BEFORE THE WASHINGTON UTILITIES

AND TRANSPORTATION COMMISSION

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| In the Matter of the Petition ofMASON COUNTY GARBAGE CO., INC. d/b/a MASON COUNTY GARBASGE, G-88Requesting Authority to Retain Thirty Percent of the Revenue Received From the Sale of Recyclable Materials Collected in Residential Recycling Service | )))))))))))) | DOCKET TG-101542 (*Consolidated)* |
| In the Matter of the Petition ofMURREY’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 | ))))))))))) | DOCKET TG-101545 (*Consolidated)* |
| In the Matter of the Petition ofAMERICAN DISPOSAL COMPANY, INC., G-87,Requesting Authority to Retain Fifty Percent of the Revenue Received From the Sale of Recyclable Materials Collected in Residential Recycling Service | )))))))))))) | DOCKET TG-101548 (*Consolidated)*MEMORANDUM OF INTERVENOR WASTE MANAGEMENT OF WASHINGTON, INC. |

**Introduction**

1. This matter presents to the Commission a procedural vehicle for considering legal issues related to implementation of RCW 81.77.185 (the “Revenue Sharing Statute”). The law states that the Washington Utilities and Transportation Commission (“Commission”) “shall allow” solid waste collection companies collecting recyclable materials “to retain up to fifty percent of the revenue paid to the companies for the material,” provided certain conditions are met. To be eligible, a company must submit a plan (a “Revenue Sharing Plan”) to the Commission. That Revenue Sharing Plan must (1) be certified by the appropriate local government authority as being consistent with the local government solid waste plan, and (2) demonstrate how the retained revenues will be used to increase recycling. The statutory provision then concludes, “The remaining revenue shall be passed to residential customers.”
2. Using common vernacular, it seems that the issue presented in these consolidated dockets is to determine whether the word “retain” means “hold the revenue in trust, use it in accordance with the certified Revenue Sharing Plan, but then give back whatever you don’t spend” or “take ownership of the revenue, use it in accordance with the certified Revenue Sharing Plan, and then keep whatever you don’t spend.” Another view of the same question is to consider what is meant by the reference to “remaining revenue” that must be passed to rate payers: Does it mean “the other fifty percent” or does it mean “the revenue that is not spent”? In other words, so long as the participating company implements a certified Revenue Sharing Plan, does the statute authorize a loan which confers only a temporary right to use the revenues, or does it authorize a payment which confers permanent ownership of the revenues?

**Analysis**

1. In 2002, the legislature enacted RCW 81.77.185 to authorize a solid waste collection company collecting recyclable materials to retain up to thirty percent of the revenue paid to the company for the material if the company submitted a plan to the Commission certified by the appropriate local government authority as being consistent with the local government solid waste management plan. SHB 2308, 57th Leg. (2002 Wash Laws Ch. 299). The law was amended in 2010 to increase the revenue sharing amount to fifty percent, but otherwise remained unchanged. ESSHB 2539, 61st Leg. (2010 Wash Laws Ch. 154).
2. Many of the activities agreed upon in the Revenue Sharing Plans are innovative and offer new approaches to increasing recycling within each of the Counties. The Revenue Sharing Plans commonly allow both the county and the participating collection company to pilot new activities and programs. Indeed, this is the heart of the Revenue Sharing Legislation. *See* Recycling Revenue Sharing, A Staff Summary of the Implementation of RCW 81.77.185 (WUTC, May 2003) (“Staff Summary”) at 3 (“The legislation creates opportunities and incentives for regulated companies to experiment with offering different recycling programs.”)
3. Without some compensation for implementing those new program and activities, a participating collection company has little incentive to experiment or otherwise participate in a Revenue Sharing Plan. “The concept behind this model of revenue sharing is that if solid waste carriers are allowed to keep more recycling revenue, they will have greater financial interest in encouraging their customers to recycle more and in finding buyers for the recyclable commodities.” Staff Summary at 5. Although arguably increased revenues from greater participation in recycling collection systems could conceivably offset that loss, some of the programs are designed to induce waste reduction as well as recycling. Thus, if the programs in the Revenue Sharing Plans are successful, a participating company’s revenues from garbage collection could be reduced, as customers divert greater amounts of material from the garbage can to the recycling container.
4. Regulated collection companies are for-profit private businesses. Putting aside legitimate corporate goals of increased sustainability and environmental protection, the single-most meaningful incentive to owners and shareholders is profit. For the Revenue Sharing Statute to be attractive, the statute must be interpreted in a manner that allows for some corporate revenues.
5. This is not inconsistent with the statutory exhortation that, “The remaining revenue shall be passed to residential customers.” Revenue sharing overlays an additional step in the deferred accounting process employed for calculating a recycling commodity credit. *See* WAC 480-07-351. Because the statute is implemented in tandem with the deferred accounting mechanism offered by the recycling commodity credit process, allowing a company to keep some of the unspent revenues does not preclude passing through to customers “the remaining revenue.”
6. The percentage of revenue retained must be subject to both the look-back and look-forward elements. At the end of the twelve-month period, once the actual revenues or charges from marketing recyclable commodities are known for the preceding year, a company can determine whether the revenue percentage projected needs to be trued-up. If in looking back over the twelve-month period the company has either over- or under-estimated the amount of the retained percentage (which usually happens), the difference can be factored into the recycling commodity credit for the following year. *See* “Staff Summary” at 8 (“Because of the existing requirement for an annual adjustment to match current conditions, the revenue sharing amount can be easily updated at the same time and incorporated into the company current rates [through the recycling commodity adjustment].”
7. In this manner, the “remaining revenue” is “passed to” residential customers. If a participating company retains fifty percent of its projected revenues, but then it turns out that the projection is not accurate, then everything other than the amount retained is returned to the customers by including it in the recycling commodity credit calculated for the next going-forward period.
8. Tellingly, the original bill proposed to implement the revenue sharing context was worded slightly differently. The language in the originally-offered legislation clearly evidences an intent to require that only revenues in excess of the percentage of revenue retained be passed back to the customers. When the legislation was first introduced in the 2000 Legislative Session, the bills contained some hints of the legislative intention. The bills allowed for companies “to retain up to thirty percent of the revenue.” HB 2939, 56th Leg.; SB 6715, 56th Leg. They also stated, “The remaining seventy percent of the revenue shall be passed to residential customers served by the company.”
9. When the legislation was ultimately adopted in 2002, it was worded almost exactly the same as the originally-proposed legislation. However, apparently the drafters noted a potential inconsistency between allowing a revenue retention of “up to” thirty percent, but then requiring the “remaining seventy percent” to be returned to ratepayers. If the companies retained less than thirty percent, then the remainder would not be seventy percent. Under a Revenue Sharing Plan that contemplated only a twenty percent retainer, if only seventy percent were returned to the customer than the remaining ten percent would be unaccounted for, under the literal language of the statute as it was first presented in 2000. The bills enacted in 2002 eliminated the seventy-percent limitation. The legislation kept the “up to” thirty percent, and allowed some leeway for local governments and participating companies to decide the appropriate percentage. It then eliminated the seventy-percent qualifier, so that the amount passed back to ratepayers could reflect the amount retained. If, for example, twenty percent were retained, then eighty percent would be passed back into the recycling commodity credit calculation.
10. Although it was not enacted, the language in the original bill nonetheless shows the legislative intent that a participating company be allowed to “own” the retained percentage, and confer more rights and responsibilities than merely granting a loan. The proposed legislation only required the other seventy percent to be passed back. It did not require unspent amounts of the retained percentage to be credited.
11. To meaningfully implement the Revenue Sharing Statute, a participating company must be compensated in some fashion. The manner and means of compensating a participating collection company may vary from jurisdiction to jurisdiction, and from plan to plan. The question of whether RCW 81.77.185 permits a company and a county to include a profit element in their agreed-upon Revenue Sharing Plan is not directly presented in this proceeding. It is at issue in the related docket matters pending before the Commission. *See Wash. Utils. & Transp. Comm’n v. Waste Management of Washington, Inc.* (Dockets TG-101220, TG-101221, TG-101222) (consolidated). Whether the statute authorizes a solid waste collection company to keep any of the unspent revenue, however, is a threshold determination that would influence the outcome in Waste Management’s proceedings. The Intervenor herein supports the arguments made by the Petitioner in its Motion for Summary Determination by Petitioners Mason County Garbage, Murrey’s Disposal Company, Inc. and American Disposal Company, Inc. in Support of Revenue Retention Authorization because the legislation seems most efficiently and correctly implemented by allowing the local jurisdiction and the participating company to take a risk together, and motivate the company’s appetite to increase recycling by allowing it to retain unspent revenues, if any. If the statute permits a company to retain some of the unspent revenue, then the only question in the Waste Management proceeding is whether a budget line-item is an appropriate mechanism for establishing the amount to be retained, and what limits are properly imposed on that budget line-item. However, even if the statute were interpreted to require the return of unspent revenues, the question of whether allocating a certain amount for profit is a legitimate means of using the revenues to increase recycling remains at play.

**CONCLUSION**

1. For the reasons stated above, Intervenor Waste Management of Washington, Inc. urges the Commission to grant Petitioner’s Motion for Summary Determination by Petitioners Mason County Garbage, Murrey’s Disposal Company, Inc. and American Disposal Company, Inc. in Support of Revenue Retention Authorization

DATED this 9th day of February, 2010.

By s/Polly L. McNeill

Polly L. McNeill, WSBA # 17437

SUMMIT LAW GROUP PLLC

315 Fifth Avenue South, Suite 1000

Seattle, WA 98104

T: (206) 676-7000

F: (206) 676-7001

Attorneys for Respondents Waste Management of Washington, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 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

 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 e-mail the foregoing document on:

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| David W. WileyWilliams Kastner601 Union Street, Suite 4100Seattle, WA 98101206-233-2895dwiley@williamskastner.com | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹 Via Email |
| Hon. Gregory J. KoptaAdministrative Law JudgeWashington Utilities and Transportation Commission1300 S. Evergreen Park Dr. SWPO Box 47250Olympia, WA 98504-7250gkopta@utc.wa.gov | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹 Via Email |
| James K. SellsAttorney at Law3110 Judson StreetGig Harbor, WA 98335360-981-0168jamessells@comcast.net | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹 Via Email |
| Fronda WoodsAssistant Attorney General1400 S. Evergreen Park Drive S.W.P.O. Box 40128Olympia, WA 98504-0128fwoods@utc.wa.gov | 🞎 Via Legal Messenger🞎 Via Facsimile🞎 Via U.S. Mail🗹Via Email  |

DATED at Seattle, Washington, this 9th day of February, 2010.

Kathy Moll