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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.

PETITIONER'S REPLY TO
COMMISSION STAFF'S RESPONSE
TO WASTE MANAGEMENT OF
WASHINGTON'S PETITION FOR
RULE INTERPRETATION OR
ALTERNATIVELY FOR
MODIFICATION OR EXEMPTION

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I. INTRODUCTION

1. The purpose of WAC 480-07-520 is to require that a general rate increase filing include work papers that give the Commission's auditors financial data necessary to evaluate a tariff request. The regulation should be interpreted and applied with that goal in mind. Staff's argument on the rule interpretation ignores the purpose of the filing requirements, and instead suggests a meaning that would lead to absurd results – which therefore is probably not what the Commission intended when the rule was adopted in 1992. In contrast, Staff's position on the rule exemption squarely comports with the purpose of the rule and offers a practical and well-founded application of the tariff filing requirements – which is consistent with the actual work papers WMW filed in the Sno-King tariff request, and with how the rule has been administered for seventeen years. However, there should be no need to resort to an exemption when the rule itself supports the same outcome. Indeed, requesting a rule interpretation should not be necessary, either, when the parties are apparently in agreement that WMW filings have satisfied the purpose of the regulation for decades now.

II. ANALYSIS

- 1
- 2 2. WMW does not seek a new interpretation of WAC 480-07-520(4). It does not suggest that
- 3 the rule be narrowly construed to apply to WMW's unique corporate structure. It asks the
- 4 Commission continue to administer the rule to achieve the regulatory objective of requiring
- 5 companies filing a general rate increase to provide work papers that present the financial
- 6 information necessary to scrutinize the request. Viewed with this proper perspective, the past
- 7 practice of the last seventeen years reflects the correct meaning of the filing regulation. The
- 8 rule language supports the outcome described in Staff's exemption analysis, but neither an
- 9 interpretation nor an exemption should have been necessary to achieve that result.
- 10 3. Presumably, solid waste collection companies regulated by the Commission come in all sorts
- 11 of corporate packages. WMW happens to operate under the auspices of a single corporate
- 12 entity for Washington. According to the intervener, Washington Refuse and Recycling
- 13 Association (WRRRA), other regulated companies have a similar structure. In contrast, some
- 14 companies apparently have chosen to separately incorporate each of their distinct operations.
- 15 The regulation should be interpreted in a manner that allows it to be applied to each
- 16 company's unique structure in the context of the overall objective. WMW does not request
- 17 an interpretation that makes the rule fit only its corporate structure. The rule requires each
- 18 filing entity to provide work papers that provide financial analysis necessary to scrutinize the
- 19 expenses and the revenue needs of each tariff request. What that means for each unique
- 20 hauler's financial and corporate structure will necessarily differ. The rule allows for those
- 21 differences now. Staff's approach would lead to the need for a series of petitions for
- 22 exemption, whenever the tariff filing entity's corporate structure varies from the
- 23 interpretation driven by the existence of one state-wide corporation. Or Staff's interpretation
- 24 could lead to a series rules, each directed to the myriad of organizational configurations
- 25 currently and potentially existing.
- 26

1 **A. The general rate filing requirements have been administered in accordance**
2 **with the language of WAC 480-07-520 since the rule was adopted in 1992.**

- 3 4. WMW does not believe WAC 480-07-520 should require the Commission's interpretation.
4 The language in the rule is consistent with the manner in which both Commission Staff and
5 WMW personnel have been applying it to WMW. The rule was first adopted in 1992. *See In*
6 *the matter of amending WAC 480-09-300 and 310 and adopting WAC 480-09-335, relating*
7 *to Solid Waste Rate Increases*, Docket No. TG-92-0486, General Order No. R-380
8 (December 7, 1992). All WMW filings since that time have consistently provided essentially
9 the same kind of work papers as were submitted with the Sno-King filing.
- 10 5. Waste Management of Washington, Inc. (herein, WMW) is a corporate subsidiary of Waste
11 Management, Inc. that performs full-service waste handling throughout Washington-state.
12 Corporate headquarters for Waste Management, Inc. are in Houston, Texas; the Western
13 Group offices are in Scottsdale, Arizona; and WMW, based in Kirkland, Washington, is one
14 of nine corporations operating in the Pacific Northwest Market Area.
- 15 6. Currently, and since the rule governing filing requirements for solid waste collection
16 company tariff requests was adopted, WMW's collection operations have operated under the
17 auspices of a single state-wide corporation. The company took steps to streamline its
18 corporate structure and began consolidating its collection operations by rolling up
19 subsidiaries into a single entity around 1992. Somewhere in and around 1999, an internal
20 analysis of revenues and expenses revealed that the corporate structure was producing double
21 taxation of state business and occupation (B&O) taxes by having a corporate entity for solid
22 waste collection, on the one hand, dealing with separate corporations providing solid waste
23 handling services, on the other. To illustrate, when the Wenatchee collection operations
24 delivered solid waste to the Greater Wenatchee Landfill, both corporations would have paid
25 B&O taxes on the same dollars because the collection company would pay for the revenues
26 produced by customers paying tariff rates that included the disposal fees, and the landfill
would pay for the revenues attributable to the disposal fees paid by the collection company.

1 The company, and its customers, was incurring that double taxation unnecessarily. To
2 minimize that tax burden, the company began merging all of its Washington operations into
3 one corporation, Waste Management of Washington, Inc. (herein, WMW).

4 7. For over seventeen years, WMW has filed general rate increase requests for changes to rates
5 in individual tariffs published specifically for each operational unit. Costs differ among
6 various tariff territories and thus supporting work papers provided financial data about the
7 tariff filing entity only.

8 8. Corporate consolidation had no practical effect on tariff filings. The information contained
9 in the work papers provided to the Commission in compliance with WAC 480-07-520 did not
10 materially change, because each tariff entity continued to operate as a separate revenue
11 center. Following consolidation, each of the tariff entities continued to keep its own general
12 ledger. Equipment is not shared, and if any vehicles or containers are transferred from one
13 collection unit to another, the asset is taken off the books of the one and put on the books of
14 the other. Operational employees work for one entity only, and labor rates differ for each
15 collection unit, most of which have their own separate collective bargaining agreement for
16 garbage collection drivers. For the most part, each collection entity has its own office and
17 facilities – and if offices were shared with other operational units the method of assigning the
18 expenses remained unchanged after the corporate consolidation.

19 9. The only costs that are common among all the various corporations that operate under the
20 Waste Management umbrella are for general and administrative (G&A) overhead. The
21 separate collection business units in Washington – as well as the non-collection, unregulated
22 solid waste handling operations – share expenses only in the allocations of G&A costs.
23 When submitting a general rate request in accordance with WAC 480-07-520, the company
24 has historically included financial data detailing the G&A costs allocated from the Corporate,
25 Group and Market Area offices. Spreadsheets with line items for all of the G&A costs from
26 each level of company management have been provided with WMW filings, as they were

1 with the Sno-King filing. Work papers have documented the bases for allocating those costs
2 out to the tariff entity. For example, proportionate expenses of providing Market Area
3 customer services are allocated to Sno-King based on the number of customers it serves, in
4 relation to the total number of customers served in the Market Area. Another example is that
5 costs for human resource services are allocated based on the number of employees.

6 Similarly, fleet and safety costs are allocated based on the number of routes. Explanation
7 and support for each of the expenses and the relevant basis of allocation has always been
8 included with the work papers filed, as it was again with the Sno-King filing.

9 10. To the extent these G&A costs are incurred by WMW and its operating entities as a result of
10 administrative services performed by the parent company, an affiliated interest arrangement
11 between WMW and Waste Management, Inc. exists. Since WAC 480-70-079 was adopted
12 in 2005, WMW has filed annual reports detailing the nature of this arrangement in
13 accordance with the regulation.

14 11. Due to its corporate structure, intra-company transactions between the various collection
15 entities and the non-collection solid waste handling operations are not “affiliated interest”
16 transactions. WMW’s unregulated, non-collection solid waste handling facilities interact
17 with its collection entities in the following manner:

- 18 • Eastmont Transfer Station in Seattle (Seattle Collection)
- 19 • Kennewick Transfer Station (Kennewick Collection)
- 20 • Ellensburg Transfer Station (Ellensburg Collection)
- 21 • Cle Elem Transfer Station (Ellensburg Collection)
- 22 • Wenatchee Transfer Station (Wenatchee Collection)
- 23 • Alaska Street Transfer Station (None – Non-regulated transfer of CDL; soils and other
24 materials to the Columbia Ridge Landfill in Oregon)
- 25 • Cascade Recycling Center MRF (Seattle, Northwest, Sno-King, Skagit Collections)
- 26 • Ellensburg MRF (Ellensburg Collection)

- 1 • RNW Recycling MRF (South Sound Collection)
- 2 • Peninsula Recycling MRF (Brem-Air Collection)
- 3 • Greater Wenatchee Landfill (Wenatchee and Ellensburg Collections)
- 4 • Graham Road Landfill (Spokane Collection – CDL only)
- 5 • Olympic View Landfill (closed site) (previously Brem-Air Collection)

6 12. As Staff agrees, these are not affiliated interest transactions. Regardless, whenever any of
7 the tariff entities have filed a general rate increase, work papers have included financial data
8 for Commission auditors to determine whether the intra-company charges are an appropriate
9 expense for including in the rate base. In these instances, the company has provided
10 information about the relevant non-collection, unregulated operation. For example, the
11 Sno-King filing included information about Cascade Recycling Center, its material recovery
12 facility to which Sno-King delivers recyclable materials.

13 13. If there is a transaction involving tipping fees, then the filings have included information for
14 Commission auditors to evaluate whether the total cost of disposal, including waste transfer,
15 transport, and disposal charges, is equal to or lower than any other reasonable and currently
16 available option, in accordance with the standards set forth in RCW 81.77.160. Where the
17 disposal price at the WMW-owned transfer station or landfill is established by contract with a
18 local government, then no financial data other than the established fees has been provided.

19 14. Otherwise, where there is no financial nexus between the tariff entity seeking a rate
20 adjustment and any of the unregulated, non-collection operations, financial information about
21 those unregulated solid waste handling facilities has not been included by WMW in its work
22 papers. No filing has ever included an “income statement” for WMW as a whole.

23 15. Nothing in the language of WAC 480-07-520 mandates a different approach than the one that
24 WMW and Commission Staff have shared in its implementation. WMW completely agrees
25 with the policy underlying the rule stated in Staff’s Response. It is indeed necessary for
26 ratemaking purposes for the Commission’s auditors to understand how expenses are

1 allocated, and to scrutinize the various methods of allocating commons costs. WMW has
2 provided that information in its work papers for seventeen years. Until this filing, there has
3 been no disagreement about what the rule requires.

4 16. In April of 2009, Executive Secretary and Director Danner sent a letter to all solid waste
5 collection companies regulated by the Commission, informing the industry of the agency's
6 intention to "strictly enforce" certain specified rules, stating that although they have been in
7 effect for many years, "enforcement of these rules has been inconsistent."

8 17. When WMW submitted its original filing for Sno-King on November 30, 2009, Staff
9 reviewed it for compliance with WAC 480-07-520, and found it was missing several
10 components. Many of the deficiencies were procedural rather than substantive. Almost all
11 of the defects were capable of being easily corrected.

12 18. However, Staff and the company did not agree about two specific subsections in the filing
13 regulation, WAC 480-07-520(4)(d) (requiring a separation of revenues and expenses between
14 regulated and non-regulated operations) and WAC 480-07-520 (4)(h) (calling for a detailed
15 depreciation schedule). For the first time, in Staff's Response, WMW is informed that its
16 filing was deficient not just with regard to these two subsections, but Staff now takes the
17 position that almost all of the tariff-specific work papers would require an exemption for the
18 Sno-King filing to be in compliance with the general rate filing regulation.

19 19. The fact that Staff has reversed its long-held interpretation of WAC 480-07-520 in the first
20 general rate case submitted by WMW since the April Letter is noteworthy. The filing
21 compliance being demanded by Staff in this matter is not just a question of more closely
22 following the rule or requiring strict compliance with filing requirements that were
23 previously ignored. In mandating that WMW expand the scope of analysis presented in its
24 prior filings, Staff is not merely reinstating a requirement that has historically been excused.
25 Instead, Staff is interpreting the rule requirement differently than it has in the past. Staff's
26 position in this filing is a change of practice. WMW believes, however, that the party's

1 practice evidence that for over seventeen years, Staff and WMW shared an interpretation of
2 the rule that furthered the objective of providing the financial analysis needed to scrutinize a
3 rate filing. It is only after the April Letter that Staff has apparently concluded it was not
4 interpreting the filing rule properly. However, “rigorously enforcing” previously overlooked
5 filing requirement is significantly different from changing the basic interpretation of the rule
6 and its policy objectives. The April Letter did not suggest that previously sound
7 interpretations be called into question, but it has apparently prompted that result.

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9 **B. Staff’s proposed rule exemption corroborates the conclusion that the rule has
10 historically been interpreted correctly.**

11 20. There should be no need for a rule interpretation prior to this Sno-King tariff filing. WMW
12 has heretofore consistently provided work papers that gave Commission auditors the
13 information needed to scrutinize its rate filings. The following discussion of each rule
14 provision specifically, summarizing what WMW submitted, discussing Staff’s new
15 interpretation of each of the filing requirements, and comparing both with what Staff says it
16 really needs in the proposed exemption, illustrates how unnecessary WMW’s Petition should
17 have been.

18 21. WAC 480 07 520(4)(a): WM filed a pro forma income statement separated among
19 Sno-King’s solid waste, single family residential recycling, multifamily recycling, and yard
20 waste operations, with restating actual and pro forma adjustments, including all supporting
21 calculations and documentation for all adjustments. This is exactly what Staff is requesting
22 in its proposed exemption, and what WMW has filed in work papers for past general rate
23 requests. Staff’s new interpretation of the rule would require a breakdown of the regulated
24 solid waste activities for the entire statewide operations of WMW. A composite of the
25 general ledger information for WMW’s nine different tariff entities’ yard waste operations,
26 for example, would be needed to meet Staff’s view of the rule. Staff offers no explanation
for how that information would be relevant to evaluating the Sno-King tariff request.

- 1 22. WAC 480 07 520(4)(b): The absurdity of Staff's new interpretation is particularly illustrated
2 here. The revenue impact of the increased rates sought in the Sno-King filing on WMW's
3 statewide regulated collection operations would be infinitesimal, and the calculation
4 meaningless. Again, Staff offers no explanation for why the auditors - or the Sno-King
5 customers - would be better able to put the tariff filing in context if the state-wide revenue
6 impact calculation were provided. Instead, work papers included a calculation of the revenue
7 impact of the proposed tariff changes to Sno-King's operations. This is exactly what Staff is
8 requesting in its proposed exemption, but surely an exemption should not be needed here.
- 9 23. WAC 480 07 520(4)(c): WMW submitted a monthly income statement listing all
10 Sno-King's revenue and expense accounts by month. Staff's new interpretation would
11 require a consolidated statement for all of the WMW operations in Washington. This
12 information is not readily available. To comply with Staff's interpretation, a separate
13 monthly income statement would need to be prepared for each business entity, and manually
14 add them together. Again, Staff suggests no meaningful utility for that information, it simply
15 asserts that the rule requires this for the state-wide corporation.
- 16 24. WAC 480 07 520(4)(d): As Staff points out, WMW believed this subsection to be one of
17 only two disputed provisions, and a significant portion of its Petition is specifically directed
18 to this work paper element. To comply with Staff's new interpretation of requiring a detailed
19 separation of expenses and revenues for all WMW Washington operations, preparing work
20 papers for each filing would require the information from each of the business unit's general
21 ledgers to be manually compiled and analyzed. The burden of undertaking that exercise for
22 each filing would be enormous.
- 23 25. Yet, even though Staff expressed a new-found disagreement with WMW's interpretation of
24 what this subsection required, and even though Staff now reads the rule as requiring
25 something different than what has been included in WMW's general rate requests for the past
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1 seventeen years, ironically Staff's proposed exemption requires even less than what WMW
2 actually included in the Sno-King filing.

3 26. First, WMW included a detailed separation of all revenues and expenses between Sno-King's
4 regulated and non-regulated operations in the income statement that was submitted in
5 compliance with subsection (4)(a). Staff's proposed exemption requests this analysis about
6 Sno-King, and WMW already provided it. WMW's work papers have at all times included a
7 detailed separation of all revenue and expenses for the business unit operating under the tariff
8 that is the subject of the filing. Especially in light of the current controversy over allocations
9 of expenses between regulated collection of solid waste collection and unregulated
10 transportation of commercial recyclables, WMW anticipated the need for this careful
11 analysis. Again, an exemption would not seem necessary to perpetuate past practice.

12 27. Also, in response to the current concerns about treatment of expenses for commercial
13 recycling operations specifically, WMW's Sno-King work papers included a detailed
14 separation of all revenues and expenses for each of the other business units performing
15 collection operations. The analysis allocated expenses proportionately on the basis of
16 regulated and unregulated revenues for each of the nine other units besides Sno-King. This
17 element of the work papers has not historically been included in WMW's rate filings, but was
18 provided with the Sno-King work papers in anticipation of heightened scrutiny on the
19 allocation between regulated and unregulated collection of common operational expenses to
20 the captive rate payers. It is not mentioned in Staff's proposed exemption. Presumably
21 WMW filed more information than the auditors actually need.

22 28. Additionally, the Sno-King filing included a combined statement of detailed revenues and
23 expenses for all of WMW's unregulated, non-collection operations added together. The
24 work papers did not offer a statement for each transfer station, each landfill, or each material
25 recovery facility. It included that information only in a combined statement for all, with each
26 expense line item separately stated albeit in a combined total. Staff does not mention this

1 submittal. In an attempt to respond to Staff's demands for financial information about the
2 unregulated, non-collection business units within WMW's state-wide umbrella, WMW
3 apparently provided more information than what the auditors needed.

4 29. Instead, under the auspices of WAC 480-07-520(4)(d), Staff's proposed exemption asks for a
5 detailed separation for "any business units within WMW with which the business unit(s)
6 providing the tariff services has intra-company transactions or arrangement that, but for the
7 fact that the business units are not separate corporations, would constitute affiliated interest
8 transactions." Because Sno-King delivers recyclable materials to the Cascade Recycling
9 Center, WMW's Woodinville material recovery facility, financial information about that
10 non-collection, nonregulated operation was included in the work papers. WMW does not
11 dispute the need for this information, and provided it in its filing. Again, neither a rule
12 interpretation nor exemption should have been necessary since both the auditors and WMW's
13 financial analyst apparently shared a view that WAC 480-07-520 required this information in
14 the work papers for the Sno-King tariff request.

15 30. WAC 480 07 520(4)(e): WMW provided a detailed list of all Sno-King's nonregulated
16 operations, including the rates charged for the services rendered. The company did not
17 provide a list of all nonregulated operations within Washington state. Staff's proposed
18 exemption offers no relief from this requirement, saying, "It is important for Staff to have a
19 clear understanding of all business units with which the business unit providing regulated
20 services *might* have common costs." WMW has 38 different municipal collection contracts,
21 and it does not understand how listing each of those and providing Staff with its contract
22 rates would be relevant to a tariff filing for Sno-King. As discussed below, information
23 necessary to evaluate how the rate filing treats allocations of overhead are obviously needed.
24 Beyond that, unless there is an intra-company transaction relevant to the filing, WMW does
25 not understand how operations that are functionally unrelated would be useful in evaluating
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1 an individual business unit's tariff. WAC 480-07-520(4) does not authorize Staff to go on
2 that sort of a fishing expedition.

3 31. WAC 480 07 520(4)(f): Staff's suggestion that an exemption is needed to excuse the
4 requirement for providing a detailed price-out information that reconciles within five percent,
5 without adjustment, to the test period all of WMW's booked revenue, including the test
6 period customer count by all of WMW's various tariff items is nonsensical. Staff's proposed
7 exemption instead asks for exactly what WMW provided: work papers that address this
8 analysis for Sno-King only.

9 32. WAC 480 07 520(4)(g): WMW filed a consolidated balance sheet for Sno-King and an
10 annual report (including a consolidated balance sheet) for Waste Management, Inc. On this
11 work paper requirement, Staff does not offer an exemption. WMW has never included a
12 consolidated balance sheet for the Washington corporate, because it does not have any debt-
13 to-equity, ratio; it is only held by the parent.

14 33. WAC 480 07 520(4)(h): Here again, WMW continued past practice and included a detailed
15 depreciation schedule listing all used and useful assets held by Sno-King during the test
16 period, including the date of purchase, the cost at purchase, the depreciable life, the salvage
17 value, depreciation expense, and accumulated depreciation expense at the end of the test
18 period. Staff's Response for the first time concedes that filing information be limited to only
19 the assets utilized by the business unit that provides the services under the relevant tariff.
20 WMW is gratified to see that Staff agrees with its analysis, and that a depreciation schedule
21 for all of WMW is not necessary. Again, however, WMW believes that is what the rule says,
22 that is how the rule has historically been implemented, and that is consistent with the policy
23 objectives of the rate filing regulation. As such, WMW should not have had to file a Petition
24 to achieve this agreed-upon outcome.

25 34. WAC 480 07 520(4)(i): WMW's work papers computed average investment for Sno-King.
26 This is exactly what Staff is requesting in its proposed exemption, and what WMW has filed

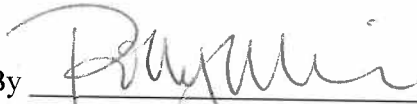
1 in work papers for past general rate requests. Staff's new interpretation of the rule would
2 require an artificial analysis of the computed average investment for the entire Washington
3 state operations of WMW.

4 35. WAC 480 07 520(4)(j): Staff's proposed exemption appears to be merely a restatement of
5 the legal requirements involving affiliated interests. Staff seeks information about affiliated
6 interest transactions limited to "those between the business unit or units that provide services
7 under the tariff that the Company is seeking to amend, on the one hand, and affiliates of
8 WMW, including Waste Management, Inc., on the other." WMW fails to understand how
9 this is an exemption. With the Sno-King filing, perpetuating past practice, WMW has
10 included information about the allocations to Sno-King of general and administrative costs
11 from Waste Management, Inc. for G&A services provided in its Corporate headquarters in
12 Houston and its Western Group headquarters in Scottsdale. WMW believes the regulation
13 requires this analysis, and if so then an exemption is not necessary. Additionally, the filing
14 included information about G&A allocated to Sno-King by WMW for Market Area overhead
15 and services. Although this Staff and WMW apparently agree that this is not an affiliated
16 interest transaction, nonetheless WMW provided the information.

17 36. For the past twenty years, apparently without regard to its corporate structure, WMW has
18 been including information about the overhead allocations. WMW has consistently provided
19 work papers that allow auditors to scrutinize how common costs are allocated, and to review
20 intra-company transactions. As discussed above, for the most part WMW finds the proposed
21 exemption offered in Staff's Response to be a fair assessment of the financial documentation
22 necessary to support a general rate request for Sno-King. However, if the Commission
23 concludes that an exemption is necessary, WMW submits that the terms of the proposed
24 exemption should be made generally applicable to its future filings. To require a petition for
25 a rule exemption for each filing would be administratively inefficient and costly to both the
26 company and its rate payers. If the exemption is conditioned on meeting the filing standards

1 identified in Staff's proposal, then unless there is a change of corporate circumstances, the
2 exemption should be applied not just in this filing, but in any future filings by WMW as well.
3

4 DATED this 3rd day of February, 2010.
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

<i>Commission:</i> Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW PO Box 47250 Olympia, WA 98504-7250 360-774-1150	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Federal Express <input checked="" type="checkbox"/> Via Email
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Dated this 3rd day of February, 2010



Kathy A. Moll