

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND) DOCKET TG-101220
TRANSPORTATION COMMISSION,) (*Consolidated*)
)
Complainant,) ORDER 06
)

v.)
)

WASTE MANAGEMENT OF)
WASHINGTON, INC., d/b/a WASTE)
MANAGEMENT – NORTHWEST,)
)
Respondent.)
.....)

WASHINGTON UTILITIES AND) DOCKET TG-101221
TRANSPORTATION COMMISSION,) (*Consolidated*)
)
Complainant,) ORDER 06
)

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 06
)

v.)
)

WASTE MANAGEMENT OF)
WASHINGTON, INC., d/b/a WASTE)
MANAGEMENT – SOUTH SOUND,)
WASTE MANAGEMENT OF)
SEATTLE,)
)
Respondent.)
.....)

INITIAL ORDER APPROVING
AND ADOPTING PARTIAL
SETTLEMENT AGREEMENT

- 1 ***Synopsis.** This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the Stipulation and Partial Settlement Agreement entered into between Waste Management of Washington, Inc., and Commission Staff will be approved and adopted. Pursuant to the Partial Settlement Agreement, the Commission will lift the suspension and make permanent through August 31, 2011, the adjustment to Waste Management's recycling commodity credits to include the full amount of unexpended revenues from the 2009-2010 Revenue Sharing Agreement period (\$212,168) in King and Snohomish Counties. The Commission will also extend authorization for Waste Management to retain fifty percent of the revenue it receives under the 2010-2011 Revenue Sharing Agreement programs in those counties on an interim basis, subject to refund of the unspent revenues that may exist at the end of the 2010-2011 Revenue Sharing Agreement plan periods. The interpretation and implementation of RCW 81.77.185 remains at issue and will be the subject of additional proceedings.*

BACKGROUND

- 2 **PROCEEDING.** These consolidated dockets arise from a petition that Waste Management of Washington, Inc. (Waste Management or Company) filed for approval to share revenues from recycled materials with residential customers, lift the interim status of certain tariff changes, and approve revised commodity credits. The Commission suspended the operation of the tariff revisions pending hearings concerning all proposed changes, including whether the changes are fair, just, reasonable and sufficient.
- 3 **APPEARANCES.** Polly L. McNeill, Summit Law Group, Seattle, WA, represents Waste Management. Fronda Woods, Assistant Attorney General, Olympia, WA, represents the Commission's regulatory staff (Commission Staff or Staff).¹

¹ 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.

- 4 **PROCEDURAL HISTORY.** On July 16, 2010, Waste Management filed with the Commission revisions to three of the Company's tariffs, requesting approval to adjust its recycling commodity credits under WAC 480-70-351 and to retain fifty percent of the revenue Waste Management would receive from the sale of recyclable materials collected under its regulated recycling services by three of the Company's operating divisions in King and Snohomish Counties under RCW 81.77.185. The filings proposed to increase the recycling commodity credits Waste Management provides to single-family and multi-family customers for the revenue Waste Management receives from the sale of the recyclable materials the Company collects through its residential recycling collection service.
- 5 Waste Management contemporaneously filed Revenue Sharing Agreements (RSAs) into which it entered with Snohomish County (for Waste Management – Northwest) and King County (for Waste Management – Sno-King and Waste Management – South Sound/Seattle) for the period of September 1, 2010, to August 31, 2011 (2010-2011 RSAs). The Company included with its filing a report of how the revenues from the sale of recyclable commodities were spent during the immediately preceding plan period of July 1, 2009, to June 30, 2010, under the prior RSAs between the Company and the two counties (2009-2010 RSAs).
- 6 The Commission considered the filings at its Open Meeting on August 26, 2010, and issued Order 01 on August 31, 2010. The Commission authorized Waste Management to retain fifty percent of the revenues it derives from the sale of recyclable materials collected in Waste Management's three single-family and multi-family residential recycling programs on an interim basis, from September 1, 2010, through December 1, 2010, subject to refund. The Commission took no action on the three revised commodity credits, thereby allowing them to go into effect September 1, 2010, by operation of law, but the Commission reserved the ability to revisit the commodity credit amounts.
- 7 On November 1, 2010, as required by Order 01, Waste Management filed a Petition to Allow Revenue Sharing, Lift Interim Status and Approve Revised Commodity Credits (Petition). The Commission considered the Petition during the November 24,

2010, Open Meeting, and consequently issued Order 02, which suspended the operation of the revised tariff revisions pending hearings on all proposed changes.

8 On December 1, 2010, the Commission issued Order 03, consolidating the three Waste Management dockets and setting them for prehearing conference. On December 20, 2010, the Commission conducted a prehearing conference before Administrative Law Judge Gregory J. Kopta in conjunction with the prehearing conference in *In re Mason County Garbage Co., Inc. d/b/a/ Mason County Garbage, G-88*, Docket TG-101542; *In re Murrey's Disposal Co., Inc., G-9*, Docket TG-101545; *In re American Disposal Co., Inc., G-87*, Docket TG-101548 (consolidated) (American Disposal Dockets).

9 At the prehearing conferences, the Commission granted Waste Management's petition to intervene in the American Disposal Dockets and agreed with the parties in the Waste Management dockets to hold the procedural schedule in abeyance pending the outcome of further proceedings in the American Disposal Dockets.

10 On February 8, 2011, Commission Staff and the Company filed a proposed Stipulation and Partial Settlement Agreement (Partial Settlement Agreement) and a Joint Narrative Supporting Partial Settlement Agreement. The parties request that the Commission approve and adopt this Agreement to resolve some, but not all, of the disputed issues in this proceeding.

PARTIAL SETTLEMENT AGREEMENT

11 The parties' Partial Settlement Agreement is attached to and made part of this Order. If there is any inconsistency between the Partial Settlement Agreement and the summary of that agreement in this Order, the express terms of the Partial Settlement Agreement control.

12 The parties request that the Commission lift the suspension and approve on a permanent basis an adjustment to Waste Management's 2010-2011 recycling commodity credit that has been calculated to include the full amount of unexpended revenues from the 2009-2010 RSA period (\$212,168). The Company would apply those revenues to the calculation of ratepayer recycling commodity credits over the

remaining six months of the 2010-2011 RSA plan period, from March 1, 2011 to August 31, 2011.²

13 The parties agree that Commission approval of the Partial Settlement Agreement is intended to fully resolve the manner in which the unexpended revenues from the 2009-2010 RSA plan period (\$212,168) are treated under RCW 81.77.185. The parties acknowledge that legal issues related to interpretation of RCW 81.77.185 are the subject of litigation in the American Disposal Dockets and possibly in these dockets. The parties agree that the outcome, including any judicial review, of these adjudicative proceedings shall not be a basis for seeking modification to the terms of the Partial Settlement or for revising the treatment of the unexpended revenues from the 2009-2010 RSA plan period (\$212,168) or for recalculating the recycling commodity credits that are presented in the substitute tariff pages that are attached to the Partial Settlement Agreement.³

14 The parties request that the Commission extend authorization for Waste Management to retain fifty percent of the revenue received under the 2010-2011 RSA programs on an interim basis, subject to refund of the unspent revenues that may exist at the end of the 2010-2011 RSA plan periods. The budget prepared by Waste Management for the King and Snohomish County 2010-2011 RSA plan periods will retain a line item for “Revenue retained by Company” in an amount of eight percent of the projected revenue. The parties acknowledge that the Commission has not approved that budget or allowed for that line-item expenditure under the 2010-2011 RSAs. The 2010-2011 RSAs are not subject to the Partial Settlement Agreement, and the parties recognize that the Commission will establish a procedural schedule for addressing the 2010-2011 RSAs and budgets following entry of the initial order in the American Disposal Dockets.⁴

15 Neither Commission Staff nor Waste Management intend the resolution of the recycling commodity credit for the 2009-2010 RSA plan period to preclude them from making arguments about the interpretation or implementation of RCW

² Partial Settlement Agreement ¶ 30.

³ *Id.* ¶ 31.

⁴ *Id.* ¶ 32.

81.77.185. The parties do not intend the Partial Settlement Agreement to be interpreted as a statement of their positions or to be construed as a waiver of any legal positions they might take in this case, the American Disposal Dockets, or any future proceedings.⁵

- 16 Commission Staff and the Company contend that the interests of the public are served by approving the Partial Settlement Agreement. Waste Management states that ratepayers benefit because under WAC 480-70-351, the recycling commodity credit is intended to be effective for a twelve-month period, and then trued-up and recalculated based on the revenue estimated for the next twelve-month period. The Partial Settlement Agreement would eliminate the need for any ongoing and further revisions to the recycling commodity credit for the currently-effective period by establishing with certainty the recycling commodity credits for regulated ratepayers served by Waste Management's regulated operations in King and Snohomish Counties for the remainder of the effective twelve-month period.⁶ Staff believes the Partial Settlement Agreement is in the public interest because by returning unspent revenues to customers, the agreement would lower the rates paid by single-family and multi-family ratepayers in King and Snohomish Counties for the remainder of the 2010-2011 RSA plan period.⁷

DISCUSSION AND DECISION

- 17 "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."⁸ In considering settlement agreements, the Commission "may accept the proposed settlement, with or without conditions, or may reject it."⁹

⁵ *Id.* ¶ 33.

⁶ Joint Narrative Supporting Partial Settlement Agreement ¶ 21.

⁷ *Id.* ¶ 23.

⁸ WAC 480-07-750(1).

⁹ WAC 480-07-750(2).

- 18 The primary dispute in this case, as well as in the American Disposal Dockets, is the interpretation of RCW 81.77.185. That dispute arises in the context of a disagreement over whether a company is entitled to retain all or some of the unspent portion of its share of the revenues it receives from the sale of the recyclable materials the company collects through its residential recycling collection service.
- 19 Waste Management and Staff request approval of their agreement to have the Company credit to ratepayers the unspent revenue from the 2009-2010 RSA plan periods in King County and Snohomish County. The agreement resolves the dispute over how such revenues are treated in the context of the recycling commodity credits that are to be in effect for the remainder of the 2010-2011 RSA plan periods. Under current law and the record before the Commission in this matter, the Company lawfully may agree to return these unspent revenues to the ratepayers. The agreement is in the public interest by providing certainty in the calculations of recycling commodity credits in effect until August 31, 2011, and by reducing rates for Waste Management's residential customers in King and Snohomish Counties during that time.
- 20 After full consideration of the Partial Settlement Agreement, the Joint Narrative Supporting Partial Settlement Agreement, and the record presented in these dockets, the Commission finds it appropriate to approve the Partial Settlement Agreement.

FINDINGS OF FACT

- 21 Having discussed above in detail the evidence received in this proceeding concerning all material matters, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 22 (1) The Commission is an agency of the state of Washington, authorized by Title 80 RCW to regulate in the public interest the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities, including solid waste companies.

- 23 (2) Waste Management of Washington, Inc., is a corporation that, *inter alia*, provides residential solid waste and recycling collection service within the state of Washington.
- 24 (3) The parties propose to resolve some, but not all, of the issues in this proceeding via the Commission's approval and adoption of their Stipulation and Partial Settlement Agreement filed on February 8, 2011, which is attached to and made part of this Order.
- 25 (4) Commission approval and adoption of the Stipulation and Partial Settlement Agreement would lift the suspension and approve on a permanent basis an adjustment to Waste Management's 2010-2011 recycling commodity credit that has been calculated to include the full amount of unexpended revenues from the 2009-2010 Revenue Sharing Agreement period (\$212,168) in King and Snohomish Counties. The Company would apply those revenues to the calculation of ratepayer recycling commodity credits over the remaining six months of the 2010-2011 Revenue Sharing Agreement plan period, from March 1, 2011 to August 31, 2011.
- 26 (5) Commission approval and adoption of the Stipulation and Partial Settlement Agreement would extend authorization for Waste Management to retain fifty percent of the revenue received under the 2010-2011 Revenue Sharing Agreement programs in King and Snohomish Counties on an interim basis, subject to refund of the unspent revenues that may exist at the end of the 2010-2011 Revenue Sharing Agreement plan periods.
- 27 (6) Commission approval and adoption of the Stipulation and Partial Settlement Agreement is in the public interest.

CONCLUSIONS OF LAW

- 28 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 29 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 30 (2) Commission approval and adoption of the Stipulation and Partial Settlement Agreement would fully resolve the manner in which the unexpended revenues from the 2009-2010 Revenue Sharing Agreement plan period (\$212,168) in King and Snohomish Counties are treated under RCW 81.77.185. Interpretation and implementation of RCW 81.77.185 on a prospective basis remains a disputed issue that will be the subject of additional proceedings in this and related dockets.
- 31 (3) The Partial Settlement Agreement is lawful, supported by an appropriate record, and is in the public interest.
- 32 (4) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 33 (1) The Stipulation and Partial Settlement Agreement filed by all parties to this proceeding on February 8, 2011, and attached to and incorporated into this Order by prior reference is approved and adopted in full resolution of the issues presented in this proceeding related to the unspent revenue Waste Management retained during the 2009-2010 Revenue Sharing Agreement plan period in King and Snohomish Counties and to establishing a permanent recycling commodity credit for the 2010-2011 Revenue Sharing Agreement plan period in those counties. The Stipulation and Partial Settlement Agreement does not resolve the issues in this proceeding concerning interpretation and implementation of RCW 81.77.185 on a prospective basis, including for any unspent revenues the Company retains during the 2010-2011 Revenue Sharing Agreement plan period, which remains disputed and will be the subject of additional proceedings in this and related dockets.

- 34 (2) Waste Management of Washington, Inc., is authorized and required to make a compliance filing including revised tariff sheets that meet the requirements of this Order and bear an effective date that affords Staff at least 3 business days for review.
- 35 (3) Waste Management of Washington, Inc., is authorized to retain fifty percent of the revenue it receives from the sale of recyclable materials collected in its single family and multi-family residential recycling programs on a temporary basis, subject to refund, and subject to the same conditions established in Order 01, except that the December 1, 2010 expiration date is no longer in effect.
- 36 (4) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective February 28, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and would like it to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a Petition for Administrative Review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an Answer to a Petition (Answer) within (10) days after service of the Petition.

WAC 480-07-830 states that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to such a petition unless the Commission requests answers by written notice.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final either by operation of law or on administrative review.

You must serve on each party of record one copy of any Petition or Answer filed with the Commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and eleven (11) copies of your Petition or Answer by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Stipulation and Partial Settlement Agreement