

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

In the Matter of the Petition of)	DOCKET TG-101542 (<i>Consolidated</i>)
)	
MASON COUNTY GARBAGE CO., INC.)	
d/b/a MASON COUNTY GARBAGE, G-88,)	
)	
Requesting Authority to Retain Thirty)	
Percent of the Revenue Received From the)	
Sale of Recyclable Materials Collected in)	
Residential Recycling Service)	
.....)	
)	
In the Matter of the Petition of)	DOCKET TG-101545 (<i>Consolidated</i>)
)	
MURREY'S DISPOSAL COMPANY, INC.,)	
G-9,)	
)	
Requesting Authority to Retain Fifty Percent)	
of the Revenue Received From the Sale of)	
Recyclable Materials Collected in Residential)	
Recycling Service)	
.....)	
)	
In the Matter of the Petition of)	DOCKET TG-101548 (<i>Consolidated</i>)
)	
AMERICAN DISPOSAL COMPANY, INC.,)	ORIGINAL PETITIONERS' RESPONSE
G-87,)	TO STAFF PETITION FOR
)	CLARIFICATION OF ORDER NO. 5
Requesting Authority to Retain Fifty Percent)	PURSUANT TO WAC 480-07-835
of the Revenue Received From the Sale of)	
Recyclable Materials Collected in Residential)	
Recycling Service)	
.....)	

1 Original Petitioners Mason County Garbage, Murrey's Disposal Company, Inc. and American Disposal Company, Inc. (hereinafter "Murrey's/American"), hereby respond to the Commission's June 7 Notice of Procedure on Order Clarification of Order No. 5 entered in these consolidated dockets on May 6, 2011, and the Staff's Petition for Clarification filed June 15, 2011. Order No. 5 was a result of a Petition for Reconsideration filed by the Petitioners on November 8, 2010 that sought to reconsider Order No. 1 of November 1, 2010. That Order followed Commission consideration of tariff changes addressing county recycling program commodity credits and revenue share plans pursuant to RCW 81.77.185, at its October 28, 2010 Open Meeting.

2 In Order No. 5, the Commission announced its understanding of the policy and practical application of the Legislature's revenue share program under RCW 81.77.185. In its first formal adjudication on the subject, it interpreted that statute's requirements featuring legislation initially adopted in 2002 and revised in 2010. Order No. 5, in addition to articulating a primary role for the Commission in the determination of whether a revenue share plan demonstrates how retained revenues "will be used to increase recycling," contained a number of other findings and conclusions providing guidance for prospective revenue share plan submissions. Amongst other material holdings in Order No. 5, the Commission, in the Order's discussion section, found, as argued by the Petitioners and Intervenors, that RCW 81.77.185 features an incentive mechanism which "allows the company to retain some portions of recycling revenues upon the meeting of certain stated performance goals."¹ And while the Commission ruled that unspent retention proceeds that *were not used to increase recycling* must be passed back to residential customers,² it also rejected freeze/carryover of unspent revenues that were used to increase recycling, and stated at ¶ 39, p. 16:

¹ TG-101542 et al., Order No. 5, ¶ 31 at 13.

² Order No. 5, ¶ 50 and ¶ 54 at 18, 19.

The plain meaning of RCW 81.77.185 is that a company may retain a percentage of the revenue it generates from the sale of recycling material that is used to increase recycling up to a maximum of 50 percent of the company's total recycling revenue . . .

3 The Staff's Petition for Clarification seeks confirmation of Murrey's/American's ability to retain the subject \$79,684 in unspent recycling revenues in the previous 2009/2010 reporting period. It does so ostensibly on the basis of the Commission's silence on "whether the companies met the performance goals of the 2009-2010 plan period to the satisfaction of the Commission."³

4 Murrey's/American is not troubled by the absence in Order No. 5 of express direction of that unspent revenue, given its understanding of the Order and earlier comments from the Bench at the October 28, 2010 Open Meeting.

5 Initially, it reads Order No. 5 as establishing threshold statutory prerequisites in order for unspent revenue share revenue to be retained, as follows:

- (1) a certification by the local government that the submitted program is consistent with the local government's solid waste plan;
- (2) that the plan submitted by the Company demonstrate to the Commission how the revenue will be used to increase recycling; and
- (3) that unspent revenues can be retained by the Company if they were used to accomplish the goal of increasing recycling.⁴

6 As concerns the "lookback" for the past reporting year which the local government addresses in its annual letter to the Commission simultaneously certifying the proposed revenue share plan's consistency with the applicable county solid waste management plan, that is historically addressed by the responsible county official in assessing performance and/or budgetary performance benchmarks. He or she typically does so by comparing either revenues

³ Staff Petition for Clarification of Order No. 5 ¶ 8, p. 4.

⁴ Order No. 5, ¶ 27, at 11, 12.

spent or recycling activities/waste stream transformation accomplished to the previous plan's criteria.⁵

7 Murrey's/American does not view the Commission's fundamental interpretation of its role under RCW 81.77.185 in independently assessing "the demonstration" of how the Company's plan will be used to increase recycling as requiring the Commission to similarly independently corroborate the attainment of those benchmark criteria. Indeed, Chairman Goltz alluded to this factor when he stated at the October 28 Open Meeting:

I'm not suggesting that we have Commission Staff run to all these companies and audit any performance measures. So I think that would be, I think even if the Staff recommended this language, I think that [we] would still be waiting to hear what the county – this is my view – but if the county thought they were going to be, if the county thought they had met their performance obligations.

8 Thus, as to the achievement of revenue share plan performance and/or budget goals, Murrey's/American believes Order No. 5 appropriately assigns the qualitative evaluation of the Company's performance to the annual County certification process consistent with the County and Company's development of an annual revenue share program pursuant to the County's comprehensive solid waste plan.

9 This is also not inconsistent with Order No. 5's interpretation of the Commission's independent role in assessing demonstration of how the revenue share proceeds *will be used* to increase recycling. As the Order clarified:

Removing the Certification condition for purposes of illustration, RCW 81.77.185 obligates companies to 'submit a plan to the commission . . . that demonstrates how the revenues will be used to increase recycling.' The company submits its plan to the *Commission*, and the *Commission* must allow the company to retain

⁵ And, indeed, the Pierce County Solid Waste Administrator did so in his September 16, 2010 letter to the Commission where he said " . . . the companies have complied with the revenue sharing conditions detailed in the approved company Recycling Plan on file with Pierce County." (Letter of Stephen C. Wamback to David W. Danner, September 16, 2010, p. 2). As elaborated upon by the Declaration of Stephen C. Wamback attached hereto and incorporated by this reference, that reference was in fact to the "up to 30% of the revenue" increment retained by Murrey's/American for the 2009/2010 plan year, and included unspent portions of the 30% revenue share plan initially approved by the Commission and the County in October, 2009 that was reviewed in the Pierce County letter of September, 2010.

revenues if that plan makes the requisite demonstration. Thus, the plain meaning of this language is that the *Commission* must determine whether the plan makes that demonstration.⁶

10 Nor is this inconsistent with related statutory provisions such as RCW 81.77.030(6), which requires the Commission to provide that G certificate holders use rate structures and billing systems consistent with local solid waste management plans and minimum service level ordinances contained therein.⁷

11 During the chronological period at issue in the Staff's Petition, September 1, 2009 – August 31, 2010, the Staff itself, following the conference on June 6, 2011, has now concluded that Murrey's/American "did meet the performance goals that were in effect during the 2009-2010 plan period."⁸ If ratified, that would mean that the companies may retain the unspent revenue share recycling plan revenue of \$79,684 from that period. Murrey's/American of course concurs with that conclusion and again believes that finding fully conforms with the mechanics of the statutory scheme articulated by the Commission in Order No. 5 and with the spirit of the Order's directive.

12 That conclusion is further buttressed by the Commission's own interpretation of the statute and its effect in Order No. 1 in this docket and the subsequent invalidation of the originally challenged "freeze/carryover" of unspent revenue share retention element contested on Petition by Murrey's/American. Here, the Commission rejected reopening of the 2010-2011 plans, (the plans subsequent to the expenditure reporting period at issue), believing " . . . the course most likely to further the legislature's goal of increasing recycling is not to revisit our prior determination. Instead, Petitioners, the Counties and Commission staff should review the

⁶ Order No. 5, ¶ 19, at 9.

⁷ RCW 81.77.185 actually encourages the participating hauler to go well beyond the county minimum service levels the Commission is statutorily-mandated to develop in those rate structures and billing systems. Revenue share under RCW 81.77.185 and RCW 81.77.030(6) is thus fully complimentary in establishing rates and billing structures with local solid waste handling priorities at the forefront, and by providing incentives for transformative operations that ultimately achieve the statutory goal of furthering recycling.

⁸ Staff Petition for Clarification under WAC 480-07-835, ¶ 10, p. 5.

current plans in light of the statutory requirements as we have interpreted them and make any adjustments to future recycling plans.”⁹

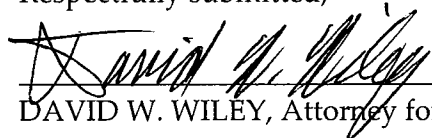
13 Likely, the most significant value of Order No. 5 then is the prospective use of the Commission’s interpretation of the revenue share program in submission of future plans and in reaffirming the overriding goals of the legislation of increasing recycling and continuing to innovate waste stream transformation.

14 Murrey’s/American believes its previous certified County and Commission approved plans have historically accomplished that overall goal and have duly demonstrated how previous plan revenues would be used to increase recycling. With Order No. 5’s interpretive directives in mind, it also believes the Company, County and Commission now have a more consistent view of the operation of the statute and the relationships of the primary actors in achieving the Legislature’s goals of incentivizing the regulated industry to continue to innovate to those aims.

15 Previous revenue share plans were likely less comprehensive and broader in outline than prospective plans will be, particularly with the benefit of Order No. 5’s guidance. As initially certified in the Pierce County September, 2010 letter to the Commission, the current declaration of Stephen C. Wamback, and as now concurred in by the Staff in its Petition for Clarification however, there should be no further question or dispute that Murrey’s/American has met the previous and presently articulated statutory standards to be entitled to retain the unspent \$79,684 revenue share proceeds in the 2009-2010 reporting period. Murrey’s/American therefore asks that the Staff-requested Petition and authorization to that effect be granted.

Dated at Seattle, Washington this 28th day of June, 2011.

Respectfully submitted,



DAVID W. WILEY, Attorney for Petitioners

⁹ Order No. 5, ¶ 42, at 17.

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2011, I caused to be served the original and three (3) copies of the foregoing document to the following address via first class mail, postage prepaid to:

David Danner, Executive Director and Secretary
Policy and Legislative Issues
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to: records@utc.wa.gov.

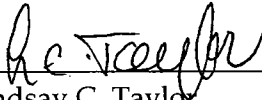
I also certify that I have served via email and first class mail the foregoing document on:

Hon. Gregory J. Kopta
Administrative Law Judge
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250
Email: gkopta@utc.wa.gov

Frona Woods
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
PO Box 40128
Olympia, WA 98504-0128
Email: fwoods@utc.wa.gov

James K. Sells
Attorney at Law
PMB 22
3110 Judson Street
Gig Harbor, WA 98335
Email: jamesells@comcast.net

Polly L. McNeill
Summit Law Group, PLLC
315 Fifth Avenue S., Ste. 1000
Seattle, WA 98104
Email: pollym@summitlaw.com


Lyndsay C. Taylor