

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC.

Respondent.

DOCKET TG-210689

NARRATIVE IN SUPPORT OF  
SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 This Narrative in Support of the Settlement Agreement (Narrative) is filed pursuant to WAC 480-07-740(3) on behalf of the Staff of the Washington Utilities and Transportation Commission (“Commission Staff”), Waste Management of Washington, Inc. d/b/a Brem-Air Disposal (“Waste Management” or the “Company”), and Kitsap County, Washington (“Kitsap County”) (collectively, “the Parties”). The Parties have signed the settlement agreement (“Agreement”), which was filed with the Commission February 18, 2022. This Narrative is not intended to modify any terms of the Agreement.

**II. PROPOSALS FOR REVIEW PROCEDURE**

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Agreement. As a preliminary matter, the Parties note that the Agreement has been entered into by all parties to this proceeding and represents a full settlement, as defined in WAC 480-07-730. The Parties believe that this Agreement concerns a “less complex matter” pursuant to WAC 480-07-740(2)(b). The matter is an enforcement proceeding of a routine nature involving allegations of violations of laws and rules enforced by the Commission and a request for penalties based on the

alleged violations. Accordingly, the Parties submit that a hearing on the proposed settlement will not be necessary for the Commission to decide whether to adopt the settlement.

3           The Parties file this Narrative in support of the Agreement pursuant to WAC 480-07-740(3)(a) and do not intend to present further filings. If the Commission requires supporting documents beyond this Narrative and the other documents on file in this docket, the Parties commit to providing documentation as directed.

4           In keeping with WAC 480-07-740(3)(b), the Parties are prepared to present one or more witnesses each to testify in support of the proposal and answer questions concerning the Agreement's details, costs, and benefits, should such testimony be required. In addition, counsel for each party is available to respond to any questions regarding legal matters associated with the proposed settlement or any other questions concerning the proposal that the Commission may have.

### **III. SCOPE OF THE UNDERLYING DISPUTE**

5           Waste Management, doing business as Brem-Air Disposal, provides solid waste collection services to approximately 48,419 customers in unincorporated areas of Kitsap County. The applicable tariff, Brem-Air Disposal Tariff 20, provides for every-other-week collection of residential yard waste and residential recycling.

6           In the summer of 2021, the Commission received complaints from Waste Management customers about missed yard waste and recycling collections in Kitsap County. Commission Staff opened an investigation focusing on missed residential pick-ups during the months of July and August 2021. Commission Staff determined that there were 3,810 missed yard waste collections in July and 12,820 missed recycling collections in August.

7           On November 15, 2021, the Commission issued a Complaint and Notice of Virtual Prehearing Conference (“Complaint”) against Waste Management, alleging 16,630 violations of RCW 81.28.080 and WAC 480-70-236, which prohibit a solid waste collection company from charging, demanding, collecting, or receiving a greater or less or different compensation than the rates and charges specified in a company’s tariff. In the Complaint, Commission Staff alleged that Waste Management violated the terms of its tariff when it failed to collect yard waste and recycling according to the service levels set forth in the tariff and that these tariff violations constituted 16,630 violations of RCW 81.28.080 and WAC 480-70-236. Commission Staff proposed penalties in the Complaint, pursuant to RCW 81.04.380, of up to \$1,000 for each violation, and requested that the Commission order such other or further relief as appropriate under the circumstances.

8           Waste Management has explained that the missed pickups were due to a shortage of qualified drivers that has affected many industries and regions during the COVID-19 pandemic. Further, the Company has reported to the Parties that the staffing shortage and the associated yard waste and recycling collection issues were resolved as of December 3, 2021.

#### **IV. DESCRIPTION OF PROPOSED SETTLEMENT**

9           The settlement resolves all of the issues in dispute. Waste Management admits to 16,630 violations of RCW 81.28.080 and WAC 480-07-236, as set forth in the Complaint. (Agreement at ¶ 12.) This admission encompasses all of the violations identified by Commission Staff in its investigation.

10          Waste Management agrees to pay a penalty of \$83,150 to the Commission. (Agreement at ¶ 13.) This is the full amount of the penalty that Commission Staff recommended in its investigation report.

11 Commission Staff has reviewed information obtained from Waste Management concerning missed recycling and yard waste pickups in unincorporated Kitsap County for the duration of the Company's staffing shortage, and Staff will not pursue additional penalties for missed recycling and yard waste pickups during this period. (Agreement at ¶ 14.)

12 After Commission Staff initiated its investigation but before the Commission issued the Complaint, Waste Management issued approximately \$448,389.39 in credits to customers for missed collections. During settlement negotiations, Waste Management reviewed all of the credits it had issued to date and discovered that there were additional missed pickups that fit the Company's methodology for issuing credits. As a term of this settlement, Waste Management will issue \$3,849.89 in credits to customers for additional missed recycling pickups and \$1,438.88 for additional missed yard waste pickups in August and September 2021. (Agreement at ¶ 15.)

13 In addition, Waste Management will issue credits totaling approximately \$34,658.63 to residential recycling and yard waste customers to assure a minimum level of credit per missed service for each customer. (Agreement at ¶ 16.) Under Item 30, "Limitations of Service," in Brem-Air Disposal Tariff No. 20, Waste Management can miss service under certain circumstances. When service is missed under these circumstances, the tariff's provisions on credits apply. A staffing shortage is not an allowed circumstance for missing service under the tariff; therefore, the tariff's credit provisions do not apply here. Because these provisions do not apply, it was necessary to develop a methodology for calculating and issuing these additional credits. The Company's methodology is fully explained in Appendix A to the Agreement.

14 Waste Management commits to working with Commission Staff and Kitsap County to develop a Company-wide Communication and Customer Outreach Plan for major service disruptions in Washington that occur in areas where the Company provides solid waste collection service that is regulated by the Commission. Waste Management will file the plan in the Complaint docket for Commission approval. The Communication and Customer Outreach Plan will establish minimum requirements for customer outreach and education, particularly concerning service pick-ups that are missed for reasons other than those listed in Tariff Item 30 during a major service disruption. Further, the Plan will identify when communications are necessary based on the breadth and duration of the service disruption; the frequency and method of communications to customers, the Commission, and affected counties and cities in the Company's Commission-regulated service territory; and will describe when credits or refunds will be provided. (Agreement at ¶ 17.)

15 Waste Management commits to working with Commission Staff and Kitsap County to develop a detailed Contingency Plan for areas in Kitsap County where the Company provides solid waste collection service that is regulated by the Commission. Waste Management will file the plan in the Complaint docket for Commission approval. The Contingency Plan must include procedures the Company has implemented or will implement to maintain adequate staffing levels; steps the Company will take to mitigate impacts to customers if certified driver levels decrease again; and steps the Company will take to return as quickly as possible to adequate staffing levels. (Agreement at ¶ 18.)

16 Finally, Waste Management agrees to provide to Commission Staff and to Kitsap County quarterly staffing reports for Waste Management employees providing collection service in the Brem-Air Disposal service territory. Reports will include the number of

qualified drivers needed for each collection service, the number of qualified drivers currently employed for each collection service, and the number and status of drivers going through the onboarding process for each collection service. Waste Management will submit a total of four quarterly reports over a reporting period of approximately one year.

(Agreement at ¶ 19.)

## **V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST**

17 As stated in the Agreement, the settlement represents a compromise of the positions of the Parties. The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources on litigation expenses. The statements below present the interests of the individual parties in entering into the Agreement.

### **A. Commission Staff**

18 Commission Staff (Staff) supports the Agreement because it reflects appropriate penalties, increases protections for Waste Management's customers, and also provides other benefits for those customers. Importantly, Waste Management admits to all of the violations that Staff identified. This is a vital aspect of Staff's compliance efforts. The level of penalties that Waste Management has agreed to pay for those violations is the full amount that Staff originally recommended in Staff's investigation report, and Staff continues to believe that this amount is appropriate to the circumstances. Waste Management has returned to adequate driver staffing levels in Kitsap County, and the missed collections attributable to the driver shortage have ceased. Because the service problem has been resolved and the Company is in compliance with the applicable tariff, Staff does not intend

to take further enforcement action related to the additional missed recycling and yard waste pickups that occurred from September to December 2021 after the period of Staff's investigation.

19           One of the customer benefits of the Agreement is the Company's commitment to issue additional credits. During the settlement process, Waste Management undertook a detailed review of the credits it had issued to date. The Agreement provides for the issuance of additional credits to customers that, but for the Agreement, likely would not have occurred. It is important to Staff that customers receive the same level of benefits, and both of the additional credits support this goal. Under paragraph 15 of the Agreement, customers who were eligible for the credits that the Company issued at the time but who did not receive these credits will now also receive these credits. Under paragraph 16, customers will receive additional credits that provide recognition, on an equitable basis, of the inconvenience customers experienced due to the long duration of Waste Management's staffing shortage and the resulting missed collections.

20           A significant term of the Agreement for Staff is the Company's commitment to develop a Communication and Customer Outreach Plan. One of the frustrations that can exacerbate a customer's negative experience when there is a longer period of major service disruption, such as occurred here, is insufficient communication from the service company. It is Staff's belief that this occurred during Waste Management's staffing shortage in its Brem-Air Disposal service territory. To improve communication with customers, the Agreement provides that Waste Management will work with Staff as well as Kitsap County to enhance Company protocols for customer education and outreach when there are major service disruptions that are not addressed in the tariff. This plan ultimately will be filed for

Commission approval in the Complaint docket, and the Company will be required to comply with it throughout its Commission-tariffed service area going forward.

21           The Agreement provides additional protection to Waste Management’s customers that directly addresses the issues that led to this enforcement action. The missed recycling and yard waste pickups occurred because Waste Management did not have a sufficient number of qualified drivers for its Brem-Air Disposal service territory. The Agreement addresses this issue in that it requires the Company to develop a detailed Contingency Plan to avoid and mitigate any future driver shortages. Further, under the Agreement, Waste Management must report quarterly on its driver staffing levels in its Brem-Air Disposal service area for a year. This provision will enable Staff to evaluate whether the Company’s driver staffing issues are indeed resolved.

**B.     Waste Management**

22           Waste Management supports the Agreement first because it is fair for customers. During last year’s struggles to maintain adequate driver staffing, Waste Management did not provide the level of service its customers deserve, nor that Waste Management expects of itself. The additional credits under the Agreement build on those Waste Management already issued to appropriately credit customers with respect to their individual experiences. The Agreement also benefits customers over the long term by allowing the Parties to focus on preserving and improving their cooperative working relationship and planning for the future, rather than expending resources on an adversarial proceeding focused on a narrowly-defined problem that Waste Management believes it has now resolved. Waste Management also believes collaboration on a clear, forward-looking communication plan will be valuable to customers and the Company going forward.

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Waste Management also supports the Agreement because it directly benefits the Company by resolving the uncertainty inherent in litigation, limiting the financial losses resulting from the driver shortage, and resolving related issues comprehensively, rather than piecemeal. Litigation is also time-consuming and distracting for operational staff, and settlement allows them to continue focusing on providing safe, reliable, reasonably-priced solid waste services.

**C. Kitsap County**

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Kitsap County is in support of this settlement. First and foremost, the settlement provides a recognition that many Waste Management customers, which are Kitsap County citizens, were negatively and significantly impacted by the Company's failure to collect yard waste and recycling at various times from July to December 2021 due to driver shortages. This recognition comes in the form of the Company's admission and payment of penalties, as well as credits for the impacted citizens. The County appreciates the Company's efforts to provide equitable reimbursements roughly commensurate with the impact. The County also supports this settlement because it provides a mechanism – through a Communications Plan and a Contingency Plan – to prepare for similar situations should they arrive in the future and to provide improved communications with Company customers not only in Kitsap County but throughout Washington state. The lengthy disruption to services was unfortunate and difficult for Kitsap County's citizens and the County appreciates the opportunity to participate in the matter in a way that makes our citizens more whole. The County believes this settlement does that in ways that taking this matter to hearing likely could not. The County urges approval of this settlement.

## VI. LEGAL POINTS THAT BEAR ON THE PROPOSED SETTLEMENT

25 In WAC 480-07-700, the Commission states its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

## VII. CONCLUSION

26 Because the Parties have negotiated a compromise on all of the issues in this dispute and because the settlement is in the public interest, the Parties request that the Commission issue an order approving the Agreement in full.

Respectfully submitted this 25th day of February, 2022.

### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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