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5 BEFORE THE WASHINGTON UTILITIES  
6 AND TRANSPORTATION COMMISSION

7 In the Matter of:

8 Waste Management of Washington, Inc. d/b/a  
9 Waste Management of SnoKing  
10 Re WAC 480-07-520(4)  
11

CASE NO.

PETITION FOR RULE  
INTERPRETATION OR  
ALTERNATIVELY FOR  
MODIFICATION OR EXEMPTION

12 I. INTRODUCTION

- 13  
14 1. COMES NOW Waste Management of Washington, Inc. (“WMW”) holder of Certificate of  
15 Public Convenience and Necessity No. G-237, by and through its attorney, Polly L. McNeill  
16 of Summit Law Group, and in accordance with WAC 480-07-370(1)(b) files this *Petition for*  
17 *Rule Interpretation Or Alternatively For Modification or Exemption* (“Petition”) respectfully  
18 requesting the Commission’s determination of how to meet the requirements for Work  
19 Papers submitted in filing a general rate increase request for a solid waste collection tariff  
20 under WAC 480-07-520(4).<sup>1</sup>  
21 2. Contemporaneously with this Petition, WMW is today filing a general rate request for its  
22 operating division Waste Management of Washington, Inc. d/b/a Waste Management of  
23 SnoKing (“SnoKing”). In the context of WMW’s corporate structure and history of tariff  
24 filings, WMW seeks an interpretation under WAC 480-07-920 that its SnoKing filing

25  
26 <sup>1</sup> 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.

1 complies with the requirements of WAC 480-07-520(4) and should not be rejected. In the  
2 alternative, if the Commission determines that WAC 480-07-520(4) demands more financial  
3 analysis than has previously been required, then WMW respectfully requests an exemption or  
4 modification under WAC 480-07-110 to the extent the rule would require the company to  
5 submit into the public record certain proprietary and confidential business records unrelated  
6 to the substantive audit of the tariff filing itself, and therefore granting WMW's request  
7 would be consistent with the public interest, the purposes underlying the tariff filing  
8 regulation, and Ch. 81.77 RCW.

## 9 II. PARTIES

10 3. Petitioner's name and address are as follows:

11 Waste Management of Washington, Inc.  
12 13225 N.E. 126th Place  
Kirkland, WA 9803

13 4. Petitioner's attorney's name and address are as follows:

14 Polly L. McNeill  
15 Summit Law Group PLLC  
16 315 Fifth Avenue S.  
Suite 1000  
Seattle, WA 98104

## 17 III. FACTUAL BACKGROUND

18 5. WMW is the corporate subsidiary of Waste Management, Inc. that operates in Washington-  
19 state. WMW has throughout the State ten different business units providing solid waste  
20 collection services, each operating within a specified territory. In addition, WMW owns  
21 three landfills, six transfer stations and four recycling centers.

22 6. There are nine different WUTC tariffs, one for each of the geographically-specific collection  
23 entities. For over twenty years, the company has filed general rate increase requests  
24 individually for each operational unit, largely due to the fact that expenses vary among the  
25 territories served. Disposal fees, labor rates, fuel prices, and other costs differ in Spokane,  
26 Skagit County, Wenatchee, Puget Sound, etc.. When submitting a general rate request in

1 accordance with WAC 480-07-520, the company has always presented financial data of the  
2 collection entity, not WMW as a whole except to the extent corporate data was necessary for  
3 auditing the filing request, as follows:

- 4 7. WAC 480-07-520(4)(a): A pro forma income statement separated among regulated  
5 collection operations, for the tariff entity only.
- 6 8. WAC 480-07-520(4)(b): A calculation of the revenue impact of the proposed tariff changes,  
7 for the tariff entity only.
- 8 9. WAC 480-07-520(4)(c): A monthly income statement, for the tariff entity only.
- 9 10. WAC 480-07-520(4)(d): A separation of revenues and expenses between regulated and non-  
10 regulated operations, for the tariff entity only.
- 11 11. WAC 480-07-520(4)(e): Revenue information about all nonregulated collection operations,  
12 for the tariff entity only.
- 13 12. WAC 480-07-520(4)(f): A price-out reconciliation to the test period revenue, for the tariff  
14 entity only.
- 15 13. WAC 480-07-520(4)(g): A consolidated balance sheet, including debt to equity and the cost  
16 of debt, for Waste Management, Inc. because neither the operating entities nor even WMW  
17 has debt or equity, which is only held by the parent.
- 18 14. WAC 480-07-520(4)(h): A detailed depreciation schedule, for the tariff entity only.
- 19 15. WAC 480-07-520(4)(i): Computed average investment, for the tariff entity only.
- 20 16. WAC 480-07-520(4)(j): Affiliated interest transactions, for the tariff entity but involving  
21 administrative overhead services performed by the area and corporate offices.
- 22 17. Relevant to this Petition, in the fall of 2006 WMW filed tariff revisions for SnoKing to  
23 implement a deferred fuel supplement component. *WUTC v. Waste Management of*  
24 *Washington, Inc., G-237, d/b/a WM-SnoKing*, Docket No. TG-061433 (November 29, 2006).  
25 In approving the fuel supplement, the Commission required WMW to make a subsequent  
26 filing and stated as a condition, “Waste Management of Washington, Inc. shall file a general

1 rate case for its WM-SnoKing operation no later than December 1, 2009.” Order 01,  
2 Paragraph 47 (emphasis added).

3 18. On November 30, 2009, Mike Weinstein, Senior Pricing Manager of Waste Management of  
4 Washington, Inc., complied with this condition and submitted SnoKing’s subsequent filing.  
5 He included Work Papers that comported with past practices, and addressed each component  
6 of WAC 480-07-520(4). However, Staff reviewed the filing in the context of recent  
7 developments involving the Commission and the solid waste industry as a whole, and  
8 determined that the filing was deficient. That context is also relevant to this Petition.

9 19. By way of background, in April of 2009, Executive Secretary and Director Danner sent a  
10 letter to solid waste collection companies regulated by the WUTC, informing the industry of  
11 the agency’s intention to “strictly enforce” certain specified rules, stating that although they  
12 have been in effect for many years, “enforcement of these rules has been inconsistent.” One  
13 of the rules that was identified in the April letter was WAC 480-07-520, which sets forth the  
14 minimum submittal requirements for requesting tariff rate increases.

15 20. Following issuance of the April letter, tariff filings submitted by solid waste collection  
16 companies were stringently reviewed for conformity with the rule. Despite good faith efforts  
17 by regulated garbage companies seeking general rate requests, various filings were presented  
18 that failed to strictly comply with the minimum requirements of WAC 480-07-520. Taken  
19 unawares by Staff’s interpretation of some of the regulatory provisions, some companies  
20 voluntarily withdrew their filings, rather than having the stigma of rejection on the record. It  
21 is fair to say that for the past six months, both Staff and industry have struggled with  
22 administration of the rule.

23 21. Recognizing the need for clearer directions, on November 3, 2009, Staff issued a letter  
24 intended to provide technical assistance to help the industry better understand the tariff filing  
25 requirements. The November letter included examples of some required documents, and a  
26 checklist for the filing elements. It also noted that companies have the option of petitioning

1 for an exemption or modification of a rule under WAC 480-07-110 as one means of recourse,  
2 if the application of a rule would impose undue hardship or be contrary to the underlying  
3 purposes of the regulation.

4 22. Following the November guidance, however, there nonetheless remain areas of uncertainty  
5 and internal inconsistency with the rules as they are written and as they are applied. It is in  
6 the context of this regulatory turmoil that WMW submitted its SnoKing tariff request in late  
7 November.

8 23. Staff immediately reviewed the SnoKing filing for compliance with WAC 480-07-520, and  
9 informed Mr. Weinstein that it was missing several components. Staff told Mr. Weinstein  
10 that the filing was sufficient to comply with the condition of the 2006 Order because it was  
11 timely submitted in good faith, but explained what was needed to meet the minimum rate  
12 increase filing requirements. Many of the deficiencies were procedural rather than  
13 substantive, and almost all were capable of being easily corrected. For example, Mr.  
14 Weinstein did not submit PDF copies of the Excel spreadsheets, knowing that the auditors  
15 work directly on the electronic documents and hoping to “save some trees.” He failed to  
16 include a map of SnoKing’s territory for the tariff. All of the various other similar  
17 deficiencies have been corrected in the filing submitted today – except for the provisions  
18 which are the subject of this Petition.

19 24. With this Petition, WMW seeks the Commission’s determination about two of the  
20 subsections. One is WAC 480-07-520(4)(d), which requires a separation of revenues and  
21 expenses between regulated and non-regulated operations. The other is  
22 WAC 480-07-520(4)(h), which calls for a detailed depreciation schedule.

23 25. To satisfy these two subsections, Staff has taken the position that information about WMW  
24 as a whole must be provided, and submitting information limited to SnoKing is not sufficient.  
25 For reasons stated below, WMW does not agree with that interpretation. However, if the  
26 Commission determines that Staff’s interpretation is correct, this Petition seeks an exemption

1 or modification from the rule as an alternative remedy. Finally, during the pendency of the  
2 Commission's decision on what the rule means and how WMW must comply with it, this  
3 Petition also seeks an exemption from WAC 480-70-256, which requires that tariffs not  
4 meeting the minimum requirements of WAC 480-07-520 be rejected. In the interests of  
5 administrative efficiency, WMW asks the Commission to consider how the rule should be  
6 interpreted and applied prospectively in the context of the SnoKing filing to avoid the need  
7 for waiting until Staff's interpretation triggers litigation.

#### 8 **IV. RULE INTERPRETATION**

9 26. Interpreting WAC 480-07-520(4) in the context of a general rate request by WMW presents a  
10 unique situation. To the best of our knowledge, it is the only regulated solid waste collection  
11 company that operates separate business entities under the umbrella of one corporation. The  
12 geographic scope of its certificate is vast, much larger than any other garbage company  
13 regulated by the WUTC. Its certificate is over twenty-five pages long. Using separate tariffs  
14 for each of the geographically-distinct collection entities is most consistent with the public  
15 interest, because it directly ties the customers' rates to regional expenses.

16 27. WMW submits that its past filing practices have been in compliance with the rule. The Work  
17 Papers required under Subsection (4) are appropriately devoted to documenting the revenue  
18 need of the entity for which the tariff rates are being reviewed.

19 28. Staff's current position is a change of interpretation, not merely a matter of more closely  
20 following the rule. Since the April Letter from Secretary Danner, Staff has required strict  
21 compliance with filing requirements that were previously ignored. In the past, for instance,  
22 Mr. Weinstein was not required to supply PDF copies of the Work Papers. Now PDF copies  
23 are mandated. Staff is enforcing that requirement, as well as others that have been  
24 overlooked. With regard to the requirement that WMW expand the scope of analysis  
25 presented in its Work Papers, however, Staff is not merely reinstating a requirement that has  
26 historically been excused. Instead, Staff is interpreting the rule requirement differently than

1 it has in the past. Staff's position in this filing is a change of practice. That, in and of itself,  
2 is not cause for supporting WMW's interpretation. However, it is evidence that for over  
3 twenty years, Staff has apparently been satisfied that WMW was providing adequate  
4 documentation of the financial data necessary to evaluate general rate increase requests for  
5 its operating entities.

6 29. The implications of Staff's interpretation of Subsection (4)(d) and (4)(h) support WMW's  
7 understanding of the filing requirements, and the manner in which those two provisions have  
8 historically been enforced makes sense. Subsection (4)(d) requires a detailed separation of  
9 all revenue and expenses between regulated and nonregulated operations. It is, however, a  
10 conditional filing requirement. The detailed data is only required if nonregulated revenue is  
11 greater than "ten percent of total company test period revenue." The fact that the condition is  
12 measured off of the "total company" revenue does not mean, however, that the financial data  
13 required for the filing must present a detailed separation of revenue and expenses for all of  
14 WMW's nonregulated operations. Unless there is an affiliated interest transaction, what  
15 possible relevance could this type of analysis about WMW's Greater Wenatchee Landfill  
16 have to SnoKing's tariff rates? How would the information about the revenues and expenses  
17 of its Kittitas County Transfer Station affect the auditors' review of the collection rates in  
18 King County? Conditioning the filing requirement under Section (4)(d) on the percentage of  
19 the "total company" revenue is a means of ensuring that *di minimis* nonregulated operations  
20 do not trigger the requirement, nothing more. In contrast, limiting the requirement to a  
21 detailed analysis of SnoKing's regulated and unregulated operations enables Staff to ensure  
22 that expenses are being properly allocated in the context of setting the sought-after tariff  
23 rates.

24 30. Similarly, Staff has opined that Subsection (4)(h) requires a detailed depreciation schedule  
25 for all of WMW's assets, not just the ones held by SnoKing. Again, the public interest is not  
26 served by such an interpretation. The assets owned by WMW are vast, and there is no good

1 regulatory reason for listing every backhoe used at the transfer stations, every desk at the  
2 recycling centers, or every compactor used at the landfills in a tariff filing for SnoKing.  
3 Because the regulation refers to “all used and useful assets held by the company,” Staff  
4 apparently believes the rule applies to WMW as a whole. First, use of the noun “company”  
5 in Subsection (4)(h) contrasts with use of the term “total company” in the qualifying clause  
6 of (4)(d), and some intentional difference between the two concepts should be presumed.  
7 The entity required to submit a depreciation schedule under Subsection (4)(h) is something  
8 other than the entity whose revenue determines whether a detailed separation of regulated  
9 and unregulated revenues and expenses is needed under Subsection (4)(d). Presumably  
10 because SnoKing is merely an operating division, Staff believes the depreciation schedule  
11 just for the tariff entity does not satisfy the rule’s requirement. The term “company,”  
12 however, is not defined. SnoKing is a separate d/b/a, and it maintains its own books and  
13 accounts. From a regulatory perspective, there is no reason it cannot be considered the  
14 “company” for which the depreciation schedule must be filed. Indeed, the introductory  
15 paragraph of WAC 480-07-520 speaks in terms of “the company,” and therefore since  
16 SnoKing is the tariff entity making the filing, it is the subject of the financial analysis  
17 demanded by the regulation.

18 31. WMW believes, therefore, that the interpretation that it and Staff have heretofore shared is  
19 the correct one. The Work Papers required under WAC 480-07-520(4) are rightfully devoted  
20 to financial analysis of the filing entity to determine the proper tariff rates.

21 **V. RULE EXEMPTION OR MODIFICATION**

22 32. If, however, the Commission determines that Staff’s interpretation of either Subsection (4)(d)  
23 and (4)(h) is correct, then WMW respectfully requests exemptions from and modification to  
24 the Commission’s regulations, as stated in WAC 480-07-110(2)(c).

25 33. If Subsection (4)(d) is interpreted to require that WMW provide a detailed breakdown of the  
26 expenses and revenues for its nonregulated operations, WMW asks for a modification to



1 excuse it from filing data about its non-collection operations. WMW does not ask for a  
2 waiver from this requirement with regard to the revenues and expenses of SnoKing's  
3 nonregulated collection activities. But the data about its disposal and recycling facilities has  
4 no relevance to the tariff rates of SnoKing. There is no public interest served by requiring  
5 WMW to submit this data into the public record.

6 34. Furthermore, landfills, transfer stations and recycling facilities are not regulated. They are  
7 highly competitive operations. The information about the expenses and revenues of those  
8 entities is valuable commercial information, and includes confidential marketing, cost and  
9 financial information. If a utility regulated under Title 80 RCW were required to submit this  
10 information, it could be protected from public disclosure under RCW 80.04.095. Although  
11 there has been no formal determination on the issue, whether that protection is afforded to  
12 transportation companies under Title 81 RCW is untested and therefore dubious. The  
13 safeguards offered under RCW 42.56.270(1) for certain proprietary data are similarly  
14 untested and fragile. The risk of having its valuable commercial information presents an  
15 undue, and unnecessary, hardship on WMW. Because of WMW's unique corporate  
16 structure, no other solid waste collection company would be required to endure this risk.  
17 Therefore, because the data is not relevant to the tariff filing and because it is valuable and  
18 proprietary commercial information, WMW's request is in the public interest and meets the  
19 standards for consideration of a rule exemption or modification under WAC 480-07-110(c).<sup>2</sup>

20 35. With regard to Subsection (4)(h), the requirement to produce a depreciation schedule for all  
21 of WMW would impose a significant hardship on the company. Each operating entity has its  
22 own general ledger, and the asset scheduled from each one would need to be mechanically  
23 cut and paste into one master list. The act of compiling and presenting a fixed asset analysis  
24 for WMW as a whole would be very time consuming. The spreadsheet contained in today's

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25 <sup>2</sup> It bears noting that WMW has included in its filing a detailed break-down of revenues and expenses for all of its  
26 collection entities, not just SnoKing; and it has also provided summary information about revenues and expenses for  
all of its nonregulated, non-collection operations.

1 filing has over 2,000 lines. WMW has a total of 23 distinct operations, and a report for all of  
2 its fixed assets would be 50,000 to 100,000 lines long. Information about the asset values is  
3 downloaded from the company's system, but depreciation for each has to be manually  
4 calculated. Compliance with Staff's interpretation require this pain-staking and time-  
5 consuming task be redone for each separate filing. It would take several days to consolidate  
6 without any commensurate benefit to the ratepayers. The assets of the Graham Road Landfill  
7 in Spokane are not germane to SnoKing's tariff.

## 8 9 10 **VI. CONCLUSION**

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

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

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

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

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

25 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

26 By \_\_\_\_\_

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