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
WASTE MANAGEMENT OF WASHINGTON, INC., d/b/a WASTE MANAGEMENT – SNO-KING	TG-101221
WASTE MANAGEMENT OF WASHINGTON, INC., d/b/a WASTE MANAGEMENT – SOUTH SOUND AND WASTE MANAGEMENT OF SEATTLE	TG-101222
Requesting Authority to Retain Fifty Percent of the Revenue Received From the Sale of Recyclable Materials Collected in Residential Recycling Service	PETITION TO ALLOW REVENUE SHARING, LIFT INTERIM STATUS, AND APPROVE REVISED COMMODITY CREDITS

I. INTRODUCTION

1. This Petition to Allow Revenue Sharing, Lift Interim Status and Approve Revised Commodity Credits ("Petition") is intended to comply with the orders in the above-identified proceedings, *Requesting Approval To Retain Fifty Percent of the Revenue Received from the Sale of Recyclable Materials Collected in Residential Recycling Service* for Waste Management of Washington, Inc.'s three operating divisions in King and Snohomish Counties: Waste Management – Sno-King, Waste Management – Northwest and Waste Management – South Sound and Waste Management of Seattle (collectively, "WM" or

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"Company"). The nature of the issues and the status of this submittal are virtually identical and to alleviate redundancies, this Petition is responsive to the Orders with respect to both King and Snohomish County operations issued in all three docket matters. See Order 01, Paragraph 21 (Docket TG-101220, Docket TG-101221 and Docket TG-101222) (collectively, "Orders 01").

II. PARTIES

2. Petitioner's name and address are as follows:
Waste Management of Washington, Inc.
13225 N.E. 126th Place
Kirkland, WA 98034

3. Petitioner's attorney's name and address are as follows:
Polly L. McNeill
Summit Law Group PLLC
315 Fifth Avenue S.
Suite 1000
Seattle, WA 98104

III. PROCEDURAL HISTORY

4. On July 16, 2010, WM filed with the Washington Utilities and Transportation Commission ("Commission") revisions to its applicable tariffs to adjust recycling commodity credits and implement a request to retain fifty percent of the revenue from the sale of recyclable materials that WM derives from marketing recyclable materials collected under its regulated recycling services, with an effective date of September 1, 2010.

5. Contemporaneously, furthering the legislative directive of RCW 81.77.185, WM also filed a Revenue Sharing Agreement ("RSA") for both King and Snohomish Counties for the period of September 1, 2010, to August 31, 2011. The Counties each submitted letters certifying the Company's RSAs as consistent with the respective Comprehensive Solid Waste Management Plans, and recommended that WM be allowed to retain fifty percent of the actual value of recyclable commodity revenues received during the period of September 1, 2010, through August 31, 2011.

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6. At the Open Meeting on August 26, 2010, the WM filings were unexpectedly moved from the Consent Agenda, and instead subject to a protracted discussion. The Commission took no action, thereby allowing the revised commodity credits filed by WM to go into effect September 1, 2010, by operation of law. The Commission also authorized retention of fifty percent of the revenues derived from recyclable materials collected in WM's recycling programs on an interim basis, from September 1, 2010, through December 1, 2010, subject to refund.

7. The Commission ordered that WM file for each of its operations a detailed budget showing the amount of revenue the Company expects to retain, the amount of money it plans to spend and supporting documents for the proposed 2010-2011 RSAs, as a condition of allowing the proposed revenue sharing to be effective for the remainder of the period through August 31, 2011.

8. The Commission directed that revenues retained by WM but not spent during the previous plan period be carried over into the next year, and revenues from the proposed plan period that are not spent are to be carried over to the following year, "unless some other treatment as may be ordered by the Commission."

9. Then, prior to December 1, 2010, the Commission intends to issue an order either lifting the interim status of the revenue sharing or setting some other amount percentage for revenue sharing. It may also revisit the commodity credit amounts.

IV. REGULATORY BACKGROUND

10. Implementation of the revenue sharing arrangement is tied to the pre-existing process for handling the market fluctuations for sale of recyclable materials. To address concerns regarding the impact of changing commodity values on the net recycle rate the customers are paying, the Commission allows companies like WM to use a deferred accounting mechanism to return recycling revenues or charges to customers. *See* WAC 480-70-351. Under the

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process, the commodity value of recycled materials is removed from the total costs for collecting recyclables, and stated as a separate line item.

11. The deferred accounting methodology has both a look-forward and a look-back element. To begin, a company calculates the average of actual revenues and expenses from processing recyclable materials in a most recent historical twelve-month period. Using that data, the revenues/expenses that were projected for the preceding twelve-month test period are trued-up to reflect actual revenues or charges. In addition, future revenues or charges are projected. The commodity value projection and the true-up together are equated to a per-customer, per-month figure, which is then converted to the next year's debit/credit shown on a separate line item on the customer invoice. The recycling commodity line item may be either a credit or a debit, depending on what markets did during the preceding test period and how that compared to values used for the prior year's amount.

12. In 2002, the legislature enacted RCW 81.77.185 to authorize a solid waste collection company collecting recyclable materials to retain up to thirty percent of the revenue paid to the company for the material if the company submitted a plan to the Commission certified by the appropriate local government authority as being consistent with the local government solid waste management plan. SHB 2308, 57th Legislature, 2002 WASH LAWS Ch. 299. The law was amended in 2010 to increase the revenue sharing amount to fifty percent, but otherwise remained unchanged. ESSHB 2539, 61st Legislature, 2010 WASH LAWS Ch. 154. The statute requires that the plans demonstrate "how the revenues will be used to increase recycling." The law also states, "The remaining revenue shall be passed through to single family and multi-family customers."

13. Presumably, then, revenue sharing overlays an additional step in the deferred accounting process employed for calculating a recycling commodity credit. The percentage of revenue retained must be subject to both the look-back and look-forward elements. At the end of the twelve-month period, once the actual revenues or charges from marketing recyclable

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commodities are known for the preceding year, a company can determine whether the revenue percentage projected needs to be trued-up. If in looking back over the twelve-month period the company has either over- or under-estimated the amount of the retained percentage, the difference would presumably be factored into the recycling commodity credit for the following year. *See* RECYCLING REVENUE SHARING, A STAFF SUMMARY OF THE IMPLEMENTATION OF RCW 81.77.185 (WUTC, May 2003) ("Staff Summary") at 8 ("Because of the existing requirement for an annual adjustment to match current conditions, the revenue sharing amount can be easily updated at the same time and incorporated into the company current rates [through the recycling commodity adjustment]."

V. PETITION

14. Implementing the Commission's Orders, WM worked with King and Snohomish Counties to prepare a budget projecting the anticipated revenue the Company estimates that it would retain during the next year for the sale of recyclable commodities collected within each County, and detailing the amounts that it would likely expend in satisfying the provisions of each County's RSA if it were to retain fifty percent of the projected commodity revenue. The budgets are incorporated into the amended RSAs that are included with this filing.

15. In preparing the budgets, the Company and both of the Counties agreed on amended language in the RSAs clarifying the allocation of funds associated with the proposed activities. In both the King County RSA and the Snohomish County RSA, the following paragraph has been added by agreement:

> The benefits to the County and our collective customers are significant. These programs are made possible by the revenue sharing program. The activities identified in this agreement are not requirements or costs that are built into Waste Management's UTC tariff rates. Because the company does not earn a return on these expenditures and investments through its regulated operations, the program specifically allows for a profit incentive. By using revenue sharing funds, both WM and the County are able to pilot innovative approaches to increase diversion in [King and Snohomish] County. These programs will be evaluated at the end of the year; those that are deemed effective may carry into the

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> following year and others may be discontinued. The cost of the ongoing programs will ultimately be built into the next rate case.

16. The amended language in the King and Snohomish County RSAs is significant. First, the expenditures in these budgets are not costs that have been previously included in the recycling collection rates set forth in each operating division's tariff. In other words, there is no redundancy or double-recovery for WM.

17. Many of the activities agreed upon in the respective RSA are innovative and often new approaches to increasing recycling within each of the Counties. The RSAs allow both Counties and the Company to pilot new methods. Indeed, this is the heart of the Revenue Sharing Legislation. *See* Staff Summary at 3 ("The legislation creates opportunities and incentives for regulated companies to experiment with offering different recycling programs.")

18. Then, dependent upon the success of these programs, WM and one or the other of the Counties may elect to make some of the RSA activities permanent programs. If so, the associated expenditures would be removed from future RSAs and incorporated into the Company's tariff rates.

19. However, no items in the RSAs are incorporated into the Company's current tariff rates. As a result, WM is not earning a return on these expenditures. Without some earning, the Company has little incentive to experiment or otherwise participate in the programs. "The concept behind this model of revenue sharing is that if solid waste carriers are allowed to keep more recycling revenue, they will have greater financial interest in encouraging their customers to recycle more and in finding buyers for the recyclable commodities." Staff Summary at 5. Indeed, if the programs in these RSAs are successful, the company's revenues from garbage collection could be reduced, as participants divert greater amounts of material from the garbage can to the recycling container. Although arguably increased revenues from greater participation in recycling collection systems could conceivably offset that loss, some of the programs are designed to induce waste reduction as well as recycling.

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20. Therefore, to implement the "incentive" aspect of the revenue sharing legislation, the Company submits that it is entitled to some reasonable profit associated with the fulfillment of RSA tasks. Doing so would be consistent with the legislative intent of incentivizing the private regulated company to be more proactive in increasing diversion through recycling programs, and finding markets for the commodities. As a result, a profit margin is reflected in the budgets, and both the Counties support the proposed return. The amount reflected is within the range of earnings permitted by the Commission.

21. Allowing the Company to earn a return does not preclude passing through to customers the remaining revenue. If it were to turn out that the budget does not accurately predict either revenues or expenses, then the remainder would be calculated in the recycling commodity credit. In this scenario, WM would still be entitled under the RSAs to retain earnings on the amounts that <u>were</u> actually expended. By the same token, if Plan-year-end analysis demonstrates that it actually cost <u>more</u> to implement these programs than the budgeted amounts, then the recycling commodity credit would be adjusted accordingly for the next plan-year as well.

22. Like the revenue sharing projection and the estimated expenditures, the profit margin is at this point speculative. It, too, would be subject to a year-end true up, along with the other components of the RSA program. Thus, also included with this Petition is a revised Revenue Sharing Report – (2009-2010). It shows how 2009 revenues were spent, but was updated for purposes of allowing a limited amount of profit-sharing to WM, and then employing the deferred accounting mechanism for the remainder of unexpended revenues. Whether those dollars came from improvements to market conditions during the last plan year, or efficiencies of operating plan-approved programs is unknown and unimportant. And so, also included with this Petition are substitute tariff pages for the three WM operations, taking the amount of unused revenue and applying it to revise the ratepayers' recycling commodity adjustment, calculated for the nine-month period remaining under the current RSAs.

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VI. CONCLUSION

23. Waste Management and the staff for both King and Snohomish Counties have a strong history of working collaboratively to increase recycling in each County. All parties believe that the overall impact of the revenue sharing legislation is extremely beneficial and important to the continued progress of recycling in King and Snohomish Counties. The legislation assigns primary oversight of the programs and activities to the Counties, and they have the paramount authority on ensuring their RSAs are designed and implemented in a manner consistent with their respective recycling goals. Policy authority is allocated to the Counties, however the assistance of the Commission is welcomed to ensure the details comport with the Counties' expectations.

24. In its Orders 01, the Commission directed that revenues retained by WM but not spent during the previous plan period be carried over "unless some other treatment as may be ordered by the Commission." WM respectfully requests the Commission to order an alternative treatment by (1) lifting the interim status of the revenue sharing 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; and (2) approving the revised recycling commodity credits as calculated in the Revenue Sharing Report – (2009-2010).

DATED this 1st day of November, 2010.

By ______________________

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