

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

MASON COUNTY GARBAGE CO.,
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

MURREY'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

.....
In the Matter of the Petition of

AMERICAN 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

DOCKETS TG-101542, TG-101545
and TG-101548 (consolidated)

COMMISSION STAFF MOTION
FOR SUMMARY
DETERMINATION, AND
ARGUMENT IN SUPPORT
THEREOF

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I. RELIEF REQUESTED

1 Pursuant to WAC 480-07-380(2), the Washington Utilities and Transportation Commission Staff (“Commission Staff” or “UTC Staff”) moves for the following relief:

- A. An order declaring that RCW 81.77.185 does not entitle solid waste collection companies to retain unspent revenues from the sale of recyclable materials; and
- B. An order denying the *Petitions for Reconsideration of Portion of Order No. 1 Requiring Revenues Not Spent During Prior Plan Period and Current Plan Period be Carried Forward to Following Plan Period.*

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

2 RCW 81.77.185 directs the Washington Utilities and Transportation Commission (“Commission”) to allow solid waste collection companies to retain a portion of the revenue they receive from the sale of recyclable materials, if certain conditions are met.¹ The remaining revenue is to be passed to residential customers. The mechanism for doing that is described in WAC 480-70-351(2).²

3 In orders entered in Dockets TG-090899, TG-091463, and TG-091467, the Commission authorized the petitioners in each of these consolidated dockets (collectively “the Companies”) to retain thirty percent of the revenue they received from the sale of

¹ [RCW 81.77.185](#)(1) currently provides:

The 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 if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

² [WAC 480-70-351](#)(2) provides: “Companies that estimate the revenue from the sale of recyclable materials collected in residential curbside programs as part of a deferred accounting program to return recycling revenues or charges to customers must use the most recent twelve-month historical period to estimate the revenue for the next twelve months.”

recyclable materials between the dates of the orders and October 31, 2010. The orders directed the Companies to report to the Commission the amount of revenue they retained, the amount of money they spent on the activities identified in their recycling plans, and the effect the activities had on increasing recycling.³

4 On September 15, 2010, the Companies initiated these dockets by filing with the Commission proposed revisions to certain tariffs, to reflect changes in recyclable commodity revenue adjustments for residential and multi-family customers receiving recycling collection services. Murrey’s Disposal Company and American Disposal Company, which operate in Pierce County (“Pierce County companies”), also filed requests to retain fifty percent of the revenue the companies will receive from the sale of recyclable materials that they collect in their residential recycling collection services during the recycling plan period of November 1, 2010, through October 31, 2011. Mason County Garbage filed a request to retain thirty percent of such revenue.

5 To support their revenue-retention requests, the Pierce County companies filed a Company Recycling Plan approved by Pierce County. Under the plan, up to fifty percent of the retained recyclable commodity revenue would be awarded to the companies based on the companies’ meeting certain performance measures during the upcoming year. Pierce County informed the Commission that the companies’ performance during the prior year had achieved the goals and objectives in the county’s solid waste management plan and ordinance, and stated that the Pierce County companies were eligible to retain thirty percent of recyclable commodity revenues they had withheld from customers during the prior year,

³ *In re Mason County Garbage Co., Inc.*, G-88, Docket TG-090899, [Order 02](#) ¶ 13 (Aug. 13, 2009); *In re Murrey’s Disposal Co., Inc.*, G-9, Docket TG-091463, [Order 01](#) ¶ 12 (Oct. 29, 2009); *In re American Disposal Co., Inc.*, G-87, Docket TG-091467, [Order 01](#) ¶ 12 (Oct. 29, 2009); see [RCW 81.04.080](#) (“commission may require any public service company . . . to file periodical or special reports”).

including any unspent revenues.⁴

6 Similarly, Mason County Garbage filed a county-approved 2010-2011 Company Recycling Plan that described performance measures the company would need to meet in order to qualify for financial awards.⁵ Mason County notified the Commission that Mason County Garbage had performed in a manner satisfactory to the county during the prior year, and stated that “the hauler is entitled to the full 30 percent revenue sharing provided for in the [recycling] plan and authorized by RCW 81.77.185.”⁶

7 On October 22, 2010, Waste Connections filed some of the information required by the orders in Dockets TG-090899, TG-091463, and TG-091467. It showed the following:⁷

Company (reporting period)	Recycling Revenue Retained	Recycling Plan Expenditures	Revenue Retained Minus Expenditures
Mason County Garbage (Aug. 16, 2009 – Aug. 31, 2010)	\$71,937	\$82,672	(\$10,735)
Murrey’s Disposal Co. and American Disposal Co. (Sept. 1, 2009 – Aug. 31, 2010)	\$487,961	\$408,277	\$79,684 unspent revenues

8 The matters came before the Commission at its October 28, 2010 Open Meeting. During the meeting, there was much discussion about how RCW 81.77.185 should be interpreted. Does it apply prospectively, requiring companies to spend all retained revenue

⁴ See Docket TG-101545, [Letter from Dan Schooler to David Gomez](#) (Oct. 15, 2010); Docket TG-101545, [Letter from Stephen C. Wamback to David W. Danner](#) (Oct. 27, 2010); Docket TG-101545, [Staff Open Meeting Memo](#) at 2 (Oct. 28, 2010); Docket TG-101548, [Letter from Dan Schooler to David Gomez](#) (Oct. 15, 2010); Docket TG-101548, [Letter from Stephen C. Wamback to David W. Danner](#) (Oct. 27, 2010); Docket TG-101548, [Staff Open Meeting Memo](#) at 2 (Oct. 28, 2010).

⁵ See Docket TG-101542, [Staff Open Meeting Memo](#) at 2 (Oct. 28, 2010).

⁶ Docket TG-090899, [Letter from David Baker to David Gomez](#) (dated Sept. 14, 2010); see Docket TG-101542, [Letter from David Baker to David Danner](#) (dated Oct. 22, 2010).

⁷ See Docket TG-101542, [Staff Open Meeting Memo](#) at 3 (Oct. 28, 2010); Docket TG-101545, [Staff Open Meeting Memo](#) at 3 (Oct. 28, 2010); Docket TG-101548, [Staff Open Meeting Memo](#) at 3 (Oct. 28, 2010).

on measures designed to increase recycling? Can it apply retroactively, allowing companies to keep some retained but unspent revenue as a reward for past performance, as the Companies proposed? Is there another interpretation?

9 In accordance with its decisions at the October 28, 2010, Open Meeting, the Commission issued Order 01 in each of these consolidated dockets. The Commission took no action on the revised tariffs that the Companies had filed, thereby allowing the revised commodity credits under WAC 480-70-351(2) to go into effect on November 1, 2010, by operation of law.⁸ The Commission authorized the Pierce County companies to retain fifty percent of the revenue they receive from the sale of recyclable materials collected in their residential recycling programs from November 1, 2010, through October 31, 2011, and the Commission authorized Mason County Garbage to retain thirty percent.

10 The Commission also ordered:

Revenues retained by [the Companies], not spent during the previous plan period [August or September 2009 through October 31, 2010] are to be carried over into the next year, and revenues from this plan period [November 1, 2010 through October 31, 2011] that are not spent are to be carried over to the following year, unless the Commission orders some other treatment.⁹

11 On November 8, 2010, the Companies filed petitions for reconsideration. They asked the Commission to revise the paragraph quoted above and to authorize the Companies to retain unspent revenue in the current year and not require carryover in future years.¹⁰ The

⁸ See [RCW 81.28.050](#).

⁹ Docket TG-101542, [Order 01](#) ¶ 19 (Oct. 28, 2010); Docket TG-101545, [Order 01](#) ¶ 20 (Oct. 28, 2010); Docket TG-101548, [Order 01](#) ¶ 20 (Oct. 28, 2010).

¹⁰ Docket TG-101542, [Petition for Reconsideration of Portion of Order No. 1 Requiring Revenue Not Spent During Prior Plan Period and Current Plan Period be Carried Forward to Following Plan Period](#) (Nov. 8, 2010); Docket TG-101545, [Petition for Reconsideration of Portion of Order No. 1 Requiring Revenue Not Spent During Prior Plan Period and Current Plan Period be Carried Forward to Following Plan Period](#) (Nov. 8, 2010); Docket TG-101548, [Petition for Reconsideration of Portion of Order No. 1 Requiring Revenue Not Spent During Prior Plan Period and Current Plan Period be Carried Forward to Following Plan Period](#) (Nov. 8, 2010).

Washington Refuse and Recycling Association (WRRRA) filed a statement in support of the Companies' position.¹¹

12 The petitions came before the Commission at its November 24, 2010, Open Meeting, and the Commission decided to set the matters for hearing. The Commission commenced an adjudicative proceeding, consolidated these three dockets, and permitted WRRRA to intervene. The parties agreed to file cross-motions for summary determination on the legal issues raised by the petitions for reconsideration.¹²

III. ISSUES

13 The Companies' petitions for reconsideration raise two legal issues:

- A. Does RCW 81.77.185 entitle solid waste collection companies to retain a portion of unspent revenues from the sale of recyclable materials during the prior reporting year as a reward for past performance?
- B. If a county recommends that a solid waste collection company be allowed to retain a portion of unspent revenues from the sale of recyclable materials during the prior reporting year, does RCW 81.77.185 require the Commission to accept that recommendation?

Commission Staff believes the answer to both questions is no.

14 Not addressed in this motion is the issue of whether RCW 81.77.185 permits a company to include a profit element in its plan for using incoming revenues prospectively.¹³ That issue is raised in another proceeding currently pending before the Commission.¹⁴ The Companies' petitions for reconsideration in these dockets do not present that issue, however.

¹¹ Docket TG-101545, [Statement of Interested Party Washington Refuse and Recycling Association](#) (Nov. 17, 2010).

¹² Dockets TG-101542/TG-101545/TG-101548, [Order 02 – Order of Consolidation and Notice of Prehearing Conference](#) (Dec. 1, 2010), [Order 03 - Prehearing Conference Order](#) (Dec. 21, 2010).

¹³ [RCW 81.77.185](#)(1) requires companies to submit to the Commission a plan “that demonstrates how the revenues will be used to increase recycling.”

¹⁴ *Wash. Utils. & Transp. Comm'n v. Waste Management of Washington, Inc.*, Dockets TG-101220, TG-101221, TG-101222 (consolidated).

IV. ARGUMENT

15 According to the Companies, RCW 81.77.185 provides to solid waste collection companies “the ‘carrot’ of prospect of retention of some of the revenue share as reward for executing and implementing the innovative plans the legislation envisioned,” as a “performance benefit/premium.”¹⁵ The Companies argue that the Commission lacks authority to require solid waste companies to carry over any unspent revenues into the next plan period because the statute entitles the Companies to a reward for their performance in the prior plan period. The Companies and WRRRA argue that the content of a company’s recycling plan and the amount of any reward is a matter to be worked out between solid waste companies and counties, and is none of the Commission’s business.¹⁶

16 As described below, RCW 81.77.185 cannot be interpreted as the Companies and WRRRA propose. The Commission properly required the Companies to carry over any unspent revenues into the next plan period. The Companies’ petitions for reconsideration should be denied.

A. The Language of RCW 81.77.185 Does Not Support the Companies’ Interpretation.

17 Statutory interpretation begins with the language of the statute.¹⁷ Here, the statutory language does not support the Companies’ position. RCW 81.77.185 provides:

- (1) The commission shall allow solid waste collection companies

¹⁵ Docket TG-101542, [Petition for Reconsideration of Portion of Order No. 1 Requiring Revenues not Spent During Prior Plan Period and Current Plan Period be Carried Forward to Following Plan Period](#) ¶¶ 6, 20, 23; Docket TG-101545, [Petition for Reconsideration of Portion of Order No. 1 Requiring Revenues not Spent During Prior Plan Period and Current Plan Period be Carried Forward to Following Plan Period](#) ¶¶ 6, 20, 23; Docket TG-101548, [Petition for Reconsideration of Portion of Order No. 1 Requiring Revenues not Spent During Prior Plan Period and Current Plan Period be Carried Forward to Following Plan Period](#) ¶¶ 6, 20, 23.

¹⁶ Docket TG-101542, [Petition for Reconsideration](#) ¶ 16; Docket TG-101545, [Petition for Reconsideration](#) ¶ 16; Docket TG-101548, [Petition for Reconsideration](#) ¶ 16; Docket TG-101545, [Statement of Interested Party Washington Refuse and Recycling Association](#) at 2.

¹⁷ *E.g., TracFone Wireless, Inc. v. Dep’t of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810, 814 (2010).

collecting recyclable materials to retain up to fifty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan *and that* demonstrates how the revenues *will be used* to increase recycling. The remaining revenue shall be passed to residential customers.

(2) By December 2, 2005, the commission shall provide a report to the legislature that evaluates:

(a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and

(b) The effect of revenue sharing on costs to customers.

(Emphasis added.)

18 RCW 81.77.185(1) requires two showings from companies. To be eligible for revenue sharing, the company must submit to the Commission a plan (1) that is certified by the local government *and* (2) that demonstrates how the revenues will be used to increase recycling. These are independent requirements, and both must be met.¹⁸

19 The Companies' interpretation would replace "and" with "or" in the statute. According to the Companies and WRRRA, if a company files a plan that is certified by a local government, that is enough, and no other showing is needed. That is not what the statute says, however. The Companies' submission must *also* demonstrate "how the revenues will be used to increase recycling."¹⁹

20 According to the Companies and WRRRA, local governments, not the Commission, have the final say on whether a company has sufficiently demonstrated how the revenues will be used to increase recycling. That interpretation ignores ordinary rules of grammar.²⁰

¹⁸ See *Ahten v. Barnes*, 158 Wn. App. 343, 352 n.5, 242 P.3d 35, 40 n.5 (2010) ("'And' conveys a conjunctive meaning, otherwise the legislature would have used 'or' if it meant to convey a disjunctive meaning. . . . We decline to read 'or' into this provision"); *Watson v. Dep't of the Navy*, 262 F.3d 1292, 1299 (Fed. Cir. 2001) ("The inclusion of the conjunctive 'and' in [a regulation] clearly demonstrates that all three criteria must be demonstrated").

¹⁹ [RCW 81.77.185\(1\)](#).

²⁰ Washington courts "employ traditional rules of grammar in discerning the plain language of a statute."

The statute requires companies to submit to the Commission “a plan that is certified by the appropriate local government authority as being consistent with the local government solid waste plan *and that* demonstrates how the revenues will be used to increase recycling.”²¹ The phrase “and that” refers back to the plan, not to the local government certification.²² The plan must demonstrate *to the Commission* “how the revenues will be used to increase recycling.”²³ The Commission has authority to determine whether a company has made that showing. The statute does not require the Commission to accept a county’s determination that a company is entitled to retain unspent revenues from the sale of recyclable materials during the prior year.

21 The Companies suggest it is intuitively obvious that recycling will increase if they can keep unspent revenue sharing money as a reward for past performance because that will give them an incentive to work harder.²⁴ The statute, however, says the Companies must demonstrate “how the revenues will *be used to* increase recycling,” not “how the revenues will increase recycling.” Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.²⁵ The Companies’ interpretation would impermissibly eliminate “be used to” from the statute.

22 The statute says the Companies must demonstrate “how the revenues *will be used to* increase recycling.” The plain meaning of “will be used” suggests future action, not past

State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487, 491 (2010).

²¹ [RCW 81.77.185\(1\)](#) (emphasis added).

²² As used here, “that” is a relative pronoun. *The Chicago Manual of Style* § 5.37 (16th ed. 2010). “Usually a relative pronoun’s antecedent is a noun or pronoun in the independent clause on which the relative clause depends.” *Id.* § 5.57.

²³ [RCW 81.77.185\(1\)](#).

²⁴ See Docket TG-101542, [Petition for Reconsideration](#) ¶ 20; Docket TG-101545, [Petition for Reconsideration](#) ¶ 20; Docket TG-101548, [Petition for Reconsideration](#) ¶ 20.

²⁵ *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256, 258 (2010).

performance. The language suggests that the Legislature expected companies to provide details about how they will spend retained revenue to increase recycling prospectively. The Companies' interpretation would rewrite RCW 81.77.185 to require the Commission to "allow solid waste collection companies collecting recyclable materials to retain as a reward up to fifty percent of the revenue paid to the companies for the material if the companies submit a plan . . . that demonstrates ((~~how the revenues will be used to~~)) increased recycling."²⁶ Under the Companies' interpretation, they would not have to use any of their share of the revenues on activities designed to increase recycling, so long as recycling increases. That is not what the statute says. Courts may not rewrite statutes by adding or subtracting words, and neither may the Commission.²⁷

23 According to the Companies and WRRRA, RCW 81.77.185 embodies "the concept of incentivizing haulers to enthusiastically embrace optimization of solid waste streams and recycling systems," and so obviously they are entitled to a reward.²⁸ The statutory language does not support that view. None of the words "reward," "performance benefit," or "premium" appears in the statute. The word "incentive" appears only in the provision directing the Commission to evaluate the "effectiveness of revenue sharing as an incentive to increase recycling *in the state*."²⁹ It does not support the Companies' view that the Legislature intended an incentive for individual companies to earn a retroactive reward.

²⁶ See Docket TG-101542, [Petition for Reconsideration](#) ¶¶ 22, 23; Docket TG-101545, [Petition for Reconsideration](#) ¶¶ 22, 23; Docket TG-101548, [Petition for Reconsideration](#) ¶¶ 22, 23.

²⁷ *G-P Gypsum*, 169 Wn.2d at 309, 237 P.3d at 258 ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous"); *State v. Christensen*, 153 Wn.2d 186, 194, 102 P.3d 789, 793 (2004) ("court must not add words where the legislature has chosen not to").

²⁸ Docket TG-101542, [Petition for Reconsideration](#) ¶ 16; Docket TG-101545, [Petition for Reconsideration](#) ¶ 16; Docket TG-101548, [Petition for Reconsideration](#) ¶ 16; see Docket TG-101545, [Statement of Interested Party Washington Refuse and Recycling Association](#) at 2.

²⁹ [RCW 81.77.185](#)(2)(a) (emphasis added).

24 The Commission’s orders requiring the Companies to carry over any unspent revenues into the next reporting period are consistent with the language of RCW 81.77.185. The Companies’ proposed revision is not.

B. The Legislative History Does Not Support the Companies’ Interpretation.

25 The legislative history of RCW 81.77.185 supports Commission Staff’s reading. It shows that the Legislature considered, but did not adopt, the Companies’ position.³⁰

1. Legislative History of the Enactment of RCW 81.77.185 in 2002

a. The Recycling Assessment Panel Report

26 In 1989, the Washington Legislature enacted the Waste Not Washington Act.³¹ It established a policy framework for waste reduction, reuse, and recycling, and declared a state goal of achieving a fifty percent recycling rate by 1995.³² That goal was not met, and the recycling rate dropped after reaching 39 percent in 1996.

27 In 1999, the Washington Department of Ecology convened a Recycling Assessment Panel to evaluate causes for the recycling rate decline and to recommend responses. The panel’s report, which was published in February 2000, included recommendations for legislation designed to increase commercial recycling, increase the efficiency of residential recycling, increase organic material recycling, address land-clearing waste, and raise public awareness.³³ As the Companies point out in their Petitions for Reconsideration, the

³⁰ Washington courts sometimes consider legislative history when interpreting statutes. *Chadwick Farms Owners Ass’n v. FHC, LLC*, 116 Wn.2d 178, 195-96, 207 P.3d 1251, 1260 (2009).

³¹ 1989 Wash. Laws ch. 431.

³² 1989 Wash. Laws ch. 431, § 1(9).

³³ Washington Department of Ecology, *Revitalizing Recycling in Washington: Recommendations of the Recycling Assessment Panel* (Feb. 2000) (Ecology Publication No. 00-07-009) (hereinafter *Recycling Assessment Panel Report*) (available at www.ecy.wa.gov/pubs/0007009.pdf). Excerpts from the *Recycling Assessment Panel Report*, as well as other legislative history materials, are provided with the *Commission Staff Legislative History of RCW 81.77.185 (Excerpts)* filed herewith (hereinafter *Leg. Hist. Excerpts*).

residential recycling section recommended legislation to allow revenue sharing.³⁴

28 Using selective quotations, the Companies say the *Recycling Assessment Panel Report* supports their interpretation of RCW 81.77.185. Other language in the report supports Commission Staff's interpretation, however:

In order to participate in the [revenue sharing] program, haulers will be required to submit a plan to the Utilities and Transportation Commission and local government to demonstrate *how they will use the revenues* to increase recycling. An annual report will also be submitted by participating companies describing the effectiveness of their recycling efforts.³⁵

29 The *Recycling Assessment Panel Report* included a letter from UTC Staff as an appendix, with the following comment on the revenue sharing recommendation:

To ensure that the incentive actually increases recycling and is not simply additional profit, the report recommends that participating haulers submit a plan for increasing recycling and annually evaluate the results.³⁶

30 The Legislature was aware of the *Recycling Assessment Panel Report* when it enacted RCW 81.77.185.³⁷ The report does not end the inquiry on the questions raised in the Companies' Petitions for Reconsideration, however.

b. The 2000 Legislative Session: House Bill 2939 and Senate Bill 6715

31 The legislation that eventually became RCW 81.77.185 was first introduced in 2000, as a response to the *Recycling Assessment Panel Report*. Companion bills were introduced in the House and Senate. As originally introduced, both contained language similar to the

³⁴ *Recycling Assessment Panel Report* at 12 & Appendix. See Docket TG-101542, [Petition for Reconsideration](#) ¶¶ 11, 17, 21, 24; Docket TG-101545, [Petition for Reconsideration](#) ¶¶ 11, 17, 21, 24; Docket TG-101548, [Petition for Reconsideration](#) ¶¶ 11, 17, 21, 24.

³⁵ *Recycling Assessment Panel Report* at 12 (emphasis added).

³⁶ *Id.*, Appendix p. 1

³⁷ See Final Bill Rpt., SHB 2308 (57th Leg.), at 1 (*Leg. Hist. Excerpts*, Page 148).

language that the Legislature ultimately enacted in 2002:³⁸

House Bill 2939, 56 th Leg., § 1 (as introduced)	Senate Bill 6715, 56 th Leg., § 4 (as introduced)
<p>(1) The commission shall allow solid waste collection companies collecting recyclable materials to retain up to thirty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining seventy percent of the revenue shall be passed to residential customers served throughout the state.</p> <p>(2) By December 2, 2003, the commission shall provide a report to the legislature that evaluates:</p> <p>(a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and</p> <p>(b) The effect of revenue sharing on costs to customers.</p>	<p>(1) The commission shall allow a solid waste collection company collecting recyclable materials from residential customers to retain up to thirty percent of the revenue paid to the company for the material if the company submits a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining seventy percent of the revenue shall be passed to residential customers served by the company.</p> <p>(2) By December 2, 2003, the commission shall provide a report to the legislature that evaluates:</p> <p>(a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and</p> <p>(b) The effect of revenue sharing on costs to customers.</p>

32

Before finally agreeing on the language that became RCW 81.77.185, however, the Legislature considered several alternative versions.³⁹ Some of them would have allowed solid waste collections companies to be eligible for financial rewards for past

³⁸ The text of House Bill 2939 (56th Legislature), amendments, and legislative committee reports, are available on the Washington State Legislature web site at <http://dlr.leg.wa.gov/billsummary/default.aspx?year=1999&bill=2939>. The text of Senate Bill 6715 (56th Legislature), amendments, and legislative committee reports, are available at <http://dlr.leg.wa.gov/billsummary/default.aspx?year=1999&bill=6715>. Legislative history materials cited herein are provided in the *Commission Staff Legislative History of RCW 81.77.185 (Excerpts)*.

³⁹ Courts may examine sequential bill drafts over multiple legislative sessions in determining what the Legislature intended in the version that it ultimately enacted. *Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 470, 139 P.3d 1078, 1089 (2006) (“court may consider sequential drafts of a bill in order to help determine the legislature’s intent”); *Buchanan v. Simplot Feeders, Ltd.*, 134 Wn.2d 673, 688, 952 P.2d 610, 617 (1998) (using legislative history of failed 1991 legislation in determining intent of identical 1992 legislation that passed); *In re Marriage of Kovacs*, 121 Wn.2d 795, 804-09, 854 P.2d 629, 634-37 (1993) (tracing history of the Parenting Act over several years of proposed legislation).

performance—the model the Companies now say the Legislature enacted. None of those bills passed, however.

i. House Bill 2939

33 The first alternative model arrived in a House committee amendment to HB 2939:

Substitute House Bill 2939, 56th Leg., § 1(1)⁴⁰
(House Committee amendment to original bill shown in bill draft style)

~~The commission shall allow solid waste collection companies collecting recyclable materials to retain ((up to)) thirty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is ((certified by the appropriate local government authority as being)) consistent with the local government solid waste plan in the jurisdiction served by the company and that demonstrates how ((the revenues will be used to increase)) recycling will be increased. The remaining seventy percent of the revenue shall be passed to residential customers served ((throughout the state)) by the collection company.~~

The report of the House Committee on Agriculture and Ecology explained that, under the amendment, “Solid waste collection companies are not required to demonstrate how revenues will be used to increase recycling, but simply to demonstrate how recycling will increase.”⁴¹

34 Here, the Companies ask the Commission to assume that the Legislature enacted the model in Substitute House Bill 2939. They argue that recycling will increase if companies are allowed to retain some revenue for themselves, without being required to demonstrate how they will use the money. According to the Companies, that is because they will have an incentive to work harder to collect recyclable materials if they can keep some of the money from sales of the materials as a reward for past performance.

⁴⁰ *Leg. Hist. Excerpts*, Page 25.

⁴¹ House Bill Rpt., HB 2939 (56th Leg.), at 3 (available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bill%20Reports/House/2939.HBR.pdf>) (*Leg. Hist. Excerpts*, Page 38). Courts may consider bill reports when interpreting legislation. See *State v. Hirschfelder*, 170 Wn.2d 536, 546-47, 242 P.3d 876, 881 (2010).

The Legislature did not enact Substitute House Bill 2939, however. When the bill got to the Senate, the Senate reworked it. Under the Senate version of House Bill 2939, companies would be entitled to keep twenty percent of the proceeds from the sale of recyclable materials, but only to the extent recycling exceeded 1999 levels. Companies would not be required to demonstrate how they would use the money:

(1) As an incentive to increase recycling and reduce landfill disposal, the commission shall allow a solid waste collection company collecting recyclable materials from residential customers to retain a portion of the revenue derived from the sale of increased recyclable materials tonnage. In order to qualify to participate in a recycling revenue sharing program each hauler must submit to the commission a plan certified by the appropriate local government authority as being consistent with the local government solid waste management plan and specifying the 1999 per capita recycling base as determined by the local government. Provided, that customers shall receive one hundred percent of the revenue derived from the sale of recyclable materials, up to the established per capita base. Customers shall receive eighty percent of the revenue derived from the sale of recyclable materials exceeding the established per capita base.

(2) By December 2, 2004, the commission shall provide a report to the legislature that evaluates:

- (a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and
- (b) The effect of revenue sharing on costs to customers.

(3) This section expires December 31, 2005.⁴²

The House did not concur in the Senate Amendment to Substitute House Bill 2939, and asked the Senate to recede therefrom.⁴³ The Senate did so, but then amended the bill to delete the revenue sharing section entirely.⁴⁴ The Legislature took no further action on House Bill 2939.

⁴² SHB 2939, as amended by Senate, 56th Leg., § 6, *reprinted in* Wash. S. Journal, 56th Leg., 2d Sess. 812 (2000) *and* Wash. House Journal, 56th Leg., 2d Sess. 1344-45 (2000) (*Leg Hist. Excerpts*, Pages 41, 48-49). The bill is also available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Amendments/Senate/2939-S%20AMS%20EQWR%20S5017.1.pdf>.

⁴³ Wash. House Journal, 56th Leg., 2d Sess. 1349 (2000) (*Leg Hist. Excerpts*, Page 54).

⁴⁴ Wash. S. Journal, 56th Leg., 2d Sess. 1040-43 (2000) (*Leg. Hist. Excerpts*, Pages 56-59).

ii. Senate Bill 6715

37 The history of Senate Bill 6715 in the 2000 Legislature reflects similar debate about the model for revenue sharing. When the bill got to the House, that body made substantial amendments, under which companies would receive rewards for setting and meeting performance goals that caused recycling to increase beyond the prior year's levels:⁴⁵

- (1) In order to provide an incentive for recycling, the commission shall allow a solid waste collection company collecting recyclable materials from residential customers to retain thirty percent of the revenue paid to the companies for the material. The remaining seventy percent of the revenue shall be passed to residential customers served by the company. Failure to provide documentation of increased recycling will cause the entire revenue stream to be passed to residential customers served by the company. The following documents are required:
 - (a) A plan submitted to the commission that is consistent with the comprehensive solid waste plan and showing how the company plans to increase recycling; and
 - (b) A yearly report showing that the plan has been successful at increasing recycling, as demonstrated by actual recycling tonnage increases, or by decreases in landfill disposal, or by other methods as agreed to by the local jurisdiction.
- (2) By December 2, 2003, the commission shall provide a report to the legislature that evaluates:
 - (a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and
 - (b) The effect of revenue sharing on costs to customers.
- (3) This section expires December 31, 2006.

The House Bill Report characterized the section as providing “a financial incentive to solid waste collection companies” with “accountability measures . . . to ensure that the additional revenues received by the collection companies are being used to increase recycling.”⁴⁶

38 The Companies seem to be arguing that this, or something like it, is the model the

⁴⁵ ESSB 6715, as amended by House Committee, 56th Leg., § 2 (available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Amendments/House/6715-S.E%20AMH%20AGEC%20H5024.2.pdf>) (*Leg. Hist. Excerpts*, Page 77).

⁴⁶ House Bill Rpt., ESSB 6715 (56th Leg.) at 3 (available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bill%20Reports/House/6715-S.HBR.pdf>) (*Leg. Hist. Excerpts*, Page 92).

Legislature enacted. The Legislature did not enact Engrossed Substitute Senate Bill 6715, however. After the House returned the bill to the Senate with the House amendments, the Legislature took no further action on the bill before adjourning.

c. The 2001 Legislative Session: House Bill 1907 and Senate Bill 5716

39 Companion bills again appeared in the first session of the 57th Legislature. Neither was based on a performance benefit model.

40 As introduced, House Bill 1907 lacked a revenue sharing section. A House committee inserted one, using language originally introduced in the 2000 legislative session as House Bill 2939 § 1 (56th Leg.).⁴⁷ House Bill 1907 never got to the floor of the House for a vote.

41 Senate Bill 5716 proposed an entirely new model for revenue sharing. Section 6 would have authorized experiments to test methods for increasing residential recycling. Companies choosing to participate would bear all financial risk, and would keep all revenue earned in the experiment:⁴⁸

(1) The legislature finds that it is in the public interest for solid waste collection companies, local governments, and the commission to help increase residential recycling and decrease landfill disposal of recyclable materials by working cooperatively on experimental proposals to identify appropriate materials, services, and rate structures that provide incentives for solid waste collection companies and ratepayers to increase residential recycling.

(2) Any solid waste collection company may voluntarily propose to the commission an experimental plan to increase residential recycling. The commission shall approve the plan if the commission finds that: (a) The company has demonstrated the plan is consistent with local solid waste

⁴⁷ SHB 1907, 57th Leg., § 9 (*Leg. Hist. Excerpts*, Pages 108-109). The only difference between Section 9 of Substitute House Bill 1907 (57th Leg.) and Section 1 of House Bill 2939 (56th Leg.) was the date for the Commission's report to the Legislature.

⁴⁸ SB 5716, 57th Leg., § 6 (*Leg. Hist. Excerpts*, Pages 117-118).

management plans; (b) the plan enhances, supplements, or concerns materials not included in the 2000 household recycling base as determined by the commission; (c) the company has demonstrated that the company, not the ratepayer, bears the cost of implementing the plan during the experimental period; and (d) the plan provides for gathering of necessary data and cooperative effort with local governments and the commission to evaluate results. All revenue earned by the company from implementation of the experimental plan shall be retained by the company.

(3) Working cooperatively with solid waste collection companies and local governments, the commission shall evaluate the results of experimental plans described in subsection (2) of this section and shall prepare and submit to the legislature by December 31, 2004, a report on the effectiveness of the plans for increasing residential recycling and decreasing landfill disposal of recyclable materials and identify those plans that could be implemented on a long-term basis.

(4) This section expires December 31, 2005.

Senate Bill 5716 never got to the floor of the Senate for a vote.

42 Substitute House Bill 1907 and Substitute Senate Bill 5716 were reintroduced in the second session 57th Legislature, but saw no further action.

d. The 2002 Legislative Session: House Bill 2308 and Senate Bill 6480

43 New companion bills were introduced in the second session of the 57th Legislature. Both contained the revenue-sharing language that the Legislature ultimately enacted.⁴⁹ The Legislature passed Substitute House Bill 2308, and § 6 was codified as RCW 81.77.185.⁵⁰

44 As enacted, RCW 81.77.185(1) requires companies to demonstrate “how the revenues will be used to increase recycling,” which suggests that the Legislature expected companies’ plans to contain specifics about how the companies will spend the money

⁴⁹ HB 2308, 57th Leg., § 6 (available at <http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bills/House%20Bills/2308.pdf>) (*Leg. Hist. Excerpts*, Page 144); SB 6480, 57th Leg., § 6 (available at <http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bills/Senate%20Bills/6480.pdf>) (*Leg. Hist. Excerpts*, Page 167).

⁵⁰ 2002 Wash. Laws ch. 299, § 6 (available at <http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bills/Session%20Law%202002/2308-S.SL.pdf>) (*Leg. Hist. Excerpts*, Page 155), codified at RCW 81.77.185.

prospectively to increase recycling. The Senate Bill Reports on both of the 2002 bills reinforce that interpretation:⁵¹

Solid waste collection companies are allowed to retain up to 30 percent of the revenue they receive for recyclable materials, if they submit a plan that is consistent with local solid waste management plans and that shows *how they will use that revenue* to increase recycling. The remaining revenue is passed to residential customers. The Utilities and Transportation Commission must evaluate the effectiveness of this incentive and its effect on cost to customers and report to the Legislature in 2005.

(Emphasis added.)

2. Legislative History of the Amendment of RCW 81.77.185 in 2010

a. The UTC Revenue Sharing Report and the Climate Change Report

45 As enacted, RCW 81.77.185(2) directed the Commission to provide a report to the Legislature that evaluates the effectiveness of revenue sharing as an incentive to increase recycling in the state, and the effect of revenue sharing on costs to customers. The Commission published the report in February 2006.⁵²

46 The Commission examined data from ten solid waste collection companies in King, Pierce, and Snohomish Counties, including the two Pierce County companies involved in these dockets. Among the Commission's conclusions were these:⁵³

How companies spent the retained revenue. Companies spent all of the retained revenue for recycling-related purposes, such as new containers,

⁵¹ Senate Bill Rpt., SHB 2308 (57th Leg.) at 2 (available at <http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bill%20Reports/Senate/2308-S.SBR.pdf>) (*Leg. Hist. Excerpts*, Page 147); Senate Bill Rpt., SB 6480 (57th Leg.) at 2 (available at <http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bill%20Reports/Senate/6480.SBR.pdf>) (*Leg. Hist. Excerpts*, Page 170). Courts will consider bill reports that support the plain reading of a statute. *Chadwick Farms*, 166 Wn.2d at 195-96, 207 P.3d at 1260.

⁵² Washington Utilities and Transportation Commission, *Report on Revenue Sharing in the Regulated Solid Waste Industry*, Submitted to the Washington State Legislature, February 21, 2006 (hereinafter *Revenue Sharing Report*) (available at [http://www.wutc.wa.gov/webdocs.nsf/b8da29aede8fdd67882571430005a9c1/7dc15c16bde058068825711e00616102/\\$FILE/UTC%20Recycling%20revenue%20sharing%20report%20-%20final%202-21-06.pdf](http://www.wutc.wa.gov/webdocs.nsf/b8da29aede8fdd67882571430005a9c1/7dc15c16bde058068825711e00616102/$FILE/UTC%20Recycling%20revenue%20sharing%20report%20-%20final%202-21-06.pdf)).

⁵³ *Revenue Sharing Report* at 3.

collection equipment and educational materials. Much of the retained revenue was spent on activities or items that will increase the company's equity or profit in future years.⁵⁴

Effectiveness of revenue sharing as a tool to increase recycling. We cannot draw meaningful conclusions about whether revenue sharing was effective in increasing recycling, in large part because there are too many uncontrolled variables.

47 The *Revenue Sharing Report* does not suggest that anyone, as of February 2006, was implementing RCW 81.77.185 so as to provide retroactive performance rewards for participating companies.

48 In 2008, the Legislature enacted legislation to address greenhouse gas emissions. Among other things, it directed the Departments of Ecology and Commerce, by December 1, 2008, to submit recommendations for responding to climate change.⁵⁵ The agencies convened the Washington Climate Action Team and several work groups, and produced a 597-page report in November 2008.⁵⁶

49 One of the work groups reporting to the Climate Action Team was the Beyond Waste Implementation Work Group, which proposed a new recycling goal of 80% of the overall solid waste stream by 2020. Among other things, the work group recommended financial incentives to the private sector to encourage investment in infrastructure.⁵⁷ Despite the apparent lack of evidence, as described in the *Revenue Sharing Report*, that revenue sharing is effective as a tool to increase recycling, the work group recommended:

⁵⁴ The summary of how companies spent retained revenue did not include the Companies involved in these consolidated dockets. With respect to the Pierce County companies, the Commission explained that their programs “are relatively new, [thus] there are no data available at this time.” *Revenue Sharing Report* at 15. Mason County Garbage did not initiate a revenue-sharing program until 2009.

⁵⁵ 2008 Wash. Laws ch. 14, § 4.

⁵⁶ Climate Action Team, *Leading the Way: Implementing Practical Solutions to the Climate Change Challenge* (November 2008) (hereinafter *Climate Change Report*) (available at http://www.ecy.wa.gov/climatechange/2008CATdocs/lw_app_v2.pdf).

⁵⁷ *Id.* at 34, Appendix 5 p. 4.

Financing for the Private Sector

Revenue Sharing Between Haulers and Generators – Current law allows solid waste collection companies to retain up to 30 percent of the revenue generated from the sales of recycled materials as negotiated between the company and the local planning jurisdiction. 70 percent is returned to generators through reduction in their garbage bills. To provide a stronger incentive the [sic] solid waste collection companies, this revenue sharing lid should be increased to 50 percent. The amount of the revenue sharing should continue to be negotiated between solid waste jurisdiction and the collection service provider as a means to incentivize the collection service provider to improve recycling systems, improve the quality of recycled materials for market and increase market development efforts.⁵⁸

50 The above-quoted language from the 2008 *Climate Change Report* was not before the Legislature in 2002, nor was it produced by the Legislature. It is not evidence of what the Legislature intended in 2002.

b. The 2010 Legislation

51 House Bill 2539 was introduced in the second session of the 61st Legislature, in part as a result of the Climate Action Team recommendations.⁵⁹ One section in the bill would amend RCW 81.77.185 to increase the allowable revenue sharing percentage from thirty percent to fifty percent.⁶⁰ The Legislature enacted the amendment, but made no other changes to RCW 81.77.185.⁶¹

52 The change from “thirty” to “fifty” is the only change the Legislature made in 2010. There is no evidence that the Legislature intended in 2010 to change the meaning of any of the other words it enacted in 2002. The meaning the Legislature intended those words to

⁵⁸ *Id.* at Appendix 5 p. 7; *see id.* p. 23 (draft amendments to RCW 81.77.185).

⁵⁹ *See* House Bill Rpt., E2SHB 2539 (61st Leg.) at 3 (available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bill%20Reports/House/2539-S2.E%20HBR%20PL%2010.pdf>) (*Leg. Hist. Excerpts*, Page 187).

⁶⁰ HB 2539, 61st Leg., § 5 (available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/House%20Bills/2539.pdf>) (*Leg. Hist. Excerpts*, Page 181).

⁶¹ 2010 Wash. Laws ch. 154, § 3 (available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202010/2539-S2.SL.pdf>) (*Leg. Hist. Excerpts*, Page 192).

have in 2002 applies to the same words in 2010. Courts will not assume that the Legislature intended to change the law by implication, and neither should the Commission.⁶²

3. Conclusion

53 As the above legislative history demonstrates, the Legislature considered several models for revenue sharing in 2000 and 2001. Some of them would not have required companies to show how they would spend the money. At least one version would have made companies eligible to receive rewards for setting and meeting performance goals. The legislative history shows that no agreement was reached on those models.

54 Ultimately, the Legislature returned to revenue-sharing language very much like what was originally proposed in the first versions of House Bill 2939 (56th Leg.) and Senate Bill 6715 (56th Leg.). Members of the Legislature are presumed to be aware of prior drafts of bills at the time of an enactment.⁶³ It follows that the Legislature did not intend to enact any of the alternative models that were before it during the 2000 and 2001 sessions.⁶⁴

55 The language of RCW 81.77.185 is the best evidence of the Legislature's intent.⁶⁵ As discussed above, the language does not support the Companies' interpretation. It does not entitle solid waste collection companies to retain unspent revenues from the sale of recyclable materials during the prior year as a reward for past performance.

C. The Companies' Interpretation is not Consistent with Industry Implementation of RCW 81.77.185.

56 Other solid waste collection companies have applied RCW 81.77.185 in a manner consistent with Commission Staff's interpretation. For example, two companies recently

⁶² *Philippides v. Bernard*, 151 Wn.2d 376, 385, 88 P.3d 939, 943 (2004).

⁶³ *Bellevue Fire Fighters Local 1604 v. City of Bellevue*, 100 Wn.2d 748, 753, 675 P.2d 592, 595-96 (1984).

⁶⁴ *See id.*

⁶⁵ *See TracFone Wireless*, 170 Wn.2d at 281, 242 P.3d at 814; *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795, 798 (2004).

submitted revenue sharing plans that describe in detail how they will use revenues received during 2011 to fund an array of specific initiatives. These include data collection, replacement of customer carts, public outreach, and capital investments, all with dates and budgets attached.⁶⁶ The Commission approved the companies' tariffs with a requirement, like the one at issue in these dockets, that any unspent revenues be carried over into the next plan period.⁶⁷ Nobody has challenged that requirement in those dockets.

57 Moreover, as described above, the Commission concluded in its February 2006 *Revenue Sharing Report* that the companies who had been participating in revenue-sharing programs had "spent all of the retained revenue for recycling-related purposes, such as new containers, collection equipment and educational materials."⁶⁸ UTC Staff's interpretation of RCW 81.77.185 is consistent with that historical practice. The Companies' is not.

V. CONCLUSION

58 Under the plain language of RCW 81.77.185, solid waste collection companies are not entitled to keep unspent revenues from the sale of recyclable materials as a reward for past performance. The legislative history is consistent with the plain language. The plain language of RCW 81.77.185 does not require the Commission to accept a county's determination that a solid waste collection company is entitled to retain unspent revenues from the sale of recyclable materials during the prior year. The Commission has

⁶⁶ *In re Rabanco LTD, dba Allied Waste Services of Kent, Rabanco Companies and Sea-Tac Disposal, G-12, Docket TG-101857, [Allied Waste-Rabanco LTD/SeaTac Disposal Commodity Revenue Sharing Enhancement Plan for King County, January 1, 2011 – December 31, 2011](#); In re Rabanco LTD, dba Eastside Disposal, Container Hauling, Rabanco Connections and Rabanco Companies, G-12, Docket TG-101858, [Allied Waste Services of Bellevue, Commodity Revenue Sharing Enhancement Plan for King County Calendar Year 2011](#).*

⁶⁷ *In re Rabanco LTD, dba Allied Waste Services of Kent, Rabanco Companies and Sea-Tac Disposal, G-12, Docket TG-101857, [Order 01](#) ¶ 19 (Dec. 30, 2010); In re Rabanco LTD, dba Eastside Disposal, Container Hauling, Rabanco Connections and Rabanco Companies, G-12, Docket TG-101858, [Order 01](#) ¶ 19 (Dec. 30, 2010).*

⁶⁸ *Revenue Sharing Report* at 3.

independent authority to determine whether a company's plan "demonstrates how the revenues will be used to increase recycling."⁶⁹


59 The Commission properly ordered the Companies to carry forward revenues not spent during the previous plan period into the next plan period. The Commission should deny the Companies' *Petitions for Reconsideration*.

60 The Commission Staff Motion for Summary Determination should be granted.

DATED this 9th day of February 2011.

Respectfully submitted,

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⁶⁹ RCW 81.77.185(1).