

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TG-140560
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	ORDER 14
v.)	
)	
WASTE CONTROL, INC. (G-101),)	DENYING MOTION FOR
)	CLARIFICATION AND
Respondent.)	DENYING
)	RECONSIDERATION
.....)	

MEMORANDUM

- 1 On April 3, 2014, Waste Control, Inc. (WCI or Company), filed with the Washington Utilities and Transportation Commission (Commission) a general rate increase that would have generated approximately \$532,000 (15.4 percent) in additional revenue, if approved. Administrative Law Judge Friedlander entered an Initial Order, Order 12, on June 8, 2015, approving and adopting a partial settlement and resolving four contested issues. Order 12 authorized a net regulated revenue requirement increase of \$351,961.¹ WCI sought administrative review under RCW 34.05.464 and WAC 480-07-825.

- 2 The Commission entered its Final Order, Order 13, on August 6, 2015. Order 13, among other things, reversed the Initial Order’s determination that Staff’s calculation of land rent in the amount of \$85,217 for facilities WCI shares with affiliates should be approved.² The Commission found and determined that:

[N]either the Company’s nor Staff’s land rent adjustment proposals [is] adequately supported in this case. Nor is there evidence adequate to support any other adjustment to land rent. As a consequence, we are left with no alternative but to determine that there will be no adjustment to the level of land rent approved in WCI’s 2009 case. WCI accordingly will continue to be

¹ Order 12 at 30 (Table 2, ln. 37).

² Order 12 accepts Staff’s adjustment of (\$52,783) to the Company’s per books land rent of \$138,000; (\$138,000 - \$52,783 = \$85,217).

authorized to recover in rates and the amount of \$80,250 in land rents for purposes of the Company's compliance filing.³

On August 17, 2015, WCI filed its Motion for Clarification of Final Order 13. WCI, by its motion, asks the Commission to authorize recovery of more than the \$80,250 previously authorized in WCI's 2009 rate case. Specifically, WCI's motion requests us to modify Order 13 by allowing \$102,013.00 in land rent.

- 3 At the outset, WCI's motion is procedurally flawed. WCI would have us materially change the outcome of the land rent issue in Order 13. The Commission's procedural rules provide that such a request must be in the form of a petition for reconsideration under WAC 480-07-850. Moreover, WAC 480-07-850 states expressly that a motion for clarification under WAC 480-07-835 is not appropriate when a party seeks to change the outcome with respect to any issue determined in a Final Order, such as Order 13. WAC 480-07-835 governing motions for clarification of Final Orders states, in relevant parts:

Clarification of final order by motion.

(1) **Motion - when appropriate.** Any party who does not seek to change the outcome with respect to an issue may file a motion for clarification of a final order within ten days after the order is served. The purpose of a motion for clarification is to ask for clarification of the meaning of an order so that compliance may be enhanced, so that any compliance filing may be accurately prepared and presented, to suggest technical changes that may be required to correct the application of principle to data, or to correct patent error without the need for parties to request reconsideration and without delaying post-order compliance. A motion for clarification may also request that obvious or ministerial errors in orders be corrected by letter from the secretary or by subsequent order, consistent with WAC [480-07-875](#).

(2) **Motion - when not appropriate.** If a party seeks to change an outcome with respect to one or more issues resolved by a final order, or challenge a finding of fact or conclusion of law stated in the order, it may not

³ Order 13 ¶ 37. It restated this in Finding and Conclusion 18 at ¶ 74 of Order 13, as follows:
Neither the Company's nor Staff's land rent adjustment proposals are adequately supported in this case. As a consequence, there will be no adjustment to the level of land rent from the level approved in WCI's 2009 rate case and the amount of \$80,250 is authorized for recovery in rates determined for purposes of the Company's compliance filing.

(italics in original).

do so by motion for clarification, but must file a petition for reconsideration pursuant to WAC [480-07-850](#).

- 4 The Commission’s procedural rules, however, provide that “[t]he Commission will liberally construe pleadings and motions with a view to effect justice among the parties.”⁴ We will in this case treat WCI’s motion for clarification as if it had been properly filed as a petition for reconsideration, which is the appropriate pleading when a party wishes to “request that the commission change the outcome with respect to one or more issues determined by the commission’s final order”⁵ in a proceeding.
- 5 Even when construed as a petition for reconsideration, we find WCI’s arguments to be without substantive merit. WCI’s motion describes its request as one for “a technical change.”⁶ Although WCI’s motion does not plainly say so, it appears that the Company would have us accept that it is doing no more than “suggest[ing] technical changes that may be required to correct the application of principle to data,” which is allowed under WAC 480-07-835.⁷ This implied characterization of the Company’s request misses the mark by a wide margin.
- 6 The principle upon which the outcome in Order 13 depends is that when the record of a proceeding does not support an adjustment to an amount previously authorized for recovery with respect to an ongoing cost, the Commission may exercise its discretion to allow a previously authorized amount to remain in rates. The only alternative to this result would be to disallow recovery of any amount of land rent.
- 7 Yet, what WCI proposes is that the Commission adjust the amount of land rent approved for recovery in 2009 (*i.e.*, \$80,250), by adding to it additional rent that “reflects the addition of the truck shop property which was not contained in the previous 2009 rate expense.”⁸ The additional rent amounts that WCI seeks are taken directly from Staff’s litigation position in this case,⁹ which the Commission expressly rejected in Order 13 as being flawed in its methodology and unsupported. The suggestion that the Commission should reverse itself

⁴ WAC 480-07-395(4).

⁵ WAC 480-07-850(1).

⁶ Motion ¶¶ 4, 7.

⁷ See Motion ¶ 7.

⁸ Motion ¶ 4.

⁹ See Motion ¶ 5 and Motion Exhibits A and A-1.

here by selectively adopting data underlying Staff's litigation position in this case to adjust the amount of land rent authorized in 2009 is not a request for a technical change within the meaning of WAC 480-07-835.

- 8 In sum, we find no reason to reconsider our decision in Order 13. Order 13 determines that the land rent proposals of both the Company and Staff were methodologically flawed and inadequately supported. Both proposals are accordingly rejected in Order 13. This being so, the evidence on which WCI would have us rely cannot be considered as credible evidence meeting the substantial competent evidence standard upon which our determinations of fact depend. It would be patent error for the Commission to now rely on data drawn selectively from Staff's rejected proposal below to change the outcome of the land rent issue as WCI requests. The rationale WCI argues in support of Commission reconsideration of Order 13 is simply untenable. We therefore reject the Company's arguments and deny its request for relief.

ORDER

- 9 THE COMMISSION ORDERS That Waste Control Inc.'s Motion for Clarification, liberally construed here as a petition for reconsideration, is denied.

Dated at Olympia, Washington, and effective August 31, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner