶ 11.

¹²² Exchange between Melissa Cheesman, regulatory analyst for Staff and Dave Wiley, attorney for WCI, TR 210:17-23.

¹²³ *Id.*, TR 207:15-208:22.

¹²⁴ Exchange between Joe Willis, owner of the Company, and Brett Shearer, attorney for Staff, TR 81:25-83:22.

¹²⁵ *Id.*, TR 82:19-86:17.

¹²⁶ Davis, Exh. No. JD-43T at 18:3-4.

It also applied a 5.27 percent cost of debt to the Stanley Plaza Warehouse facility.¹²⁷ As the Company argues, only two of the properties are actually carrying debt,¹²⁸ and the cost of debt for these two facilities should not be calculated based upon the debts of HBI and HBII that have been incurred for investments and projects not related to the regulated operations of WCI.¹²⁹

49 Staff recommends that the Commission employ HBI's and HBII's actual costs of debt which are 2.2 percent and 4.3 percent, respectively.¹³⁰ The actual costs of debt for both companies are easily determined from their financial statements,¹³¹ and Staff argues that, "[f]inancial statements capture an entity's risk profile and financial obligations"¹³² which are key to calculating cost of debt figures.

50 *Allocation Factors.* Depreciation and average net investment for buildings shared by WCI and other affiliates must also be allocated. WCI proposes to use a one-third allocator.¹³³ Just as with the issue of shared utility expenses, WCI opposes Staff's three-factor allocator methodology.¹³⁴ The Company criticizes Staff's allocator, stating:

WCI would then receive a portion of the return on the net investment in the transfer station and [material recycling facility] 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.¹³⁵

51 Staff argues that depreciation and average net investment are important to any cost plus return calculation and both should be allocated amongst tenants based on Staff's three-factor allocation methodology.¹³⁶ Pointing to the long-held regulatory maxim that shared costs should be allocated based on cost causation factors, Staff asserts that its three-factor allocator

¹²⁷ *Id.* at 18:10-11.

¹²⁸ Demas, Exh. No. LD-1T at 5:5-6.

¹²⁹ *Id.* at 5:6-8.

¹³⁰ Staff's Initial Brief, ¶ 38.

¹³¹ *Id.*, ¶ 39.

¹³² *Id.* (citation omitted).

¹³³ WCI's Reply Brief, ¶ 42.

¹³⁴ WCI's Initial Brief, ¶ 6.

¹³⁵ *Id.*

¹³⁶ Staff's Initial Brief, ¶ 46.

is better suited to this principle than the Company's unmitigated one-third approach.¹³⁷ Staff maintains that its methodology "is a reasonable estimate of each entity's relative size and scope of operations, which in turn reasonably estimates each entity's impact on common resources."¹³⁸

52 **Discussion/Decision.** RCW 81.16.030 addresses the issue of rate recovery of payments by a solid waste company to an affiliate. It provides:

In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of the public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished ... under existing contracts or arrangements with the affiliated interest unless the public service company establishes the reasonableness of the payment or compensation.

53 WCI has not supported its proposal to recover \$164,302 in aggregate land rent expense. The Company based this asset-specific approach to capital structure on an airporter case, *Bremerton-Kitsap Airporter*,¹³⁹ decided almost thirteen years ago and containing a different set of facts. WCI does not point to additional cases where the Commission has employed this capital structure for affiliate land rent adjustments. The Company has not countered Staff's claim that such a proposal would enable WCI's affiliate landlords to shift equity to regulated assets while moving debt to assets solely serving the operations of non-regulated affiliates resulting in cross-subsidization by ratepayers of these non-regulated affiliates. Further, WCI's use of an asset-specific capital structure results in a hypothetical capital structure, where, for purposes of calculating fair rents associated with the properties owned by HBI and HBII, Staff uses the actual capital structure of the owners in order to calculate a fair return for the landlords. The Company has not offered a reasonable justification for using the capital structure of the tenant instead of the landlord to calculate a fair return on rents charged by the landlord affiliates.

54 As Staff demonstrated and WCI acknowledged, the Company's assets have been pledged to secure the debts of HBI and HBII. It's true that WCI has received some benefits for these debts, as have all of the affiliates, regulated or not. That said, lending institutions hold

¹³⁷ *Id.*, ¶ 47. The Company has allocated costs based on the number of entities sharing the facility. Wiley, TR 222:1-7.

¹³⁸ *Id.*, ¶ 48.

¹³⁹ Docket TC-001846, Fifth Supplemental Order, Final Order Granting, in Part, and Denying, in Part, Petition for Review; Rejecting Tariff Filing and Requiring Compliance Filing (August 2, 2002).

claims against the buildings leased by the Company due to HBI and HBII's debts, not the debts of WCI. We find that Staff's approach of using the landlords' actual capital structure for determining a fair return on the land rents is reasonable and will prevent cross-subsidization of the non-regulated affiliate operations by ratepayers.

- 55 WCI also fails to adequately support its ROE proposal of a flat 15 percent. The *Bremerton-Kitsap Airporter* decision from 13 years ago on which WCI relies does not serve as precedent for ROE decisions the Commission makes today in solid waste rate cases. As Staff explains, ROEs are fluid, not static, and an ROE established over a decade ago has little, if any, contemporary vitality. WCI nevertheless asserts that Staff used the 15 percent ROE from *Bremerton-Kitsap Airporter* in WCI's 2009 general rate case. The Company's 2009 rate request, however, was not adjudicated.¹⁴⁰ The *Bremerton-Kitsap Airporter* decision and the negotiated rate increase for WCI recommended by Staff in 2009 do not set a precedent on this issue.
- 56 Staff, on the other hand, uses a Commission-accepted methodology in its calculations. Although not employing the same level of complexity typically seen in utility rate cases, we view Staff's calculation as a step in the right direction. Staff's "DCF-based" cost of equity figures combine the earnings growth rate of comparable publicly traded property rental companies with the relevant current dividend yields. We note that in energy rate proceedings, the Commission relies on DCF, in conjunction with a variety of other well-established methods, to determine return on equity for regulated utilities. We find Staff's "DCF-based" approach to be more consistent with past Commission practice and far superior to the Company's unsubstantiated proposal. We therefore adopt Staff's proposed ROEs of 12.5 percent for HBI and 13.1 percent for HBII.
- 57 With regard to the cost of debt, WCI has claimed that Commission precedents and previous treatment by the Staff warrant use of the asset-specific cost of debt upon which the Company relies. WCI has not, however, cited any cases where the Commission has followed this approach in an adjudicated solid waste rate case. Staff's proposal to use the landlords' actual cost of debt -- in this case, 2.2 percent for HBI's rents and 4.3 percent for HBII's rents -- is easily verifiable, captures the combined landlords' risk profile, and connects a fair return to that risk profile. That approach also protects ratepayers from cross-subsidizing the Company's unregulated affiliate by ensuring that no more than the actual cost is included in rent. We adopt Staff's cost of debt proposal.
- 58 Finally, WCI failed to support its proposed allocation of depreciation and average net investment. As we found above, Staff's three-factor allocator is consistent with the

¹⁴⁰ The Company filed for the rate increase on October 15, 2009, and the Commission took no action on the rate request at its January 28, 2010, Open Meeting, pursuant to Staff's recommendation, allowing the request negotiated by Staff to become effective February 1, 2010.

regulatory principle of cost-causation allocation and more reasonable than the Company's unsubstantiated proposal. We adopt Staff's proposed allocation methodology. Because we agree with Staff on all of these issues, we accept Staff's recommendation for an adjustment of \$85,217 for these affiliate transactions.

C. Rate Case Costs

59 WCI has requested recovery of significant rate case expenses for both Dockets TG-131794 and TG-140560, the majority of which are legal and accounting fees. Initially, the Company requested approximately \$392,000 in additional revenue in Docket TG-131794. In its refiled case, Docket TG-140560, WCI has requested an approximate increase in revenue of \$532,000. The Company's latest figures for its combined legal and accounting expenses total \$502,477 through February 28, 2015, which is prior to the evidentiary hearing and reply briefing. The chart below reflects the yearly expenses incurred in each profession during both rate case proceedings:

Year	Accounting Fees	Legal Fees	Total
2013	\$91,986.60	\$12,245.00	\$104,231.60
2014	\$117,317.90	\$245,441.29	\$362,759.19
2015	\$14,195.30	\$21,291.90 ¹⁴¹	\$35,487.20
	\$223,499.80 ¹⁴²	\$278,978.19	\$502,477.99

60 Staff recommends that the Commission only allow a percentage of the rate case expenses incurred by the Company, as follows:

- 100 percent recovery of costs in associated with the informal auditing process in Docket TG-131794;¹⁴³
- 50 percent recovery of expenses associated with the formal adjudication in Docket TG-131794,¹⁴⁴ and
- 50 percent recovery of expenses associated with Docket TG-140560.¹⁴⁵

¹⁴¹ The legal fee totals for 2015 only represent expenses incurred through February 28, 2015, which is prior to the evidentiary hearing and the reply briefing.

¹⁴² Davis, Exh. No. JD-49 at 2 (revised March 30, 2015) incorrectly lists this total as \$228,390.60.

¹⁴³ Staff explains that this would include any costs incurred prior to the Notice of Prehearing Conference issued on December 24, 2013. Cheesman, Exh. No. MC-1T at 47:1-2.

¹⁴⁴ This would include any expenses incurred between December 24, 2013, and March 25, 2014.

¹⁴⁵ Staff's Initial Brief, ¶ 51.

Staff proposes amortization of the rate case expenses over a minimum five year period.¹⁴⁶

- 61 Staff argues that the Commission dismissed WCI's original rate case because the Company filed a deficient and poorly-supported rate request in Docket TG-131794.¹⁴⁷ The Company's shareholders and representatives, according to Staff, failed to follow the Commission's filing rules and procedures, not ratepayers.¹⁴⁸ Staff asserts that ratepayers do not bear responsibility for the rejected rate case.¹⁴⁹ Acknowledging that the Company's preparatory work in Docket TG-131794 was "useful and relevant" to the instant case, Staff doesn't suggest a full disallowance of rate case expenses, but it has opted for a 50 percent recovery.¹⁵⁰
- 62 With regard to the rate case costs incurred here, Staff complains that the Company's conduct has led to prolonged discovery and significant delay. Staff cites to WCI's use of hardcodes in its spreadsheets which resulted in the Commission ordering the Company to remove the hardcodes or supply appropriate external links to WCI's calculations.¹⁵¹ The Company also "filed a substantial amount of new information in its rebuttal testimony on August 20, 2014."¹⁵² Staff admits that a small portion of the delay in this case was due to a lapse in communication its part,¹⁵³ and it acknowledges that some of the rate case expenses reflect "legitimate costs and should be included in rates."¹⁵⁴ Thus, Staff suggests a 50 percent recovery for costs in this docket.
- 63 Staff suggests amortizing the rate case expenses the Commission allows over a five year period.¹⁵⁵ The amortization "normalizes rare and atypical general rate case expenses while allowing for a reasonable recovery of accounting and legal expenses."¹⁵⁶ Rate case expenses are typically non-recurring on an annual basis, and in this case, the extraordinary amount is

¹⁴⁶ *Id.*

¹⁴⁷ Staff's Initial Brief, ¶ 54

¹⁴⁸ *Id.*, ¶ 55.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, ¶ 56.

¹⁵¹ *Id.*, ¶ 58.

¹⁵² *Id.*

¹⁵³ Staff's Reply Brief, ¶ 30.

¹⁵⁴ Staff's Initial Brief, ¶ 60 (citation omitted).

¹⁵⁵ *Id.*, ¶ 63.

¹⁵⁶ Cheesman, Exh. No. MC-1T at 47:15-17.

not representative of ordinary rate case expenses associated with the Company's prior filings.¹⁵⁷

- 64 Staff arrived at the 5 year figure by averaging approximately 4.5 years, which is the time between WCI's 2009 rate case in Docket TG-091653 and Docket TG-140560, and 5.2 years, which is the time between the effective dates of the two filings.¹⁵⁸ Staff argues that the Company's four year amortization proposal "fails to consider the extraordinary magnitude of rate case costs in this proceeding and the potential effect on rates."¹⁵⁹
- 65 WCI sharply disagrees with Staff's disallowance recommendations.¹⁶⁰ WCI contends that the increased rate case expenses are "symptomatic of some of the 'moving parts' alternative ratemaking theories the Company confronted."¹⁶¹ Specifically, the Company cites to the difficulties it encountered with Staff over Kalama. WCI had originally filed its case with the Kalama operations commingled in all of the Company's operations.¹⁶² The Company argues that it did this for two reasons. First, the nonregulated portion of Kalama operations amount to less than the threshold 10 percent designated in WAC 480-07-420(4)(d).¹⁶³ Secondly, WCI asserts that a former Commission auditor had instructed the Company to file commingled Kalama operations in this matter.¹⁶⁴ According to WCI, it was only after Staff filed its response case that the Company realized that Staff wanted the Kalama numbers segregated into regulated and nonregulated operations. The Company states that it had to spend many hours attempting to revise its original route study and then discovered that Staff opted to commingle Kalama operations anyway.¹⁶⁵
- 66 WCI contends that its cumulative total professional expenses and hourly rates are not excessive, and it points out that Staff's own total accounting hours from September 2013 to June 30, 2014, aggregate to 1,595 hours, while the Company's accounting experts totaled

¹⁵⁷ Staff's Initial Brief, ¶ 64.

¹⁵⁸ Cheesman, Exh. No. MC-1T at 47:22-48:2.

¹⁵⁹ Staff's Initial Brief, ¶ 65.

¹⁶⁰ As the Company points out, Staff does not contest the total amount of time or the hourly rates assessed. WCI's Initial Brief, ¶ 17.

¹⁶¹ *Id.*, ¶ 18.

¹⁶² *Id.*, ¶ 19.

¹⁶³ *Id.*, ¶ 18. WAC 480-07-420(4)(d) provides: "[i]f nonregulated revenue represents more than ten percent of total company test period revenue, a detailed separation of all revenue and expenses between regulated and nonregulated operations."

¹⁶⁴ *Id.*, ¶ 19. See also, Davis, TR 101:11-103:10.

¹⁶⁵ *Id.*

911.1 hours.¹⁶⁶ WCI explains that, what Staff has cited to as the “complexity” of this case stems from thousands of pages of data request responses, telephone and in-person meetings, and site visits by Staff resulting in the “sheer volume of supporting documentation and data which explored and tested numerous ratemaking theories.”¹⁶⁷

67 The Company attributes the dismissal of its original filing in Docket TG-131794 to the Commission’s practice of forwarding the workpapers filed with the rate request directly to Staff without posting these supporting documents to the Commission’s public page for that matter.¹⁶⁸ WCI maintains that, absent these supporting documents, the Company had little chance of making a prima facie case for its request.¹⁶⁹ As a result, WCI argues that the blame for the dismissed case does not rest with the Company, and it should not be punished with a disallowance for Commission practices that were outside of its control.¹⁷⁰

¹⁶⁶ *Id.*, ¶ 21 and n. 27.

¹⁶⁷ *Id.*, ¶ 24.

¹⁶⁸ WCI’s Reply Brief, ¶ 50.

¹⁶⁹ *Id.*, ¶ 51.

¹⁷⁰ *Id.*, ¶ 52.

- 68 WCI contends that Staff’s recommendation of a 50 percent disallowance for the bulk of Docket TG-131794 expenses and the entirety of Docket TG-140560 rate costs is arbitrary and unsupported.¹⁷¹ The Company condemns what it characterizes as Staff’s “blame game,” as unconstructive and overreaching.¹⁷² Pointing to the cumulative \$50,000 courtesy professional fees discount both the Company’s legal and accounting professionals have offered to ratepayers, WCI recommends that the Commission allow recovery of all of its rate case expenses.¹⁷³
- 69 **Discussion/Decision.** We find the rate case expenses in this proceeding are exorbitant. By the end of February 2015, the combined legal and accounting fees totaled \$502,477.99. If one adds to this sum the fees and expenses incurred during the month of March, the month involving an all-day evidentiary hearing, the preparatory work necessary for it, and reply briefing, it isn’t inconceivable that these costs could have risen higher than the rate increase request of approximately \$532,000. At some point, a prudent business has to consider whether the amount it is expending is producing a prudent or efficient result. To expend approximately the same amount of money as your rate request tests the bounds of logic.
- 70 The Company claims that Staff contributed to the added procedure and expense of this rate case, both by its in-depth audit and examination and Staff’s communication breakdowns. WCI must also bear some of the culpability in this regard since the Company held all of the information necessary to process this case. It was WCI’s spreadsheets that contained hardcodes resulting in confusion and delay of the proceeding. Indeed, the Company must also accept some responsibility for the acrimony between the parties.
- 71 We find WCI’s argument that a partial recovery of any of its costs sends the harmful message to applicants that they will be denied rate case expenses if they pursue due process unjustified. If this were the case, the Commission would have no authority to examine rate case expenses, and these costs would be pass-through expenses. However, the Commission does analyze professional costs and must critically weigh whether they have been prudently incurred. We must balance the interests of the shareholders to recover legitimate rate case expenses and the interests of the ratepayers to only pay for costs prudently incurred. When the rate case expense total nears the requested amount, scrutiny will increase.

¹⁷¹ *Id.*, ¶ 53.

¹⁷² *Id.*, ¶ 58.

¹⁷³ *Id.*, ¶ 59.

- 72 WCI's erroneously presumes that the Company's first filing wouldn't have been dismissed but for the Commission's practice of forwarding all workpapers directly to Staff without posting them to the docket. Providing workpapers is but one step in the substantiation of a rate request. Workpapers do not, in and of themselves, constitute an analysis of adjustments or the validation that testimony would provide. In fact, the testimony filed in the original docket was lacking in meaningful detail. The Company's defense was to assert it would put on a full case at hearing. As we stated at the time of dismissal, that is not our standard operating procedure in adjudicating rate cases. The burden of proof in Docket TG-131794, as in every solid waste rate case, lies with the applicant, not with Staff or the Commission.
- 73 Further, Staff's detailed examination of the Company's records and books is not "novel" as WCI argues. A substantial period of time has elapsed since WCI's last adjudicated rate case. Neither the Company nor WRRRA have demonstrated that Staff's decision to closely scrutinize WCI resulted from animosity or hostility toward the Company or the industry at large. With regard to WCI's contention that the December 24, 2013, date beginning Staff's proposed time period for recovery of one-half the professional fees incurred is arbitrary, the date chosen by Staff does bear significance. It is the date that, pursuant to WAC 480-07-305(1), begins the adjudication "when the [C]ommission or presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted." This time period, December 24, 2013, through March 25, 2014, reflects the time WCI was preparing its formal case which was eventually dismissed. It is reasonable, given the inadequacy of the Company's preparation in Docket TG-131794, for this time frame to bear significance in the dismissal of the case.
- 74 Staff's proposal to split the liability for the time and expense incurred in Dockets TG-131794 and TG-140560 in legal and accounting fees is reasonable. We find that fairness and parity require an equal sharing of the burden and the blame between WCI and Staff for their actions during both proceedings. The Commission accepts Staff's recommended disallowance of one-half the professional expenses in Docket TG-131794 incurred between December 24, 2013, and March 25, 2014, and one-half of the professional expenses incurred during the pendency of Docket TG-140560.
- 75 The difference between the parties' suggested amortization periods is negligible. WCI has proposed four years, while Staff has proposed five. Had we granted the Company's full rate case expense allowance, the full five year period would have been beneficial to prevent a "rate shock" to ratepayers. With only a portion of the costs requested being allowed in rates, we see no reason to extend the amortization period beyond the four years requested by WCI.

D. Investigation Costs

76 Staff recommends that the Commission impose investigation costs upon the Company pursuant to RCW 81.20.020. The statute provides that:

Whenever the [C]ommission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of ... or render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the [C]ommission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year ... such public service company shall pay the expenses reasonably attributable and allocable to such investigation ... or services.¹⁷⁴

Staff asserts that it investigated the books and records of the Company because of its obligation to review WCI's rate request and recommend rates that are fair, just, reasonable, and sufficient.¹⁷⁵ Staff asserts that it has spent an extraordinary amount of time on this general rate case and incurred considerable expense during its investigation.¹⁷⁶ According to Staff, it incurred \$84,305 in expenses in the combined Dockets TG-131794 and TG-140560.¹⁷⁷

77 WCI asserts that neither it nor Staff are aware of any instance where the Commission has actually assessed investigation fees against an applicant in a solid waste general rate case.¹⁷⁸ The Company argues that language warning of the potential that the Commission could assess investigation fees was not included in any of the orders in Dockets TG-131794 or TG-140560, and it therefore did not receive notice of the possibility that investigation costs might be imposed.¹⁷⁹ WCI argues that the Commission recently failed to impose investigation fees under RCW 81.20.020 against an airporter alleged to have committed repeat prolonged

¹⁷⁴ RCW 81.20.020. Emphasis added.

¹⁷⁵ Staff's Initial Brief, ¶ 67.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ WCI's Initial Brief, ¶ 14.

¹⁷⁹ WCI's Reply Brief, ¶ 45.

violations of the Commission's rules.¹⁸⁰ The Company asserts that Staff have alleged no violations of the Commission's rules, but it still recommends imposing investigation fees against WCI.¹⁸¹ Finally, WCI argues that the statutory language is entirely discretionary so that the Commission is not forced to impose the fee.¹⁸²

78 **Discussion/Decision.** RCW 81.20.020 clearly states that, when the Commission has deemed it necessary to investigate a public service company's "books, accounts, practices and activities" and the cost exceeds "the ordinary regulatory fees paid by the public service company during the preceding calendar year," the company "shall pay the expenses reasonably attributable and allocable to such investigation."¹⁸³ The language of the statute does not give the Commission discretion in the imposition of the investigation fee. Nor is a statutory provision similar to one of the Commission's own rules that could be waived by the agency. The only discretion given to the Commission is when and which company's operations it should investigate.

79 WCI has alleged that Staff acted irregularly by conducting an investigation of the Company's books and accounts after years of entering into settlements with solid waste companies seeking rate increases. RCW 81.20.040 provides that the Commission's "determination of the necessity of the investigation ... shall be conclusive evidence of such necessity, and its findings and determination of facts expressed ... in any proceedings determinative of such bills shall be prima facie evidence of such facts." This rate case is the first fully litigated solid waste rate case before the Commission in more than 20 years.¹⁸⁴ We have no indication when Staff conducted the last audit comparable to the one Staff performed here. It is entirely reasonable for Staff to conduct an audit or investigation into the books and accounts of WCI after years, if not decades, of entering into rate case settlement agreements with solid waste companies. The Company has not proven any discriminatory or improper motivation for Staff's audit, and we find that Staff's decision to investigate WCI was in the public interest.

80 While correct that the Complaint and Order Suspending both WCI's filing in this matter and the previous incarnation did not contain notice that the Commission may impose investigative fees upon the Company, this is not the only avenue under which notice can be conveyed. As of the time WCI signed the Partial Settlement Agreement, it acknowledged that one of the four remaining contested issues was whether the Commission should require

¹⁸⁰ *Id.*, ¶ 47 (citing to *WUTC v. Shuttle Express, Inc.*, Docket TC-120323, Order 04 (March 19, 2014)).

¹⁸¹ *Id.*

¹⁸² *Id.*, ¶ 48.

¹⁸³ *Emphasis* added.

¹⁸⁴ *King County Dep't. of Public Works, Solid Waste Division, v. Seattle Disp. Co., et al*, Docket TG-940411, Third Supplemental Order (Sept. 1994).

the Company to pay investigation fees. The Commission's Order 10 discussed Staff's recommendation that the Commission require WCI pay investigation fees. Further, the Company was given an opportunity to be heard at the March 11, 2015, evidentiary hearing on the issue of investigation costs. We conclude that the statutory notice and opportunity to be heard requirements have been fulfilled. Thus, we find Staff's proposal to enforce RCW 81.20.020 and impose investigation fees in the public interest.

81 In determining the amount of the investigative fee to be charged, the statute provides some further guidance. The Commission, after providing the public service company with notice and an opportunity to be heard, is directed to mail a bill to the company for the amount of the investigation, so long as it doesn't exceed one percent of the company's gross intrastate operating revenues during the preceding calendar year.¹⁸⁵ Staff states WCI paid \$18,732.55 in regulatory fees for the 2013 calendar year.¹⁸⁶ The investigation costs of \$84,305 exceed the regulatory fees paid by the Company for the 2013 calendar year. That said, WCI's gross intrastate operating revenues in 2013 were \$4,381,882.25, and one percent of this total limits any investigation fees to \$43,818.82.¹⁸⁷ Staff also argues that the Company should not be allowed to recover investigation fees in rates.¹⁸⁸ The Commission Secretary should be directed to mail a bill to WCI in the amount of \$43,818.82 in accordance with RCW 81.20.020.

82 **Revenue Requirement.** Table 2 shows the Commission's determination of issues and the revenue requirement increase that we authorize WCI to collect in rates using the rate design implementing the Staff's proposal,¹⁸⁹ including a single company-wide rate for those regulated services that have multiple rates under Tariff Nos. 14 and 15. The results of operations incorporates the decisions that we discussed resolving contested issues and acceptance of uncontested issues. As shown, the revenue requirement deficiency is calculated based on commingled WCI's regulated and non-regulated Kalama results of operations and reflects the assignment of a portion of the revenue requirement deficiency pursuant to the Partial Agreement between WCI and Staff.

¹⁸⁵ RCW 81.20.020.

¹⁸⁶ Cheesman, Exh. No. MC-1T at 55:15-16.

¹⁸⁷ *Id.*, at 55:15, 17-19.

¹⁸⁸ Staff's Initial Brief, ¶ 69.

¹⁸⁹ Cheesman Exh. MC-11T and Exh. MC-12.

Table 2

WASTE CONTROL, INC. Docket No. TG-140560						
Commission Determination of Issues						
Results of Operations						
Test Year Ended June 30, 2013						
	Adj.No.	Total Operating Revenues	Total Operating Expenses	Net Operating Income	Operating Ratio	Net Investment
1		\$ 4,033,016	\$ 3,899,633	\$ 133,383	96.69%	
2		Uncontested Adjustments:				
3	R-1,R1A		\$ (38,747)	\$ 38,747		
4	R-2	-	-	-		
5	R-3		-	-		
6	R-4		(50,614)	50,614		
7	R-5		-	-		
8	R-6		(40,903)	40,903		
9	R-6A		(5,458)	5,458		
10	R-6B		(11,799)	11,799		
11	R-6C		(6,652)	6,652		
12	R-6F		(9,647)	9,647		
13	R-6G		(3,122)	3,122		
14	R-6H		-	-		
15	R-7	(45,570)		(45,570)		
16	RC-1	(154,085)	(154,085)	-		
17	RC-2		1,161	(1,161)		
18	RC-3		-	-		
19	P-1A		86,527	(86,527)		
20	P-1B		18,000	(18,000)		
21	P-4		(27,192)	27,192		
22	P-5A	138,598	180,885	(42,287)		
23	P-5B		138,598	(138,598)		
24		\$ (61,057)	\$ 76,952	\$ (138,009)		
25						
26		Contested Adjustments:				
27	R-6D		\$ (44,399)	\$ 44,399		
28	R-6E		(52,783)	52,783		
29	P-2,3		77,292	(77,292)		
30						
31		\$ -	\$ (19,891)	\$ 19,891		
32		\$ (61,057)	\$ 57,061	\$ (118,118)		
33		\$ 3,971,959	\$ 3,956,694	\$ 15,265	99.6%	\$ 1,548,613
34		376,630	10,898	365,732		
35		\$ 4,348,589	3,967,592	380,997	91.2%	\$ 1,548,613
36			24,668			
37		\$ 351,961			-	
38						

FINDINGS AND CONCLUSIONS

- 83 (1) The Washington Utilities and Transportation Commission (Commission) is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, and practices of solid waste companies.
- 84 (2) On April 3, 2014, Waste Control, Inc. (WCI) filed with the Commission new Tariff No. 16 reflecting a general rate increase that, if approved, would generate approximately \$532,000, or 15.4 percent, in additional revenue.
- 85 (3) On October 14, 2014, WCI and the Commission's regulatory staff (Staff) entered into a Partial Settlement Agreement (Partial Agreement), attached to this Order as Appendix A, resolving all but four contested issues: shared utility expenses, land rents, rate case expenses, and investigation costs.
- 86 (4) Specifically, the parties reached consensus on eleven contested issues in the Partial Agreement, including by not limited to: the capital structure and cost of debt in the Lurito-Gallagher formula, labor and fuel expenses, and the commingling of revenue, expense, and average net investment of WCI's regulated and nonregulated City of Kalama operations.
- 87 (5) Pursuant to WAC 480-07-540, WCI bears the burden of proof in this case requesting an increase in its rates for regulated operations. This burden of proof includes the burden of going forward with evidence and the burden of persuasion.
- 88 (6) The terms and conditions within the Partial Agreement are consistent with law and policy and reasonably resolve the issues in this proceeding. Each of the adjustments are supported by an appropriate record and will result in rates that are fair, just, reasonable, and sufficient.
- 89 (7) The Commission convened an evidentiary hearing on March 11, 2015, to address the remaining contested issues.
- 90 (8) With regard to the shared utility expenses adjustment, Staff's three-factor allocation proposal is consistent with generally accepted allocation principles and is more reasonable than WCI's position assigning direct costs as shared expenses.
- 91 (9) We accept Staff's proposed utility expense Adjustment R-6D allocating \$15,424 of shared utility expense to WCI's regulated operations as fair, just, reasonable, and sufficient.

- 92 (10) Staff's use of the capital structure and actual costs of debt of Heirborne Investments, LLC (HBI) and Heirborne Investments II, LLC (HBII) is appropriate to calculate the allowed return on equity for the land rents WCI pays to its affiliates HBI and HBII.
- 93 (11) The discounted cash flow methodology proposed by Staff for calculating returns on the land WCI rents from its affiliates is reasonable.
- 94 (12) Staff's approach employing the landlords' actual cost of debt, in this case, 2.2 percent for HBI's rents and 4.3 percent for HBII's rents, is easily verifiable, captures the combined landlords' risk profile, and connects a fair return to that risk profile.
- 95 (13) Staff's three-factor allocator is consistent with the regulatory principle of cost-causation allocation and should be applied to allocate depreciation and average net investment among tenants of HBI and HBII's facilities.
- 96 (14) The rate case expenses of which WCI has requested recovery are excessive. The Commission finds that Staff's proposal to allow 100 percent recovery of the expenses from the informal audit process in Docket TG-131794 and 50 percent recovery of the expenses from the formal adjudications in Dockets TG-131794 and TG-140560, as described in paragraph 69, is reasonable. The rate case costs will be amortized over a four year period.
- 97 (15) RCW 81.20.020 provides that the public service company subject to a Commission investigation shall pay the costs incurred by the Commission for such an investigation up to one percent of its gross intrastate operating revenues for the preceding calendar year.
- 98 (16) The Commission incurred \$84,305 investigating Dockets TG-131794 and TG-140560.
- 99 (17) WCI shall pay \$43,818.82, or one percent of its intrastate gross operating revenues for calendar year 2013.

ORDER

THE COMMISSION ORDERS That:

- 100 (1) The proposed tariff revisions filed by Waste Control, Inc., on April 3, 2014, and suspended by prior Commission order, are rejected.
- 101 (2) The Partial Settlement Agreement, filed by Staff and WCI on October 14, 2014, and attached to this Order as Appendix A, is approved and adopted without condition.

- 102 (3) WCI is authorized and required to make a compliance filing including such new and revised tariff sheets as are necessary to implement the requirements of this Order.
- 103 (4) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order.
- 104 (5) The Commission shall render a bill in the amount of \$43,818.82 to WCI pursuant to the requirements in RCW 81.20.020.
- 105 (6) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective June 8, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3).

WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and five (5) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Appendix A
(Partial Settlement Agreement)