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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

In the Matter of the Petitions of:

DOCKET NOS.

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

TG-101220  
*(Consolidated)*

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

TG-101221  
*(Consolidated)*

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

TG-101222  
*(Consolidated)*

Requesting Authority to Retain Fifty Percent of  
the Revenue Received From the Sale of  
Recyclable Materials Collected in Residential  
Recycling Service

MOTION FOR SUMMARY  
DETERMINATION IN SUPPORT OF  
REVENUE-SHARING PLANS

**I. INTRODUCTION**

1. This Motion for Summary Determination in Support of Revenue-Sharing Plans (“Motion”) is submitted by Waste Management of Washington, Inc. (“Waste Management”), to explain why allocating as a financial reward a percentage of revenues retained from marketing recyclable materials to a company for making expenditures and otherwise participating in a revenue-sharing program is a “use[] to increase recycling” within the meaning of RCW 81.77.185.

1 2. On July 16, 2010, Waste Management filed with the Washington Utilities and Transportation  
2 Commission (“Commission”) revisions to its applicable tariffs for three of the company’s  
3 operating divisions in King and Snohomish Counties: *In re Waste Management of*  
4 *Washington, Inc., d/b/a/ Waste Management – Northwest*, G-237, Docket TG-110220; *In re*  
5 *Waste Management of Washington, Inc., d/b/a/ Waste Management – Sno-King*, G-237,  
6 Docket TG-110221, and *In re Waste Management of Washington, Inc., d/b/a/ Waste*  
7 *Management – South Sound and Waste Management of Seattle*, G-237, Docket TG-110222  
8 (collectively, “2010-2011 Filing”).<sup>1</sup> The 2010-2011 Filing is the subject of this adjudicative  
9 proceeding, which is intended to resolve issues of interpreting and applying RCW 81.77.185  
10 in the context of Waste Management’s 2010-2011 Revenue Sharing Agreement (“RSA”)  
11 with King County and with Snohomish County.

## 12 II. PROCEDURAL HISTORY

13 3. The administrative procedures implicated by this matter are somewhat cyclical in nature. On  
14 one track is the recycling commodity adjustment, which is a deferred accounting mechanism  
15 that draws on data from the preceding year’s activities and projects a rate adjustment for a  
16 prospective twelve-month period from that historical data. On a parallel track is the process  
17 for implementing a revenue-sharing plan under RCW 81.77.185. Both components involve  
18 revenues generated from marketing recycling materials, and therefore companies  
19 participating in programs under RCW 81.77.185 seek approval to revise recycling  
20 commodity adjustments contemporaneously with a request to retain proceeds under a new  
21 revenue-sharing plan. Because commodity credit adjustment is a deferred accounting  
22 calculation that relies on actual and projected revenues, and revenue-sharing requests are  
23

24  
25 <sup>1</sup> All submittals in these three dockets, which were consolidated at the prehearing conference on December 20,  
26 2010, will be identified as the 2010-2011 Filing. Consolidated Orders 03 (Order of Consolidation and Notice of  
Prehearing Conference) (December 1, 2010). In this Motion, the relevant Commission decisions applicable to each  
matter are denominated as “Northwest Order,” “Sno-King Order,” or “South Sound Order,” and those applicable to  
all three are collectively referred to as “Consolidated Orders.”

1 based on those same numbers, both are subject to being trued-up at the end of a plan period,  
2 and where one filing ends, another begins.

3 **A. Procedural History of Waste Management’s Filings.**

- 4 4. Thus, the procedural context for this matter in a sense begins with the immediately-preceding  
5 plan period for 2009-2010. In May 2009 Waste Management filed for recycling commodity  
6 price adjustments, and also requested Commission approval to retain thirty percent of the  
7 revenues paid to the Company for marketing recyclable materials. *In re Waste Management*  
8 *of Washington, Inc., d/b/a/ Waste Management – Northwest*, G-237, Docket TG-090759; *In*  
9 *re Waste Management of Washington, Inc., d/b/a/ Waste Management – Sno-King*, G-237,  
10 Docket TG-090760, and *In re Waste Management of Washington, Inc., d/b/a/ Waste*  
11 *Management – South Sound and Waste Management of Seattle*, G-237, Docket TG-090761  
12 (collectively, “2009-2010 Filing”).<sup>2</sup>
- 13 5. Acting on the Consent Agenda, in its decision approving the recycling commodity  
14 adjustment and granting the request to retain recycling revenue, the Commission ordered  
15 Waste Management to report the amount of revenue it retained, the amount of money it spent  
16 on the activities identified in the recycling plans, and the effect the activities had on  
17 increasing recycling at the close of the planning period. Collective Orders 01 (Approving  
18 Commodity Credits; Authorizing Revenue Sharing; and Requiring Deferred Accounting  
19 Treatment for Recyclable Commodities Revenues) ¶ 17 (June 25, 2009).
- 20 6. After the 2009-2010 plan period closed, Waste Management submitted a report presenting  
21 the relevant calculations of the actual retained revenue and expenditures, as well at data  
22 comparing recycling tonnages and pounds per customer to the previous year’s numbers.  
23 2009-2010 Filing, *Revenue Sharing Report – (2009-2010)* (August 30, 2010) (“Initial  
24 Revenue Sharing Report”). The Initial Revenue Sharing Report showed that \$3,720,339 was  
25

26 <sup>2</sup> The three dockets in the 2009-2010 Filing were not consolidated, but for purposes of this Motion Commission decisions applicable to all three will be referred to as “Collective Orders.”

1 generated from marketing recyclable materials, and \$1,038,671 was the amount of the thirty-  
2 percent retained revenue. Of the retained funds, \$889,861 was spent on planned activities.  
3 The Initial Revenue Sharing Report stated that \$212,168 of the revenue was not expended on  
4 program activities, and that amount was credited to the Company.

5 7. Using the actual revenue data for 2009-2010 from the Initial Revenue Sharing Report to  
6 calculate the recycling commodity adjustment for the next plan period, the Company initiated  
7 the next cycle and submitted the two components of its 2010-2011 Filing. The Company  
8 requested approval to adjust recycling commodity credits for the 2010-2011 plan period  
9 based on actual data from the 2009-2010 plan period. The calculation assumed the Company  
10 would keep the unspent retained revenue of \$212,000.

11 8. Contemporaneously, in implementation of RCW 81.77.185, Waste Management also  
12 requested approval for revenue-sharing, and filed RSAs for both King and Snohomish  
13 Counties for the period of September 1, 2010, to August 31, 2011. The Counties each  
14 submitted letters certifying the Company's RSAs as consistent with their respective  
15 Comprehensive Solid Waste Management Plans, and recommended that Waste Management  
16 be allowed to retain fifty percent of the recyclable commodity revenues projected for the  
17 period of September 1, 2010, through August 31, 2011. 2010-2011 Filing, *Letter from Kevin*  
18 *Kiernan to David W. Danner* (June (sic) 15, 2010); *Letter from Matt Zybas to David W.*  
19 *Danner* (July 14, 2010).

20 9. The 2010-2011 Filing was docketed for the Consent Agenda at the Open Meeting on  
21 August 26, 2010. The Commission took no action on the rate adjustment component,  
22 thereby allowing the revised commodity credits to go into effect September 1, 2010, by  
23 operation of law. The Commission authorized retention of fifty percent of the revenues  
24 derived from recyclable materials collected in Waste Management's recycling programs, but  
25 only on an interim basis, from September 1, 2010, through December 1, 2010, subject to  
26 refund. Consolidated Orders 01.

- 1 10. As a condition of allowing the proposed revenue sharing to be effective for the remainder of  
2 the period through August 31, 2011, the Commission directed Waste Management to prepare  
3 and submit for its 2010-2011 revenue-sharing activities and programs in King and  
4 Snohomish Counties a detailed budget showing the amount of revenue the Company  
5 expected to retain and the amount of money it planned to spend under the proposed 2010-  
6 2011 RSAs. Consolidated Orders 01 ¶¶ 21 & 22.
- 7 11. The Commission directed: “Revenues retained by [the company] not spent during the  
8 previous plan period are to be carried over into the next year, and revenues from this plan  
9 period that are not spent are to be carried over to the following year, unless some other  
10 treatment as may be ordered by the Commission.” Consolidated Orders 01 ¶ 25.
- 11 12. On October 26, 2010, Waste Management filed with the Commission a *Petition to Allow*  
12 *Revenue Sharing, Lift Interim Status, and Approve Revised Commodity Credits* (“Petition”).  
13 The Petition included a detailed budget estimating the costs of program activities and  
14 investments. The budget had a line-item allocating 8% of the estimated retained revenue to  
15 the Company. King and Snohomish Counties submitted letters re-certifying the RSAs, as  
16 embellished by the detailed budget. The certificate letters acknowledged the support of King  
17 and Snohomish Counties for the Company to be allocated 8% of the revenue as incentive for  
18 participating in the RSA programs. 2010-2011 Filing, *Letter from Kevin Kiernan to David*  
19 *W. Danner* (November 1, 2010); *Letter from Matt Zybas to David W. Danner* (October 28,  
20 2010).
- 21 13. For this reason, the Petition also included a modified revenue sharing report. *See* 2009-2010  
22 Filing, *Revenue Sharing Report – (2009-2010)* (revised October 29) (“Revised Revenue  
23 Sharing Report”). Instead of allocating all revenues not expended on program activities and  
24 investments in the 2009-2010 plan period to Waste Management, the Revised Revenue  
25 Sharing Report allocated only 8% of the retained revenue to Waste Management, reducing  
26 the Company’s take from \$212,168 to \$88,162. The Company thus recalculated the

1 recycling commodity adjustment for the 2010-2011 period based on keeping only 8% of the  
2 prior plan-year revenues, and submitted revised tariff pages showing a recalculated recycling  
3 commodity price adjustments, prorated for the remainder of the 2010-2011 plan period.

4 14. In its Petition, Waste Management requested the Commission to order an alternative  
5 treatment other than carrying unspent revenue forward. It asked the Commission to: (1) lift  
6 the interim status of the revenue sharing approval and allow Waste Management to retain  
7 fifty-percent of the revenue projected in and expended according to the budgets presented in  
8 the King and Snohomish County RSAs for 2010-2011; and (2) approve the revised 2010-  
9 2011 recycling commodity credits as recalculated to credit the ratepayers with all but 8% of  
10 the unspent revenue generated in the 2009-2010 plan period.

11 15. The Commission suspended the 2010-2011 Filing and referred it to the Administrative Law  
12 Division. Consolidated Orders 02 (Complaint and Order Suspending Tariff: And  
13 Authorizing Temporary Revenue Sharing for Recyclable Commodities, Subject to Refund)  
14 (November 24, 2010). All three separate dockets were thereafter consolidated. Consolidated  
15 Orders 03 (Order of Consolidation and Notice of Prehearing Conference) (December 1,  
16 2010).

17 16. Following the initial prehearing conference, Waste Management and Commission Staff  
18 negotiated a partial settlement which was ultimately approved by the Commission.  
19 Consolidated Orders 06 (Initial Order Approving and Adopting Partial Settlement  
20 Agreement) (February 28, 2011) and Notice of Finality (March 1, 2011). The settlement  
21 resolved the recycling commodity credit component of the 2010-2011 Filing. The Company  
22 agreed to keep nothing from the 2009-2010 revenues, and instead applied all unspent revenue  
23 from 2009-2010 plan period to the calculation of the 2010-2011 recycling commodity price  
24 adjustment. Any issues related to the closure of the 2009-2010 plan period were thus settled,  
25 and the revised recycling commodity adjustment was put into effect.

26

1 17. The sole remaining point of contention relates to the Commission's determination of whether  
2 the 2010-2011 RSAs demonstrate how the revenues will be used to increase recycling. The  
3 Company and the Counties retained the line-item allocating 8% of the projected revenue in  
4 the RSA budget for the next plan period of 2010-2011. The specific question presented by  
5 this case is whether budgeting for a percentage of the recycling revenues to provide Waste  
6 Management with a financial incentive under the RSAs with King and Snohomish Counties  
7 is a "use[] to increase recycling" within the meaning of RCW 81.77.185. *See Consolidated*  
8 *Orders 07 (Second Prehearing Conference Order).*

9 **B. Procedural History of Related Filings.**

10 18. Meanwhile, King and Snohomish Counties are not the only jurisdictions participating in  
11 revenue sharing programs under RCW 81.77.185, and Waste Management is not the only  
12 regulated company under the Commission's scrutiny.

13 19. Another similar proceeding was commenced shortly after Waste Management's filings, this  
14 time involving the revenue sharing plans in Pierce and Mason Counties. *See, In re Mason*  
15 *County Garbage Co., Inc. d/b/a Mason County Garbage, G-88, Docket TG-101542; In re*  
16 *Murrey's Disposal Company, Inc., G-9, Docket TG-101545; and In re American Disposal*  
17 *Company, Inc., G-87, Docket TG-101548 (collectively, the "Pierce County Filing"; and*  
18 *collectively, the "Pierce County Companies").*<sup>3</sup>

19 20. Similar to the handling of Waste Management's 2009-2010 Filing, when the Commission  
20 approved revenue sharing and recycling commodity price adjustments for the Pierce County  
21 companies in the preceding year, it ordered a report on the amount of revenue retained, the  
22 amount of money spent on plan activities, and the effect the activities had on recycling.  
23 Pierce County Filing, Orders 01.

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26 <sup>3</sup> Because the three dockets in the Pierce County Filing were consolidated, Commission decisions will be referred to in this Motion collectively as "Orders." The nomenclature is not intended to overlook Mason County or its involvement, but the bulk of analysis in Order 05 is, in fact, directed toward the Pierce County revenue sharing plan.

1 21. When the Pierce County Companies returned in 2010 to request an adjustment on the  
2 recycling commodity credits and approval to implement the revenue-sharing program for the  
3 2010-2011 plan year, following discussion at the Open Meeting, the Commission issued an  
4 order approving the fifty-percent retention, subject to a carry-over for unspent revenues.  
5 Pierce County Filing, Orders 01.

6 22. The Pierce County Companies filed petitions for reconsideration on the Commission's Open  
7 Meeting order, and the matter was set for hearing. Pierce County Filing, Orders 02. At the  
8 hearing, the parties agreed to file cross-motions for summary determination. Pierce County  
9 Filing, Order 03.

10 23. Ultimately, the Commission issued Order 05, Order on Reconsideration (May 6, 2011)  
11 ("Order 05"), addressing many aspects of interpreting and implementing RCW 81.77.185,  
12 and which guides and informs the analysis of the issues in Waste Management's questions  
13 presented. Importantly, the Commission eliminated the requirement that unspent and unused  
14 revenues be "carried over" and instead ordered:

15 Revenues retained by [the Companies] that are not used to increase  
16 recycling must be passed on to residential customers, including but  
17 not necessarily limited to revenues allocated to undertaking  
18 specific tasks or meeting performance goals established in the  
19 recycling plan if [the Companies] do not complete those tasks or  
20 meet those performance goals to the satisfaction of the County and  
21 the Commission.

22 Order 05 ¶ 54.

23 24. Although the Pierce County Filing arose in a different procedural context, it nonetheless  
24 presents some of the same general issues. However, there are significant and meaningful  
25 differences between the Pierce County plans and the RSAs between Waste Management and  
26 King and Snohomish Counties.

### III. ARGUMENT

25 25. Creating a mechanism for a financial reward is consistent with the goal of incentivizing the  
26 private regulated company to be more proactive in increasing diversion through recycling



1 programs, and comports with the statute as well as the Commission’s previous analysis of the  
2 Revenue Sharing Legislation. In motivating a regulated company to maximize the revenues  
3 it achieves in marketing recyclable materials, a financial inducement is a “use[] to increase  
4 recycling” under RCW 81.77.185. The promise of earning greater revenue prompts  
5 companies like Waste Management to be more proactive about finding the most lucrative  
6 markets for the commodities customers place in the bins. It rewards the Company for  
7 improving the quality of the materials through improved sorting and processing in a direct  
8 economic fashion. The ability of local governments to work with the existing infrastructure  
9 of the regulated collection companies presents an efficient and economical method of  
10 implementing programs that are intended to increase participation levels and generate greater  
11 amounts of higher quality recyclable materials. The knowledge of customer patterns,  
12 collection efficiencies, and state-of-the-art technology is readily available with the regulated  
13 hauler who has served the territory and has gained familiarity and technical wherewithal.  
14 Access to company resources and expertise by offering a financial incentive is a simple and  
15 effective option for using retained revenues to increase recycling.

16 **A. Financially incentivizing Waste Management for its participation in the King**  
17 **and Snohomish County revenue-sharing programs is consistent with the**  
18 **statute.**

19 26. In 2002, the legislature enacted RCW 81.77.185 to authorize a solid waste collection  
20 company collecting recyclable materials to retain up to thirty percent of the revenue paid to  
21 the company for the material if the company submitted a plan to the Commission certified by  
22 the appropriate local government authority as being consistent with the local government  
23 solid waste management plan. SHB 2308, 57th Legislature, 2002 WASH LAWS Ch. 299. The  
24 law was amended in 2010 to increase the revenue sharing amount to fifty percent, but  
25 otherwise remained unchanged. ESSHB 2539, 61st Legislature, 2010 WASH LAWS Ch. 154  
26 (collectively, “Revenue Sharing Legislation”). The statute requires that the plans

1 demonstrate “how the revenues will be used to increase recycling.” The law also states, “The  
2 remaining revenue shall be passed through to single family and multi-family customers.”

3 27. The Revenue Sharing Legislation allows for revenue-sharing plans to implement activities  
4 and programs that are innovative. Indeed, in reporting to the legislature about the  
5 implementation of RCW 81.77.185 in 2003, Commission Staff articulated, “The legislation  
6 creates opportunities and incentives for regulated companies to experiment with offering  
7 different recycling programs.” RECYCLING REVENUE SHARING, A STAFF SUMMARY OF THE  
8 IMPLEMENTATION OF RCW 81.77.185 (WUTC, May 2003) (“Staff Summary”) at 3. The ability  
9 to implement new, untested recycling activities is the heart of the Revenue Sharing  
10 Legislation. It allows local jurisdictions to work with the regulated hauler to try new  
11 programs, to perform enhanced and targeted education and outreach, and to make  
12 investments that would not normally be considered recurring expenses for purposes of rate  
13 making.

14 28. Furthering the legislative goals through a concrete plan “creates opportunities” that allows  
15 Waste Management, as well as both King and Snohomish Counties, to “experiment” with  
16 new methods of education, outreach, collection and processing, all with the goal of using the  
17 revenues to increase recycling. Both King and Snohomish Counties have articulated the  
18 view that revenue-sharing activities advance their recycling goals, and have stated, “The  
19 benefits to the County and our collective customers are significant. These programs are  
20 made possible by the revenue sharing program.” 2010-2011 Filing, *Waste Management*  
21 *Recycling and Commodity Revenue Sharing Plan for Snohomish County* (September 1, 2010-  
22 August 31, 2011) and *Waste Management Recycling and Commodity Revenue Sharing Plan*  
23 *for King County* (September 1, 2010-August 31, 2011) at page 1.

24 29. The legislation is not only intended to create opportunities for experimentation, but it was  
25 also apparently intended to create “incentives” for participating companies. Staff Summary  
26 at 3. Prior to the enactment of RCW 81.77.185, revenues generated from the sale of

1 marketable recyclable materials were returned to the customers. Although the collection  
2 companies were in the position of finding the highest and best markets for the materials  
3 customers put in the bins, they had no financial reason for maximizing the revenue. The  
4 legislation seemingly changed that, as recognized by Commission Staff in reporting on  
5 implementation of the new statute to the Legislature. Staff Summary at 3.

6 30. Because the programs and activities presented in the RSAs are experimental, they typically  
7 would not present “known and measurable” recurring expenditures that are incorporated into  
8 a regulated company’s rate base. A participating company like Waste Management would  
9 not earn any profit or return on the expenses it incurs in performing revenue-sharing  
10 activities and making the investments identified in the RSAs in the absence of a revenue-  
11 sharing mechanism under RCW 81.77.185. The Commission Staff’s recognition that the  
12 statute creates “incentives” for regulated companies infers, then, that there is some financial  
13 reward for implementing a revenue sharing program. In the world of private business,  
14 without a return of some amount, a publicly-traded company that reports to shareholders has  
15 little incentive to experiment or otherwise participate in the programs that lack any ability to  
16 earn revenues. “The concept behind this model of revenue sharing is that if solid waste  
17 carriers are allowed to keep more recycling revenue, they will have greater financial interest  
18 in encouraging their customers to recycle more and in finding buyers for the recyclable  
19 commodities.” Staff Summary at 5.

20 31. Giving private companies a financial reward will foster the statutory goal of using revenues  
21 to increase recycling because it motivates meaningful participation toward the shared goal of  
22 generating greater participation rates, increasing collection volumes, and maximizing  
23 marketability of the materials collected. In King and Snohomish Counties, Waste  
24 Management has enormous knowledge of the customer behaviors and motivations that can  
25 make education and outreach more meaningful. Its skills and experience in designing  
26 collection systems can help provide input on pilot programs that might provide useful insight.

1 Its operational expertise at its material recovery facilities can guide toward practical and  
2 effective capital improvements.

3 32. Including a mechanism that allows Waste Management to earn financial rewards for  
4 participating in the revenue-sharing programs in King and Snohomish Counties is entirely  
5 consistent with the legislative goals. The statutory objective is not to create greater profit for  
6 industry: it is to increase recycling, and financial incentives are legitimate means to the ends  
7 of RCW 81.77.185.

8 **B. Assigning a budget item for a percentage of retained revenue to be earned by**  
9 **Waste Management for implementing the King and Snohomish County RSA**  
10 **plans is consistent with the Commission's decision in the Pierce and Mason**  
11 **County proceeding.**

12 33. The conclusion that incentivizing private sector companies by offering financial rewards is  
13 consistent with RCW 81.77.185 is supported by the Commission's most recent and relevant  
14 decision in the related proceeding involving Pierce and Mason Counties. Order 05 presents  
15 the Commission's first opportunity to thoughtfully consider the mechanics of implementing  
16 RCW 81.77.185. Although the decision was rendered specifically to address the Pierce and  
17 Mason County plans, the analysis supporting the Commission's conclusion regarding those  
18 plans is instructive for demonstrating how the King and Snohomish County RSAs meet the  
19 statutory requirement to "demonstrate[] how the revenues will be used to increase recycling."

20 34. In Order 05, the Commission sanctioned recycling plans that allow the participating private  
21 company "to retain some portion of recycling revenues upon the meeting of certain stated  
22 performance goals." ¶ 31. Thus, in the context of the recycling plans for Pierce County and  
23 Mason Counties, the Commission stated:

24 We reiterate that we are only deciding this issue in the context of  
25 the recycling plans before us, which is whether RCW 81.77.185  
26 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.  
We determine that the statute allows such a mechanism and that

1 the Commission may determine, as we do here, that such an  
2 incentive mechanism may be part of the company demonstration of  
3 how the revenue will be used to increase recycling.

4 Order 05 ¶ 31.

5 35. The Commission acknowledged that it was only addressing one form that revenue-sharing  
6 plan could take for allowing for those rewards. In Order 05, the Commission specifically  
7 referenced the issues presented in this case:

8 We are not deciding the broader question of whether RCW  
9 81.77.185 would permit a company to simply retain a percentage  
10 of the recycling revenues as “profit” where there are no associated  
11 performance goals.

12 Order 05 at fn. 25.

13 36. Importantly, in deciding whether the Pierce and Mason County plans demonstrated to the  
14 Commission’s satisfaction how revenues were to be “used” to increase recycling, the  
15 Commission indicated a more general view that financial incentives are not, *per se*,  
16 inconsistent with the statute. The Commission observed that RCW 81.77.185 does not  
17 prohibit use of incentives or rewards to companies for developing and implementing  
18 recycling plans. Order 05 ¶ 29 (the statute neither directly creates nor expressly prohibits  
19 company incentives or rewards). It noted, “Revenue can be employed in accomplishing an  
20 increase in recycling by being spent, but being spent is not necessarily the only means by  
21 which revenue can be used to accomplish that goal.” Order 05 ¶ 25. Thus financial incentive  
22 mechanisms that allow a participating company to earn the right to keep some of the retained  
23 revenues are legitimately part of the demonstration of how the revenue will be used to  
24 increase recycling, and doing so is not apparently inconsistent with the Commission’s view  
25 of the statute.

26 37. The critical question is whether the “use” of funds for purposes other than spending it on  
recycling activities will further the goal of increasing recycling. *Id.* ¶ 27. With the Pierce  
County and Mason County plans, the Commission was satisfied that rewarding the  
participating company upon the “meeting of certain performance goals” was in furtherance of

1 the goal of increasing recycling. The King and Snohomish County plans are in some aspects  
2 similar, and therefore equally capable of meeting the Commission's articulated  
3 demonstration criteria. In other aspects, the approach taken in Waste Management's RSAs  
4 differs, but is arguably even more obviously consistent with the statutory goals and  
5 objectives of using the retained revenue to increase recycling than the plans approved by the  
6 Commission in the Pierce County proceedings.

7 38. On the one hand, both sets of plans condition rewards on performance, a factor relevant to  
8 the Commission's analysis of the Pierce County plans. Order 05 ¶. The King and  
9 Snohomish County RSAs do not narrowly tie specific program activities to financial rewards  
10 as the Pierce County plan does. The ability of Waste Management to keep unspent revenue  
11 is nonetheless tied to its performance.

12 39. In approving the revenue-sharing on an interim basis, the Commission specifically found that  
13 the Counties could request from the Commission that some of the retained revenues be  
14 returned to the customers if Waste Management failed to satisfy the performance conditions  
15 of the two RSAs. Orders 01 ¶ 16 (Finding and Conclusion); Sno-King & South Sound  
16 Orders 01 ¶ 6 (quoting Letter of Certification from Mr. Kevin Kiernan, Solid Waste Division  
17 Director, King County Solid Waste Division, to WUTC, dated July 14, 2010: "If some  
18 elements [of the plan] have not been fully implemented, King County may request that  
19 WUTC consider returning some of these revenues to customers."); Northwest Order 01 ¶ 6  
20 (quoting Letter of Certification from Mr. Matt Zybas, Snohomish County Solid Waste  
21 Director, to WUTC, dated July 15, 2010: "If Waste Management does not meet its reporting  
22 requirements, the amendment [to the recycling and commodity revenue sharing plan] calls  
23 for a reduction in the revenue share retained by Waste Management to 15 percent. If Waste  
24 Management does not meet other conditions in the amended Plan, Snohomish County may  
25 later request that the WUTC consider requiring that some of the revenues be returned to  
26 customers.").

1 40. Thus, Waste Management may not keep retained revenue unless it performs in accordance  
2 with the RSAs and the conditions of certification. Like the private companies in Pierce and  
3 Mason Counties, Waste Management must fulfill the obligations of the plans to qualify for a  
4 reward. The Company's eligibility is tied to its performance.<sup>4</sup>

5 41. In contrast to the Pierce County plan, however, the King and Snohomish County RSAs do  
6 not link Waste Management's performance to an increase in recycling volumes. By  
7 correlating the financial percentage to revenue, the Company is obviously motivated to find  
8 the best markets and get the most out of the value of the materials it collects and processes;  
9 increasing volumes can theoretically increase revenues as well. However, the reward cannot  
10 reasonably be linked to proving that there has, actually, been an increase in recycling because  
11 there are too many uncontrollable factors that influence that benchmark. The vagaries of  
12 local, national and even global economics are not within the control of plan participants. The  
13 Pierce County plans started in 2004 with a whole new program, and perhaps in that context it  
14 was not unrealistic to tie the companies' performance goals to recycling rates. On a year-to-  
15 year basis, however, participation rates and material quantities should not be the only  
16 measures of a program's success. King and Snohomish County are interested in reports  
17 about those data points, but have chosen not to equate Waste Management's eligibility for a  
18 financial reward to them.

19 42. An "incentive mechanism" may take several forms, and the two sets of plans presented to the  
20 Commission in the two docket matters take very different approaches. In the Pierce County  
21 plan, percentages of revenue were allocated to discrete program activities, and the

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22 <sup>4</sup> The question of whether the activities identified in the King and Snohomish County RSAs themselves  
23 "demonstrate[] how the revenues will be used to increase recycling" is not at issue. Order 05 explicitly states that  
24 the Commission, not the local government, is the ultimate authority to determine whether a plan can make that  
25 demonstration. ¶ 23. However, the only disputed issue at this point seems to be the question of whether and under  
26 what conditions a private participant would be allowed to keep retained revenues not otherwise spent on recycling  
activities. Presumably, the Commission is satisfied that the activities and investments identified in the King and  
Snohomish County RSAs will themselves be uses that are intended to increase recycling. Although the Commission  
is not required to defer to the Counties for the demonstration, apparently it is not using that authority to second-  
guess the legitimate expertise and perspective that the local governments bring to bear on identifying revenue-  
sharing program activities.

1 participating companies were entitled to keep whatever of that amount that was not  
2 expended. So, for example, the 10% of the commodity revenue could be retained by the  
3 Pierce County Companies “for implementing the new single-stream recycling program.”  
4 Pierce County Plan at 6 (Section VII(a)). If the activities identified in the plan regarding that  
5 particular program element were performed, then the private companies could keep whatever  
6 was unspent. The Pierce County Plan divvied up the maximum allowable percentage, and  
7 allocated it to three different program components in this fashion. The Pierce County Plan  
8 did not make any effort to quantify the expenses involved in performing the three  
9 components.

10 43. For Waste Management, however, King and Snohomish County have taken a different  
11 approach. Waste Management’s reward is correlated to the revenues it produces, and its  
12 eligibility is conditioned on its performance of the RSA activities. Waste Management has  
13 no incentive to take short-cuts in performing program activities, unlike the Pierce County  
14 Companies who could keep all revenue that was not spent on particular program components.  
15 Rather, Waste Management’s line-item approach directly links its reward to its ability to get  
16 as much revenue as possible for the recyclable material it collects. If the RSA program  
17 activities are successful in generating greater volumes, in increasing participation, in adding  
18 higher-value commodities, or in maximizing processing efficiencies to generate higher  
19 marketing revenues, then Waste Management gets a share of any increased revenues that  
20 might be produced. The revenue-sharing programs in the two proceedings are illustrative of  
21 different approaches to institutionalizing financial incentives. The Pierce County approach  
22 has been sanctioned by the Commission, but should not stifle the ability of designing  
23 alternative approaches under revenue sharing programs. Either of these methods are  
24 legitimate methods of using retained revenue to increase recycling by motivating the private  
25 participants to earn greater profits, and there may be other means yet created. In some ways,  
26 though, the approach taken by Waste Management and its partner Counties is a more simple



1 and direct correlation of rewards to performance: the higher the revenue, the greater the  
2 financial return. If the Revenue Sharing Legislation was enacted to prompt regulated  
3 companies to be more proactive about finding markets and maximizing revenue, then tying  
4 the financial reward to that outcome is a legitimate means of tying the incentive to the  
5 desired outcome.

6 **C. With a budget-driven revenue sharing plan, a line-item for 8% of revenue is**  
7 **a reasonable means of quantifying Waste Management's financial incentive.**

8 44. Reading the directive of Commission in this case, which required a budget-based approach to  
9 the King and Snohomish County plans, in the context of its conclusions in the Pierce County  
10 Filing, allocating a specific line item to a company reward is consistent with the  
11 Commission's interpretations of RCW 81.77.185.

12 45. Prior to the institution of this proceeding, Waste Management and its partner Counties  
13 worked together to quantify dollars that might be projected for any given plan year, and to  
14 design programs intended to maximize the use of available, retained funds. This year, for the  
15 first time, the Commission's oversight has influenced the form and substance of the revenue-  
16 sharing programs.

17 46. Based on guidance from the Commission, King and Snohomish Counties have taken a  
18 budget-based approach to the current revenue-sharing plans, instead of the more generalized  
19 approach previously employed. Following discussions at the Open Meeting in August when  
20 the request to retain fifty percent of the revenues under the 2010-2011 RSAs was first  
21 presented, the Commission conditioned permanent approval of the fifty-percent revenue-  
22 sharing arrangement on the requirement that the parties prepare a detailed budget to more  
23 carefully predict expenditures and allocate revenues. It ordered Waste Management and the  
24 Counties to "devise a budget" and petition the Commission to lift the interim status of its  
25 approval.

26 The petition is to include a plan and detailed budget consistent  
with King County's Comprehensive Solid Waste Management  
Plan that shows details on the amount of revenue it expects to

1 retain, the amount of money it plans to spend on the activities  
2 identified in [the] recycling plan together with the anticipated  
effect the activities will have on increasing recycling.

3 Consolidated Orders 01 ¶¶ 21 & 22.

4 47. Responding to the Commission's order indirectly influenced the form of the RSAs presented  
5 in this matter, and essentially mandated a budget-based approach to planning for the use of  
6 revenues to increase recycling. Implementing the Commission's directive, Waste  
7 Management worked with King and Snohomish Counties to prepare a detailed budget  
8 estimating amounts that the Company would likely expend in satisfying the provisions of  
both RSAs if it were to use fifty percent of the projected commodity revenue.

9 48. The Counties and Waste Management agreed that the Company was entitled to a financial  
10 incentive, in accordance with their shared understanding of the statutory goals of RCW  
11 81.77.185. Both King and Snohomish Counties have articulated the view that revenue-  
12 sharing revenues should be used in some fashion to provide financial incentives to Waste  
13 Management:

14 The activities identified in this agreement are not requirements or  
15 costs that are built into Waste Management's UTC tariff rates.  
16 Because the company does not earn a return on these expenditures  
17 and investments through its regulated operations, the program  
18 specifically allows for a profit incentive. By using revenue sharing  
funds, both Waste Management and the County are able to pilot  
19 innovative approaches to increase diversion in [King and  
Snohomish] County.

20 49. Thus, to implement the "incentive" aspect of the revenue sharing legislation, the Counties  
21 believe that Waste Management is entitled to some reasonable reward associated with the  
22 fulfillment of RSA tasks, and they agreed to a profit component to the Company in their  
23 RSAs. In the context of a budget-driven plan, the logical way to accomplish that goal was to  
24 assign a line-item for its financial reward in the associated budget.

25 50. As a result, a reward of 8% of revenue for Waste Management is reflected in the budgets,  
26 and both the Counties support the proposed return. The amount was negotiated, as has been  
envisioned by recent analysis of how the statute works. *See LEADING THE WAY:*

1 IMPLEMENTING PRACTICAL SOLUTIONS TO THE CLIMATE CHANGE CHALLENGE (Climate  
2 Action Team, November 2008) at 7 (“The amount of the revenue sharing should continue to  
3 be negotiated between solid waste jurisdiction and the collection service provider as a means  
4 to incentivize the collection service provider to improve recycling systems, improve the  
5 quality of recycled materials for market and increase market development efforts.”)

6 51. The amount of the percentage for Waste Management’s financial reward was not  
7 scientifically-based. In general, Waste Management’s operating ratio in rate filings has  
8 generally fallen between 91-93%. In discussions with the Counties about how to fashion a  
9 financial incentive in the context of a budget-driven plan, the parties agreed to use that range  
10 as a benchmark. It was quite simply a negotiated number. Based on a review of recent  
11 general rate case data, Commission Staff has acknowledged that Waste Management’s  
12 operating ratios for its recycling operations averaged a return of 9.4 percent. 2010-2011  
13 Filing, *Staff Open Meeting Memo* at fn.1 (November 24, 2010). Waste Management does not  
14 mean to suggest that its negotiated financial incentive is the equivalent of returns under an  
15 operating ratio approach, but simply suggests that Staff’s analysis underscores the conclusion  
16 that allowing 8% of revenue as a financial reward is not an unreasonable measure.

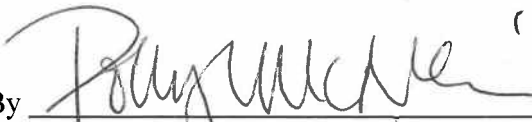
17 52. Apparently, the Commission agrees that a financial incentive for earning 8% is not over-  
18 reaching. In its most recent action approving the Pierce County plan, the Commission  
19 approved a financial incentive of 17% on a revenue sharing program retaining thirty-percent  
20 revenue. Order 05. *See also* Pierce County Filing, *Staff Open Meeting Memo* (October 28,  
21 2010) at 3.

22 53. Thus, with a budget-driven plan that earmarks funds for specific program expenditures,  
23 including a line-item that confers 8% of the retained revenue as a reward for the private  
24 participant’s use of resources, knowledge, expertise, and investments is consistent with the  
25 Commission’s interpretation of RCW 81.77.185.

IV. CONCLUSION

54. For the reasons stated above, Waste Management respectfully requests the Commission to lift the interim status of the revenue sharing proposed in the 2010-2011 RSAs, thereby allowing the Company to retain fifty-percent of the revenue projected in and expended according to the budgets presented in the King and Snohomish County RSAs for 2010-2011.

DATED this 30th day of June, 2011.

By 

Polly L. McNeill, WSBA # 17437  
SUMMIT LAW GROUP PLLC  
315 Fifth Avenue South, Suite 1000  
Seattle, WA 98104  
T: (206) 676-7000  
F: (206) 676-7001  
Attorneys for Waste Management of  
Washington, Inc.

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