

**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.,	)	ORDER 06
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,	)	ORDER 06
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,	)	ORDER 06
INC., G-87,	)	
	)	
Requesting Authority to Retain Fifty	)	ORDER ON CLARIFICATION
Percent of the Revenue Received From	)	
the Sale of Recyclable Materials	)	
Collected in Residential Recycling	)	
Service	)	
.....	)	

## BACKGROUND

- 1 This proceeding arises out of filings by Mason County Garbage Co., Inc., d/b/a Mason County Garbage, G-88 (Mason County Garbage), Murrey's Disposal Company, Inc., G-9 (Murrey's Disposal), and American Disposal Company, Inc., G-87 (American Disposal) (collectively Companies) to increase or maintain the percentage of the revenues the Companies are allowed to retain from the sale of recyclable materials that they collect in their residential recycling collection services.
- 2 On May 6, 2011, the Washington Utilities and Transportation Commission (Commission) issued Order 05, Order on Reconsideration (Order 05), interpreting and applying the requirements of RCW 81.77.185 to the Companies' recycling plans.
- 3 In response to a request from Commission Staff (Staff), the Commission conducted an order conference under WAC 480-07-840 on June 6, 2011, to attempt to resolve the parties' conflicting interpretation of Order 05. The parties dispute whether Order 05 permits the Companies doing business in Pierce County (Pierce County Companies) to keep recycling revenue they retained but did not spend during the September 2009 through August 2010 recycling plan period (2009-10 Plan Period) or whether the Order requires that money to be passed on to residential customers. The conference did not resolve the dispute, and the Commission provided the parties with the opportunity to brief the issue through a written petition for clarification pursuant to WAC 480-07-835.
- 4 On June 15, 2011, Staff filed its petition for clarification. Staff has undertaken a review of the Pierce County Companies' compliance with the plans in effect during the 2009-10 Plan Period and concludes that those Companies met the performance goals in the plans. To enhance compliance and prevent future misunderstandings, Staff requests that Order 05 be amended to specifically state whether the \$79,684 in unspent recycling revenue from the 2009-10 Plan Period was "used to increase recycling" and whether the Pierce County Companies may keep those funds or must pass the money on to residential customers.
- 5 On June 28, 2011, the Pierce County Companies filed their response to Staff's petition. These Companies contend that they have met the statutory standards to be entitled to retain the unspent revenue from the 2009-10 Plan Period and support

Staff's request to clarify Order 05 to that extent. The Companies interpret Order 05 as leaving to the county the determination of whether companies have complied with their recycling plans but observe that Staff's independent conclusion that the Pierce County Companies have satisfied the performance requirements in the 2009-10 plans, in conjunction with the county's prior determination of compliance, leaves no doubt that the Companies may keep the \$79,684 in unspent recycling revenue.

### DISCUSSION AND CLARIFICATION

- 6 The Commission grants Staff's petition and clarifies that Order 05 applies to the Pierce County Companies' 2009-10 recycling plans. That Order addressed the disputed issues of statutory interpretation "in the context of the recycling plans before us,"<sup>1</sup> and those plans include not only the 2010-11 recycling plans for which the Companies sought Commission approval in these dockets but the recycling plans that the Commission previously approved for the preceding 2009-10 Plan Period. Order 01 specifically provides that "the Commission will require revenues from *the prior plan period* and this plan period that are not spent to be carried over to the following year, unless the Commission orders some other treatment."<sup>2</sup> The Companies petitioned for reconsideration of this requirement without limitation to the 2010-11 plans, and the Commission's resolution of the issues raised in those petitions in Order 05 correspondingly included all of the plans addressed in Order 01.
- 7 Staff, however, seeks more specific clarification, asking whether the unspent recycling revenue the Pierce County Companies retained from the 2009-10 Plan Period was "used to increase recycling." We clarify Order 05 to state that it was.
- 8 The Commission in Order 05 interpreted RCW 81.77.185 to "permit[] a company, consistent with the jurisdictional solid waste management plan, to include in its recycling plan a mechanism that would allow the company to retain some portion of recycling revenues upon the meeting of certain stated performance goals."<sup>3</sup> The Pierce County Companies' recycling plans for the 2009-10 period include just such an

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<sup>1</sup> Order 05 ¶ 31.

<sup>2</sup> Order 01 ¶ 9 (emphasis added).

<sup>3</sup> Order 05 ¶ 31.

incentive mechanism, which the Commission determined “may be part of the company demonstration of how the revenue will be used to increase recycling.”<sup>4</sup>

9 Applying those principles to the specific recycling plans at issue, the Commission did “not find it necessary to reopen the determination in Order 01 that the plans submitted in this docket have demonstrated how the retained revenue will be used to increase recycling.”<sup>5</sup> The Commission concluded, “[t]he recycling plans submitted to the Commission in these dockets sufficiently demonstrate how the revenue the company retains from its sale of recyclable materials will be used to increase recycling as required by RCW 81.77.185 only if express recycling performance goals are set forth that must be met before retention of any revenues would be allowed . . . .”<sup>6</sup>

10 The same conclusion applies to the Pierce County Companies’ 2009-10 recycling plans. The Commission will not revisit its determination in the prior dockets that those plans sufficiently demonstrated how the retained revenue was to be used to increase recycling. The plans included recycling performance goals, and consistent with Order 05, the Commission interprets those plans to require that the Companies meet those goals before being entitled to keep the recycling revenue they retained.

11 Contrary to the Pierce County Companies’ interpretation, however, Order 05 does not “assign[] 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.”<sup>7</sup> Rather, the Commission expressly amended Order 01 to require the Companies to pass on to residential customers “revenues allocated to undertaking specific tasks or meeting performance goals established in the recycling plan if [the Companies] do not complete those tasks or meet those performance goals to the satisfaction of the County *and the Commission*.”<sup>8</sup> The Commission retains

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* ¶ 41.

<sup>6</sup> *Id.* ¶ 51.

<sup>7</sup> Original Petitioners’ Response to Staff Petition for Clarification of Order 05 Pursuant to WAC 480-07-835 ¶ 8.

<sup>8</sup> Order 05 ¶ 54 (emphasis added).

jurisdiction over recycling plans, and both it and the local government must determine whether a solid waste company has satisfied the requirements in the applicable plan.

- 12 In this case, Pierce County and Commission Staff have reviewed the Companies' performance under the 2009-10 recycling plans, and both the County and Staff have determined that the Companies met the stated performance goals. Having satisfied their obligations under the plans as required in Order 05, therefore, the Companies are entitled to keep the unspent recycling revenue they retained and are not required to pass that money to residential customers.

**ORDER**

THE COMMISSION ORDERS THAT:

- 13 (1) Staff's Petition for Clarification is granted.
- 14 (2) The Commission clarifies that Order 05 applies to the Companies' recycling plans in effect between September 2009 and August 2010. More specifically, the \$79,684 in unspent recycling revenue collectively retained by Murrey's Disposal Company and American Disposal Company under those plans during that time period was "used to increase recycling," and the Companies are entitled to keep that revenue.

Dated at Olympia, Washington, and effective July 13, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner