Staff Comments - Recycling Revenue Sharing, Docket TG-112162

I. Recycling Revenue Sharing Plans

A. What is the meaning of "increase-recycling" under RCW 81.77.185?

1. Please identify and describe all ways a solid waste collection company could "increase recycling" within the meaning of the statute.

Staff comment – Staff's interpretation of the meaning "increase-recycling" within the context of the statute involves a two-step approach.

First, the county and the company articulate a plan which outlines one or more activities or efforts designed to use retained funds in the future period (how the revenues will be used to increase recycling); and

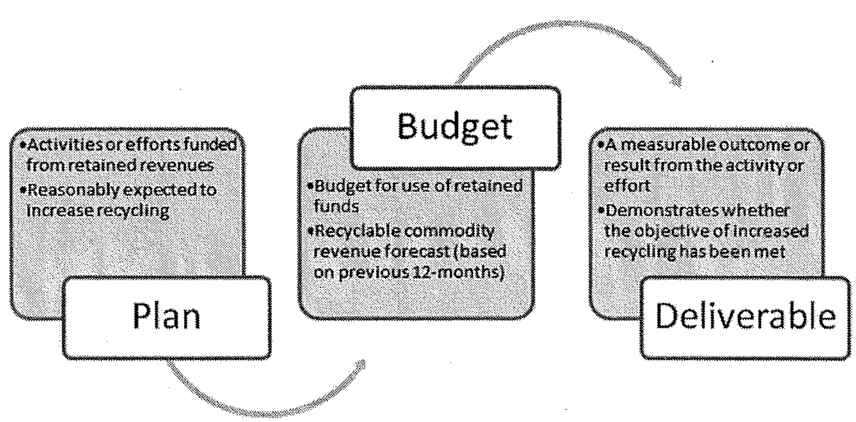
Second, the plan includes an expected outcome or result, tied to each activity or effort that demonstrates, at the end of the plan period, whether the objective of increased recycling has been met.

At the end of the plan period, one of two results is possible:

- The activity or effort specified at the beginning of the plan period increased recycling; or
- The activity or effort specified at the beginning of the plan period had no effect on increasing recycling

Staff recommends that commission approval of revenue retention at the start of the plan period should be based on the county and company demonstrating a connection between the activities or efforts funded by retained revenues which are reasonably expected to increase recycling (plan), the revenues retained (budget) and a measurable outcome or result for each activity or effort that demonstrates whether the objective of increased recycling has been met (deliverable). See Figure 1 below:

Figure 1, Revenue Sharing Logic Model



Staff can envision many activities and efforts that may increase recycling but in staff's opinion, they all ultimately need to meet the test above, at the beginning of the period, to qualify for the use of retained funds. Activities and efforts that do not meet these criteria should not be funded by retained revenues.

2. For each way identified, please identify or suggest quantifiable measures for determining whether a recycling revenue sharing program could demonstrate that the plan will increase recycling in that way.

   Staff comment – Today, 11 companies are participating in recyclable commodity revenue sharing with four separate counties.[1] All have established measures that track recyclable commodity tonnages, prices, costs, customer counts, contamination, participation, waste diversion, etc.[2] Therefore, staff does not see any obstacle to companies determining the effect that activities and efforts have on increasing recycling (results and outcomes).

3. If the measure is inherently difficult to quantify due to being a new program or a program intended to modify consumer behavior, please suggest a framework by which the commission can assess results using objective criteria, or perhaps refer to assessment models that have been used in other industries.

   Staff comment – When making a recommendation to the commission to approve a company's revenue sharing plan, including revenue retention amounts, the biggest challenge currently faced by staff is demonstrating a causal link between an activity and effort in a company's plan and measurable changes in recycling at the end of the plan period.

   To illustrate this challenge, consider Tables 1 and 2 below, which are representative examples of all eleven revenue sharing plans currently in effect. In both tables, staff has broken out discrete elements of the plan and mapped them to categories for budget, deliverable, reward/incentive and return to show the gaps encountered by staff when it analyzes the company's filing and attempts to make a recommendation to the commission. For example, Element D in Table 1 only requires the company to write a $67,000 check to the county for which it is rewarded with $155,893 (16 percent of the total recyclable commodity revenues retained by the company). Table 2 has a line item budget for each of the plan's activities and efforts but there is no connection to a deliverable. The only two deliverables in Table 2 are not connected to any activity or effort, and thus there is no showing that these outcomes were actually caused by plan activities.[3]

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1 In all 11 of the recyclable commodity revenue sharing plans for the current plan year, over $204,000 of the $3.4 million in retained recyclable commodity revenues (6.0 percent) is being applied towards recycling measurement and data collection.

2 An important function of these measures is to allow for the deferred accounting treatment of recyclable commodity revenues which, through a true-up mechanism applied at the end of the period, removes the risk of fluctuating commodity prices and tonnages for both the customer and the company.

3 Appendix A contains the 2011 results for the company in Table 2. In the data, we can see examples of the variation experienced between recycling and disposal tonnages and their effect on waste diversion.

Table 1; American Disposal Company and Murrey's Disposal Company (Pierce County)

Plan (Activity or Effort)	Budget	Deliverable (Measurable outcome or result)	Reward or Incentive (For achieving outcome or result)	Return
Element A; On-going Implementation 1. The company attends four quarterly meetings; and 2. Maintains a customer container size option	n/a	n/a	5 percent of retained revenues or $48,417	n/a
Element B; Data Reporting Requirements The company transmits data once a quarter to the county	n/a	n/a	4 percent of retained revenues or $38,973	n/a
Element C; Increased Recycling/ Decreased Disposal	n/a	Two separate sets of performance measures: 1. Compares recycling program results with a 2004 baseline (pre-single stream recycling); and 2. Compares recycling program results with 2009 results	21 percent of retained revenues or $204,610	n/a
Element D; Direct Support for Pierce County Environmental Sustainability Programs and Positions (Headcount) Direct payment to the county by December 2011	n/a	n/a	16 percent of retained revenues or $155,893	n/a
Element E; Increasing Participation, Increasing Tonnage and Reducing Contamination 1. Company's customer education position; 2. Number of glass drop-off sites operated by the company; 3. Customer service training of company staff; 4. Company participation in Solid Waste Advisory Committee (SWAC) subcommittee work; and 5. Non-participant tracking by the company	n/a	1. Drop in 64-gallon garbage service; 2. Increase in mini-can customers; and 3. Increase in every other week and monthly service customers (versus weekly)	4 percent of retained revenues or $38,973	n/a
		Total planned retention	Fifty percent of retained revenues or $486,866	

Table 2, Rabanco Ltd. d/b/a Lynnwood Disposal (Snohomish County)

Plan (Activity or Effort)	Budget	Deliverable (Measurable outcome or result)	Reward or Incentive (For achieving outcome or result)	Return
Staffing Costs				
Municipal Relationship Manager (Lynnwood's share)	$15,986	n/a	n/a	n/a
Community Relations Manager (Lynnwood's share)	$34,965	n/a	n/a	n/a
Data Collection and Evaluation	$7,500	n/a	n/a	$375
Outreach Efforts	$18,750	n/a	n/a	$938
Website Development	$2,500	n/a	n/a	$125
Outreach Material Costs				
New Commodities Brochure and Printed Materials	$15,000	n/a	n/a	$750
Media Outreach and Advertising	$70,000	n/a	n/a	$3,500
School Recycling Education and Outreach	$2,500	n/a	n/a	$125
Community Events/Fairs Sponsorship	$10,000	n/a	n/a	$500
Contamination Monitoring	$15,000	n/a	n/a	$750
Customer Mailings	$18,480	n/a	n/a	$924
n/a	n/a	Increase in Yard Waste and Food Waste subscriptions	$3,577 or 1 percent of total forecasted recyclable commodity revenues; $357,697	n/a
n/a	n/a	Increase in percent of waste diverted from landfills	$3,577 or 1 percent of total forecasted recyclable commodity revenues; $357,697	n/a
Total Budget	$159,730			
		Total Reward or Incentive	$7,154	
			Total Return (5 percent of budgeted expenditures)	$7,987

Staff believes that the single greatest contributor to increased recycling tonnages in the last ten years has been the conversion from source-separated to single-stream recycling through minimum service level ordinances enacted by counties.[4] Single-stream recycling programs have been paid for almost entirely through regulated rates, not revenue sharing. In staff's opinion, the incremental activities and efforts undertaken by companies through revenue sharing plans, post conversion to single-stream, have not demonstrated they have led to measurable impacts in increased recycling.[5]

B. Should companies be required to prepare a budget of anticipated retained revenues and expenditures under the recycling revenue sharing plan?

Staff comment – Yes. Staff does not see any other way to avoid revenue sharing percentage requests that are inconsistent with planned expenditures. Experience has shown that, without a budget, the outcome is almost always large amounts of unspent retained revenues left over at the end of the plan period. Staff does not see this as an efficient use of ratepayer monies. Companies should only retain what is needed to execute the plan.

1. If actual revenues materially differ from those anticipated, should the company, in consultation with the county, independently manage and prioritize expenditures on plan activities to reflect actual revenues, or can and should the company and the county formally modify the budget and revenue sharing plan during the plan period?

   Staff comment – In all 11 recyclable commodity revenue sharing plans for the current plan year, both the company and the county are supposed to meet regularly to discuss progress on deliverables and recyclable commodity revenues retained to date compared to targets. Staff would expect the company to work with the county and jointly agree to modifications or prioritizing of the plan in light of actual retained revenues. At the end of the plan period, the company would report plan changes to the commission as part of its compliance filing.

2. If plans are modified during the plan period to accommodate unanticipated circumstances, to what extent should the company be required to seek, and the commission be obligated to grant, approval of such modifications?

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4 "<u>*Compared to source-separated collection programs, the single-stream programs are collecting about 10 percent more material.*</u>" – Washington Department of Ecology (Ecology), Solid Waste in Washington – 19th Annual Status Report, Appendix B: Municipal Solid Waste (MSW) Generation, Recycling & Disposal, Page No. 151, December 2010

5 Since 2004, 11 companies, operating in four counties, have retained over $23 million in recyclable commodity revenues. At the same time, these same four counties have achieved, on average, 15 percent increase in their respective Municipal Solid Waste (MSW) Recycling Rate as measured by Ecology. In addition, Ecology has attributed much of the increases in the MSW Recycling Rate since 2008 to the economic slowdown, which has resulted in lower consumer spending and hence lower disposal tonnages. Washington Department of Ecology (Ecology), Solid Waste in Washington – 19th Annual Status Report, Appendix B: Municipal Solid Waste (MSW) Generation, Recycling & Disposal, Page No. 149, December 2010.

Staff comment – Staff believes that once approved by the commission at the beginning of the period, the company and the county are responsible for managing the plan. Revenue sharing percentages should ideally be set at the start of the plan period to retain only the amount of recyclable revenues required for in a plan budget, and the budget should be based on the same forecast of market prices for recyclable commodities and tonnages that is used by the deferred accounting mechanism. If market conditions affect recyclable commodity prices downward, staff would expect the company and the county to modify and prioritize their plan accordingly. If market prices for recyclable commodity prices rise significantly, staff would expect the company to refund to customers any amount retained that is greater than what was approved to execute the revenue sharing plan. Or perhaps, the commission's approval to retain revenue could be capped at the proposed budget level.

The only exception where commission approval would be needed is in the unlikely event that changes to the monthly recyclable commodity revenue adjustments need to be made, extraordinary issues occur like a crash in the market for recyclable commodities, or there is a need to terminate the plan in its entirety and forego revenue sharing.

C. What are permissible expenditures under recycling revenue sharing plans?

1. What general types of expenditures (e.g., annually recurring expenses, equipment costs, cash payments to affiliates or third parties to be used for recycling related activities, personnel, advertising, etc.) can and should be funded with retained recycling revenues, rather than included in general base rates for recycling service, and why?

   Staff comment – Staff believes that retained revenues are meant to provide funds to be used to try new and innovative programs at little or no risk to the company. Staff's experience with managing company revenue sharing plans has shown that most plan expenditures involve sustaining/ongoing activities or efforts that are part of the companies recycling operations and are more appropriately included in rates and not continually funded through retained revenues. Examples of sustaining/ongoing efforts or activities are:

   - Outreach and education of existing customers regarding single-stream recycling;
   - Capital expenditures to reduce cost and improve efficiency,
   - Ongoing data collection, reporting and measurement; and
   - Recycling program staff employed by the company.

2. What types of performance incentives (*i.e.*, funds a company may retain in excess of amounts spent on plan activities) are acceptable?

a) *Should a company be entitled to a performance incentive bonus solely for completing activities required under the plan?*

Staff comment – No.

b) *Should performance incentives be limited to achieving or exceeding plan goals or objectives?*

Staff comment – Yes, if these performance incentives meet the criteria in staff's comments (c) below and are approved by the commission at the beginning of the plan period.

c) *Should the amount of performance incentives be limited to a fixed dollar amount or percentage of revenues, and if so, what level or range would be most appropriate?*

Staff comment – The amount proposed by a company as a reward or incentive should be evaluated by the commission for approval at the beginning of the plan period against the value of the deliverable and the degree to which the company shares risk with ratepayers.

For example, suppose that a company's deliverable is to increase yard-waste tonnage (counted toward diversion) and, as a reward for meeting this objective, it will receive $150,000 in retained recyclable commodity revenues. Suppose, also the company does nothing different in its operations and at the end of the plan year, yard-waste tonnage increased from the previous year's 5,000 tons to 5,001 tons. Is an increase of 1 ton in yard-waste worth $150,000 in ratepayer monies? The answer is plainly no. Is the company's risk in this case zero and therefore the result is worth far less than of the amount proposed as an award? The answer is plainly yes. In Table 1 above, Element D provides a real world example to consider. The company is awarded $155,893 in retained revenues for writing a $67,000 check to the county.

Staff believes that the amount of any reward or incentive proposed as part of a revenue sharing plan should be evaluated by the commission in this light.

3. Is a general return on plan expenditures permissible?

   a) *Under what circumstances, if any, should the company be granted a general return on its expenditures under the plan?*

Staff comment – A fundamental principle in ratemaking is that the amount of return awarded to a public service company is based on risk: the company's cost of capital, expenditures and the opportunity costs of the company foregoing other uses for invested funds. For over 20 years, the commission has relied on the Lurito-Gallagher (LG) Methodology to calculate the allowable level of revenue requirement (including return) for regulated solid waste companies. In the case of revenue sharing, the source of funds is the ratepayer.[6] The company bears little to no risk in executing the revenue sharing plan. Therefore, staff does not think the company should be entitled to a return on expenditures.

b) Should the amount of any general return be limited to a fixed dollar amount or percentage of revenues, and if so, what level or range would be most appropriate?

Staff comment – Companies should not be allowed to earn a return on revenue sharing plan expenditures. If the commission determines a return is appropriate, staff recommends the commission set the return using the LG Methodology.

c) Do companies have incentives to participate in recycling revenue sharing programs other than earning a return on plan expenditures (e.g., complying with county solid waste plans, using retained revenues to finance equipment or other costs, as a means of experimenting with different recycling techniques, etc.)?

Staff comment – Yes, they have access to funds at no cost or risk to experiment and optimize their recycling operations and can earn bonuses for meeting performance objectives.

II. Process Issues

A. What is the role of the counties under RCW 81.77.185?

Staff comment – The statute clearly provides that the county is to certify to the commission that the revenue sharing plan is consistent with the county's solid waste management plan. Practically, the county is also responsible to ensure that the plan:

- Contains activities or efforts funded by retained revenues which are reasonably expected to increase recycling;
- Contains measurable performance standards;

6 Essentially, revenue sharing funds are seen by staff as contributions in aid of construction (money or other property contributed by ratepayers to a regulated public service company) which, in ratemaking, is excluded from rate of return calculations.

- Links activities and efforts with outcomes and results (deliverable) which will demonstrate, at the end of the plan period, whether the objective of increased recycling has been met;
- Is managed once it has been approved by the commission.

1. How should counties consider or negotiate financial conditions in the plan?

   Staff comment – The county is acting on behalf of its constituents and, as such, it should carefully evaluate the reasonableness and value of each element of a proposed plan compared to the alternative of refunding to customers the revenue generated from recyclable commodities.

   With about 84 percent of the state's population having access to curbside recycling and the remaining having access to recycling drop-box recycling service, staff believes counties should carefully consider what ratepayer money is really buying in the way of increased recycling.

2. Are there ways in which the counties and the commission could collaborate on development and approval of plans, rather than have each governmental entity conduct its own independent process?

   Staff comment – Staff's role has been, and should continue to be, to facilitate plan development by providing technical assistance as required. Staff should not be placed in a position to develop revenue sharing plans which:

   - Jeopardize staff's independent review of the revenue retention plan and its recommendation to the commission that the plan meets the statutory requirements for approval
   - Is an effort staff is not presently resourced for; and
   - Lack consensus between companies and counties regarding a standardized process or approach, particularly given the current range of philosophies.

B. What is the role of commission staff in development and county review of plans?

1. Should staff participate in negotiations between a county and a company in the development of a plan?

   Staff comment – Yes, but only if invited and then in a technical assistance role to facilitate but not advocate outcomes.

2. Should the county and/or the company seek staff input on drafts of the plan and, if so, at what point(s) in the process, and how much time should be allowed for staff to review the draft(s)?

   Staff comment – Staff would expect that as a result of the commission issuing a policy statement, staff's technical assistance requirements would be limited to helping companies and counties interpret orders, the policy statement and statute.

3. Should the commission formalize such a consultative process either in a policy statement or rule, or should staff and county officials be authorized to establish processes on a case-by-case basis?

   Staff comment – Staff and county officials should be authorized to establish very limited processes on a case-by-case basis.

C. When and what must companies file with the commission?

1. Must companies file the final plan and county certification as part of the original filing seeking approval of the plan?

   Staff comment – Yes. The current compliance requirement in commission orders specifies that the company will report to the commission no later than 45 days prior to the effective date of a revised tariff page containing the updated recyclable commodity revenue adjustment:

   - The amount of revenue it retained;
   - The amount of money it spent on the activities identified in its prior period recycling and revenue sharing plan;
   - The effect the activities had on increasing recycling;
   - County recommendation to the commission regarding the prior plan year's revenue retention, the company's performance to objectives in the plan and the final retention amount; and
   - Its recycling and revenue sharing plan for the upcoming year, certified by the county

   Staff believes meeting these requirements is possible if the company and county meet regularly to review plan results throughout the year and begin the process of creating a new revenue sharing plan earlier based on these ongoing discussions. Staff's experience is that the counties and companies in the past have allowed too little time to make this happen.

2. What supporting documentation should companies include in their filings to make the requisite demonstration of how the retained revenues will be used to increase recycling?

   Staff comment – Please see staff's earlier comments in I.A.1 above.

3. Should all companies be required to use the same plan period (e.g., a calendar year)?

   Staff comment – No. Having all 11 revenue sharing plans filed at the same time would not allow staff sufficient time to examine them and make a recommendation. The present practice of having the companies and counties stagger the effective dates of plans allows staff to have a more balanced workload.

4. When should companies make their filings to enable staff and the commission to review and make a determination on those filings?

Staff comment – If all of the elements in staff's comments in II.C.1 above are present, 45 days is sufficient.

D. Which of the issues in Sections I and II A-C above would be appropriate for resolution in a policy or interpretive statement to be issued by the commission?

Staff comment – All.

E. Are there any other issues that the commission should address in a policy or interpretive statement?

Staff comment – Yes, see staff's comments in section I.C.2(c) above. Staff would also support adding a customer notice requirement on revenue retention plans, in order to get customer comments on how their money is being spent by the company on efforts to increase recycling and what ideas and thoughts they may have.

F. Should the commission conduct a rulemaking?

1. Should the commission promulgate a rule on filing requirements for recycling revenue sharing plans?
2. Should the commission revise its existing customer notification rules to enable county input on the content and frequency of notices on recycling?
3. Are there other aspects of recycling revenue sharing programs that the industry or counties request that the commission address through a rulemaking?

Staff comment – Staff believes that it is too early to embark on rulemaking. The commission should issue a policy statement that narrows the issues and continue to regulate revenue sharing through the flexibility of individual orders for the foreseeable future.

Appendix A

Allied Waste of Lynnwood
WUTC Snohomish County
Revenue Sharing Summary
2011

Single Family		Recycle Tons	YW Tons	MSW Tons	Customers	Recycle Lbs./Customer	YW Lbs./Customer	Total Diversion	Diversion %
	2008 - 2009	7,289.2	8,150.5	12,011.4	16,679	874.1	977.3	1,851.4	56.2%
	2009 - 2010	5,813.2	7,120.3	10,736.2	16,655	698.1	855.0	1,553.1	54.6%
	2010 - 2011	6,002.2	7,922.3	10,452.7	16,752	716.6	945.8	1,662.4	57.1%

Multi-Family		Recycle Tons	YW Tons	MSW Tons	Diversion %
	2008 - 2009	918.6	n/a	5,080.7	15.3%
	2009 - 2010	864.0	n/a	4,819.0	15.2%
	2010 - 2011	986.4	n/a	4,948.3	16.6%

Combined		Recycle Tons	YW Tons	MSW Tons	Diversion %
	2008 - 2009	8,207.8	8,150.5	17,092.1	48.9%
	2009 - 2010	6,677.2	7,120.3	15,555.2	47.0%
	2010 - 2011	6,988.5	7,922.3	15,401.1	49.2%