BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

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| In the Matter of:  Waste Management of Washington, Inc. d/b/a Waste Management of SnoKing  Re WAC 480‑07‑520(4) |  | CASE NO.  PETITION FOR RULE INTERPRETATION OR ALTERNATIVELY FOR MODIFICATION OR EXEMPTION |

# INTRODUCTION

1. COMES NOW Waste Management of Washington, Inc. (“WMW”) holder of Certificate of Public Convenience and Necessity No. G‑237, by and through its attorney, Polly L. McNeill of Summit Law Group, and in accordance with WAC 480‑07‑370(1)(b) files this *Petition for Rule Interpretation Or Alternatively For Modification or Exemption* (“Petition”) respectfully requesting the Commission’s determination of how to meet the requirements for Work Papers submitted in filing a general rate increase request for a solid waste collection tariff under WAC 480‑07‑520(4).[[1]](#footnote-1)
2. Contemporaneously with this Petition, WMW is today filing a general rate request for its operating division Waste Management of Washington, Inc. d/b/a Waste Management of SnoKing (“SnoKing”). In the context of WMW’s corporate structure and history of tariff filings, WMW seeks an interpretation under WAC 480‑07‑920 that its SnoKing filing complies with the requirements of WAC 480‑07‑520(4) and should not be rejected. In the alternative, if the Commission determines that WAC 480‑07‑520(4) demands more financial analysis than has previously been required, then WMW respectfully requests an exemption or modification under WAC 480‑07‑110 to the extent the rule would require the company to submit into the public record certain proprietary and confidential business records unrelated to the substantive audit of the tariff filing itself, and therefore granting WMW’s request would be consistent with the public interest, the purposes underlying the tariff filing regulation, and Ch. 81.77 RCW.

# PARTIES

1. Petitioner’s name and address are as follows:

Waste Management of Washington, Inc.

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Kirkland, WA 9803

1. Petitioner’s attorney’s name and address are as follows:

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# FACTUAL BACKGROUND

1. WMW is the corporate subsidiary of Waste Management, Inc. that operates in Washington-state. WMW has throughout the State ten different business units providing solid waste collection services, each operating within a specified territory. In addition, WMW owns three landfills, six transfer stations and four recycling centers.
2. There are nine different WUTC tariffs, one for each of the geographically-specific collection entities. For over twenty years, the company has filed general rate increase requests individually for each operational unit, largely due to the fact that expenses vary among the territories served. Disposal fees, labor rates, fuel prices, and other costs differ in Spokane, Skagit County, Wenatchee, Puget Sound, etc.. When submitting a general rate request in accordance with WAC 480‑07‑520, the company has always presented financial data of the collection entity, not WMW as a whole except to the extent corporate data was necessary for auditing the filing request, as follows:
3. WAC 480‑07‑520(4)(a): A pro forma income statement separated among regulated collection operations, for the tariff entity only.
4. WAC 480‑07‑520(4)(b): A calculation of the revenue impact of the proposed tariff changes, for the tariff entity only.
5. WAC 480‑07‑520(4)(c): A monthly income statement, for the tariff entity only.
6. WAC 480‑07‑520(4)(d): A separation of revenues and expenses between regulated and non-regulated operations, for the tariff entity only.
7. WAC 480‑07‑520(4)(e): Revenue information about all nonregulated collection operations, for the tariff entity only.
8. WAC 480‑07‑520(4)(f): A price-out reconciliation to the test period revenue, for the tariff entity only.
9. WAC 480‑07‑520(4)(g): A consolidated balance sheet, including debt to equity and the cost of debt, for Waste Management, Inc. because neither the operating entities nor even WMW has debt or equity, which is only held by the parent.
10. WAC 480‑07‑520(4)(h): A detailed depreciation schedule, for the tariff entity only.
11. WAC 480‑07‑520(4)(i): Computed average investment, for the tariff entity only.
12. WAC 480‑07‑520(4)(j): Affiliated interest transactions, for the tariff entity but involving administrative overhead services performed by the area and corporate offices.
13. Relevant to this Petition, in the fall of 2006 WMW filed tariff revisions for SnoKing to implement a deferred fuel supplement component. *WUTC v. Waste Management of Washington, Inc., G-237, d/b/a WM-SnoKing*, Docket No. TG-061433 (November 29, 2006). In approving the fuel supplement, the Commission required WMW to make a subsequent filing and stated as a condition, “Waste Management of Washington, Inc. shall file a general rate case for its WM-SnoKing operation no later than December 1, 2009.” Order 01, Paragraph 47 (emphasis added).
14. On November 30, 2009, Mike Weinstein, Senior Pricing Manager of Waste Management of Washington, Inc., complied with this condition and submitted SnoKing’s subsequent filing. He included Work Papers that comported with past practices, and addressed each component of WAC 480‑07‑520(4). However, Staff reviewed the filing in the context of recent developments involving the Commission and the solid waste industry as a whole, and determined that the filing was deficient. That context is also relevant to this Petition.
15. By way of background, in April of 2009, Executive Secretary and Director Danner sent a letter to solid waste collection companies regulated by the WUTC, informing the industry of the agency’s intention to “strictly enforce” certain specified rules, stating that although they have been in effect for many years, “enforcement of these rules has been inconsistent.” One of the rules that was identified in the April letter was WAC 480‑07‑520, which sets forth the minimum submittal requirements for requesting tariff rate increases.
16. Following issuance of the April letter, tariff filings submitted by solid waste collection companies were stringently reviewed for conformity with the rule. Despite good faith efforts by regulated garbage companies seeking general rate requests, various filings were presented that failed to strictly comply with the minimum requirements of WAC 480‑07‑520. Taken unawares by Staff’s interpretation of some of the regulatory provisions, some companies voluntarily withdrew their filings, rather than having the stigma of rejection on the record. It is fair to say that for the past six months, both Staff and industry have struggled with administration of the rule.
17. Recognizing the need for clearer directions, on November 3, 2009, Staff issued a letter intended to provide technical assistance to help the industry better understand the tariff filing requirements. The November letter included examples of some required documents, and a checklist for the filing elements. It also noted that companies have the option of petitioning for an exemption or modification of a rule under WAC 480‑07‑110 as one means of recourse, if the application of a rule would impose undue hardship or be contrary to the underlying purposes of the regulation.
18. Following the November guidance, however, there nonetheless remain areas of uncertainty and internal inconsistency with the rules as they are written and as they are applied. It is in the context of this regulatory turmoil that WMW submitted its SnoKing tariff request in late November.
19. Staff immediately reviewed the SnoKing filing for compliance with WAC 480‑07‑520, and informed Mr. Weinstein that it was missing several components. Staff told Mr. Weinstein that the filing was sufficient to comply with the condition of the 2006 Order because it was timely submitted in good faith, but explained what was needed to meet the minimum rate increase filing requirements. Many of the deficiencies were procedural rather than substantive, and almost all were capable of being easily corrected. For example, Mr. Weinstein did not submit PDF copies of the Excel spreadsheets, knowing that the auditors work directly on the electronic documents and hoping to “save some trees.” He failed to include a map of SnoKing’s territory for the tariff. All of the various other similar deficiencies have been corrected in the filing submitted today – except for the provisions which are the subject of this Petition.
20. With this Petition, WMW seeks the Commission’s determination about two of the subsections. One is WAC 480‑07‑520(4)(d), which requires a separation of revenues and expenses between regulated and non-regulated operations. The other is WAC 480‑07‑520(4)(h), which calls for a detailed depreciation schedule.
21. To satisfy these two subsections, Staff has taken the position that information about WMW as a whole must be provided, and submitting information limited to SnoKing is not sufficient. For reasons stated below, WMW does not agree with that interpretation. However, if the Commission determines that Staff’s interpretation is correct, this Petition seeks an exemption or modification from the rule as an alternative remedy. Finally, during the pendency of the Commission’s decision on what the rule means and how WMW must comply with it, this Petition also seeks an exemption from WAC 480‑70‑256, which requires that tariffs not meeting the minimum requirements of WAC 480‑07‑520 be rejected. In the interests of administrative efficiency, WMW asks the Commission to consider how the rule should be interpreted and applied prospectively in the context of the SnoKing filing to avoid the need for waiting until Staff’s interpretation triggers litigation.

# RULE INTERPRETATION

1. Interpreting WAC 480‑07‑520(4) in the context of a general rate request by WMW presents a unique situation. To the best of our knowledge, it is the only regulated solid waste collection company that operates separate business entities under the umbrella of one corporation. The geographic scope of its certificate is vast, much larger than any other garbage company regulated by the WUTC. Its certificate is over twenty-five pages long. Using separate tariffs for each of the geographically-distinct collection entities is most consistent with the public interest, because it directly ties the customers’ rates to regional expenses.
2. WMW submits that its past filing practices have been in compliance with the rule. The Work Papers required under Subsection (4) are appropriately devoted to documenting the revenue need of the entity for which the tariff rates are being reviewed.
3. Staff’s current position is a change of interpretation, not merely a matter of more closely following the rule. Since the April Letter from Secretary Danner, Staff has required strict compliance with filing requirements that were previously ignored. In the past, for instance, Mr. Weinstein was not required to supply PDF copies of the Work Papers. Now PDF copies are mandated. Staff is enforcing that requirement, as well as others that have been overlooked. With regard to the requirement that WMW expand the scope of analysis presented in its Work Papers, however, Staff is not merely reinstating a requirement that has historically been excused. Instead, Staff is interpreting the rule requirement differently than it has in the past. Staff’s position in this filing is a change of practice. That, in and of itself, is not cause for supporting WMW’s interpretation. However, it is evidence that for over twenty years, Staff has apparently been satisfied that WMW was providing adequate documentation of the financial data necessary to evaluate general rate increase requests for its operating entities.
4. The implications of Staff’s interpretation of Subsection (4)(d) and (4)(h) support WMW’s understanding of the filing requirements, and the manner in which those two provisions have historically been enforced makes sense. Subsection (4)(d) requires a detailed separation of all revenue and expenses between regulated and nonregulated operations. It is, however, a conditional filing requirement. The detailed data is only required if nonregulated revenue is greater than “ten percent of total company test period revenue.” The fact that the condition is measured off of the “total company” revenue does not mean, however, that the financial data required for the filing must present a detailed separation of revenue and expenses for all of WMW’s nonregulated operations. Unless there is an affiliated interest transaction, what possible relevance could this type of analysis about WMW’s Greater Wenatchee Landfill have to SnoKing’s tariff rates? How would the information about the revenues and expenses of its Kittitas County Transfer Station affect the auditors’ review of the collection rates in King County? Conditioning the filing requirement under Section (4)(d) on the percentage of the “total company” revenue is a means of ensuring that *di minimis* nonregulated operations do not trigger the requirement, nothing more. In contrast, limiting the requirement to a detailed analysis of SnoKing’s regulated and unregulated operations enables Staff to ensures that expenses are being properly allocated in the context of setting the sought-after tariff rates.
5. Similarly, Staff has opined that Subsection (4)(h) requires a detailed depreciation schedule for all of WMW’s assets, not just the ones held by SnoKing. Again, the public interest is not served by such an interpretation. The assets owned by WMW are vast, and there is no good regulatory reason for listing every backhoe used at the transfer stations, every desk at the recycling centers, or every compactor used at the landfills in a tariff filing for SnoKing. Because the regulation refers to “all used and useful assets held by the company,” Staff apparently believes the rule applies to WMW as a whole. First, use of the noun “company” in Subsection (4)(h) contrasts with use of the term “total company” in the qualifying clause of (4)(d), and some intentional difference between the two concepts should be presumed. The entity required to submit a depreciation schedule under Subsection (4)(h) is something other than the entity whose revenue determines whether a detailed separation of regulated and unregulated revenues and expenses is needed under Subsection (4)(d). Presumably because SnoKing is merely an operating division, Staff believes the depreciation schedule just for the tariff entity does not satisfy the rule’s requirement. The term “company,” however, is not defined. SnoKing is a separate d/b/a, and it maintains its own books and accounts. From a regulatory perspective, there is no reason it cannot be considered the “company” for which the depreciation schedule must be filed. Indeed, the introductory paragraph of WAC 480‑07‑520 speaks in terms of “the company,” and therefore since SnoKing is the tariff entity making the filing, it is the subject of the financial analysis demanded by the regulation.
6. WMW believes, therefore, that the interpretation that it and Staff have heretofore shared is the correct one. The Work Papers required under WAC 480‑07‑520(4) are rightfully devoted to financial analysis of the filing entity to determine the proper tariff rates.

# rule exemption or modification

1. If, however, the Commission determines that Staff’s interpretation of either Subsection (4)(d) and (4)(h) is correct, then WMW respectfully requests exemptions from and modification to the Commission’s regulations, as stated in WAC 480‑07‑110(2)(c).
2. If Subsection (4)(d) is interpreted to require that WMW provide a detailed breakdown of the expenses and revenues for its nonregulated operations, WMW asks for a modification to excuse it from filing data about its non-collection operations. WMW does not ask for a waiver from this requirement with regard to the revenues and expenses of SnoKing’s nonregulated collection activities. But the data about its disposal and recycling facilities has no relevance to the tariff rates of SnoKing. There is no public interest served by requiring WMW to submit this data into the public record.
3. Furthermore, landfills, transfer stations and recycling facilities are not regulated. They are highly competitive operations. The information about the expenses and revenues of those entities is valuable commercial information, and includes confidential marketing, cost and financial information. If a utility regulated under Title 80 RCW were required to submit this information, it could be protected from public disclosure under RCW 80.04.095. Although there has been no formal determination on the issue, whether that protection is afforded to transportation companies under Title 81 RCW is untested and therefore dubious. The safeguards offered under RCW 42.56.270(1) for certain proprietary data are similarly untested and fragile. The risk of having its valuable commercial information presents an undue, and unnecessary, hardship on WMW. Because of WMW’s unique corporate structure, no other solid waste collection company would be required to endure this risk. Therefore, because the data is not relevant to the tariff filing and because it is valuable and proprietary commercial information, WMW’s request is in the public interest and meets the standards for consideration of a rule exemption or modification under WAC 480‑07‑110(c).[[2]](#footnote-2)
4. With regard to Subsection (4)(h), the requirement to produce a depreciation schedule for all of WMW would impose a significant hardship on the company. Each operating entity has its own general ledger, and the asset scheduled from each one would need to be mechanically cut and paste into one master list. The act of compiling and presenting a fixed asset analysis for WMW as a whole would be very time consuming. The spreadsheet contained in today’s filing has over 2,000 lines. WMW has a total of 23 distinct operations, and a report for all of its fixed assets would be 50,000 to 100,000 lines long. Information about the asset values is downloaded from the company’s system, but depreciation for each has to be manually calculated. Compliance with Staff’s interpretation require this pain-staking and time-consuming task be redone for each separate filing. It would take several days to consolidate without any commensurate benefit to the ratepayers. The assets of the Graham Road Landfill in Spokane are not germane to SnoKing’s tariff.

# conclusion

For the reasons stated above, WMW respectfully requests that the Commission:

1) Interpret WAC 480‑07‑520(4) to require Working Papers that provide financial analysis only of WMW’s tariff-filing entity, in accordance with WMW’s interpretation and Staff’s past practices; or

2) Grant an exemption or modification of WAC 480‑07‑520(4) to WMW for today’s SnoKing filing and for any future filing, to excuse the requirement of a detailed separation of revenues and expenses of the unregulated noncollection operations of WMW as a whole under WAC 480‑07‑520(4)(d)

3) Grant an exemption or modification of WAC 480‑07‑520(4) to WMW for today’s SnoKing filing and for any future filing, to excuse the requirement of a detailed depreciation schedule for WMW as a whole under WAC 480‑07‑520(4)(h); and

4) Grant an exemption or modification of WAC 480‑70‑236, to excuse the requirement of rejecting today’s SnoKing filing during the pendency of the Commission’s review on this decision.

DATED this \_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2009.

By

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1. WAC 480‑07‑520 sets forth the minimum requirements for filing a general rate increase request by solid waste collection companies. Subsection (4) discusses the necessary information and documents to be included in the Work Papers. [↑](#footnote-ref-1)
2. It bears noting that WMW has included in its filing a detailed break-down of revenues and expenses for all of its collection entities, not just SnoKing; and it has also provided summary information about revenues and expenses for all of its nonregulated, non-collection operations. [↑](#footnote-ref-2)