

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 RESPONSE
TO WASTE MANAGEMENT
MOTION FOR SUMMARY
DETERMINATION

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1 Waste Management’s Motion for Summary Determination in Support of Revenue-Sharing Plans is long on theory and short on facts.¹ The question in these dockets is not whether RCW 81.77.185 requires solid waste collection companies to spend all retained revenue from the sale of recyclable materials on recycling activities. The Washington Utilities and Transportation Commission (“Commission”) has already concluded that it does not.² The question is whether the particular recycling plans that Waste Management has submitted *in this case* “demonstrate[] how the revenues will be used to increase recycling” under the statute.³ Waste Management has failed to show that using a portion of the recycling revenues to provide the company with a rate of return on the expenditures described in the recycling plans is a “use[] to increase recycling” within the meaning of RCW 81.77.185.

I. ARGUMENT

A. Under the Recycling Plans at Issue in this Case, Financial Reward is not Linked with Company Performance.

2 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

¹ As used herein, the term “Waste Management” means all three respondents companies, collectively, in these consolidated dockets.

² *In re Mason Cnty. Garbage Co.*, Dockets TG-101542/TG-101545/TG-101548, [Order 05](#) ¶¶ 24-31, 48 (Wash. Utils. & Transp. Comm’n, May 6, 2011).

³ RCW 81.77.185(1) currently 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.

performance goals.”⁴ Unlike the recycling plans that were involved in those dockets, 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. The only exception is data reporting. Under the King County plan, if Waste Management fails to meet data reporting requirements, it will be allowed to retain only 25 percent of recycling revenues rather than 50 percent.⁵ Under the Snohomish County plan, if Waste Management fails to meet data reporting requirements, it will be allowed to retain only 15 percent of recycling revenues rather than 50 percent.⁶

3 Waste Management attempts to say that the recycling plans in this case do tie a financial reward to performance goals. According to Waste Management, the Commission’s August 31, 2010, orders in these dockets require the company to meet all the performance conditions in the 2010-2011 recycling plans in order to keep revenues that it does not spend.⁷ The orders do not say that, however. The orders require only that Waste Management meet the data reporting requirements of the plans or risk having its revenue share reduced.⁸ Though the orders recognize that county officials may seek to have some

⁴ Dockets TG-101542/TG-101545/TG-101548, [Order 05](#) ¶ 31.

⁵ Docket TG-101221, [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) at 6 (filed July 16, 2010), [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 Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) at 6 (filed July 16, 2010), [Waste Management Recycling and Commodity Revenue Sharing Plan for King County, September 1, 2010 – August 31, 2011](#) at 6 (filed Nov. 1, 2010).

⁶ Docket TG-101220, [Waste Management Recycling and Commodity Revenue Sharing Plan for Snohomish County, September 1, 2010 – August 31, 2011](#) at 7 (filed July 16, 2010), [Waste Management Recycling and Commodity Revenue Sharing Plan for Snohomish County, September 1, 2010 – August 31, 2011](#) at 9 (filed Nov. 1, 2010).

⁷ Dockets TG-101220/TG-101221/TG-101222, [Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶¶ 38-40 (filed June 30, 2011); see Dockets TG-101220/TG-101221/TG-101222, [Declaration of Michael A. Weinstein in Support of Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶ 19 (unsigned declaration filed June 30, 2011).

⁸ Docket TG-101220, [Order 01](#) ¶¶ 16, 24; Docket TG-101221, [Order 01](#) ¶ 24; Docket TG-101222, [Order 01](#)

revenues returned to customers if Waste Management fails to meet the other conditions in the plans, the orders do not require it.⁹

4 With the exception of data reporting, neither the recycling plans that Waste Management has submitted, nor the Commission’s orders in these dockets, tie financial reward with performance. The facts of this case are not like those in Dockets TG-101542, TG-101545, and TG-101548.

B. Waste Management has Not Shown that the Profit Item in its Revenue Sharing Plan Budget is an Incentive to Increase Recycling.

5 Instead of linking revenue with the achievement of performance goals, the recycling plans that Waste Management has submitted contain a budget that allocates a portion of the revenue Waste Management receives from the sale of its customers’ recyclables as profit to the company. Waste Management says this is a “use[] to increase recycling” under RCW 81.77.185 because it motivates the company to find ways to maximize the revenue it gets from the sale of its customers’ recyclables.¹⁰ According to Waste Management, “without a return of some amount, a publicly-traded company that reports to shareholders has little incentive to experiment or otherwise participate in the programs.”¹¹

6 As described in the Commission Staff Motion for Summary Determination and Argument in Support Thereof, that argument bears no relationship to the facts of this case.¹²

¶ 24.

⁹ Docket TG-101220, [Order 01](#) ¶¶ 6, 16; Docket TG-101221, [Order 01](#) ¶¶ 6, 16; Docket TG-101222, [Order 01](#) ¶¶ 6, 16.

¹⁰ Dockets TG-101220/TG-101221/TG-101222, [Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶¶ 24, 43 (filed June 30, 2011) ; *see* Dockets TG-101220/TG-101221/TG-101222, [Declaration of Michael A. Weinstein in Support of Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶ 20 (unsigned declaration filed June 30, 2011).

¹¹ Dockets TG-101220/TG-101221/TG-101222, [Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶ 30 (filed June 30, 2011).

¹² Docket TG-101220/TG-101221/TG-101222, [Commission Staff Motion for Summary Determination and Argument in Support Thereof](#) ¶¶ 22-27 (filed June 30, 2011).

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In the Revenue Sharing Plan Budget attached to its recycling 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.”¹³ Waste Management says the “promise of earning greater revenue . . . rewards the Company for improving the quality of the materials through improved sorting and processing.”¹⁴ That would be true without the profit element in the Revenue Sharing Plan Budget. Waste Management will be able to use the new equipment to maximize 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. Waste Management cannot seriously argue that it would decide not to make the upgrades at the Cascade Recycling Center if the Revenue Sharing Plan Budget did not include \$146,600 for profit in addition to the \$483,000 gift from “WUTC customers” for new equipment.

C. The Proposed Eight Percent Reward is Unreasonable.

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According to Waste Management, it is reasonable to allow the company to keep eight percent of the recycling revenues it retains as a reward. As described in the Commission Staff Motion for Summary Determination and Argument in Support Thereof, the facts do not support that argument.¹⁵ Under the Lurito-Gallagher methodology that the

¹³ Docket TG-101220, [Waste Management Recycling and Commodity Revenue Sharing Plan for Snohomish County, September 1, 2010 – August 31, 2011](#) at 12 (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 9 (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 9 (filed Nov. 1, 2010).

¹⁴ Dockets TG-101220/TG-101221/TG-101222, [Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶ 25 (filed June 30, 2011) ; *see id.* ¶¶ 31, 43; Dockets TG-101220/TG-101221/TG-101222, [Declaration of Michael A. Weinstein in Support of Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶ 18 (unsigned declaration filed June 30, 2011).

¹⁵ Docket TG-101220/TG-101221/TG-101222, [Commission Staff Motion for Summary Determination and Argument in Support Thereof](#) ¶¶ 28-30 (filed June 30, 2011).

Commission uses to set rates for the solid waste industry, eight percent is an unreasonably high rate of return for the expenditures described in the recycling plans Waste Management has submitted.¹⁶

9 Moreover, the recycling plans do not explain the relationship between the proposed eight percent profit and the other items in the Revenue Sharing Plan Budget. If commodity prices or recycling volumes fall because of global economic factors, causing Waste Management to receive less revenue than projected, would Waste Management forego some recycling plan expenditures so that it could still keep eight percent as profit? “The statutory objective is not to create greater profit for industry: it is to increase recycling,” as Waste Management notes.¹⁷ The recycling plans Waste Management has submitted do not recognize that priority, however.

¹⁶ Docket TG-101220/TG-101221/TG-101222, [Declaration of David Gomez in Support of Commission Staff Motion for Summary Determination](#) (filed June 30, 2011).

¹⁷ Dockets TG-101220/TG-101221/TG-101222, [Motion for Summary Determination in Support of Revenue-Sharing Plans](#) ¶ 32 (filed June 30, 2011).

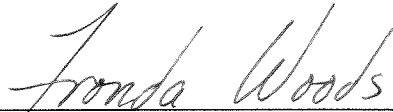
II. CONCLUSION

10 The recycling plans that Waste Management has submitted in this case 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. Because Waste Management has failed to meet its burden of proof, the Commission should deny Waste Management’s Motion for Summary Determination in Support of Revenue-Sharing Plans.

DATED this 19th day of July 2011.

Respectfully submitted,

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