

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET TG-091933
TRANSPORTATION COMMISSION,	)	(Consolidated)
	)	
Complainant,	)	ORDER 04
	)	
v.	)	
	)	ORDER DENYING PETITION FOR
WASTE MANAGEMENT OF	)	RULE INTERPRETATION;
WASHINGTON, INC., d/b/a WASTE	)	GRANTING EXEMPTION TO RULE
MANAGEMENT OF SNO-KING,	)	
	)	
Respondent.	)	
.....	)	
	)	
In the Matter of the Petition of	)	DOCKET TG-091945
	)	(Consolidated)
WASTE MANAGEMENT OF	)	
WASHINGTON, INC., d/b/a WASTE	)	ORDER 03
MANAGEMENT OF SNO-KING	)	
	)	
For Rule Interpretation or Alternatively	)	ORDER DENYING PETITION FOR
For Modification or Exemption of	)	RULE INTERPRETATION;
WAC 480-07-520(4)	)	GRANTING EXEMPTION TO RULE
	)	
.....	)	

1 **Synopsis:** *The Commission denies Waste Management’s Petition for Rule Interpretation seeking a determination that the work papers Waste Management filed in Docket TG-091933 comply with the requirements of Washington Administrative Code (WAC) 480-07-520(4). The Commission’s rule governing solid waste companies filing requests for general rate increases requires submission of work papers that contain detailed financial data for a company, its affiliated interests, and its subsidiaries. The plain language of the rule requires these work papers to address*

*company finances as a whole, not a limited subset of one or more subsidiary entities. This remains true even when only a single subsidiary of a larger company seeks a rate increase. However, the Commission recognizes the administrative burden placed on Waste Management due to its chosen corporate structure and, rather than reject Sno-King's rate case filing, grants an exemption to the rule in this case.*

### **INTRODUCTION**

- 2 **NATURE OF PROCEEDING.** Docket TG-091933 involves a proposed tariff revision filed with the Washington Utilities and Transportation Commission (Commission) by Waste Management of Washington, Inc., d/b/a Waste Management of Sno-King, an operating division of Waste Management of Washington, Inc. (Waste Management or the Company) on December 17, 2009. If approved by the Commission, the new tariff would increase Waste Management's rates in its Sno-King division by approximately \$475,301 or 4.4 percent. The Commission suspended operation of the proposed tariff by order entered on January 14, 2010.
- 3 Docket TG-091945 involves a petition from Waste Management seeking the Commission's determination of how the Company should comply with the filing requirements set out in WAC 480-07-520(4). According to information presented at the Commission's Open Meeting on January 14, 2010, the form and completeness of the Company's above-noted proposed tariff revision may be affected by the Commission's ruling on this petition. Therefore, the Commission consolidated Waste Management's petition for rule interpretation with its proposed tariff revision.
- 4 **BRIEFS.** In accordance with Order 03/Order 02, on January 29, 2010, Commission Staff filed its response to Waste Management's petition. On February 2, 2010, WRRRA filed its reply to Staff and on February 3, 2010, Waste Management filed its reply to Staff. On February 5, 2010, Commission Staff filed its rebuttal.
- 5 **APPEARANCES.** Polly L. McNeill, Summit Law Group PLLC, Seattle, Washington, represents Waste Management. James K. Sells, Ryan Sells Uptegraft, Inc. P.S., Silverdale, Washington, represents Intervenor Washington Refuse and

Recycling Association (WRRRA). Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).<sup>1</sup>

- 6 **ISSUES PRESENTED.** In a general rate proceeding, does WAC 480-07-520(4) require Waste Management to file "work papers" (i.e., specified balance sheets, income statements, and related financial data) for the corporation as a whole or only for the subsidiary tariff entity seeking to modify its rates? If the regulation does require the corporation as a whole to file work papers, should the Commission nevertheless grant an exemption from strict application of that rule?
- 7 **COMMISSION DECISION.** Waste Management selected a corporate organization that placed multiple business units under the umbrella of a single company, each of which conducts operations under the same Certificate of Public Convenience and Necessity. Commission rules governing work papers in general rate cases require each company, without regard to size or complexity, to submit specified financial data about regulated and non-regulated operations and revenue. The rule applies to the entire corporation, including all subsidiaries and affiliated interests. Waste Management cannot selectively interpret WAC 480-07-520(4) to fit its chosen corporate structure. However, in this case, the Commission grants an exemption to the rule to partially relieve the administrative burden imposed on Waste Management by its selected organizational hierarchy.

## MEMORANDUM

### A. Background Facts

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory 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.*

- 8 Waste Management has ten different business units or divisions providing solid waste collection services across Washington, each operating in distinct service territories.<sup>2</sup> Waste Management also owns three landfills, six transfer stations, and four recycling centers in Washington.<sup>3</sup> The Company provides its solid waste collection services under nine different Commission tariffs.<sup>4</sup>
- 9 On November 30, 2009, Waste Management submitted a general rate case filing for its Sno-King division, but Commission Staff concluded that the Company's work papers were deficient under the Commission's revised policy for stricter enforcement of WAC 480-07-520.<sup>5</sup> Waste Management remedied some of the minor deficiencies, but the Company disagrees with Commission Staff's position that it must file a detailed separation of all revenue and expenses between regulated and nonregulated operations and a detailed depreciation schedule listing all used and useful assets held by the Company during the test period.<sup>6</sup> Waste Management interprets WAC 480-07-520(4)(d) and (h) to require only information related to the tariff entity or division alone (i.e., Waste Management of Sno-King), not for the entire Company, across all of its statewide operations.<sup>7</sup>
- 10 On December 17, 2009, the Company filed a new Tariff No. 15 seeking to increase revenue in the Sno-King Division by approximately \$475,000 (4.4 percent) through a

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<sup>2</sup> Waste Management's Petition for Rule Interpretation or Alternatively for Modification or Exemption (Petition), at ¶ 5. *See also* Declaration of Michael A. Weinstein, at ¶¶ 4-6.

<sup>3</sup> Petition, at ¶ 5.

<sup>4</sup> *Id.*, at ¶ 6.

<sup>5</sup> *Id.*, at ¶¶ 17-22 (referencing April 16, 2009, letter to solid waste collection companies from Dave Danner, UTC Executive Director & Secretary, as well as November 3, 2009, follow-up letter from Gene Eckhardt, UTC Assistant Director of Solid Waste, Water and Transportation); *see also* Weinstein Declaration at ¶¶ 7-12.

<sup>6</sup> *Id.*, at ¶¶ 23-24.

<sup>7</sup> *Id.*, at ¶ 25.

residential and commercial rate increase of (collectively) 4.9 percent.<sup>8</sup> Waste Management filed work papers containing financial information only for Waste Management of Sno-King and some of the Company's other business units, but not for the entirety of Waste Management's statewide operations. Therefore, Waste Management filed its Petition for Rule Interpretation seeking the Commission's endorsement of the Company's interpretation of WAC 480-07-520(4).

**B. Applicable Regulation – WAC 480-07-520(4)**

11 WAC 480-07-520 explains that “[g]eneral rate increase filings by class A and B haulers as defined in WAC 480-70-041 must include the information described in this rule.” Failure to meet the rule's minimum requirements can result in the Commission rejecting the filing, without prejudice to the Company's right to refile its request in conformance with the rule.

12 In its entirety, WAC 480-07-520(4) states:

(4) **Work papers.** One paper and one electronic copy of all supporting work papers for the test period, which is the most recent or most appropriate consecutive twelve-month period for which financial data are available. The electronic copy must be submitted in the format identified in WAC 480-07-140(6). Work papers must include:

(a) A detailed pro forma income statement separated among solid waste, single family residential recycling, multifamily recycling, and yard waste, with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments.

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<sup>8</sup> Although collectively the proposed residential and commercial rate increases represent a 4.9 percent increase, individual impacts vary. For example, the proposed residential rate increase, as reflected on a monthly bill for weekly pick-up of a 35-gallon cart and every other week pick-up of a recycling cart, would go from \$19.45 to \$20.45, an increase of 5.1 percent. Depending on the size of the can or cart, the amount of the proposed residential rate increase varies slightly (but, notably, the proposed new rates for optional yard waste service are approximately 10 percent *lower* than currently in force).

(i) “Restating actual adjustments” adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) “Pro forma adjustments” give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(b) A calculation of the revenue impact of proposed tariff revisions.

(c) An income statement listing all revenue and expense accounts by month.

(d) If 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.

(e) A detailed list of all nonregulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.

(f) Detailed price-out information that reconciles within five percent,

without adjustment, to the test period booked revenue, including the test period customer count by tariff item.

(g) A consolidated balance sheet, including the percentage of equity and the percentage of debt, and the cost of that debt by component.

(h) A detailed depreciation schedule listing all used and useful assets held by the company during the test period, including the date of purchase, the cost at purchase, the depreciable life, the salvage value, depreciation expense, and accumulated depreciation expense at the end of the test period.

(i) Computed average investment. Average investment is the net book value of allowable assets at the beginning of the test period plus the net book value of allowable assets at the end of the test period, divided by two. Investor supplied working capital may be included, provided a work sheet is submitted detailing the calculations.

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

## **C. Positions of the Parties**

### ***1. Waste Management***

13 Waste Management asserts that it is unique among solid waste collection companies because it operates separate business entities under one corporate umbrella, providing solid waste collection services across a wide geographic area of many territories

under a single G-certificate.<sup>9</sup> According to the Company, its past filings have always complied with the rule by documenting the revenue requirement only for the tariff entity seeking review of its individual rates.<sup>10</sup> Waste Management views Staff's demand for documentation of the entire corporation's finances as a "change of practice" altering two decades of interpretation in the Commission's evaluation of general rate increase requests.<sup>11</sup>

14 With regard to WAC 480-07-520(4)(d), Waste Management points to the conditional language of the filing requirement: "[i]f nonregulated revenue represents more than ten percent of total company test period revenue," the rule then requires filing a "detailed separation of all revenue and expenses between regulated and nonregulated operations." Waste Management sees this ten percent threshold for "total company" revenue as a means of ensuring that *de minimis* nonregulated operations do not trigger the rule's separation of revenue and expenses requirement. According to the Company, Staff's new practice would force Waste Management to present a detailed separation of revenue and expenses for all nonregulated operations, without consideration of any potential relevance to the proposed change in tariff rates.<sup>12</sup>

15 With regard to WAC 480-07-520(4)(h), the Company argues that no public interest is served by requiring Waste Management to list its every asset statewide, from transfer stations to backhoes, each time one of its subdivisions seeks a rate increase. Further, Waste Management distinguishes the term "company" in this section of the rule from the "total company" language used in -520(4)(d). As applied to Waste Management, the Company argues that Waste Management of Sno-King is the "company" because it exists as a separate d/b/a entity under the Waste Management corporate umbrella.<sup>13</sup>

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<sup>9</sup> Petition, at ¶ 26. Waste Management's G-Certificate is lengthy, comprising 25 pages.

<sup>10</sup> *Id.*, at ¶ 27.

<sup>11</sup> *Id.*, at ¶ 28.

<sup>12</sup> *Id.*, at ¶ 29.

<sup>13</sup> *Id.*, at ¶ 30.

16 In sum, Waste Management argues that the work papers rule should be focused on the filing or tariff entity, not the overall corporate entity. If the Commission disagrees, then Waste Management requests a rule exemption or modification excusing it from filing data about its non-collection operations, particularly those dedicated to disposal and recycling.<sup>14</sup> Further, Waste Management contends that Commission Staff’s interpretation of the rule would force the Company to file valuable commercial information and also undertake more complex accounting methods, placing an undue hardship on the Company.<sup>15</sup>

## 2. *Commission Staff*

17 Commission Staff asserts that “the work paper requirements are intended to apply to, and in the absence of an exemption, must encompass all business activities of the corporation as a whole, not just a ‘business unit’ of the corporation’s choosing.”<sup>16</sup> As Staff views the situation, Waste Management’s various business units around the state are internal divisions of the Company that interact with each other. In order for Commission Staff to satisfactorily audit and analyze allocation of common costs between regulated and unregulated services in a proposed rate increase, it needs detailed income and balance sheet information not only for the business unit operating under the tariff, but also for any other business units within Waste Management that transact business with the tariff unit (in this case, Waste Management of Sno-King).<sup>17</sup>

18 Under the Commission’s affiliated interest transaction rules, when a parent corporation provides services to a regulated sub-entity, disclosure of income and

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<sup>14</sup> *Id.*, at ¶¶ 31-33.

<sup>15</sup> *Id.*, at ¶¶ 34-35.

<sup>16</sup> Staff Response, at ¶ 2. *See also Id.*, at ¶ 7, defining “company” as referencing a legal entity, not a division within a legal entity.

<sup>17</sup> *Id.*, at ¶ 3 and ¶¶ 10-12.

DOCKET TG-091945 (Consolidated)  
ORDER 03

balance sheets for all involved entities would be required.<sup>18</sup> Staff argues that Waste Management's selection of a unitary corporate structure, merging all of its subunits into a single business entity, does not excuse Waste Management from making a complete Company filing under WAC 480-07-520(4).<sup>19</sup>

19 Commission Staff supports granting an exemption to the rule in this case to ease the administrative burden on the Company. Commission Staff's proposed exemptions seek to ensure that the Commission can still be fully apprised of the Company's proposed allocation of common costs between internal business units.<sup>20</sup> For purposes of this filing only, Staff supports the following partial exemptions to the individual subsections of WAC 480-07-520(4) for Waste Management, for the purpose of its request to increase rates in its Sno-King operating division:

*WAC 480-07-520(4)(a) (detailed pro forma income statement)* – The required income statement may be limited to the business unit or units that provide services under the tariff that the Company is seeking to amend.

*WAC 480-07-520(4)(b) (revenue impact calculation for proposed tariff revisions)* – The revenue impact calculation may be limited to services provided under the tariff that the Company is seeking to amend.

*WAC 480-07-520(4)(c) (income statement listing all revenue and expense accounts by month)* – The required income statement may be limited to the business unit or units that provide services under the tariff that the Company is seeking to amend.

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<sup>18</sup> *Id.*, at ¶ 13.

<sup>19</sup> *Id.*, at ¶¶ 14-15.

<sup>20</sup> *Id.*, at ¶¶ 17-19.

DOCKET TG-091945 (*Consolidated*)  
ORDER 03

WAC 480-07-520(4)(d) (*detailed separation of all revenue and expenses between regulated/nonregulated operations if nonregulated revenue exceeds ten percent of total company test period revenue*) – Waste Management may provide a detailed separation of all revenue and expenses between (1) the business unit or units that provide services under the tariff that the Company is seeking to amend and (2) any business unit within Waste Management with which the business unit providing the tariff services has intra-company transactions or arrangements that, but for the fact that the business units are not separate corporations, would be affiliated interest transactions.

WAC 480-07-520(4)(e) (*detailed list of all nonregulated operations, including the rates charged for the services rendered*) – Staff recommends that no exemption be granted to this provision, contending that the Company will not be unduly burdened to provide a list of all regulated and nonregulated operations within Waste Management of Washington, including the rates charged. Staff contends that a comprehensive list will provide the Commission with a clearer understanding of all business units with which the business unit providing regulated services *might* have common costs.

WAC 480-07-520(4)(f) (*detailed price-out information*<sup>21</sup>) – The revenue to be reported may be limited to services provided under the tariff that the Company is seeking to amend.

WAC 480-07-520(4)(g) (*consolidated balance sheet*) – Staff recommends that no exemption be granted to this provision, contending that the required consolidated balance sheet should include Waste Management, Inc., and Waste Management of Washington.

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<sup>21</sup> “Price-out” information means the total revenue the company will receive when applying the proposed new tariff to the total number of customers and number of annual billing cycles.

DOCKET TG-091945 (Consolidated)  
ORDER 03

*WAC 480-07-520(4)(h) (detailed depreciation schedule)* – The assets for which a depreciation schedule must be provided may be limited to those utilized by the business unit or units that provide services under the tariff that the Company is seeking to amend.

*WAC 480-07-520(4)(i) (computed average investment)* – The assets for which the Company must compute an average investment may be limited to those utilized by the business unit or units that provide services under the tariff that the Company is seeking to amend.

*WAC 480-07-520(4)(j) (information about every transaction with affiliated interests or subsidiaries)* – Waste Management may limit the affiliated interest transactions under this requirement to those between the business unit or units that provide services under the tariff that the Company is seeking to amend, on the one hand, and affiliates of Waste Management of Washington, including Waste Management, Inc., on the other. Waste Management must provide an income statement and balance sheet for Waste Management, Inc., and any other affiliate that is party to such a transaction.

- 20 In sum, Staff supports a ruling that would allow the Company to file work papers that explain the services provided under the tariff and list all relevant data for any and every part of the corporation as a whole that conduct intra-company transactions or arrangements affecting the services provided under the tariff. Notably, Staff opposes exemptions to the detailed list of nonregulated operations required by subsection (e) or the consolidated balance sheet requirement of subsection (g).

### ***3. Intervenor Washington Refuse and Recycling Association***

- 21 Intervenor WRRRA points out that at least two of its member companies may have similar business models to that adopted by Waste Management. Therefore, from an industry perspective, WRRRA highlights the importance of every solid waste collection

company knowing the “rules of the game” and how Commission Staff will now interpret and apply the regulations governing general rate case filings.<sup>22</sup>

- 22 WRRRA agrees with Waste Management and supports an interpretation of the rule requiring companies to only file data for entities or sub-entities with a reasonable connection to the business unit requesting the rate revisions.<sup>23</sup> In WRRRA’s view, Commission Staff’s “literal application” of the rule in this case is at odds with past Commission practice.<sup>24</sup>

#### *4. Waste Management – Sno-King’s Reply*

- 23 Waste Management agrees with the general nature of the rule exemption offered by Commission Staff but is frustrated by the apparent need to seek such an exemption; the Company views Staff’s proposal as a continuation of past practice.<sup>25</sup> Waste Management and Staff concur on the policy behind the work paper filing requirement: “it is indeed necessary for ratemaking purposes for the Commission’s auditors to understand how expenses are allocated, and to scrutinize the various methods of allocating common costs.”<sup>26</sup> However, according to Waste Management, Staff’s approach would require petitions for exemption to be filed with all rate cases where the filing entity’s corporate structure includes multiple business entities.<sup>27</sup>
- 24 Waste Management repeatedly claims that only after publication of an April 2009 letter to solid waste companies did Staff reverse its long-held interpretation of

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<sup>22</sup> WRRRA Reply, at ¶¶ 2-3

<sup>23</sup> *Id.*, at 3.

<sup>24</sup> *Id.*

<sup>25</sup> Waste Management’s Reply, at ¶¶ 1-2 and 15; *see also* at ¶¶ 4-14 for the Company’s view of the Commission’s historical practices since adopting the rule in 1992.

<sup>26</sup> *Id.*, at ¶ 15.

<sup>27</sup> *Id.*, at ¶ 3.

WAC 480-07-520(4).<sup>28</sup> According to the Company, the letter's promised rigorous enforcement of the rule has actually resulted in a significant and substantive deviation from the Commission's previous approach to interpreting its own rule.<sup>29</sup> Waste Management contends that much of the detailed data Staff would require it to file will prove meaningless.<sup>30</sup> Ultimately, though, the Company seeks approval of Staff's proffered exemption, but with continuing applicability of that exemption to all of Waste Management's future filings, too.<sup>31</sup>

### *5. Commission Staff's Rebuttal*

25 On February 5, 2010, Commission Staff filed a rebuttal to the Company's reply. In short, Staff opposes any suggestion that it should continue to individually tailor application and enforcement of the work paper rules to particular solid waste collection companies and their unique corporate structures.<sup>32</sup> Staff seeks to have a uniform approach and to consistently apply the rule to all companies, not on a case-by-case basis.<sup>33</sup>

#### **D. Commission Decision**

26 The heart of this dispute is whether an operating company that is one of an organized group of affiliated companies is required to support a request to increase rates with information detailing the commercial relationships that exist between it and its

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<sup>28</sup> *Id.*, at ¶¶ 18-19.

<sup>29</sup> *Id.*

<sup>30</sup> *See Id.*, at ¶¶ 20-35, for the Company's subparagraph-by-subparagraph critique of Commission Staff's proposed exemption to the work papers requirement of WAC 480-07-520(4)(a – j).

<sup>31</sup> *Id.* at ¶ 36.

<sup>32</sup> Staff Rebuttal, at ¶¶ 1-2.

<sup>33</sup> *Id.*, at ¶ 2.

affiliates. We find that it does, but provide an exemption from the filing rule in this case.

- 27 We are statutorily obligated to supervise and regulate all solid waste collection companies operating in Washington.<sup>34</sup> These responsibilities include establishing and altering rates and charges.<sup>35</sup> In order to effectively set rates, the Commission requires solid waste collection companies to submit certain information with every general rate increase filing.<sup>36</sup> Having determined that we had not been consistently enforcing our regulations in this area, in 2009 we advised the regulated community of our intent to more strictly enforce the substantive requirements related to rate case filings.<sup>37</sup>
- 28 Waste Management disputes Commission Staff’s interpretation and enforcement of our rules governing the information to be submitted when a petition to increase rates is filed. The Company argues that it should not have to submit certain information when only one part of its organization seeks to increase rates. It contends that when the tariff of Waste Management of Sno-King is under review, the only “company” encompassed by the rule is the Sno-King operating division. In other words, the operations of its affiliates do not affect or are not material to Sno-King’s rates, unless such operations are specifically set forth in the rate petition. Staff interprets our rules broadly enough to encompass the operations of Sno-King’s affiliates – at least those operations affecting Sno-King’s rates, charges or services. To give effect to its interpretation of the rule, Commission Staff categorizes the entire parent corporation of Waste Management as the “company” and Sno-King as one of its subsidiaries seeking to raise its tariff rates. We conclude that Staff is correct.

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<sup>34</sup> RCW 81.77.030.

<sup>35</sup> See RCW 81.77.030(1).

<sup>36</sup> See WAC 480-07-520, WAC 480-70-079, and WAC 480-70-256.

<sup>37</sup> Letter to Solid Waste Collection Companies from Dave Danner, UTC Executive Director & Secretary (April 16, 2009); see also Letter to Solid Waste Collection Companies from Gene Eckhardt, UTC Assistant Director of Solid Waste, Water and Transportation (November 3, 2009).

- 29 WAC 480-07-520 requires solid waste collection companies seeking to increase their rates to file a number of documents, including work papers accounting for a variety of data supporting the company's request, including its commercial relationships with affiliated enterprises. The rule's purpose is to ensure that all information necessary to determine whether existing or proposed rates are fair, just, reasonable and sufficient is available to the Commission.
- 30 Waste Management contends that WAC 480-07-520(4)(d)'s use of the term "total company" should be read to mean that work papers detailing the commercial relationship between the entity under review and its nonregulated affiliates are only required when nonregulated income exceeds ten percent and, even if true, its work papers only need to show the separation of regulated and nonregulated revenue associated directly or indirectly with the tariff filing entity.<sup>38</sup> The company reads too much into the scope of subsection (4)(d).
- 31 As Waste Management points out in its pleadings, subsection (4)(d) sets a threshold for revenue generated by nonregulated activities. If nonregulated revenue is less than 10 percent of "total company" operations, then the filing entity can avoid creating and submitting a detailed separation of revenue and expenses associated with nonregulated operations. Unlike Waste Management, we do not read subsection (4)(d) to implicitly deny the Commission access to other information potentially relevant to the operations of the filing entity.
- 32 When read in its entirety, we interpret WAC 480-07-520 to conclude that the term "company" as used within the rule has only one possible meaning: the entire corporate entity, including all subsidiaries and affiliates.<sup>39</sup> As this is a rule of general application, the broadest scope of the term "company" is inclusive of the myriad of corporate structures made available under current statutes. It would be inconsistent with applicable law and public policy to find that a particular corporate structure

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<sup>38</sup> See Petition at ¶¶ 29-30 and Reply at ¶¶ 24-29.

<sup>39</sup> With the possible exception of subsection (4)(d), it consistently uses the term "company" to define its parameters, and does not distinguish smaller business units within a company for individual consideration.

shielded a corporation under Commission regulation from revealing the extent and effect of affiliate transactions on rates, charges or services. To the contrary, WAC 480-07-520(4)(j) requires the submission of work papers containing “information about every transaction with an affiliated interest *or subsidiary* that directly or indirectly affects the proposed rates” (emphasis added). Thus, the plain wording of the rule requires evaluation of the entire corporation’s operations to determine what effect, if any, other subsidiary (or affiliated interest) operations might have on the proposed tariff revision.

33 Waste Management and Commission Staff agree that the spirit of the rule requires submission of any evidence that might shed light on how the undertakings of the whole company impact the rates of one of its operating units. However, we view Waste Management’s position to be problematic in its application. Given our statutory obligations, we cannot permit Waste Management to dictate what books we will audit and allow self-selection as to when to open the ledgers of other subsidiaries or unregulated operations. The access to information called for by statute enables us to perform our regulatory mission.<sup>40</sup> In furtherance of this objective, our filing rule dictates that all relevant “company” information be made available in a form subject to audit by Staff. Our rule cannot be interpreted to cede discretion to a regulated entity over which data to submit. We understand that the breadth and scope of our review authority may be a burden to companies organized in the manner of Waste Management. However, we could not properly perform our statutory duties without unfettered access to relevant data and evidence.

34 In essence, we consider the holder of a certificate of public convenience and necessity to be the “company” referenced in our rule. As Waste Management of Washington, Inc., holds a single G-certificate that covers all of its subsidiary units of operation, including Waste Management of Sno-King, it is the “company” to which the rule applies. We now turn to the other points raised by Waste Management.

35 Waste Management objects to Staff’s “new” interpretation of the work papers rule as a substantive change in policy and position. We do not view Staff’s action here to be

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<sup>40</sup> RCW 81.04.070 provides us wide latitude to ask for information from a regulated company.

a new interpretation of an existing rule, but merely a stricter enforcement of it. Just to be clear, Staff has not acted unilaterally in seeking stricter enforcement of our rule, but acted at our direction to correct the quality of rate filings made at the Commission. While we recognized more strict enforcement could create confusion, we believed that such confusion could be avoided by giving the industry notice of our intention. Thus, we provided notice to all solid waste collection companies that our existing rules governing general rate case filings would be strictly enforced.<sup>41</sup> Given this direction, Staff is simply seeking to enforce the rule as written and ensure consistency for all solid waste collection companies.<sup>42</sup>

36 Waste Management argues that its interpretation of our filing rule would better protect proprietary information regarding its business operations. While we agree that information that is not in our possession cannot be obtained through a Public Records Act<sup>43</sup> request, we cannot impair our regulatory obligations because of the potential of disclosure. We recognize that Waste Management may be required to submit corporate information that is commercially sensitive. Though there are some protections for such information under the Public Records Act,<sup>44</sup> the Company may perceive some vulnerability for disclosure of some information.<sup>45</sup> Nevertheless, effective regulation demands that the Commission have access to the data required by WAC 480-07-520. Should WRA and Waste Management deem it necessary to seek more statutory protection of information our rules require be filed, we will work with

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<sup>41</sup> Letter to Solid Waste Collection Companies from Dave Danner, UTC Executive Director & Secretary (April 16, 2009); *see also* Letter to Solid Waste Collection Companies from Gene Eckhardt, UTC Assistant Director of Solid Waste, Water and Transportation (November 3, 2009).

<sup>42</sup> Even if it were true that we changed our interpretation of the regulation, there is ample case law to support such a change. Agencies are not “inflexibly bound” by prior decisions and may change course if they present sufficient justification for the change. *See e.g., Vergeyle v. Department of Employment Security*, 28 Wn. App. 399, 404, 623 P.2d 738 (1981).

<sup>43</sup> RCW 42.56.

<sup>44</sup> *See, e.g.,* RCW 42.56.270.

<sup>45</sup> Information filed under Title 80 RCW (relating to utilities) has a more specific statutory protection. RCW 80.04.095. There is no clear authority applying that provision to information filed by transportation companies regulated under title 81 RCW.

them and the Legislature to obtain an appropriate resolution. Further, Waste Management, or any solid waste collection company, may continue to seek specific exemptions from this rule for individual filings.<sup>46</sup>

37 We now turn to question of whether Waste Management should be granted an exemption from our filing rule.

38 WAC 480-07-110 provides that the Commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest and the purposes of the underlying regulation:

The standard for consideration is the public interest standard. Factors the commission may consider include whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

39 Waste Management's corporate structure is unusual with respect to having so many organizationally distinct regulated and nonregulated lines of business within one corporation. Therefore, we conclude that granting an exemption in this case is consistent with the public interest. This result relieves the administrative burden to both the company and Commission should we dismiss this matter for failing to comply with our filing rule and require the company to refile its rate request. Staff supports this result believing that it can obtain the information needed to fully analyze the company's rate request during the pendency of this proceeding.

40 In summary, we conclude that Commission Staff must have access to all relevant corporate financial data in order to assess the reasonableness of a company's proposed allocation of common costs between internal business units and any affiliates. This ensures that ratepayers only pay for regulated services, and that any

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<sup>46</sup> Of course, in the event a rate filing results in an adjudicative proceeding, filing of information could be covered by a protective order. RCW 34.05.446; WAC 480-07-420.

charges related to transactions with its affiliates are priced at the lower of cost or market.<sup>47</sup> Furthermore, we adopt Commission Staff's proposed exemption. In our view, this eases the Company's administrative burden while simultaneously ensuring that Commission Staff receives all of the information it needs to analyze a general rate case filing. Finally, we do not extend this exemption, as Waste Management requests, to future filings.

### **FINDINGS OF FACT**

41 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

42 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate the rates, rules, regulations, practices, and accounts of public service companies, including solid waste companies.

43 (2) Waste Management of Washington, Inc., is a solid waste company and a public service company holding Certificate of Public Convenience and Necessity No. G-237, and is subject to Commission jurisdiction.

44 (3) Waste Management of Sno-King is a subsidiary business unit of Waste Management of Washington, Inc., and collects solid waste under one of Waste Management of Washington, Inc.'s nine tariffs.

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<sup>47</sup> See WAC 480-07-078 and 480-07-079. Notably, WAC 480-07-079(2) requires that annual reports of affiliated interest and subsidiary transactions "must be for total company and for total state of Washington" and include "a corporate organization chart of the company and its affiliated interests and subsidiaries."

- 45 (4) Waste Management of Washington, Inc., d/b/a Waste Management of Sno-King filed a proposed tariff revision filed with the on December 17, 2009, seeking to increase Waste Management's rates in its Sno-King division by approximately \$475,301 or 4.4 percent.
- 46 (5) In support of its proposed tariff revisions, Waste Management of Washington, Inc., filed work papers containing financial information only for Waste Management of Sno-King and some of the Company's other business units, but not for the entirety of Waste Management of Washington, Inc.'s statewide operations.
- 47 (6) Simultaneously with its proposed tariff revision, Waste Management of Washington, Inc., d/b/a Waste Management of Sno-King also filed a Petition for Rule Interpretation seeking the Commission's endorsement of the Company's interpretation of WAC 480-07-520(4)'s work papers requirement.
- 48 (7) The Commission suspended operation of Waste Management of Sno-King's proposed tariff by order entered on January 14, 2010.

**CONCLUSIONS OF LAW**

- 49 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 50 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 51 (2) Washington Administrative Code (WAC) 480-07-520 requires solid waste collection companies proposing general rate increases to file specific documentation in support of the proposed rate increase.

- 52 (3) The language of WAC 480-07-520 requiring a “company” to file detailed financial data applies to the certificate holding corporate entity as a whole and is not limited to corporate subsidiaries.
- 53 (4) WAC 480-07-520(4) requires Waste Management of Washington, Inc., to file work papers that address the entire corporation’s financial data, and is not limited to subsidiary business units operating under individual tariffs.
- 54 (5) The Commission determines that it is in the public interest and is consistent with the purposes of evaluating general rate increase filings to grant Waste Management of Sno-King an exemption to the work papers requirement of WAC 480-07-520(4) for the limited purpose of considering the proposed general rate increase filing in Docket TG-091933 for the tariff governing Waste Management of Sno-King.
- 55 (6) The Commission should retain jurisdiction to effectuate the terms of this Order.

**ORDER**

56 THE COMMISSION ORDERS That:

- 57 (1) Waste Management of Washington, Inc., d/b/a Waste Management of Sno-King’s Petition for Rule Interpretation is denied.
- 58 (2) Waste Management of Washington, Inc., d/b/a Waste Management of Sno-King’s Petition for Exemption from the requirements of WAC 480-07-520(4) is granted, in part, consistent with the terms of this Order.
- 59 (3) The exemption granted to Waste Management of Washington, Inc., d/b/a Waste Management of Sno-King in this Order applies only to the general rate proceeding in Docket TG-091933.

60 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective March 23, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**