

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET TG-101220
TRANSPORTATION COMMISSION,	)	(Consolidated)
	)	
Complainant,	)	ORDER 11
	)	
v.	)	
	)	
WASTE MANAGEMENT OF	)	
WASHINGTON, INC., d/b/a WASTE	)	
MANAGEMENT – NORTHWEST,	)	
	)	
Respondent.	)	
.....	)	
WASHINGTON UTILITIES AND	)	DOCKET TG-101221
TRANSPORTATION COMMISSION,	)	(Consolidated)
	)	
Complainant,	)	ORDER 11
	)	
v.	)	
	)	
WASTE MANAGEMENT OF	)	
WASHINGTON, INC, d/b/a WASTE	)	
MANAGEMENT – SNO-KING,	)	
	)	
Respondent.	)	
.....	)	
WASHINGTON UTILITIES AND	)	DOCKET TG-101222
TRANSPORTATION COMMISSION,	)	(Consolidated)
	)	
Complainant,	)	ORDER 11
	)	
v.	)	ORDER REOPENING DOCKETS
	)	AND AMENDING ORDER 10 TO
WASTE MANAGEMENT OF	)	APPROVE SETTLEMENT
WASHINGTON, INC., d/b/a WASTE	)	AGREEMENT
MANAGEMENT – SOUTH SOUND,	)	
WASTE MANAGEMENT OF	)	
SEATTLE,	)	
	)	
Respondent.	)	
.....	)	

1 ***Synopsis.** The Commission reopens these dockets and amends Order 10 to approve a settlement agreement between Waste Management of Washington, Inc., and Commission Staff authorizing incentive payments of five percent of expenditures under the 2010-11 recyclable commodity revenue sharing plans with King and Snohomish Counties for meeting plan performance benchmarks tied to an increase in recycling and crediting the remaining \$347,557 in retained revenues to customers.*

2 **NATURE OF PROCEEDINGS.** These dockets arose from a petition to allow sharing of revenues from recycled materials, lift the interim status of certain tariff changes, and approve revised commodity credits.

3 **APPEARANCES.** Polly L. McNeill, Summit Law Group, Seattle, Washington, represents Waste Management of Washington, Inc. (Waste Management or Company). Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Staff).<sup>1</sup>

4 **PROCEDURAL HISTORY.** Order 09 summarizes the background of this proceeding, which we will not repeat.<sup>2</sup> In brief, on July 16, 2010, Waste Management of Washington, Inc. (Waste Management or Company) filed revisions to its tariffs governing recycling commodity price adjustment rates for three of the Company's operating divisions in King and Snohomish Counties with a proposed effective date of September 1, 2010. Waste Management also filed recycling plans certified by King and Snohomish Counties for the period of September 1, 2010 through August 31, 2011 (subsequently extended to November 30, 2011). The Commission suspended the tariffs, authorized the up to 50 percent revenue sharing in the plans on a temporary basis subject to refund and other conditions, and set the matter for hearing.

5 On August 26, 2011, the Commission entered Order 09, Initial Order Denying Company Request to Keep Eight Percent of Retained Recycling Revenues as a

---

<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

<sup>2</sup> Order 09 ¶¶ 4-15.

Financial Incentive and Reward and Requiring Refiling of Tariffs (Order 09). Order 09 concluded Waste Management would not be authorized to keep eight percent of the revenues it retained from the sale of recyclable materials collected from its customers as a financial incentive and reward pursuant to the 2010-11 recycling plans because the Company failed to demonstrate that those revenues will be used to increase recycling as required by RCW 81.77.185. The order required the Company to pass those revenues to residential customers.

6 On October 25, 2011, the Commission entered Order 10, Final Order Adopting and Modifying Initial Order Denying Company Request to Keep Eight Percent of Retained Recycling Revenues as a Financial Incentive (Order 10). The Commission subsequently closed these dockets.

7 On September 5, 2011, the Company and Staff jointly filed a Motion to Lift Suspension and Approve Settlement Agreement, along with a Narrative Supporting Settlement Agreement and a copy of the agreement itself.<sup>3</sup> The Settlement Agreement allows Waste Management to retain five percent of its program expenditures for having achieved benchmarks tied to an increase in recycling as defined in its 2010-11 plans with King and Snohomish Counties.<sup>4</sup>

8 On September 12, 2012, the Commission received a letter from Kevin Kiernan, Director of the King County Solid Waste Division, expressing its support for the Settlement Agreement. On September 13, 2012, the Commission received a letter from Matthew Zybas, Director, Solid Waste Division for Snohomish County Public Works, communicating its support for the Settlement Agreement.<sup>5</sup>

## DISCUSSION AND DECISION

9 We construe the parties filing as a request to reopen these dockets and to amend Order 10 to accept and approve the Settlement Agreement, rather than require the

---

<sup>3</sup> The parties made this filing both in this proceeding and in consolidated dockets TG-111813, TG-111814, and TG-111815.

<sup>4</sup> Settlement Agreement ¶¶ 24 & 27.

<sup>5</sup> The Counties' letters referenced both this proceeding and consolidated dockets TG-111813, TG-111814, and TG-111815.

Company to pass to residential customers the entirety of the revenues it retained as a financial incentive under the 2010-11 plans.<sup>6</sup> Reopening closed dockets to consider a settlement agreement submitted long after the Commission entered its final order is highly unusual. The Commission nevertheless encourages settlement of disputes, seeks to ensure fair, just, and reasonable results, and recognizes that compliance with RCW 81.77.185 has been, and continues to be, an evolving process. Under these unique circumstances, we grant the parties' request to reopen these dockets and consider the Settlement Agreement.

10 WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

11 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

12 We approve the Settlement Agreement without condition. The Agreement permits Waste Management to retain an incentive payment of five percent of plan expenditures under the current and prior recycling plan periods. The payment structure and amount is consistent with the direction on financial incentives we gave in our Interpretive and Policy Statement in Docket TG-112162.<sup>7</sup>

---

<sup>6</sup> See WAC 480-07-395(4) (providing for liberal construction of pleadings); WAC 480-07-875 (authorizing amendment, rescission, or correction of order).

<sup>7</sup> *In re Commission Investigation of Recycling Revenue Sharing Plans*, Docket TG-112162, Interpretive and Policy Statement on RCW 81.77.185 ¶¶ 31-32 (May 30, 2012).

- 13 The terms in the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Without prejudging the acceptable design of incentive payments in future recycling plans, we find that the Settlement Agreement in the context of the circumstances described above is consistent with the public interest.

**ORDER**

THE COMMISSION ORDERS that

- 14 (1) The Commission reopens these dockets for the limited purpose of considering the Settlement Agreement between Waste Management of Washington, Inc., and Commission Staff.
- 15 (2) The Settlement Agreement is approved without condition and is adopted as the final resolution of the disputed issues in these dockets.

Dated at Olympia, Washington, and effective September 27, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner