

# SUMMIT LAW GROUP®

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January 29, 2010

David W. Danner  
Director and Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: Consolidated Matter of TG-091933 (WUTC v. Waste Management of Washington, Inc. d/b/a Waste Management Sno-King) & TG 091945 (In re Petition of Waste Management of Washington, Inc. d/b/a Waste Management Sno-King)**

Dear Secretary Danner:

At the prehearing conference on the above-identified consolidated matters, the parties agreed to an expedited briefing schedule, which was memorialized in Order 02/03, dated January 25, 2010. The Order directs the parties to present a Joint Stipulation of Facts today.

To comply with that directive, I volunteered to prepare the first draft, and transmitted the attached *Joint Stipulation of Facts* to Jon Thompson for his review and approval yesterday. This morning, Mr. Thompson informed me Staff is unwilling to sign on this Stipulation. Mr. Thompson's position is that the Commission can assume these facts to be true for purposes of deciding the Petition under a summary determination standard (, i.e. if assumed for the purposes of the Petition to be true,

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David W. Danner  
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would Waste Management be entitled to relief requested), but because he feels that the draft Stipulation goes beyond the facts that are material to the case and because Staff cannot verify the truth of many of the statements, Staff will not sign it. Mr. Thompson has assured me that Staff does not dispute the facts as presented in Waste Management's *Petition for Rule Interpretation Or Alternatively For Modification or Exemption*. Mr. Thompson has recommended the facts be presented by declaration with Waste Management's *Reply to Commission Staff* next week, instead of a Joint Stipulation.

We intend to proceed on that course of action, but this letter is intended to document our good faith efforts to comply with the directives of Order 02/03. Waste Management will instead present these facts, as well as any others that are relevant to its Reply, by declaration.

Thank you for your consideration.

Sincerely,

SUMMIT LAW GROUP PLLC



Polly L. McNeill

cc: Jon Thompson  
Jim Sells  
Judge Torem

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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

In the Matter of:

Waste Management of Washington, Inc. d/b/a  
Waste Management of SnoKing  
  
Re WAC 480-07-520(4)

CASE NO.

JOINT STIPULATION OF FACTS

1 IDENTITY OF PETITIONER

2 Waste Management of Washington, Inc. (“WMW”) is a corporate subsidiary of Waste  
3 Management, Inc. that performs full-service waste handling throughout Washington-state.  
4 Corporate headquarters for Waste Management, Inc. are in Houston, Texas; the Western Group  
5 offices are in Scottsdale, Arizona; and WMW, based in Kirkland, Washington, is one of six  
6 corporations operating in the Pacific Northwest Market Area.<sup>1</sup>

7 WMW functions throughout Washington as several discrete business units, none of  
8 which is separately incorporated but each of which operates as a separate revenue center. The  
9 corporation includes ten divisions that perform collection services, both regulated and  
10 unregulated; and thirteen other operating units that provide post-collection solid waste handling  
11 services, consisting of three landfills, six transfer stations and four recycling centers in  
12 Washington.

13 WMW has nine different WUTC tariffs, one for each of the geographically-specific  
14 collection entities that operate under authority of Certificate of Public Convenience and  
15 Necessity No. G-237. The geographic scope of Certificate No. G-237 is vast, larger than any  
16 other garbage company regulated by the WUTC. WMW’s certificate is over twenty-five pages  
17 long. WMW uses separate tariffs for each of the geographically-distinct collection entities in  
18 order to directly tie the customers’ rates to regional expenses. To the best of our knowledge,  
19 WMW is the only solid waste collection company regulated by the Commission that operates  
20 separate business entities under the umbrella of one corporation. [Do any other SW companies  
21 have multiple tariffs?]

22 CONTEXTUAL BACKGROUND

23 In April of 2009, Executive Secretary and Director Danner sent a letter to solid waste  
24 collection companies regulated by the Commission, informing the industry of the agency’s

25 <sup>1</sup> During the test period used for the tariff filing that is the subject of this proceeding, the other corporations were  
26 Chemical Waste Management of the Northwest, Inc., Waste Management Disposal Services of Oregon, Inc.; Waste  
Management of Oregon, Inc., Waste Management of Idaho, Inc., and Waste Management of Alaska, Inc. Waste  
Management of Canada, Inc., has since been added to the Market Area.

1 intention to “strictly enforce” certain specified rules, stating that although they have been in  
2 effect for many years, “enforcement of these rules has been inconsistent.” One of the rules that  
3 was identified in the April letter was WAC 480-07-520, which sets forth the minimum submittal  
4 requirements for requesting tariff rate increases. A copy of the April Letter is attached.

5 Following issuance of the April letter, tariff filings submitted by solid waste collection  
6 companies were stringently reviewed for conformity with the rule. Despite good faith efforts by  
7 regulated garbage companies seeking general rate requests, various filings were presented that  
8 failed to strictly comply with the minimum requirements of WAC 480-07-520. Taken unawares  
9 by Staff’s interpretation of some of the regulatory provisions, some companies voluntarily  
10 withdrew their filings, rather than having the stigma of rejection on the record. For the past six  
11 months, both Staff and industry have struggled with administration of the rule.

12 Recognizing the need for clearer directions, on November 3, 2009, Staff issued a letter  
13 intended to provide technical assistance to help the industry better understand the tariff filing  
14 requirements. The November Guidance included examples of some required documents, and a  
15 checklist for the filing elements. It also noted that companies have the option of petitioning for  
16 an exemption or modification of a rule under WAC 480-07-110 as one means of recourse, if the  
17 application of a rule would impose undue hardship or be contrary to the underlying purposes of  
18 the regulation. A copy of the November Guidance is attached.

#### 19 PROCEDURAL SUMMARY

20 On November 30, 2009, Mike Weinstein, Senior Pricing Manager of WMW, submitted a  
21 general rate filing requesting changes to Tariff No. 15 for SnoKing. This general rate request  
22 was a subsequent filing required by Commission order. *See WUTC v. Waste Management of*  
23 *Washington, Inc., G-237, d/b/a WM-SnoKing*, Docket No. TG-061433 (Order 01, November 29,  
24 2006) (In which the Commission conditioned its approval of a deferred fuel supplement  
25 component in the fall of 2006 on requiring WMW to “file a general rate case for its WM-  
26 SnoKing operation no later than December 1, 2009.”)

1 Staff immediately reviewed the November SnoKing filing for compliance with  
2 WAC 480-07-520, and informed Mr. Weinstein that it was missing several components. Staff  
3 told Mr. Weinstein that the filing was sufficient to comply with the subsequent filing condition  
4 of the 2006 order because it was timely submitted in good faith, but explained what was needed  
5 to meet the regulatory requirements for general rate filings. Staff provided a checklist informing  
6 Mr. Weinstein of the additional information required to deem the filing in compliance with  
7 WAC 480-07-520. A copy of Staff's Checklist is attached.

8 Staff and company representatives communicated about the items identified on Staff's  
9 Checklist. Many of the deficiencies were procedural rather than substantive. For example, Mr.  
10 Weinstein did not submit PDF copies of the Excel spreadsheets, knowing that the auditors work  
11 directly on the electronic documents and hoping to "save some trees." He failed to include a  
12 map of SnoKing's territory for the tariff. There were other elements missing.

13 Almost all of the defects were capable of being easily corrected. However, Staff and the  
14 company did not agree about two specific subsections in the filing regulation. One is  
15 WAC 480-07-520(4)(d), which requires a separation of revenues and expenses between  
16 regulated and non-regulated operations. The other is WAC 480-07-520(4)(h), which calls for a  
17 detailed depreciation schedule.

18 To satisfy these two subsections, Staff took the position that information described in  
19 these two subsections had to be provided about WMW as a whole, and submitting work papers  
20 limited to SnoKing did not comply with the rule. The company, however, disagreed with Staff's  
21 interpretation of the two provisions, believing past practices in which work papers were only  
22 required for the entity to which the tariff applied represented a more supportable reading of the  
23 regulatory requirements.

24 Following communications with Staff about the disputed rule interpretation and  
25 procedural options for resolving it, on December 17, 2009, WMW resubmitted the SnoKing  
26

1 general rate filing with corrections, and concurrently filed a *Petition for Rule Interpretation Or*  
2 *Alternatively For Modification or Exemption* (“Petition”).

3 The general rate filing included information that WMW believed to be in compliance  
4 with the requirements of WAC 480-07-520 as follows:

5 WAC 480 07 520(4)(a): A pro forma income statement separated among SnoKing’s  
6 solid waste, single family residential recycling, multifamily recycling, and yard waste operations,  
7 with restating actual and pro forma adjustments, including all supporting calculations and  
8 documentation for all adjustments.

9 WAC 480 07 520(4)(b): A calculation of the revenue impact of the proposed tariff  
10 changes to SnoKing’s operations.

11 WAC 480 07 520(4)(c): A monthly income statement listing all SnoKing’s revenue and  
12 expense accounts by month.

13 WAC 480 07 520(4)(d): A detailed separation of all revenues and expenses between  
14 SnoKing’s regulated and non-regulated operations was presented in the income statement  
15 submitted in accordance with subsection (4)(a). Also, in response to this subsection specifically,  
16 the filing included a detailed separation of all revenues and expenses for each of the other  
17 collection operations, with expense allocated proportionately on the basis of regulated and  
18 unregulated revenues for each one. The filing also included a combined statement of detailed  
19 revenues and expenses for all of WMW’s unregulated, non-collection operations added together.

20 WAC 480 07 520(4)(e): A detailed list of all SnoKing’s nonregulated operations,  
21 including the rates charged for the services rendered.

22 WAC 480 07 520(4)(f): Detailed price-out information that reconciles within five  
23 percent, without adjustment, to the test period SnoKing’s booked revenue, including the test  
24 period customer count by SnoKing’s tariff item.

25 WAC 480 07 520(4)(g): A consolidated balance sheet for SnoKing and an annual report  
26 for Waste Management, Inc., which included the percentage of equity and the percentage of debt,  
and the cost of that debt by component because neither SnoKing nor WMW has a debt-to-equity,  
ratio; it is only held by the parent.

WAC 480 07 520(4)(h): A detailed depreciation schedule listing all used and useful  
assets held by SnoKing during the test period, including the date of purchase, the cost at  
purchase, the depreciable life, the salvage value, depreciation expense, and accumulated  
depreciation expense at the end of the test period.

WAC 480 07 520(4)(i): Computed average investment for SnoKing.

WAC 480 07 520(4)(j): Information about every transaction with an affiliated interest or  
subsidiary that directly or indirectly affects the proposed rates, including a full description of the  
relationship, terms and amount of the transaction, the length of time the relationship has been  
ongoing, and an income statement and balance sheet for every affiliated entity, consisting of  
information about the allocations to SnoKing of general and administrative costs from Waste  
Management, Inc. for services provided in its Corporate headquarters and Western Group

1 headquarters. Additionally, information was provided about certain intra-company expenses not  
2 involving affiliated interest transactions. The filing included information about G&A allocated  
3 to SnoKing by WMW for Market Area overhead and services. Also, because SnoKing delivers  
recyclable materials to Cascade Recycling Center, WMW's Woodinville material recovery  
facility, financial information about that non-collection, nonregulated operation was included.

4 In the Petition, WMW requested that the Commission, interpret WAC 480-07-520(4) to  
5 require Working Papers that provide financial analysis only of WMW's tariff-filing entity, in  
6 accordance with WMW's interpretation and Staff's past practices; or grant an exemption or  
7 modification of WAC 480-07-520(4) for not only the SnoKing filing but also for any future  
8 filing that would excuse the requirements of providing a detailed separation of revenues and  
9 expenses of the unregulated non-collection operations of WMW under WAC 480-07-520(4)(d),  
10 and of preparing a detailed depreciation schedule for WMW as a whole under WAC 480 07  
11 520(4)(h).

12 At the Open Meeting on January 14, the Commission suspended the SnoKing tariff filing  
13 and directed that both it and the Petition to be addressed together in an adjudicative proceeding.  
14 Following the Open Meeting, the Commission issued its *Order of Consolidation and Notice of*  
15 *Prehearing Conference*, in which the tariff filing (TG-091933) and the Petition (Docket No. TG-  
16 091945) were consolidated, and set for prehearing conference on January 22, 2009. At the  
17 prehearing conference, an expedited briefing schedule was agreed to for a ruling on WMW's  
18 Petition as soon as possible so that the merits of SnoKing's proposed rate increase can be  
19 promptly considered and, if approved, allowed to become effective.

#### 20 SUMMARY OF PAST PRACTICES

21 For over twenty years, the company has filed general rate increase requests for changes to  
22 rates in individual tariffs published specifically for each operational unit. Disposal fees, labor  
23 rates, fuel prices, and other costs differ among various tariff territories in Spokane, Skagit  
24 County, Wenatchee, Kitsap County, and Puget Sound. For that reason, supporting work papers  
25 provided financial data about the tariff filing entity, similar to the submission for the SnoKing  
26 filing.



1 For some period of time, at least through the early 1990's, Waste Management, Inc.'s  
2 Washington-state collection entities were separately incorporated. At some point around that  
3 time, the company took steps to consolidate its collection operations, and its certificate was  
4 rolled up into a single entity, Washington Waste Hauling & Recycling, Inc. In the late 1990s,  
5 the company undertook an internal analysis of revenues and expenses, and found that it was  
6 incurring double taxation on state business and occupation taxes by having a separate corporate  
7 entity for solid waste collection, on the one hand, dealing with separate corporations providing  
8 solid waste handling services, on the other. To illustrate, when the Wenatchee collection  
9 operations delivered solid waste to the Greater Wenatchee Landfill, both corporations would  
10 have paid B&O taxes on the same dollars because the collection company would pay for the  
11 revenues produced by customers paying tariff rates that included the disposal fees, and the  
12 landfill would pay for the revenues attributable to the disposal fees paid by the collection  
13 company. The company, and its customers, was incurring that double taxation unnecessarily.  
14 To minimize that tax burden, the entire Washington operations were consolidated into one  
15 corporation, Waste Management of Washington, Inc.

16 This corporate consolidation had no practical effect on tariff filings. The information  
17 provided to the Commission in compliance with WAC 480-07-520 did not materially change,  
18 because each tariff entity continued to operate as a separate revenue center. Following  
19 consolidation, each of the tariff entities continued to keep its own general ledger.<sup>2</sup> Equipment is  
20 not shared, and if any vehicles or containers are transferred from one collection unit to another,  
21 the asset is taken off the books of the one and put on the books of the other. Operational  
22 employees work for one entity only, and labor rates differ for each collection unit, most of which  
23 have their own separate collective bargaining agreement for garbage collection drivers. For the  
24 most part, each collection entity has its own office and facilities – and if offices were shared with  
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<sup>2</sup> Attach order allowing WM to vary from GAAP?

1 other operational units the method of assigning the expenses remained unchanged after the  
2 corporate consolidation.

3 The only costs that are shared among the various corporations that operate under the  
4 Waste Management umbrella are for general and administrative (G&A) overhead. The separate  
5 collection business units in Washington – as well as the non-collection, unregulated solid waste  
6 handling operations – share expenses only in the allocations of G&A costs. When submitting a  
7 general rate request in accordance with WAC 480-07-520, the company has historically included  
8 financial data detailing the G&A costs allocated from the Corporate, Group and Market Area  
9 offices. Spreadsheets with line items for all of the G&A costs from each level of company  
10 management have been provided with WMW filings, as they were with the SnoKing filing.  
11 Work papers have documented the bases for allocating those costs out to the tariff entity. For  
12 example, proportionate expenses of providing Market Area customer services are allocated to  
13 SnoKing based on the number of customers it serves, in relation to the total number of customers  
14 served in the Market Area. Another example is that costs for human resource services are  
15 allocated based on the number of employees. Similarly, fleet and safety costs are allocated based  
16 on the number of routes. Explanation and support for each of the expenses and the relevant basis  
17 of allocation has always been included with the Work Papers filed, as it was again with the  
18 SnoKing filing.

19 To the extent these G&A costs are incurred by WMW and its operating entities as a result  
20 of administrative services performed by the parent company, an affiliated interest arrangement  
21 between WMW and Waste Management, Inc. exists. Since WAC 480-70-079 was adopted in  
22 2005, WMW has filed annual reports detailing the nature of this arrangement in accordance with  
23 the regulation. The SnoKing filing submitted in December included the information about this  
24 affiliated interest arrangement in accordance with WAC 480-07-520(4)(j).

25 Due to its corporate structure, intra-company transactions between the various collection  
26 entities and the non-collection solid waste handling operations are not “affiliated interest”

1 transactions. WMW's unregulated, non-collection solid waste handling facilities interact with its  
2 collection entities in the following manner:

3 Eastmont Transfer Station in Seattle (Seattle Collection)

4 Kennewick Transfer Station (Kennewick Collection)

5 Ellensburg Transfer Station (Ellensburg Collection)

6 Cle Elem Transfer Station (Ellensburg Collection)

7 Wenatchee Transfer Station (Wenatchee Collection)

8 Alaska Street Transfer Station (None – Non-regulated transfer of CDL; soils and other  
9 materials to the Columbia Ridge Landfill in Oregon)

10 Cascade Recycling Center MRF (Seattle, Northwest, Sno-King, Skagit Collections)

11 Ellensburg MRF (Ellensburg Collection)

12 RNW Recycling MRF (South Sound Collection)

13 Peninsula Recycling MRF (Brem-Air Collection)

14 Greater Wenatchee Landfill (Wenatchee and Ellensburg Collections)

15 Graham Road Landfill (Spokane Collection – CDL only)

16 Olympic View Landfill (closed site) (previously Brem-Air Collection)

17 These are not affiliated interest transactions. Regardless, whenever any of the tariff  
18 entities have filed a general rate increase, the Work Papers have included financial data for  
19 Commission auditors to determine whether the intra-company charges are an appropriate  
20 expense for including in the rate base. In these instances, the company has provided information  
21 about the relevant non-collection, unregulated operation. For example, because SnoKing  
22 delivers recyclable materials to the company's Cascade Recycling Center, an income statement  
23 for the material recovery facility was included in the SnoKing filing.

24 If there is a transaction involving tipping fees, then the filings have included information  
25 for Commission auditors to evaluate whether the total cost of disposal, including waste transfer,  
26 transport, and disposal charges, is equal to or lower than any other reasonable and currently

1 available option, in accordance with the standards set forth in RCW 81.77.160. Where the  
2 disposal price at the WMW-owned transfer station or landfill is established by contract with a  
3 local government, then no financial data other than the established fees has been provided.

4 . Otherwise, where there is no financial nexus between the tariff entity seeking a rate  
5 adjustment and any of the unregulated, non-collection operations, financial information about  
6 those unregulated solid waste handling facilities has not been included by WMW in its rate  
7 filings. No filing for over a decade has included an "income statement" for WMW as a whole.

8 Nonetheless, in an attempt to assuage Staff's concerns about compliance by the SnoKing  
9 filings with WAC 480-07-520(4)(d), the SnoKing filing included information about WMW that  
10 had not historically been provided and varied from past practice. Specifically, the filing included  
11 a detailed separation of all revenues and expenses for each of the other WMW collection  
12 operations, with expenses allocated proportionately on the basis of regulated and unregulated  
13 revenues for each one. The filing also included a combined statement of detailed revenues and  
14 expenses for all of WMW's unregulated, non-collection operations added together. It did not  
15 separately state the expenses and revenues for each landfill, transfer station, or material recovery  
16 facility. The spreadsheet provided added them all together, and presented consolidated  
17 information about each expense and line item. The SnoKing filing did not include an income  
18 statement for WMW, and provided information about the corporation only in these consolidated,  
19 but detailed, breakdowns.

20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

21 SUMMIT LAW GROUP PLLC

22  
23 By \_\_\_\_\_  
24 Polly L. McNeill, WSBA # 17437  
25 Counsel for Waste Management of  
26 Washington, Inc.

ROBERT M. MCKENNA  
Attorney General

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