

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC. d/b/a WASTE
MANAGEMENT OF SNO-KING

Respondent.

DOCKET TG-091933
(consolidated)

COMMISSION STAFF'S RESPONSE
TO WASTE MANAGEMENT OF
WASHINGTON'S PETITION FOR
RULE INTERPRETATION AND
ALTERNATIVELY FOR RULE
EXEMPTION

In the Matter of the Petition of

WASTE MANAGEMENT OF
WASHINGTON, INC. d/b/a WASTE
MANAGEMENT OF SNO-KING

For Rule Interpretation or Alternatively for
Modification or Exemption of WAC 480-07-
520(4)

DOCKET TG-091945
(consolidated)

I. INTRODUCTION

1 Staff hereby submits its response to Waste Management of Washington, Inc.'s
(WMW) petition for an interpretation of WAC 480-07-520(4) and to WMW's alternative
request for a partial exemption from the requirements of that rule.

2 Staff opposes WMW's proposed interpretation of the work paper filing requirements
for solid waste company general rate case proceedings. The work paper requirements are

intended to apply to, and in the absence of an exemption, must encompass all business activities of the corporation as a whole, not just a “business unit” of the corporation’s choosing.

3 Staff supports, however, a partial exemption for WMW from the work paper filing requirements of WAC 480-07-520(4), but not in the manner requested by WMW. WMW has chosen to consolidate within one corporation, and under one certificate (G-237), numerous “business units” performing regulated operations in different parts of the state under nine different tariffs, and unregulated operations of different types. These business units are really just organizational divisions of WMW referred to by trade names such as “Waste Management of Sno-King.” For purposes of this general rate case filing, Staff generally needs detailed income statements and balance sheet information for (1) the business unit or units that provide services that are affected by the proposed tariff, and (2) any business units within WMW with which those units have intra-company transactions or arrangements that would constitute an affiliated interest transaction but for the merger of the business units into a single corporation. Staff recommends that the Commission grant WMW a partial exemption from the work paper filing requirements of WAC 480-07-520(4) consistent with this principle. What this would mean for each item (a) through (j) of WAC 480-07-520(4) is detailed in Section III below.

II. **RULE INTERPRETATION**

A. **Issue presented**

4 The rule interpretation question presented by WMW’s petition is this: Do the general rate case work paper filing requirements of WAC 480-07-520(4)(a)–(j) apply at the level of the corporate entity that holds the certificate of public convenience and necessity

(i.e., WMW itself), or can those rules be interpreted to apply only at the level of the “business unit” within WMW that the corporation has designated for its own accounting purposes?

5 Staff contends that the rule requires work papers that encompass the activities of the entire corporation holding the solid waste collection certificate. If WMW wants relief from the requirement to file detailed accounting information about some parts of its business activities, then it must obtain a rule exemption.

B. Analysis

6 WAC 480-07-520 provides that “rate increase filings by class A and B haulers . . . must include” various documents listed in subsections (1) – (5). Subsection (4) of that rule lists work papers (a) through (j).

7 WAC 480-70-041 defines “classes of companies.” Classes A, B, and C each refer to a different type of “solid waste collection company.” There is no dispute that WMW qualifies as a “Class A” solid waste collection company. RCW 81.77.010 defines “solid waste collection company” as:

every *person* or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a “common carrier” or as a “contract carrier.” [Emphasis added.]

Under RCW 81.04.010, “person” is defined to include “an individual, a firm, or a co-partnership.” Staff submits that when “company” or “person” is used in the rules and statutes pertaining to public service companies, the terms refer to a legal entity, not to a division within the legal entity.

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WMW holds a single certificate encompassing various service territories in Washington State, but it maintains tariffs in different trade names, each of which covers a different geographic territory within the state of Washington. WMW keeps separate general ledgers for what it terms the “business units” or “tariff entities” that provide the services described in each of the corporation’s nine different solid waste collection tariffs. These “business units” however, are not legally distinct from WMW. They are not separately incorporated. WMW is, however, legally distinct from its parent, Waste Management, Inc., which provides various general and administrative services to the operating “units” within WMW.

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Significantly, WMW does not treat its business units as separate “affiliated interests”¹ for purposes of the Commission’s statutes and rules pertaining to affiliated interest transactions. Therefore, to the extent that there are *intra*-company dealings or arrangements² between “business units” within WMW, such as the sharing of assets or personnel, WMW correctly takes the position that no affiliated interest transaction has occurred (because the parties involved are not affiliates but simply parts of the same company). Yet, at the same time, WMW seeks an interpretation of WAC 480-07-520(4) that would enable *it*, and not the Commission, to define what part of those intra-company

¹ See RCW 81.16.010.

² RCW 81.16.020 addresses dealings with affiliated interests:

Every public service company shall file with the commission a verified copy, or a verified summary if unwritten, of a *contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial, or similar services, or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to the affiliated interests.* [Emphasis added.]

transactions and arrangements it must disclose when it makes a general rate case filing. This is the nub of Staff's concern about WMW's proposed rule interpretation.

10 Subsections (d) and (j) of WAC 480-07-520(4) are key filing requirements for purposes of identifying how the solid waste company has allocated common costs either within a corporate entity that includes nonregulated operations, or between the regulated entity and its nonregulated affiliates, for purposes of its rate filing. Either way, the objective is the same—transparency with respect to allocation of common costs within the corporation or corporate family. The general approach adopted by WAC 480-07-520(4) to ensure this transparency is to require “a detailed separation of all revenue and expenses between regulated and nonregulated operations”³ within the company and “an income statement and balance sheet for every affiliated entity”⁴ with which the company has a transaction directly or indirectly affecting the proposed rates.

11 The purpose for the detailed separation of regulated and nonregulated operations is to ensure that the company has made its allocations in a reasonable manner. It is common for public service companies to engage in both regulated and nonregulated lines of business. A solid waste company might operate a disposal facility (transfer station or landfill), a commercial recycling business, or a portable toilet business, or it might provide garbage collection under contract with a city. None of these operations is subject to regulation, yet they are often provided by the same legal entity that provides regulated solid waste collection service. When a company incurs common expenses associated with both regulated and non-regulated lines of business, it is necessary for ratemaking purposes to

³ WAC 480-07-520(4)(d).

⁴ WAC 480-07-520(4)(j). Staff understands that WMW agrees that it must file the work papers described in this subsection as pertain to the provision of general and administrative services from Waste Management, Inc. to its subsidiary, WMW.

come up with a means of allocating or separating revenues and expenses, as well the value of any common assets, between the regulated and nonregulated operations.

12 There are various possible methods of allocating common costs between regulated and unregulated services: timesheets (hours), direct expense, revenue, customer count, etc. The methods are not necessarily fixed, so the auditor needs to be able to make judgments about what allocation method is the most reasonable for a particular expense or asset. It is important for the Commission to scrutinize how a company proposes to allocate common costs because regulated companies have an incentive to try to allocate as much of common property and common operating expense to regulated services (and captive ratepayers) as they can.⁵

13 As the Commission explained in *WUTC v. American Water Resources, Inc.*, Dockets UW-980072, UW-980258, UW-980265 (consolidated), 6th Supp. Order (Jan. 21, 1999):

The Commission's interest in allocation methodology when a company's operations include both regulated and unregulated activities is heightened during this period of deregulation in several utility sectors. Generally, there should be a preference for more precise methodologies and measures. Where costs can be directly assigned, that should be done. Where allocation factors must be used, these should relate to the nature of the cost incurrence.

The Initial Order expresses the general principle that when confronted with the need to allocate a company's costs between regulated and unregulated activities, the Commission prefers precise and detailed allocation analyses (including direct allocations based on careful records where possible) over more basic allocations based on a single allocation factor applied to diverse account balances. . . . We accept the Initial Order's determinations regarding . . . allocations.”

Public service companies are often organized on a parent/operating subsidiary model, with administrative and overhead services provided by a parent corporation to multiple operating company subsidiaries that are generally considered to constitute the regulated entities.

⁵ See RCW 80.36.330(3)-(6) (providing safeguards against telecommunications companies subsidizing competitive ventures by above cost rates for regulated services).

Under this organization model, allocation of common costs will necessarily involve scrutiny of affiliated interest transactions. For example, the regulated entity (in whose name the authority is held and the tariff is filed) may obtain management, legal, accounting, human resources or other administrative services from the parent corporation. The operating company might also lease office space from the parent. Or, the regulated entity might lease trucks or other equipment to or from other operating companies. All of these services and arrangements are “affiliated interest transactions.”⁶ When a solid waste collection company of this type files a rate case, it must provide the information required by WAC 480-07-520(4)(j):

Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: 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.* [Emphasis added.]

The reason it must provide an income statement and balance sheet for every affiliated entity is because this information is necessary to the auditor (and ultimately the Commission) to test how common costs have been allocated among affiliates.

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WMW was previously organized in this fashion, but it subsequently merged the operations of its nine different solid waste collection businesses and various unregulated lines of business under one corporate entity. Part of the reason was to avoid taxes that would otherwise apply. Whatever the merits of that decision, it now seeks a rule interpretation that would allow it to narrowly define what it is required to provide for purposes of “a detailed separation of all revenue and expenses between regulated and non-regulated operations.” WMW possesses revenue and expense information for its unregulated business units, but it does not want to file that information in some cases

⁶ RCW 81.16.020.

because of concerns that it would become a public record that could be obtained by, for example, someone seeking to submit a bid to a local government entity in competition with WMW for a disposal contract.

15 In summary, the work paper filing requirements of WAC 480-07-520(4) apply to the whole legal entity (“person”) providing the regulated service, not just the division that the company designates for its purposes. Interpreting the rule otherwise would allow the company to withhold potentially relevant information about how the company has allocated common costs between regulated and nonregulated operations.

III. EXEMPTION

16 As an alternative to its proposed rule interpretation, WMW seeks an exemption from WAC 480-07-520(4)(d), “to excuse the requirement of a detailed separation of revenues and expenses of the unregulated noncollection operations of WMW” and from WAC 480-07-520(4)(h) “to excuse the requirement of a detailed depreciation schedule for WMW as a whole.” (Petition at 10:7-14.)

17 Although WMW only expressly seeks an exemption from (4)(d) and (h), that is because the company was under the incorrect impression that Staff had agreed to the Company’s assertion that it is sufficient for it to provide data “for the tariff entity only” with respect to the workpapers required by subsections (4)(a), (b), (c), (e), (f), (g), (i), and (j). In fact, it is Staff’s position that every work paper on the list (a) through (j), applies at the level of the legal entity of which the regulated operations are a part.

18 WAC 480-07-110 provides that the Commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest and the purposes of the underlying regulation.

The standard for consideration is the public interest standard. Factors the commission may consider include whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

Because WMW is unusual with respect to having so many organizationally distinct regulated and nonregulated lines of business within one corporation, Staff believes an exemption would be consistent with the public interest to ease the Company's administrative burden, but in a manner that still provides Staff and the Commission with the information that it needs to assess the reasonableness of the Company's proposed allocation of common costs between business units within WMW.

19 To clarify Staff's proposal for a partial exemption, the text of the relevant portion of WAC 480-07-520(4) is set forth in italics below, with Staff's proposal with respect to each of the work paper requirements, (a) through (j), provided in boxes:

Work papers must include:

(a) A detailed pro forma income statement separated among solid waste, single family residential recycling, multifamily recycling, and yard waste, with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

Staff recommends a partial exemption, for purposes of this filing only, that this income statement may be limited to the business unit or units that provide services under the tariff that the Company is seeking to amend.

(b) A calculation of the revenue impact of proposed tariff revisions.

Staff recommends a partial exemption, for purposes of this filing only, that the revenue impact may be limited to services provided under the tariff that the Company is seeking to amend.

(c) An income statement listing all revenue and expense accounts by month.

Staff recommends a partial exemption, for purposes of this filing only, that this income statement may be limited to the business unit or units that provide services under the tariff that the Company is seeking to amend.

(d) If nonregulated revenue represents more than ten percent of total company test period revenue, a detailed separation of all revenue and expenses between regulated and nonregulated operations.

Staff recommends a partial exemption, for purposes of this filing only, that it is sufficient for WMW to provide a detailed separation of all revenue and expenses between (1) the business unit or units that provide services under the tariff that the Company is seeking to amend and (2) any business units within WMW with which the business unit(s) providing the tariff services has intra-company transactions or arrangements that, but for the fact that the business units are not separate corporations, would constitute affiliated interest transactions.

(e) A detailed list of all nonregulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.

Staff recommends that no exemption be granted. The Company should not be unduly burdened to provide a list of all nonregulated operations within WMW and other regulated operations within WMW, including the rates charged. It is important for Staff to have a clear understanding of all business units with which the business unit providing regulated services *might* have common costs.

(f) Detailed price-out information that reconciles within five percent, without adjustment, to the test period booked revenue, including the test period customer count by tariff item.

Staff recommends a partial exemption, for purposes of this filing only, that the revenue may be limited to services provided under the tariff that the Company is seeking to amend.

(g) A consolidated balance sheet, including the percentage of equity and the percentage of debt, and the cost of that debt by component.

Staff recommends that no exemption be granted. This consolidated balance sheet should include Waste Management, Inc. and WMW.

(h) A detailed depreciation schedule listing all used and useful assets held by the company 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.

Staff recommends a partial exemption, for purposes of this filing only, that the assets for which a depreciation schedule must be provided may be limited to those utilized by the business unit or units that provide services under the tariff that the Company is seeking to amend.

(i) Computed average investment. Average investment is the net book value of allowable assets at the beginning of the test period plus the net book value of allowable assets at the end of the test period, divided by two. Investor supplied working capital may be included, provided a work sheet is submitted detailing the calculations.

Staff recommends a partial exemption, for purposes of this filing only, that the assets for which the company must compute an average investment may be limited to those utilized by the business unit or units that provide services under the tariff that the Company is seeking to amend.

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: 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.

Staff recommends a partial exemption, for purposes of this filing only, that WMW may limit the affiliated interest transactions under this requirement to those between the business unit or units that provide services under the tariff that the Company is seeking to amend, on the one hand, and affiliates of WMW, including Waste Management, Inc., on the other. WMW must provide an income statement and balance sheet for Waste Management, Inc. and any other affiliate that is party to such a transaction.

Staff believes that these exemptions will meet the purpose of the rule, but will relieve WMW of any undue burden owing to its form or corporate organization.

IV. CONCLUSION

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For the foregoing reasons, Staff asks that the Commission (1) interpret the work paper filing requirements of WAC 480-07-520(4)(a)–(j) to apply at the level of the corporate entity that holds the certificate of public convenience and necessity (i.e., WMW itself), and (2) grant the partial exemption from those work paper filing requirements set out in detail above.

DATED this 29th day of January 2010.

Respectfully submitted,

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