

1 **INTRODUCTION**

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

23 **ANALYSIS**

- 24 3. In 2002, the legislature enacted RCW 81.77.185 to authorize a solid waste collection
25 company collecting recyclable materials to retain up to thirty percent of the revenue paid to
26 the company for the material if the company submitted a plan to the Commission certified by

1 the appropriate local government authority as being consistent with the local government
2 solid waste management plan. SHB 2308, 57th Leg. (2002 Wash Laws Ch. 299). The law
3 was amended in 2010 to increase the revenue sharing amount to fifty percent, but otherwise
4 remained unchanged. ESSHB 2539, 61st Leg. (2010 Wash Laws Ch. 154).

5 4. Many of the activities agreed upon in the Revenue Sharing Plans are innovative and offer
6 new approaches to increasing recycling within each of the Counties. The Revenue Sharing
7 Plans commonly allow both the county and the participating collection company to pilot new
8 activities and programs. Indeed, this is the heart of the Revenue Sharing Legislation. *See*
9 *Recycling Revenue Sharing, A Staff Summary of the Implementation of RCW 81.77.185*
10 *(WUTC, May 2003) (“Staff Summary”)* at 3 (“The legislation creates opportunities and
11 incentives for regulated companies to experiment with offering different recycling
12 programs.”)

13 5. Without some compensation for implementing those new program and activities, a
14 participating collection company has little incentive to experiment or otherwise participate in
15 a Revenue Sharing Plan. “The concept behind this model of revenue sharing is that if solid
16 waste carriers are allowed to keep more recycling revenue, they will have greater financial
17 interest in encouraging their customers to recycle more and in finding buyers for the
18 recyclable commodities.” *Staff Summary* at 5. Although arguably increased revenues from
19 greater participation in recycling collection systems could conceivably offset that loss, some
20 of the programs are designed to induce waste reduction as well as recycling. Thus, if the
21 programs in the Revenue Sharing Plans are successful, a participating company’s revenues
22 from garbage collection could be reduced, as customers divert greater amounts of material
23 from the garbage can to the recycling container.

24 6. Regulated collection companies are for-profit private businesses. Putting aside legitimate
25 corporate goals of increased sustainability and environmental protection, the single-most
26 meaningful incentive to owners and shareholders is profit. For the Revenue Sharing Statute

1 to be attractive, the statute must be interpreted in a manner that allows for some corporate
2 revenues.

- 3 7. This is not inconsistent with the statutory exhortation that, “The remaining revenue shall be
4 passed to residential customers.” Revenue sharing overlays an additional step in the deferred
5 accounting process employed for calculating a recycling commodity credit. *See* WAC 480-
6 07-351. Because the statute is implemented in tandem with the deferred accounting
7 mechanism offered by the recycling commodity credit process, allowing a company to keep
8 some of the unspent revenues does not preclude passing through to customers “the remaining
9 revenue.”
- 10 8. The percentage of revenue retained must be subject to both the look-back and look-forward
11 elements. At the end of the twelve-month period, once the actual revenues or charges from
12 marketing recyclable commodities are known for the preceding year, a company can
13 determine whether the revenue percentage projected needs to be trued-up. If in looking back
14 over the twelve-month period the company has either over- or under-estimated the amount of
15 the retained percentage (which usually happens), the difference can be factored into the
16 recycling commodity credit for the following year. *See* “Staff Summary” at 8 (“Because of
17 the existing requirement for an annual adjustment to match current conditions, the revenue
18 sharing amount can be easily updated at the same time and incorporated into the company
19 current rates [through the recycling commodity adjustment].”
- 20 9. In this manner, the “remaining revenue” is “passed to” residential customers. If a
21 participating company retains fifty percent of its projected revenues, but then it turns out that
22 the projection is not accurate, then everything other than the amount retained is returned to
23 the customers by including it in the recycling commodity credit calculated for the next going-
24 forward period.
- 25 10. Tellingly, the original bill proposed to implement the revenue sharing context was worded
26 slightly differently. The language in the originally-offered legislation clearly evidences an

1 intent to require that only revenues in excess of the percentage of revenue retained be passed
2 back to the customers. When the legislation was first introduced in the 2000 Legislative
3 Session, the bills contained some hints of the legislative intention. The bills allowed for
4 companies “to retain up to thirty percent of the revenue.” HB 2939, 56th Leg.; SB 6715,
5 56th Leg. They also stated, “The remaining seventy percent of the revenue shall be passed to
6 residential customers served by the company.”

7 11. When the legislation was ultimately adopted in 2002, it was worded almost exactly the same
8 as the originally-proposed legislation. However, apparently the drafters noted a potential
9 inconsistency between allowing a revenue retention of “up to” thirty percent, but then
10 requiring the “remaining seventy percent” to be returned to ratepayers. If the companies
11 retained less than thirty percent, then the remainder would not be seventy percent. Under a
12 Revenue Sharing Plan that contemplated only a twenty percent retainer, if only seventy
13 percent were returned to the customer than the remaining ten percent would be unaccounted
14 for, under the literal language of the statute as it was first presented in 2000. The bills
15 enacted in 2002 eliminated the seventy-percent limitation. The legislation kept the “up to”
16 thirty percent, and allowed some leeway for local governments and participating companies
17 to decide the appropriate percentage. It then eliminated the seventy-percent qualifier, so that
18 the amount passed back to ratepayers could reflect the amount retained. If, for example,
19 twenty percent were retained, then eighty percent would be passed back into the recycling
20 commodity credit calculation.

21 12. Although it was not enacted, the language in the original bill nonetheless shows the
22 legislative intent that a participating company be allowed to “own” the retained percentage,
23 and confer more rights and responsibilities than merely granting a loan. The proposed
24 legislation only required the other seventy percent to be passed back. It did not require
25 unspent amounts of the retained percentage to be credited.
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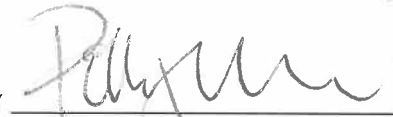
1 13. To meaningfully implement the Revenue Sharing Statute, a participating company must be
2 compensated in some fashion. The manner and means of compensating a participating
3 collection company may vary from jurisdiction to jurisdiction, and from plan to plan. The
4 question of whether RCW 81.77.185 permits a company and a county to include a profit
5 element in their agreed-upon Revenue Sharing Plan is not directly presented in this
6 proceeding. It is at issue in the related docket matters pending before the Commission. *See*
7 *Wash. Utils. & Transp. Comm'n v. Waste Management of Washington, Inc.* (Dockets TG-
8 101220, TG-101221, TG-101222) (consolidated). Whether the statute authorizes a solid
9 waste collection company to keep any of the unspent revenue, however, is a threshold
10 determination that would influence the outcome in Waste Management's proceedings. The
11 Intervenor herein supports the arguments made by the Petitioner in its Motion for Summary
12 Determination by Petitioners Mason County Garbage, Murrey's Disposal Company, Inc. and
13 American Disposal Company, Inc. in Support of Revenue Retention Authorization because
14 the legislation seems most efficiently and correctly implemented by allowing the local
15 jurisdiction and the participating company to take a risk together, and motivate the
16 company's appetite to increase recycling by allowing it to retain unspent revenues, if any. If
17 the statute permits a company to retain some of the unspent revenue, then the only question
18 in the Waste Management proceeding is whether a budget line-item is an appropriate
19 mechanism for establishing the amount to be retained, and what limits are properly imposed
20 on that budget line-item. However, even if the statute were interpreted to require the return
21 of unspent revenues, the question of whether allocating a certain amount for profit is a
22 legitimate means of using the revenues to increase recycling remains at play.

CONCLUSION

14. 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



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

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