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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Petition of:)

) DOCKET TG-101542

4

MASON COUNTY GARBAGE CO., INC.,)

d/b/a MASON COUNTY GARBAGE, G-88,)

5

Requesting Authority to Retain)

6

Thirty Percent of the Revenue)

Received From the Sale of)

7

Recyclable Materials Collected)

in Residential Recycling Service)

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In the Matter of the Petition of:)

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) DOCKET NO. TG-101545

MURREY'S DISPOSAL COMPANY, INC.,)

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G-9,)

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)

Requesting Authority to Retain)

Fifty Percent of the Revenue)

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Received From the Sale of)

Recyclable Materials Collected)

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in Residential Recycling Service)

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_____)

In the Matter of the Petition of:)

) DOCKET TG-101548

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AMERICAN DISPOSAL COMPANY, INC.,)

G-87,)

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Requesting Authority to Retain)

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Fifty Percent of the Revenue)

Received From the Sale of)

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Recyclable Materials Collected in)

Residential Recycling Service)

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A prehearing Conference in the above matter was

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held on December 20, 2010, at 10:00 a.m., at 1300 South

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Evergreen Park Drive Southwest, Olympia, Washington, before

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Administrative Law Judge GREGORY J. KOPTA.

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Shaun Linse, Court Reporter, CCR 2029

1 The parties were present as follows:

2 WASHINGTON UTILITIES AND TRANSPORTATION
3 COMMISSION, by FRONDA WOODS, Assistant Attorney General,
4 1400 South Evergreen Park Drive Southwest, Post Office Box
5 40128, Olympia, Washington 98504; telephone (360) 664-1225.

6 MASON COUNTY GARBAGE CO, INC., d/b/a MASON COUNTY
7 GARBAGE, G-88; MURREY'S DISPOSAL COMPANY, INC., G-9;
8 AMERICAN DISPOSAL COMPANY, INC., G-87; by DAVID W. WILEY,
9 Attorney at Law, Williams, Kastner, 601 Union Street, Suite
10 4100, Seattle, Washington 98101; telephone (206) 233-2895.

11 WASHINGTON REFUSE AND RECYCLING ASSOCIATION, by
12 JAMES K. SELLS, Attorney at Law, PMB 22, 3110 Judson Street,
13 Gig Harbor, Washington 98335; telephone (360) 981-0168.

14 WASTE MANAGEMENT OF WASHINGTON, INC., d/b/a WASTE
15 MANAGEMENT - NORTHWEST; WASTE MANAGEMENT OF WASHINGTON,
16 INC., d/b/a WASTE MANAGEMENT - SNO-KING; WASTE MANAGEMENT OF
17 WASHINGTON INC., d/b/a WASTE MANAGEMENT - SOUTH SOUND, WASTE
18 MANAGEMENT OF SEATTLE; by Polly L. McNeill, Attorney at Law,
19 Summit Law Group, 315 Fifth Avenue South, Suite 1000,
20 Seattle, Washington 98104-2682; telephone (206) 676-7040.

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1 P R O C E E D I N G S

2 JUDGE KOPTA: Let's be on the record then in the
3 following dockets: Docket TG-101542 entitled In the Matter
4 of the Petition of: Mason County Garbage Company, Inc.,
5 d/b/a Mason County Garbage, G-88, Requesting Authority to
6 Retain THIRTY PERCENT of the Revenue Received From the Sale
7 of Recyclable Materials Collected in Residential Recycling
8 Service; Docket TG-101545 entitled In the Matter of the
9 Petition of Murrey's Disposal Company, Inc., G-9, Requesting
10 Authority to Retain Fifty Percent of the Revenue Received
11 From the Sale of Recyclable Materials Collected in
12 Residential Recycling Service; Docket No. TG-101548 entitled
13 In the Matter of the Petition of American Disposal Company,
14 G-87, Requesting Authority to Retain Fifty Percent of the
15 Revenue Received From the Sale of Recyclable Materials
16 Collected in Residential Recycling Service. Those three
17 dockets have been consolidated.

18 We are also here on the following dockets that
19 have been consolidated with each other but not with the
20 prior three dockets, and they are Dockets TG-101220 entitled
21 Washington Utilities and Transportation Commission versus
22 Waste Management of Washington Inc, d/b/a Waste Management -
23 Northwest; Docket No. TG-101221 entitled Washington
24 Utilities and Transportation Commission versus Waste
25 Management of Washington, Inc., d/b/a Waste Management -

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1 Sno-King; and TG-101222 entitled Washington Utilities and
2 Transportation Commission versus Waste Management of
3 Washington, Inc., d/b/a Waste Management - South Sound,
4 Waste Management of Seattle. Those last three dockets have
5 been consolidated.

6 We are here at the offices of the Washington
7 Utilities and Transportation Commission in Olympia,
8 Washington. Today's date is December 20, 2010.

9 I am Administrative Law Judge Gregory J. Kopta,
10 and we are here for prehearing conferences in each of these
11 consolidated dockets.

12 Let's start this morning by taking appearances for
13 the record beginning on my left.

14 MS. McNEILL: Thank you Judge Kopta, Polly L.
15 McNeill appearing on behalf of Waste Management of
16 Washington in its three consolidated matters. My law firm
17 is Summit Law Group. My address is 315 Fifth Avenue South,
18 Suite 1000, Seattle, Washington 98104. Hardly ever use
19 those street addresses anymore and my e-mail address is
20 pollym@summitlaw.com. My phone number direct dial is
21 206-676-7040, and although another sign of the times I'll
22 give the fax number, but nobody ever uses that anymore
23 either. It's 206-676-7041. Thank you.

24 JUDGE KOPTA: Thank you.

25 MR. WILEY: Good morning. David W. Wiley

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1 appearing on behalf of the petitioners Mason County Garbage,
2 Murrey's Disposal, and American Disposal in the dockets that
3 Judge Kopta listed. My street address is 601 Union Street,
4 Two Union Square, Suite 4100, Seattle, Washington 98101. My
5 direct line is 206-233-2895. Our fax number is
6 206-628-6611, and my e-mail address is
7 dwiley@williamskastner.com.

8 JUDGE KOPTA: Thank you.

9 MR. SELLS: Your Honor, my name is James Sells,
10 S-e-l-l-s, appearing on behalf of Washington Refuse and
11 Recycling Association in what we call the Murrey dockets.
12 We are presently an interested party, and today we are
13 petitioning to intervene in those dockets. We do not
14 anticipate petitioning to intervene in the Waste Management
15 dockets at this time. My address is PMB (Private Mailbox)
16 22, 3110 Judson Street, Gig Harbor 98335. Telephone
17 360-981-0168, e-mail jamessells@comcast.net.

18 MS. WOODS: Good morning, Your Honor. I'm Fronda
19 Woods, Assistant Attorney General, appearing on behalf of
20 Commission Staff. My address is 1400 South Evergreen Park
21 Drive S.W., P.O. Box 40128, Olympia, Washington 98504-0128.
22 My telephone number is area code 360-664-1225. My fax
23 number is area code 360-586-5522, and my e-mail is
24 fwoods@utc.wa.gov.

25 JUDGE KOPTA: Thank you. Is there anyone on the

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1 bridge line that would like to make an appearance?

2 Hearing nothing, I will assume that there is not.

3 The first matter for us to take up are petitions
4 to intervene. We'll start with for a lack of better term
5 the Murrey's dockets since we do have a petition to
6 intervene of Washington Refuse and Recycling Association,
7 and, Mr. Sells, I have your written petition as I'm assuming
8 does Mr. Wiley and Ms. Woods.

9 Is there any objection to the petition to
10 intervene by the Washington Refuse and Recycling
11 Association?

12 MR. WILEY: None from the petitioners, Your Honor.

13 MS. WOODS: None from the UTC staff, Your Honor.

14 JUDGE KOPTA: Thank you. That petition will be
15 granted.

16 Is there anyone else that wishes to intervene in
17 that series of dockets?

18 MS. McNEILL: Yes, Your Honor, with apologies for
19 not filing one in writing. At the open meeting in which the
20 Waste Management commodity credit and revenue sharing
21 agreement was suspended, we spent quite a bit of time trying
22 to negotiate if not a complete, at least a partial
23 settlement, and we achieved we thought a partial settlement
24 on the commodity credit element of the filing -- and I
25 apologize that this is a little bit like drinking out of a

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1 fire hose for you right here -- and were unable to reach
2 agreement on the revenue sharing portion of it. And
3 expressing some frustration with the nature of the
4 proceeding itself as being an open meeting, Chairman Goltz
5 accepted the staff's recommendation to suspend our matter
6 and set us for hearing.

7 We had embarked in the last several weeks in a
8 process where we assumed that the commodity credit itself
9 was not actually a subject of controversy, and that the only
10 issue remained on the revenue sharing portion of the filing
11 and have been thinking and preparing for today's prehearing
12 conference with that in mind.

13 But just this morning before the prehearing
14 conference we've been informed that actually our
15 understanding and the discussions on the record in open
16 meeting were meaningless, and that in fact our entire case,
17 including the commodity credit, is the subject of that
18 proceeding. In that case unfortunately all of the thinking
19 that I have done for today's prehearing conference has been
20 dramatically changed without a lot of notice on it.

21 But one outcome of that is that we will oppose
22 procedurally consolidating the Waste Management consolidated
23 matters with they're called the Murrey's consolidated
24 matters, and in that instance I do, however, wish to
25 intervene in the Murrey's matters because I think the

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1 threshold question that is presented in their petition is
2 potentially relevant to my client both in terms of the
3 implications to the immediate filing before it as well as
4 the long-term implementation of the revenue sharing
5 agreements.

6 So I would have filed a written petition had I
7 known last week that this was going to happen, but since I
8 didn't I am forced with apologies to make an oral motion
9 this morning.

10 JUDGE KOPTA: Thank you, and that's news to me. I
11 had assumed that we were really dealing with essentially the
12 same issue in both consolidated dockets and was inclined to
13 consolidate them all together, but let me hear from staff
14 and see whether that's their understanding that the entirety
15 Waste Management petitions are on the table in terms of
16 issues.

17 MS. WOODS: That is my understanding, Your Honor,
18 and I have Gene Eckhardt from the UTC staff sitting next to
19 me, and if I am misstating that I'm asking him to kick me
20 under the table.

21 JUDGE KOPTA: Fair enough. Mr. Wiley and
22 Mr. Sells, do you have any comments in terms of allowing
23 Waste Management to intervene in the consolidated dockets in
24 which you are parties to?

25 MR. WILEY: Your Honor, Dave Wiley for the

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1 petitioners. In looking at the rule at WAC 480-07-355, I do
2 believe that the legal issue that we have attempted to
3 narrowly frame in our petition is relevant to both the WRRRA
4 and to Waste Management in terms of an industry wide
5 implication. So I do not oppose intervention by Waste
6 Management into our proceedings, but I also do oppose
7 consolidation but for largely the same reasons that
8 Ms. McNeill alluded to which is that I think our issue is
9 narrower, theirs appears to be much broader, and would
10 involve considerably more factual issues that I understand
11 at this juncture than ours would. So I do not interpose the
12 intervention and I do oppose consolidation.

13 JUDGE KOPTA: Mr. Sells, anything from you?

14 MR. SELLS: It would be pretty tough for one
15 intervenor to oppose the intervention of a petition so we
16 have no objection, Your Honor.

17 JUDGE KOPTA: All right. Thank you. I will grant
18 that motion. We sort of preempted the next agenda item that
19 I had which was consolidation. As I say, I was inclined to
20 consolidate then if the only issue is for the revenue
21 sharing, but since there seems to be more issues than that
22 in the Waste Management dockets, I would agree that that's
23 probably not the best procedural course. And since the
24 Murrey's docket deals with the shared interest issue and
25 hopefully that we will proceed more quickly so whatever is

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1 decided in that docket we can carry over to the Waste
2 Management docket and not have duplication of effort in the
3 two dockets, that's certainly what I would strongly
4 encourage the parties to do in terms of proposing procedural
5 schedules in each of these dockets.

6 MS. McNEILL: Thank you, Your Honor. We do concur
7 that although we don't believe the matter should be
8 consolidated, we have discussed both with counsel for the
9 Murrey's companies as well as with the Attorney General some
10 sequencing of the issues and the presentations and briefing
11 that we think will be most efficient administratively to get
12 the answers that are needed for the industry as well as for
13 the Commission staff on this legislation.

14 JUDGE KOPTA: Great. I think because of that it
15 would still make sense to continue this as a joint
16 prehearing conference between the two sets of dockets since
17 there is an interrelationship between the scheduling issues.
18 But as I indicated earlier off the record, my expectation is
19 that this transcript will be part of both sets of dockets.
20 There will be separate orders, prehearing conference orders
21 coming in each of the dockets, but for all other intensive
22 purposes they will be treated separately.

23 MS. WOODS: Your Honor, Fronda Woods for UTC
24 staff. One possible way to handle the procedure could be to
25 have a partial consolidation for purposes of presenting

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1 cross-motions for summary determination and handling any
2 factual issues that may remain after that separately. I
3 believe that is permitted under the Court rules.

4 JUDGE KOPTA: Well, certainly we have the
5 flexibility to do something like that. I am a little bit
6 hesitant just because I think that might be more cumbersome
7 than simply allowing intervention. I would ask the
8 clarifying question of Waste Management if they would agree
9 whatever ruling comes out of the Murrey's case in terms of
10 legal issue that's common to all of the dockets if you could
11 consider that to be binding on Waste Management in your case
12 so that we don't have to relitigate it, and I don't think we
13 would need to have any kind of partial consolidation.

14 MS. McNEILL: No, thank you. We definitely would
15 agree to comply with the outcome of the order whatever that
16 may be. There is and perhaps at some point we can go off
17 the record to talk about how we would schedule these things.
18 There is sort of a cascading effect of the different
19 outcomes and decision trees that could result, but, yes, we
20 would not be relitigating the issue in our proceeding that
21 is presented by the Waste connection proceeding.

22 JUDGE KOPTA: I think with that clarification I'm
23 prepared to proceed as we have just discussed earlier
24 without any consolidation. I think that's the cleanest and
25 easiest thing for the parties and both for the Commission.

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1 So I will do separately a couple of questions.
2 For Murrey's do you see any need for discovery?

3 MR. WILEY: I don't, Your Honor. I thought this
4 through in some detail. I think that the issue is really
5 the declarations versus prefiled testimony and cross on the
6 prefiled because there will be witnesses probably from the
7 staff and from the county in our case.

8 JUDGE KOPTA: Ms. Woods, any discovery need that
9 you see?

10 MS. WOODS: UTC staff does not see a need for
11 discovery in the Waste connections dockets.

12 JUDGE KOPTA: Well, then at this point we will
13 assume that there will be no discovery in that case, and
14 therefore no need for a protective order I assume, or is
15 that something you would like even without discovery?

16 MR. WILEY: Your Honor, considering the rate cases
17 in general lately, I would ask for a protective order. I
18 think just because they're a matter of course. I don't know
19 that anything that's been developed thus far is not already
20 in the public domain, but I do think that it might be useful
21 in that rare occasion where the companies are concerned
22 about the release of data.

23 JUDGE KOPTA: Ms. Woods, any objection to an entry
24 of a protective order?

25 MS. WOODS: No objection, Your Honor.

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1 JUDGE KOPTA: Then we will issue the Commission
2 standard protective order in the Waste dockets.

3 Now, let's to go Waste Management.

4 Ms. McNeil, do you see the need for discovery in
5 your cases?

6 MS. McNEILL: No, I don't. But again, you know,
7 my whole preparation for today's hearing has changed too.
8 I'm not sure whether there is discovery on the rate
9 component. I suspect there is.

10 JUDGE KOPTA: Ms. Woods?

11 MS. WOODS: Your Honor, Commission staff does see
12 a need for discovery in the Waste Management dockets.

13 JUDGE KOPTA: I think given the nature of the
14 issues that probably makes sense to go ahead and find that
15 discovery is appropriate in those cases, and I assume that
16 you would like a protective order?

17 MS. McNEILL: Yes, please, Your Honor.

18 JUDGE KOPTA: Any objection, Ms. Woods?

19 MS. WOODS: No objection, Your Honor.

20 JUDGE KOPTA: Then the standard protective order
21 will be issued in the Waste Management dockets. Because I
22 was anticipating we might be consolidating this I did not
23 get information in terms of number of copies, that sort of
24 thing. I will include that in the prehearing conference
25 order so everyone knows.

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1 I think unless somebody has something else, that
2 leads us to scheduling and it might be wise at this point to
3 go off the record so that we can have a discussion.

4 So we will be off the record.

5 (Discussion off the record from 10:24 a.m. to
6 10:44 a.m.)

7 JUDGE KOPTA: All right. Let's be back on the
8 record.

9 While we were off the record there were some
10 scheduling discussions held by the parties, and I will let
11 Mr. Wiley inform us as to the dates for briefing in the
12 Murrey's disposal cases.

13 MR. WILEY: Thank you, Your Honor. What we have
14 tentatively agreed to subject to your approval is a
15 cross-motion filing date of Wednesday, February 9, 2011, and
16 a response date due Monday, February 28, 2011. I would ask
17 that we be able to serve on that date via e-mail and then
18 follow up with a hard copy if it's postmarked the same day.

19 JUDGE KOPTA: Yes, that's what our rules
20 contemplate, and to the extent that we need to formalize
21 that I have no problem with that procedure or those dates.
22 We had discussion off the record also about the issues to be
23 resolved. Do we need to formalize those on record or is
24 everyone clear on the issues to be briefed?

25 MR. WILEY: I am comfortable, Your Honor.

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1 JUDGE KOPTA: Ms. Woods?

2 MS. WOODS: Yes, I am as well, Your Honor.

3 JUDGE KOPTA: All right. Then we will leave it to
4 the parties to discuss the issues that we agreed off the
5 record or to be resolved in this particular case.

6 Then with respect to the Waste Management, we
7 agreed that we would not hold further scheduling events
8 until after the initial order is issued in the Murrey's
9 Disposal Case, and once that order is issued we will
10 schedule a prehearing conference and deal with scheduling
11 issues at that point.

12 Is that correct, Ms. McNeill?

13 MS. MCNEILL: Yes, that is correct, Your Honor.

14 JUDGE KOPTA: Is there anything else that needs to
15 be discussed at this point?

16 MS. WOODS: Your Honor, Fronda Woods for UTC
17 staff. We talked about discovery earlier and we reserve the
18 right to conduct discovery for the Waste Management. UTC
19 staff does believe that they would need to conduct some
20 discovery for the Waste Connection Companies depending on
21 how the legal issues in the case are resolved, and so we
22 would reserve the right to request discovery at some future
23 point either in these dockets or in another proceeding.

24 JUDGE KOPTA: Mr. Wiley.

25 MR. WILEY: Your Honor, I do believe that based on

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1 how she's tendered her motion that I should make it clear
2 that we believe that these rates that we petition for
3 reconsideration on a single legal issue involving a
4 carryover that rates are final, they aren't suspended, and
5 we have had two rounds of informal staff data requests that
6 we've responded. So we oppose any further discovery because
7 we believe that the issue before you is a legal one.

8 JUDGE KOPTA: At this point I will tend to agree
9 with Mr. Wiley that as we have discussed it the issues are a
10 legal one, and as I understand staff's position they are
11 simply reserving the right at a later date should there be
12 factual issues that arise to seek discovery at that point.
13 So I will leave for that future date any discussion about
14 whether discovery is needed and leave it open. But at this
15 point we will not have a finding that discovery is necessary
16 in those cases but can be revisited as most decisions can
17 be. But for now there will be no discovery.

18 Any other issues that need to be discussed today?

19 Hearing none, we are adjourned. Thank you.

20 (Prehearing conference was adjourned at 10:51.)

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2 In Re: Dockets TG-101542, TG-101545, TG-101548

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I, Shaun Linse, CCR, do hereby certify that the
foregoing transcript prepared under my direction is a
full and complete transcript of proceedings held on
December 20, 2010 in Olympia, Washington.

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Shaun Linse, CCR 2029

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