BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

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| In the Matter of:  Waste Management of Washington, Inc. d/b/a Waste Management Sno‑King  Re WAC 480‑07‑520(4) |  | CASE NO. TG-091933  DECLARATION OF  mICHAEL a. WEINSTEIN  Docket No. TG-091945 |

I, Michael A. Weinstein, declare under penalty of perjury as follows:

1. I am a citizen of the United States and a resident of the State of Washington. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.
2. I am employed by Waste Management of Washington, Inc. My present position is Senior Pricing Manager of Waste Management of Washington, Inc.
3. For over twenty years, I have been responsible for preparing and filing tariffs and rate cases with the Washington Utilities and Transportation Commission (“WUTC”) for Waste Management of Washington, Inc. and its corporate predecessors, as well as conducting financial analyses related to Washington State operations.

# IDENTITY OF PETITIONER

1. Waste Management of Washington, Inc. (“WMW”) is a corporate subsidiary of Waste Management, Inc. that performs full-service waste handling throughout Washington-state. Corporate headquarters for Waste Management, Inc. are in Houston, Texas; the Western Group offices are in Scottsdale, Arizona; and WMW, based in Kirkland, Washington, is one of nine corporations operating in the Pacific Northwest Market Area.[[1]](#footnote-1)
2. WMW functions throughout Washington as several discrete business units, none of which is separately incorporated but each of which operates as a separate revenue center. The corporation includes ten divisions that perform collection services, both regulated and unregulated, covering statewide operations under the WUTC’s authority and 38 municipal collection contracts. WMW also owns thirteen other operating units that provide post-collection solid waste handling services, consisting of three landfills, six transfer stations and four recycling centers in Washington.
3. WMW has nine different WUTC tariffs, one for each of the geographically-specific collection entities that operate under authority of Certificate of Public Convenience and Necessity No. G-237. The geographic scope of Certificate No. G-237 is vast, larger than any other garbage company regulated by the WUTC. WMW’s certificate is over twenty-five pages long. WMW uses separate tariffs for each of the geographically-distinct collection entities in order to directly tie the customers’ rates to regional expenses. Waste Management of Washington, Inc. d/b/a Waste Management Sno‑King (“Sno‑King”) is one of the tariff-specific entities.

# CONTEXTUAL BACKGROUND

1. In April of 2009, Executive Secretary and Director Danner sent a letter which I understand was mailed to all solid waste collection companies regulated by the Commission, informing the industry of the agency’s intention to “strictly enforce” certain specified rules, stating that although they have been in effect for many years, “enforcement of these rules has been inconsistent.” One of the rules that was identified in the April letter was WAC 480‑07‑520, which sets forth the minimum submittal requirements for requesting tariff rate increases. A copy of the April Letter is attached.
2. Following issuance of the April letter, tariff filings submitted by solid waste collection companies were stringently reviewed for conformity with the rule. I know that, despite good faith efforts by regulated garbage companies seeking general rate requests, various filings were presented that failed to strictly comply with the minimum requirements of WAC 480‑07‑520. Apparently taken unawares by Staff’s interpretation of some of the regulatory provisions, I am told that some companies voluntarily withdrew their filings, rather than having the stigma of rejection on the record. For the past six months, both Staff and industry have struggled with administration of the rule.
3. Ostensibly recognizing the need for clearer directions, on November 3, 2009, Staff issued a letter intended to provide technical assistance to help the industry better understand the tariff filing requirements. The November Guidance included examples of some required documents, and a checklist for the filing elements. It also noted that companies have the option of petitioning for an exemption or modification of a rule under WAC 480‑07‑110 as one means of recourse, if the application of a rule would impose undue hardship or be contrary to the underlying purposes of the regulation. A copy of the November Guidance is attached.

# PROCEDURAL SUMMARY

1. On November 30, 2009, I submitted a general rate filing requesting changes to Tariff No. 15 for Sno‑King. This general rate request was a subsequent filing required by Commission order. *See* *WUTC v. Waste Management of Washington, Inc., G-237, d/b/a WM Sno‑King*, Docket No. TG-061433 (Order 01, November 29, 2006) (In which the Commission conditioned its approval of a deferred fuel supplement component in the fall of 2006 on requiring WMW to “file a general rate case for its WM-Sno‑King operation no later than December 1, 2009.”)
2. Staff reviewed the November Sno‑King filing for compliance with WAC 480‑07‑520, and informed me that it was missing several components. Staff told me that the filing was sufficient to comply with the subsequent filing condition of the 2006 order because it was timely submitted in good faith, but explained what was needed to meet the regulatory requirements for general rate filings. Staff provided a checklist informing me of the additional information required to deem the filing in compliance with WAC 480‑07‑520. A copy of Staff’s Checklist is attached.
3. Staff and company representatives communicated about the items identified on Staff’s Checklist. Many of the deficiencies were procedural rather than substantive. For example, I did not submit PDF copies of the Excel spreadsheets, knowing that the auditors work directly on the electronic documents and hoping to “save some trees.” I failed to include a map of Sno‑King’s territory for the tariff. There were other elements missing.
4. Almost all of the defects were capable of being easily corrected. However, Staff and the company did not agree about two specific subsections in the filing regulation. One is WAC 480‑07‑520(4)(d), which requires a separation of revenues and expenses between regulated and non-regulated operations. The other is WAC 480‑07‑520(4)(h), which calls for a detailed depreciation schedule.
5. To satisfy these two subsections, Staff took the position that information described in these two subsections had to be provided about WMW as a whole, and submitting work papers limited to Sno‑King did not comply with the rule. The company, however, disagreed with Staff’s interpretation of the two provisions, believing past practices in which work papers were only required for the entity to which the tariff applied represented a more supportable reading of the regulatory requirements.
6. Following communications with Staff about the disputed rule interpretation and procedural options for resolving it, on December 17, 2009, WMW resubmitted the Sno‑King general rate filing with corrections, and concurrently filed a *Petition for Rule Interpretation Or Alternatively For Modification or Exemption* (“Petition”).
7. The general rate filing included information that I believed to be in compliance with the requirements of WAC 480‑07‑520 as follows:

* WAC 480 07 520(4)(a): A pro forma income statement separated among Sno‑King’s solid waste, single family residential recycling, multifamily recycling, and yard waste operations, with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments.
* WAC 480 07 520(4)(b): A calculation of the revenue impact of the proposed tariff changes to Sno‑King’s operations.
* WAC 480 07 520(4)(c): A monthly income statement listing all Sno‑King’s revenue and expense accounts by month.
* WAC 480 07 520(4)(d): A detailed separation of all revenues and expenses between Sno‑King’s regulated and non-regulated operations was presented in the income statement submitted in accordance with subsection (4)(a). Also, in response to this subsection specifically, the filing included a detailed separation of all revenues and expenses for each of the other collection operations, with expense allocated proportionately on the basis of regulated and unregulated revenues for each one. The filing also included a combined statement of detailed revenues and expenses for all of WMW’s unregulated, non-collection operations added together. Also, because Sno‑King delivers recyclable materials to Cascade Recycling Center, WMW’s Woodinville material recovery facility, the work papers included financial information about that non-collection, nonregulated operation.
* WAC 480 07 520(4)(e): A detailed list of all Sno‑King’s nonregulated operations, including the rates charged for the services rendered.
* WAC 480 07 520(4)(f): Detailed price-out information that reconciles within five percent, without adjustment, to the test period Sno‑King’s booked revenue, including the test period customer count by Sno‑King’s tariff item.
* WAC 480 07 520(4)(g): A consolidated balance sheet for Sno‑King and an annual report for Waste Management, Inc., which included the percentage of equity and the percentage of debt, and the cost of that debt by component because neither Sno‑King nor WMW has a debt-to-equity, ratio; it is only held by the parent.
* WAC 480 07 520(4)(h): A detailed depreciation schedule listing all used and useful assets held by Sno‑King 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.
* WAC 480 07 520(4)(i): Computed average investment for Sno‑King.
* WAC 480 07 520(4)(j): Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates, including 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, consisting of information about the allocations to Sno‑King of general and administrative costs from Waste Management, Inc. for services provided in its Corporate headquarters and Western Group headquarters. Additionally, information was provided about certain intra-company expenses not involving affiliated interest transactions. The filing included information about G&A allocated to Sno‑King by WMW for Market Area overhead and services.

1. In the Petition, WMW requested that the Commission, interpret WAC 480‑07‑520(4) to require work papers that provide financial analysis only of WMW’s tariff-filing entity, in accordance with WMW’s interpretation and Staff’s past practices; or grant an exemption or modification of WAC 480‑07‑520(4) for not only the Sno‑King filing but also for any future filing that would excuse the requirements of providing a detailed separation of revenues and expenses of the unregulated non-collection operations of WMW under WAC 480‑07‑520(4)(d), and of preparing a detailed depreciation schedule for WMW as a whole under WAC 480 07 520(4)(h).
2. At the Open Meeting on January 14, the Commission suspended the Sno‑King tariff filing and directed that both it and the Petition to be addressed together in an adjudicative proceeding. Following the Open Meeting, the Commission issued its *Order of Consolidation and Notice of Prehearing Conference*, in which the tariff filing (Docket No. TG-091933) and the Petition (Docket No. TG-091945) were consolidated, and set for prehearing conference on January 22, 2009. At the prehearing conference, an expedited briefing schedule was agreed to for a ruling on WMW’s Petition as soon as possible so that the merits of Sno‑King’s proposed rate increase can be promptly considered and, if approved, allowed to become effective.

# SUMMARY OF PAST PRACTICES

1. For over twenty years, I have filed general rate increase requests for changes to rates in individual tariffs published specifically for each operational unit. Disposal fees, labor rates, fuel prices, and other costs differ among various tariff territories in Spokane, Skagit County, Wenatchee, Kitsap County, and Puget Sound. For that reason, supporting work papers provided financial data about the tariff filing entity, similar to the submission for the Sno‑King filing.
2. For some period of time, at least through the early 1990’s, Waste Management, Inc.’s Washington-state collection entities were separately incorporated. Around 1992, the company took steps to streamline its corporate structure and began consolidating its collection operations by rolling up subsidiaries into a single entity.[[2]](#footnote-2)
3. Somewhere in and around 1999, an internal analysis of revenues and expenses revealed that the corporate structure was producing double taxation of state business and occupation (B&O) taxes by having a corporate entity for solid waste collection, on the one hand, dealing with separate corporations providing solid waste handling services, on the other. To illustrate, when the Wenatchee collection operations delivered solid waste to the Greater Wenatchee Landfill, both corporations would have paid B&O taxes on the same dollars because the collection company would pay for the revenues 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. The company, and its customers, was incurring that double taxation unnecessarily. To minimize that tax burden, the company began merging all of its Washington operations into one corporation, Waste Management of Washington, Inc.
4. Corporate consolidation had no practical effect on tariff filings. The information contained in the work papers provided to the Commission in compliance with WAC 480‑07‑520 did not materially change, because each tariff entity continued to operate as a separate revenue center. Following consolidation, each of the tariff entities continued to keep its own general ledger. Equipment is not shared, and if any vehicles or containers are transferred from one collection unit to another, the asset is taken off the books of the one and put on the books of the other. Operational employees work for one entity only, and labor rates differ for each collection unit, most of which have their own separate collective bargaining agreement for garbage collection drivers. For the most part, each collection entity has its own office and facilities – and if offices were shared with other operational units the method of assigning the expenses remained unchanged after the corporate consolidation.
5. The only costs that are common among all the various corporations that operate under the Waste Management umbrella are for general and administrative (G&A) overhead. The separate collection business units in Washington – as well as the non-collection, unregulated solid waste handling operations – share expenses only in the allocations of G&A costs. When submitting a general rate request in accordance with WAC 480‑07‑520, the company has historically included financial data detailing the G&A costs allocated from the Corporate, Group and Market Area offices. Spreadsheets with line items for all of the G&A costs from each level of company management have been provided with WMW filings, as they were with the Sno‑King filing. Work papers have documented the bases for allocating those costs out to the tariff entity. For example, proportionate expenses of providing Market Area customer services are allocated to Sno‑King based on the number of customers it serves, in relation to the total number of customers served in the Market Area. Another example is that costs for human resource services are allocated based on the number of employees. Similarly, fleet and safety costs are allocated based on the number of routes. Explanation and support for each of the expenses and the relevant basis of allocation has always been included with the work papers filed, as it was again with the Sno‑King filing.
6. To the extent these G&A costs are incurred by WMW and its operating entities as a result of administrative services performed by the parent company, an affiliated interest arrangement between WMW and Waste Management, Inc. exists. Since WAC 480‑70‑079 was adopted in 2005, on behalf of WMW I have filed annual reports detailing the nature of this arrangement in accordance with the regulation. The Sno‑King filing submitted in December included the information about this affiliated interest arrangement in accordance with WAC 480‑07‑520(4)(j).
7. Due to its corporate structure, intra-company transactions between the various collection entities and the non-collection solid waste handling operations are not “affiliated interest” transactions. WMW’s unregulated, non-collection solid waste handling facilities interact with its collection entities in the following manner:

* Eastmont Transfer Station in Seattle (Seattle Collection)
* Kennewick Transfer Station (Kennewick Collection)
* Ellensburg Transfer Station (Ellensburg Collection)
* Cle Elem Transfer Station (Ellensburg Collection)
* Wenatchee Transfer Station (Wenatchee Collection)
* Alaska Street Transfer Station (None – Non-regulated transfer of CDL; soils and other materials to the Columbia Ridge Landfill in Oregon)
* Cascade Recycling Center MRF (Seattle, Northwest, Sno-King, Skagit Collections)
* Ellensburg MRF (Ellensburg Collection)
* RNW Recycling MRF (South Sound Collection)
* Peninsula Recycling MRF (Brem-Air Collection)
* Greater Wenatchee Landfill (Wenatchee and Ellensburg Collections)
* Graham Road Landfill (Spokane Collection – CDL only)
* Olympic View Landfill (closed site) (previously Brem-Air Collection)

1. These are not affiliated interest transactions. Regardless, whenever any of the tariff entities have filed a general rate increase, my work papers have included financial data for Commission auditors to determine whether the intra-company charges are an appropriate expense for including in the rate base. In these instances, the company has provided information about the relevant non-collection, unregulated operation. For example, because Sno‑King delivers recyclable materials to the company’s Cascade Recycling Center, an income statement for the material recovery facility was included in the Sno‑King filing.
2. If there is a transaction involving tipping fees, then the filings have included information for Commission auditors to evaluate whether the total cost of disposal, including waste transfer, transport, and disposal charges, is equal to or lower than any other reasonable and currently available option, in accordance with the standards set forth in RCW 81.77.160. Where the disposal price at the WMW-owned transfer station or landfill is established by contract with a local government, then no financial data other than the established fees has been provided.
3. Otherwise, where there is no financial nexus between the tariff entity seeking a rate adjustment and any of the unregulated, non-collection operations, financial information about those unregulated solid waste handling facilities has not been included by WMW in its work papers. No filing for over a decade has included an “income statement” for WMW as a whole.
4. Nonetheless, in an attempt to assuage Staff’s concerns about compliance by the Sno‑King filings with WAC 480‑07‑520(4)(d), I included in the Sno‑King filing information about WMW that had not historically been provided and varied from past practice. Specifically, the filing included a detailed separation of all revenues and expenses for each of the other WMW collection operations, with expenses allocated proportionately on the basis of regulated and unregulated revenues for each one. The filing also included a combined statement of detailed revenues and expenses for all of WMW’s unregulated, non-collection operations added together. It did not separately state the expenses and revenues for each landfill, transfer station, or material recovery facility. The spreadsheet provided added them all together, and presented consolidated information about each expense and line item. The Sno‑King work papers did not include an income statement for WMW, and provided information about the corporation only in these consolidated, but detailed, breakdowns.
5. To submit the financial documentation that staff is seeking under its interpretation of WAC 480‑07‑520(4)(d) would be unduly burdensome. To comply with Staff’s new interpretation of requiring a detailed separation of expenses and revenues for all WMW Washington operations, preparing work papers for each filing would require the information from each of the business unit’s general ledgers to be manually compiled and analyzed. The burden of undertaking that exercise for each filing would be enormous.
6. Furthermore, landfills, transfer stations and recycling facilities are not regulated. They are highly competitive operations. The information about the expenses and revenues of those entities is valuable commercial information, and includes confidential marketing, cost and financial information.
7. With regard to WAC 480‑07‑520(4)(h), the requirement to produce a depreciation schedule for all of WMW would impose a significant hardship on the company. Each operating entity has its own general ledger, and the asset scheduled from each one would need to be mechanically cut and paste into one master list. The act of compiling and presenting a fixed asset analysis for WMW as a whole would be very time consuming. The spreadsheet contained in the Sno‑King filing has over 2,000 lines. WMW has a total of 23 distinct operations, and a report for all of its fixed assets would be 50,000 to 100,000 lines long. Information about the asset values could be downloaded from the company’s system, but depreciation for each would have to be manually calculated. It would take several days to prepare a consolidated depreciation schedule. Compliance with Staff’s interpretation would require this pain-staking and time-consuming task be redone for each separate filing

DATED this \_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2010.

Michael A. Weinstein

1. During the test period used for the tariff filing that is the subject of this proceeding, the other corporations were Hillsboro Landfill, Inc., Wastech, Inc., Riverbend Landfill Company, Inc., Chemical Waste Management of the Northwest, Inc., Waste Management Disposal Services of Oregon, Inc.; Waste Management of Oregon, Inc., Waste Management of Idaho, Inc., and Waste Management of Alaska, Inc. Waste Management of Canada Corporation has since been added to the Market Area. [↑](#footnote-ref-1)
2. At the time, the collection company was Washington Waste Hauling & Recycling, Inc. In 1999, the name was changed to Waste Management of Washington, Inc. [↑](#footnote-ref-2)