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7 BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

8 In the Matter of the Petition of
9 MASON COUNTY GARBAGE CO., INC.
10 d/b/a MASON COUNTY GARBAGE, G-88,
11 Requesting Authority to Retain Thirty
12 Percent of the Revenue Received From
13 the Sale of Recyclable Materials
Collected in Residential Recycling Service

Docket TG-101542
(Consolidated)

14
15 In the Matter of the Petition of
16 MURREY'S DISPOSAL COMPANY, INC.,
G-9,
17 Requesting Authority to Retain Fifty
18 Percent of the Revenue Received From
19 the Sale of Recyclable Materials
Collected in Residential Recycling Service

Docket TG-101545
(Consolidated)

20
21 In the Matter of the Petition of
22 AMERICAN DISPOSAL COMPANY, INC.,
G-87,
23 Requesting Authority to Retain Fifty
24 Percent of the Revenue Received From
25 the Sale of Recyclable Materials
Collected in Residential Recycling Service

Docket TG-101548
(Consolidated)

JOINDER IN MOTION FOR
SUMMARY DETERMINATION
BY INTERVENOR WASHINGTON
REFUSE AND RECYCLING
ASSOCIATION

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Joinder in Motion for Summary Determination
by Intervenor Washington Refuse and
Recycling Association - 1

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3) INTERVENOR'S POSITION: It is WRRRA's understanding that Petitioner will submit a Motion for Summary Determination in accordance with the "procedural schedule" contained in Order No. 3, served December 21, 2010. WRRRA's position here is that the relief sought in Petitioner's Motion should be granted, and the following is in support of that Motion.

4) ARGUMENT:

a) It is important to note that this issue is not limited to the situations of the Petitioners, which are publicly owned "west side" entities serving, for the most part, high density population areas. However, the statute at issue, RCW 81.77.185, of course, applies statewide and involves the efforts of each and every county to increase, or even implement, residential recycling. That clearly is the goal of this legislation and it would appear that the Commission's position in this action is contrary to that goal. If there is to be widespread and effective recycling in rural, less populated areas, there simply must be serious and realistic incentives at the local level. That was, and remains, a primary reason for the enactment of this legislation.

b) Interpretation of RCW 81.77.185 largely is interpretation of the word "shall," and the phrase "up to" and the determination of to whom each applies. Each is a limitation upon the authority granted to both the Commission and the Counties.

1 The word "shall," "as used in the statutes . . ." is "imperative or
2 mandatory." ***Black's Law Dictionary, 5th ed. at 1233.*** Here, the word applies
3 to the Commission. The Commission "shall allow solid waste companies
4 collecting recyclable materials to retain up to fifty percent of the revenue paid to
5 the companies. . ." (emphasis added). The statute does not use the word "may"
6 for example, but clearly uses a mandatory word. That is not to be ignored, nor is
7 there room for deliberation over the meaning of the word.

8 There is a limitation on the Commission's mandatory action; that is,
9 that it must have a "plan" submitted by the company which is "certified" by local
10 government "as being consistent with the local government solid waste plan and
11 that demonstrates how the revenues will be used to increase recycling." If there
12 is no such certification, there would be no retention at all of revenue, and
13 presumably the issue would not even be before the Commission.

14 Just as "shall" limits the Commission, the phrase "up to" limits the
15 Counties. They cannot certify a plan for 51%; they are limited, again by clear
16 statutory language. They can, of course, certify a plan for less than 50% and
17 have.¹ Simply put, "up to" refers to, and perhaps defines, the authority of the
18 local government; while "shall" refers to, and limits, the authority of the
19 Commission.

20 c) This situation is admittedly somewhat unusual in that a
21 County, in this one limited area, has certain "rate making" authority. However,
22 the Commission is the ultimate rate maker, and one can suppose that is why this
23 statute even mentions the Commission. The Commission does not lose its
24 authority here, it is simply required to approve and adopt a rate structure that
25 has been already vetted, approved and adopted by another entity.

26 However, the Commission would appear to be extending its authority
far beyond that contemplated by the relatively simple language of RCW
81.77.185. Neither the statute itself nor any of its legislative history even hints
at authorizing the Commission to "freeze" and/or require a carryover of any of
this revenue stream. To do so literally could, and will, render the statute

¹ For example, Mason County recently has submitted a 30% retention plan for one of the
Petitioners here.

1 meaningless; and leave both the companies and counties investing time, effort
 2 and funds to develop a local solution to a local situation that could be arbitrarily
 3 dismissed by the Commission. That clearly is not the intent of this statute. The
 County is to be a primary participant, not a spectator.

4 d) If recycling is to be encouraged and expanded, this statute is
 5 one way of doing so. It provides for local oversight and certification while
 6 providing incentive for private industry. The Commission's interpretation of the
 7 law destroys both these concepts, and may well have the exact opposite effect, i.e.
 a disincentive to provide these valuable and necessary programs.

8 5) CONCLUSION: If, as probably should be expected, the Legislature
 9 revisits this issue at some future point, we will all hopefully have a clarification of
 10 intent. However, in the meantime, it seems clear to Intervenor that the
 11 Commission's interpretation is not only incorrect, but in addition destroys the
 very reasons for enactment of the statute in the first place.

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 13 DATED this 8 day of February 2011.



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 15 _____
 16 JAMES K. SELLS, WSBA No. 6040
 Attorney for Washington Refuse and
 Recycling Association

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2011 I caused to be served the original and 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
PO 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 an official electronic file containing the foregoing document via e-mail to: records@utc.wa.gov.

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

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DATED at Silverdale, Washington, this 8th day of February 2011.



Terre Skelly