

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC., d/b/a WASTE  
MANAGEMENT – NORTHWEST,

Respondent.

.....  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC, d/b/a WASTE  
MANAGEMENT – SNO-KING,

Respondent.

.....  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC., d/b/a WASTE  
MANAGEMENT – SOUTH SOUND,  
WASTE MANAGEMENT OF SEATTLE,

Respondent.

DOCKETS TG-101220, TG-101221  
and TG-101222 (consolidated)

COMMISSION STAFF MOTION  
FOR SUMMARY  
DETERMINATION AND  
ARGUMENT IN SUPPORT  
THEREOF

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## I. RELIEF REQUESTED

1 Pursuant to WAC 480-07-380(2), the Washington Utilities and Transportation Commission Staff (“Commission Staff”) moves for an order:

- (1) Declaring that the 2010-2011 Recycling and Commodity Revenue Sharing Plans submitted by the respondents (“Waste Management”) do not demonstrate that using a portion of the recycling revenues to provide Waste Management with a rate of return on the expenditures described in the plans is a “use[] to increase recycling” within the meaning of RCW 81.77.185; and
- (2) Requiring Waste Management to refund to residential customers all revenues that Waste Management has received since September 1, 2010, from the sale of recyclable materials collected in its residential recycling programs, and that have not been spent on recycling-related activities.

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

### A. Waste Management Recycling Revenue Sharing Plans Between 2003 and 2009.

2 In 2002, the Washington Legislature enacted RCW 81.77.185.<sup>1</sup> As originally enacted, it provided:

(1) The commission shall allow solid waste collection companies collecting recyclable materials to retain up to thirty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

(2) By December 2, 2005, the commission shall provide a report to the legislature that evaluates:

(a) The effectiveness of revenue sharing as an incentive to

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<sup>1</sup> 2002 Wash. Laws ch. 299, § 6.

increase recycling in the state; and

(b) The effect of revenue sharing on costs to customers.

3

In 2003, Waste Management initiated revenue sharing under RCW 81.77.185 in Snohomish and King Counties. Waste Management-Northwest submitted to the Washington Utilities and Transportation Commission (“Commission”) a recycling plan that Snohomish County had certified. The other two respondents submitted a recycling plan that King County had certified.<sup>2</sup> The Commission considered the plans in connection with Waste Management’s proposed tariff revisions to change its annual recycling commodity revenue adjustment under WAC 480-70-351.<sup>3</sup> The Commission allowed Waste Management to retain 30 percent of the revenue it received from the sale of recyclable materials in residential recycling programs. The Commission continued that practice for the next six years, in the following dockets:

<b>Company</b>	<b>County</b>	<b>Dockets</b>
Waste Management - Northwest	Snohomish	TG-030711
		TG-041085
		TG-050891
		TG-060934
		TG-071177
		TG-081053
		TG-090759
Waste Management – Sno-King	King	TG-030923
		TG-041086
		TG-050892
		TG-060933
		TG-071178
		TG-081054
		TG-090760

<sup>2</sup> *In re Waste Management of Washington, Inc., (Northwest) G-237*, Docket TG-030711, [Waste Management & Snohomish County Recycling Plan and Commodity Revenue Sharing Agreement](#) (May 30, 2003); *In re Waste Management of Washington, Inc., (Seattle) G-237*, Docket TG-030713, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County](#) (May 30, 2003).

<sup>3</sup> See Dockets TG-030711/TG-030712/TG-030713/TG-030923, Commission Staff [Open Meeting Memo](#) (June 27, 2003).

Company	County	Dockets
Waste Management – South Sound, Seattle	King	TG-030713
		TG-041084
		TG-050894
		TG-060932
		TG-071179
		TG-081055
		TG-090761

4           The recycling plans that Waste Management submitted in 2003 described tasks that it was to perform to be eligible to retain 30 percent of the revenues it received from the sale of recyclable materials. They included the implementation of single-cart curbside recycling, expansion of curbside recycling into rural areas (Snohomish County), and data reporting, each with an associated subtotal of the retained 30 percent. The plans said the counties might ask the Commission to reduce the percentage of revenues Waste Management would be allowed to retain if conditions in the plans were not met.

5           Waste Management submitted new recycling plans in 2008 and 2009.<sup>4</sup> Unlike the 2003 plans, the later plans did not associate specific tasks with any particular portion of the retained recycling revenues, with one exception: If Waste Management failed to meet data reporting requirements, it would be allowed to retain only 15 percent of recycling revenues rather than 30 percent.

6           Until November 2010, none of Waste Management’s recycling plans specifically allowed for a profit margin.

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<sup>4</sup> *In re Waste Management of Washington, Inc., d/b/a Waste Management-Northwest, G-237*, Docket TG-081053, [WM Recycling and Commodity Revenue Sharing Plan for Snohomish County Addendum 3, June 2008](#) (filed June 30, 2008); *In re Waste Management of Washington, Inc., d/b/a Waste Management-Northwest, G-237*, Docket TG-090759, [WM Recycling and Commodity Revenue Sharing Plan for Snohomish County Addendum 4, June 2009](#) (filed June 9, 2009); *In re Waste Management of Washington, Inc., d/b/a Waste Management-Sno-King, G-237*, Docket TG-090760, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County: July 1, 2009 – June 30, 2010](#) (filed June 16, 2009).

## B. Procedural History of These Dockets

7 In 2010, the Washington Legislature amended RCW 81.77.185(1). The amendment directed the Commission to allow solid waste collection companies to retain up to 50 percent of the revenues received from the sale of recyclable materials.<sup>5</sup>

8 In July 2010, pursuant to WAC 480-70-351(2), Waste Management initiated these dockets by filing with the Commission proposed revisions to certain tariffs, to reflect the change in commodity credits for residential and multi-family customers paying for recycling collection services. Waste Management also filed requests to retain fifty percent of the revenue Waste Management would receive from the sale of recyclable materials that it collects in its residential recycling services during the recycling plan period of September 1, 2010, through August 31, 2011. To support the requests, Waste Management-Northwest submitted a new recycling plan that Snohomish County had certified, while the other two respondents submitted a new recycling plan that King County had certified. Like the 2008 and 2009 recycling plans, these new plans stated that the revenue Waste Management would be allowed to retain would be reduced if it failed to meet data reporting requirements, but they contained no other specific link between revenues retained and tasks to be performed or recycling goals to be achieved.<sup>6</sup>

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<sup>5</sup> [2010 Wash. Laws ch. 154](#), § 3. As amended, RCW 81.77.185(1) provides:

The commission shall allow solid waste collection companies collecting recyclable materials to retain up to fifty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

<sup>6</sup> *In re Waste Management of Washington, Inc., d/b/a Waste Management-Northwest, G-237*, Docket TG-101220, [Waste Management Recycling and Commodity Revenue Sharing Plan for Snohomish County, September 1, 2010 – August 31, 2011](#) (July 15, 2010); *In re Waste Management of Washington, Inc., d/b/a Waste Management-Sno-King, G-237*, Docket TG-101221, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) (July 15, 2010); *In re Waste Management of Washington, Inc., d/b/a Waste Management-South Sound and Waste Management of Seattle,*

9 In August 2010, Waste Management filed with the Commission a Revenue Sharing Report for 2009-2010. The report showed that Waste Management received \$3,720,339 from the sale of recyclable materials and had retained thirty percent, or \$1,102,029. It had spent \$889,861 on recycling program costs, leaving an unspent balance of \$212,168.<sup>7</sup>

10 The matters came before the Commission at its August 26, 2010, Open Meeting. The Commission inquired about the manner in which the revenue from sales of recyclable materials is budgeted and spent. On August 31, 2010, the Commission issued Order 01 in each of these consolidated dockets. The Commission authorized Waste Management to retain 50 percent of the revenue it received from the sale of recyclable materials collected in its residential recycling programs from September 1, 2010, through December 1, 2010, subject to refund. The Commission directed Waste Management to work with Snohomish and King Counties to devise detailed budgets for the use of the retained revenue, showing how much money Waste Management planned to spend on recycling activities and the anticipated effect the activities would have on increased recycling. The Commission ordered Waste Management to file the budgets and other materials with the Commission by November 1, 2010. The Commission also ordered Waste Management to carry over into the 2010-2011 plan period the unspent recycling revenues from the 2009-2010 period.<sup>8</sup>

11 On November 1, 2010, Waste Management submitted revised recycling plans certified by Snohomish and King Counties. They projected that Waste Management would

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G-237, Docket TG-101222, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) (July 15, 2010).

<sup>7</sup> Docket TG-090759, [2009-2010 Revenue Sharing Report](#) (Aug. 30, 2010); Docket TG-090760, [2009-2010 Revenue Sharing Report](#) (Aug. 30, 2010); Docket TG-090761, [2009-2010 Revenue Sharing Report](#) (Aug. 30, 2010).

<sup>8</sup> Docket TG-101220, [Order 01](#) ¶¶ 19-23, 25 (Wash. Utils. & Transp. Comm'n, Aug. 31, 2010); Docket TG-101221, [Order 01](#) ¶¶ 19-23, 25 (Wash. Utils. & Transp. Comm'n, Aug. 31, 2010); Docket TG-101222, [Order 01](#) ¶¶ 19-23, 25 (Wash. Utils. & Transp. Comm'n, Aug. 31, 2010).

receive \$3,665,200 from the sale of recyclable materials during the 2010-2011 plan period, and they proposed a budget for the use of the revenues. Waste Management proposed to spend \$1,686,000 (46%) on recycling activities, to keep \$146,600 (4%) as profit, and to pass the remaining \$1,832,600 (50%) to residential customers, as required by RCW 81.77.185.<sup>9</sup>

12 Waste Management also filed a revised Revenue Sharing Report for 2009-2010 showing how it proposed to use unspent revenues from the July 2009 through August 2010 plan period. Waste Management proposed to return some to its customers through commodity credits, and to keep \$88,162 as profit.<sup>10</sup> Waste Management filed revised tariffs showing the commodity credits proposed to be in effect from December 1, 2010, through August 31, 2011.

13 The matters came before the Commission at its November 24, 2010, Open Meeting. Commission Staff recommended that the Commission set the matters for hearing, and suspend the tariff revisions that Waste Management had filed on November 1, 2010. Staff explained that the Commission had not previously been asked to authorize revenue sharing under RCW 81.77.185 that specifically included a profit element for the company, adding “Staff believes that the open meeting is not the appropriate forum to decide this industry-wide issue.”<sup>11</sup> The Commission accepted Staff’s recommendation, suspended the tariff revisions, and commenced an adjudicative proceeding.<sup>12</sup>

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<sup>9</sup> See Docket TG-101220, [Waste Management Recycling and Commodity Revenue Sharing Plan for Snohomish County, September 1, 2010 – August 31, 2011](#) (filed Nov. 1, 2010); Docket TG-101221, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) (filed Nov. 1, 2010); Docket TG-101222, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) (filed Nov. 1, 2010).

<sup>10</sup> See Docket TG-101220, [Revenue Sharing Report – \(2009-2010\) \(revised 10/29/10\)](#) (filed Nov. 1, 2010).

<sup>11</sup> Dockets TG-101220, TG-101221, TG-101222, [Commission Staff Open Meeting Memorandum](#) at 5-6 (Nov. 24, 2010).

<sup>12</sup> Docket TG-101220, [Order 02](#) (Wash. Utils. & Transp. Comm’n, Nov. 24, 2010); Docket TG-101221, [Order 02](#) (Wash. Utils. & Transp. Comm’n, Nov. 24, 2010); Docket TG-101222, [Order 02](#) (Wash. Utils. & Transp. Comm’n, Nov. 24, 2010). These dockets were consolidated in [Order 03](#), issued December 1, 2010.



14 On December 20, 2010, Administrative Law Judge Gregory J. Kopta convened a prehearing conference. The parties agreed that the outcome in these dockets would depend, in part, on the outcome in Dockets TG-101542, TG-101545, and TG-101548, and agreed to hold further proceedings in abeyance until those dockets were decided.

15 Waste Management and Commission Staff then negotiated a partial settlement to address the unspent revenues from the 2009-2010 plan period. Waste Management agreed to return all of the unspent revenues from 2009-2010 to customers through commodity credits and not retain any as profit. The Commission approved the partial settlement on February 28, 2011.<sup>13</sup> The partial settlement did not resolve the treatment of revenues that Waste Management receives from the sale of recyclable materials during the 2010-2011 plan period.

16 The Commission issued a final order in Dockets TG-101542, TG-101545, and TG-101548 on May 6, 2011.<sup>14</sup> The Commission held that RCW 81.77.185 does not require companies to spend all retained revenues on recycling activities, but that retained revenues that are not used to increase recycling must be passed on to residential customers. In footnote 25 of its order, the Commission said, “We are not deciding the broader question of whether RCW 81.77.185 would permit a company to simply retain a percentage of the recycling revenues as ‘profit’ where there are no associated performance goals,” deferring that question for resolution in these dockets.

17 Administrative Law Judge Kopta then convened a second prehearing conference in these dockets and set a schedule for briefing the remaining issues.

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<sup>13</sup> Dockets TG-101220/TG-101221/TG-101222, [Order 06](#) (Feb. 28, 2011), [Notice of Finality](#) (Feb. 28, 2011).

<sup>14</sup> *In re Mason County Garbage Co.*, Docket TG-101542/*In re Murrey’s Disposal Co.*, Docket TG-101545/*In re Am. Disposal Co.*, Docket TG-101548, [Order 05](#) (Wash. Utils. & Transp. Comm’n, May 6, 2011).

### III. ISSUE

18 The Second Prehearing Conference Order frames the issue as follows:<sup>15</sup>

The Commission must determine whether the recycling plans Waste Management has submitted demonstrate that the revenues the Company retains will be used to increase recycling as required under RCW 81.77.185. The parties having previously agreed to be bound by the Commission's decision in Dockets TG-101542, TG-101545 & TG-101548 (consolidated), the primary, if not sole, issue in this proceeding is whether using a portion of the recycling revenues to provide Waste Management with a rate of return on its expenditures under the plans is a "use[] to increase recycling" within the meaning of the statute.

### IV. ARGUMENT

19 Under RCW 81.77.185(1), Waste Management has the burden to submit a plan that "demonstrates how the [retained recycling] revenues will be used to increase recycling." The profit element proposed in the 2010-2011 Recycling and Commodity Revenue Sharing Plans that Waste Management has submitted does not meet that standard.

20 In Dockets TG-101542, TG-101545, and TG-101548, the Commission held that "RCW 81.77.815 permits a company, consistent with the jurisdictional solid waste management plan, to include in its recycling plan a mechanism that would allow the company to retain some portion of recycling revenues upon the meeting of certain stated performance goals."<sup>16</sup> Unlike the recycling plans that were involved in those dockets, however, the revised 2010-2011 recycling plans that Waste Management has submitted do not associate any particular portion of recycling revenue with the achievement of performance goals, with one exception—data reporting.<sup>17</sup>

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<sup>15</sup> Dockets TG-101220/TG-101221/TG-101222, [Order 07](#) ¶ 5 (June 7, 2011).

<sup>16</sup> Dockets TG-101542/TG-101545/TG-101548, [Order 05](#) ¶ 31.

<sup>17</sup> See Docket TG-101220, [Waste Management Recycling and Commodity Revenue Sharing Plan for Snohomish County, September 1, 2010 – August 31, 2011](#) at 9 (filed Nov. 1, 2010); Docket TG-101221, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) at 6 (filed Nov. 1, 2010); Docket TG-101222, [Waste Management Recycling and Commodity](#)

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Instead of linking revenue with the achievement of performance or recycling goals, the plans contain a budget that allocates a portion of the revenue Waste Management receives from the sale of its customers' recyclables as profit to Waste Management. According to Waste Management, "[w]ithout some earning, the Company has little incentive to experiment or otherwise participate in the programs."<sup>18</sup> The facts do not support that argument.

**A. There is No Evidence that Waste Management Would Abandon its Recycling Programs if it Could Not Earn a Profit Under RCW 81.77.185.**

**1. Waste Management Must Comply With Local Ordinances Regardless of Whether it Participates in Revenue Sharing Under RCW 81.77.185.**

22

Under RCW 81.77.030(5), the Commission must supervise and regulate solid waste collection companies "[b]y requiring compliance with local solid waste management plans and related implementation ordinances." Ordinances in King and Snohomish Counties require solid waste collection companies to distribute promotional and educational materials about recycling.<sup>19</sup> The 2010-2011 recycling plans that Waste Management has submitted

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[Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) at 6 (filed Nov. 1, 2010). *See also* Docket TG-101220, [Order 01](#) ¶ 24 (noting data reporting requirement).

<sup>18</sup> Dockets TG-101220/TG-101221/TG-101222, [Petition to Allow Revenue Sharing, Lift Interim Status, and Approve Revised Commodity Credits](#) ¶ 19 (Nov. 1, 2010).

<sup>19</sup> King County Code § 10.18.040 provides: "Certificated haulers shall be responsible for distributing promotional and educational materials for their franchise area and for initial as well as subsequent program promotion as new programs, customers or areas of service are established. Promotional and educational materials are those materials prepared for the purpose of encouraging participation and educating residents about the county's recycling collection programs. Materials may include, but are not limited to, the following: Internet web pages; brochures; mailings; advertisements; radio and television commercials or public service announcements; and displays." The King County Code is available at [http://www.kingcounty.gov/council/legislation/kc\\_code.aspx](http://www.kingcounty.gov/council/legislation/kc_code.aspx).

Snohomish County Code § 7.42.040(5)(c) provides: "Promotional strategies shall be employed by collection companies to reasonably and regularly inform and notify each single-family and multi-family customer of the inclusion of recycling collection service and charges in combination with garbage collection service. Promotional strategies shall also be employed to regularly inform each customer and residence of proper material preparation, collection schedules, and the availability of mini-can, yard debris collection and other services." The Snohomish County Code is available at [http://www1.co.snohomish.wa.us/County\\_Services/County\\_Code/County\\_Code\\_Collection.htm](http://www1.co.snohomish.wa.us/County_Services/County_Code/County_Code_Collection.htm).

include provisions for the distribution of promotional and educational materials, along with a substantial budget for those activities. Regardless of whether Waste Management participates in revenue sharing under RCW 81.77.185, the Commission can require Waste Management to comply with the county ordinances mandating such activities. To the extent the recycling plans would allow Waste Management to earn a rate of return on expenditures it would have to make anyway, the plans do not demonstrate “how the revenues will be used to increase recycling” under RCW 81.77.185.

**2. Waste Management Profits From Revenue Sharing Without a Line Item for Profit.**

23 The recycling and revenue sharing plans that Waste Management submitted in November 2010 are the first that have specifically allowed for a profit margin. Yet, Waste Management has been participating in revenue sharing under RCW 81.77.185 since 2003. If, as Waste Management argues, it would have little reason to do so without a financial incentive, then the pre-2010 plans must have provided some incentive.

24 That is indeed what the Commission has concluded in the past. In 2005, the Commission examined data from ten solid waste collection companies, including the three involved in these dockets, and prepared a report. The Commission concluded that revenue sharing had the effect of increasing company profit and encouraging innovation, even though the companies spent all of the revenue-sharing money and retained none as profit:<sup>20</sup>

Companies spent all of the retained revenue for recycling-related purposes, such as new containers, collection equipment and educational materials. Much of the retained revenue was spent on activities or items that will increase the company’s equity or profit in future years.

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<sup>20</sup> Washington Utilities and Transportation Commission, *Report on Revenue Sharing in the Regulated Solid Waste Industry*, Submitted to the Washington State Legislature, February 21, 2006, at 3, 14, 16 (available at [http://www.wutc.wa.gov/webdocs.nsf/b8da29aede8fdd67882571430005a9c1/7dc15c16bde058068825711e00616102/\\$FILE/UTC%20Recycling%20revenue%20sharing%20report%20-%20final%202-21-06.pdf](http://www.wutc.wa.gov/webdocs.nsf/b8da29aede8fdd67882571430005a9c1/7dc15c16bde058068825711e00616102/$FILE/UTC%20Recycling%20revenue%20sharing%20report%20-%20final%202-21-06.pdf)).

Companies spent most of the retained revenue on recycling-related activities that increased owner equity or company profit, consistent with the intent of the revenue sharing legislation.

\* \* \*

All of the recycling activities described in this report could have been accomplished without revenue sharing through the county's comprehensive solid waste management planning process and service level ordinances. However, the planning process can be lengthy . . . . Revenue sharing provided an incentive for haulers to negotiate sooner with county solid waste staff to implement changes in existing recycling programs and experiment with pilot programs.

25           The recycling plans that Waste Management has submitted for 2010-2011 demonstrate how revenue-sharing money can be used to increase the company's profit in future years. The "Decrease Residuals and Contaminants" sections in both plans (Task 4 in the King County plan) say that "Waste Management will continue to invest in equipment and processing technologies to improve the quality of recyclables (and reduce contamination) at the Cascade Recycling Center (CRC)."<sup>21</sup> In the budget attached to the plans, Waste Management proposes to spend a total of \$1.4 million to install optical sorting equipment at the Cascade Recycling Center. About a third of that money, \$483,000, would come from revenues from the sale of recyclable materials collected from "WUTC customers," without any investor capital being put at risk.

26           By installing equipment to enhance efficiency and "improve the quality of recyclables," Waste Management may be able to increase the price it receives when it sells recyclables collected from all of its customers in the Puget Sound area, in regulated as well as unregulated operations. Surely the \$483,000 gift to pay for the equipment and the prospect of increased future profit are incentives.

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<sup>21</sup> Docket TG-101220, [Waste Management Recycling and Commodity Revenue Sharing Plan for Snohomish County, September 1, 2010 – August 31, 2011](#) at 3 (filed Nov. 1, 2010); Docket TG-101221, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) at 2 (filed Nov. 1, 2010); Docket TG-101222, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) at 2 (filed Nov. 1, 2010).

27           There is no basis for concluding that Waste Management would have less incentive  
to participate in recycling programs without a profit line item in its recycling plans. The  
proposed profit margin in the plans is not a “use[] to increase recycling” within the meaning  
of RCW 81.77.185.

**B.     The Proposed Rate of Return in the Recycling Plans is Unreasonable.**

28           According to Waste Management, it is “entitled to some reasonable profit associated  
with the fulfillment of [Revenue Sharing Agreement] tasks.”<sup>22</sup> The rate of return proposed  
in the recycling plan budgets is unreasonable, however.

29           Since 1988, the primary method that the Commission has used for determining rates  
for the solid waste industry has been a modified operating ratio method known as the Lurito-  
Gallagher methodology.<sup>23</sup> The Commission began applying the methodology to recycling  
services in 1991, in a proceeding that involved two of the petitioners in these consolidated  
dockets.<sup>24</sup>

30           As described in the Declaration of David Gomez,<sup>25</sup> when the Lurito-Gallagher  
methodology is applied to the figures in the 2010-2011 Revenue Sharing Plan Budget that  
Waste Management has submitted, it shows that Waste Management would earn a return  
well in excess of that allowed by Lurito-Gallagher. Waste Management has provided no  
justification for treating the recycling services described in plans developed under RCW

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<sup>22</sup> Dockets TG-101220/TG-101221/TG-101222, [Petition to Allow Revenue Sharing, Lift Interim Status, and Approve Revised Commodity Credits](#) ¶ 20 (Nov. 1, 2010).

<sup>23</sup> *In re Consolidated Garbage Cases*, Docket TG-2016, Final Commission Order (Wash. Utils. & Transp. Comm’n, Jan. 28, 1988).

<sup>24</sup> *Wash. Utils. & Transp. Comm’n v. Sno-King Garbage Co., Inc., G-126*, Docket TG-900657, [Fourth Supplemental Order](#) (Wash. Utils. & Transp. Comm’n, Dec. 10, 1991)/*Wash. Utils. & Transp. Comm’n v. Northwest Garbage Co., Inc., G-43*, Docket TG-900658, Fifth Supplemental Order (Wash. Utils. & Transp. Comm’n, Dec. 10, 1991).

<sup>25</sup> Commission Staff submits the Declaration of David Gomez in accordance with [WAC 480-07-380\(2\)\(a\)](#), [CR 56](#), and [RCW 9A.72.085](#).

81.77.185 differently from recycling services whose costs are included in Commission-approved rates. Waste Management has not demonstrated how the rate of return proposed in the recycling plans it has submitted “will be used to increase recycling.”

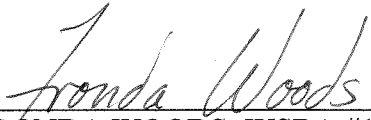
## V. CONCLUSION

31 The recycling plans that Waste Management has submitted do not demonstrate that the proposed profit under the plan budget is a “use[] to increase recycling” within the meaning of RCW 81.77.185. In Orders 01 and 02 entered in these dockets, the Commission authorized Waste Management to retain fifty percent of the revenue it receives from the sale of recyclable materials collected in its residential recycling programs on a temporary basis, subject to refund. The Commission should require Waste Management to refund to residential customers all revenues that Waste Management has received since September 1, 2010, from the sale of recyclable materials collected in its residential recycling programs and that have not been spent on recycling-related activities.

DATED this 30th day of June 2011.

Respectfully submitted,

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