BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET TG-101542 *(Consolidated)*
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	)	DOCKET TG-101545 *(Consolidated)*
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	)	
. . . . .	)	
	)	DOCKET TG-101548 *(Consolidated)*
In the Matter of the Petition of	)	
	)	MOTION FOR SUMMARY
AMERICAN DISPOSAL COMPANY, INC., G-87,	)	DETERMINATION BY PETITIONERS MASON COUNTY GARBAGE, MURREY'S DISPOSAL COMPANY, INC. AND AMERICAN DISPOSAL COMPANY, INC. IN SUPPORT OF REVENUE RETENTION AUTHORIZATION
Requesting Authority to Retain Fifty Percent of the Revenue Received From the Sale of Recyclable Materials Collected in Residential Recycling Service	)	
. . . . .		

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I. PARTIES

1 Petitioners' name and address are as follows:

Mason County Garbage Co., Inc. d/b/a Mason County Garbage
81 E. Wilburs Way
P O Box 787
Shelton, WA 98584

Murrey's Disposal Company, Inc.
PO Box 399
Puyallup, WA 98371

American Disposal Company, Inc.
PO Box 399
Puyallup, WA 98371

2 Petitioners' attorney's name and address are as follows:

David W. Wiley
Williams Kastner
601 Union Street, Suite 4100
Seattle, WA 98101

II. STATUTES AND REGULATIONS AT ISSUE IN PETITION/MOTION

3 RCW 34.05.470, RCW 81.77.030(5), RCW 81.77.030(6), RCW 81.77.185, RCW 70.95.010, WAC 480-70-351, WAC 480-07-380.

III. INTRODUCTION/PROCEDURAL SYNOPSIS OF CASE

4 This Motion is filed by Mason County Garbage, Murrey's Disposal Company, Inc. and American Disposal Company, Inc. (hereinafter, "Petitioners, Murrey's") who are here now seeking a ruling by the Commission on summary determination that, upon reconsideration of Order No. 1 in these consolidated dockets, unspent revenues from the current or prior revenue share plan reporting period (*See*, RCW 81.77.185, analyzed below) be authorized for retention rather than the required freeze/carryover originally mandated by the Commission in its Order No. 1 served October 28, 2010. That Order followed the Open Meeting of the same day where the Commission, in approving the commodity credit adjustments and the revenue share plans submitted by the Petitioners,

on September 15, 2010, specifically provided in all three of its Orders at ordering paragraph No. 4 that . . .

> [r]evenues retained by [Mason County Garbage, Murrey's Disposal and American Disposal] not spent during the previous plan period are to be carried over to the following year, unless the Commission orders some other treatment.

5 The Petitioners, on November 8, 2010, filed separate Petitions for Reconsideration of the Commission's Orders which, at the regular Open Meeting on November 24, 2010, were ordered referred to the Administrative Law Division. On December 20, 2010, a prehearing conference was convened before Administrative Law Judge Gregory J. Kopta who, after noting the prehearing consolidation orders of the Commission on the three dockets, granted intervention status to the Washington Refuse and Recycling Association and Waste Management of Washington, Inc. and set the procedural schedule to which this initial motion is responsive.

IV. ISSUE PRESENTED

6 As generally framed above, the issue for resolution in this Motion is relatively straightforward: **Should Petitioners be precluded from retaining any unspent revenue share proceeds that evolve from a county-certified and Commission-approved recycling plan pursuant to RCW 81.77.185, such that any unspent revenues be "frozen," carried over or otherwise held in reserve and precluded from "accreting" to the bottom line or general operating accounts of the qualifying solid waste collection company?** In short, should the Commission grant Summary Determination here in reconsidering Order No. 1's freeze of excess revenue share revenues for the past or present year which mandated carryover into the next reporting

period, and thereby allow the three Petitioners to appropriately retain the remaining revenue share proceeds?[1]

V. STATUTORY LANGUAGE, LEGISLATIVE INTENT AND REVENUE SHARE IN CONTEXT

7 When interpreting any statute, a Washington court's "primary objective is to 'ascertain and give effect to the intent of the Legislature.'" *Koenig v. City of Des Moines*, 158 Wn.2d 173, 181, (2006) (quoting *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, (1999)). When determining legislative intent, courts begin with an examination of the statute's plain language, according it its ordinary meaning. *Id.* "[W]e may discern the plain meaning of nontechnical statutory terms from their dictionary definitions." *State v. Cooper*, 156 Wn.2d 475, 480, 128 P.3d 1234 (2006).

8 "If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself." *Cockle v. Dept. of Labor and Industries*, 142 Wn.2d 801, 807 (2001). "Plain language does not require construction." *Koenig* at 181. "If language in a statute is subject to only one interpretation, then the court's inquiry ends." *State v. Kintz*, 169 Wn.2d. 537, 548 (2010) (quoting *State v. J.P.*, 149 Wn.2d. 444, 450 (2003). Language is deemed unambiguous when it is not susceptible to two or more reasonable interpretations. *State v. Delgado*, 148 Wn.2d 723, 726-27 (2003).

9 The language of RCW 81.77.185(1)'s two sentences may well be clear and unambiguous on its face:

> . . . The commission shall allow solid waste collection companies collecting recyclable materials to retain up to fifty percent of the revenue paid in commission for the material if the company's submit a plan to the commission that is certified by the appropriate local government authority

[1] In the 2009-2010 reporting period, Mason County Garbage Company reported no excess remaining of its revenue share portion proceeds. (*See*, paragraph 7 of the Petition for Reconsideration). However, Mason County supported retention of the proceeds where excess were applicable as "performance measures." *Ibid.*, paragraph 7 of Petition for Reconsideration and Open Meeting Transcript of October 28, 2010). Petitioners also believe that it is fully consistent with their position in this proceeding that any "overspent" revenue share in a prior year be credited above the allowed revenue share percentage in the prospective test year reporting period which admittedly is not an issue previously addressed in any county-certified recycling plans to Petitioners' knowledge.

as being consistent with the local solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenues shall be passed to residential customers.

However, the convergence of significantly varying views between the staff as of 2010 and the affected solid waste collection companies on revenue share retention may suggest that legislative history would aid at least in placing some of the present dispute in context. While Petitioners believe that the legislature's intent is discernible from the plain text of the statute, courts may resort to principles of statutory construction, legislative history and relevant case law to assist in discerning legislative intent where legislative intent cannot be clearly ascertained. Because there is now disagreement about the application of the revenue share program at present, some review of the history of the legislation in implementing revenue share may be instructive in resolving the featured issue in this proceeding.

VI. HISTORY OF LEGISLATIVE ACTIONS IMPLEMENTING REVENUE SHARE PROGRAM

10 With the passage of landmark legislation in 1989, "The Waste Not Washington Act" (ESHB 1671), the state legislature established some impressive goals for solid waste reduction and recycling by setting a target for recycling of 50 percent of the state municipal solid waste stream by 1995. As the Recycling Assessment Panel established by the Department of Ecology at the direction of the State Senate Committee on Natural Resources, Energy & Water in the introduction to a report in February, 2000, noted,[2] recycling reached a high water mark of 39 percent in 1996 only to drop sharply the following year to 32.4 percent. The Recycling Assessment Panel was assembled in September, 1999 to evaluate the causes of this decline and the inability to achieve higher participation rates and outline processes and programs to increase recycling participation rates statewide.

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[2] WASH. DEP'T. OF ECOLOGY, REVITALIZING RECYCLING IN WASHINGTON (Publication No. 00-07-009) at 1 (2000).

11 The recycling revenue share program and RCW 81.77.185 are indisputably the results of that assessment of the causes of the diminution in recycling and the inability at the time to achieve and grow ambitious recycling participation rates. That study articulated the need for enhanced legislative focus to improve and incentivize recycling and, within two years of the formal findings of the Recycling Assessment Panel, legislation embodying that goal was enacted. The Panel's report serves as the most detailed known examination of the perceived causes of recycling participation stagnation in the late 1990's, what the experts on the panel advocated and what legislative steps were ultimately taken to ameliorate and "jump start" more widespread participation in and development of programs fostering recycling in Washington.

12 Specifically, the 2000 Recycling Assessment Panel Report produced a "policy paper" with recommendations/directives for the legislature to consider in furthering the goal of increased recycling participation and enhanced market development. In a key recommendation in its report, the Panel observed:

> [i]n the current system, there is no incentive for recyclers to increase the quantity or quality of materials collected, seek out the highest end use for any particular commodity, or to attempt to sell their material at the very highest market prices, since 100 percent of the revenue from the sale of the material is passed back to the customers. Creating a revenue-sharing program where recyclers are allowed to retain a certain portion of the revenue received from the sale of the recyclables would encourage recyclers to collect more, and to seek out the best and highest end uses for recyclables collected in curbside recycling collection programs in regulated areas of the state. [Emphasis added].
>
> Ecology Publication No. 00-007-009, at 12.

13 As the Panel Report later explained " . . . the reason for this legislative directive is simple: the concept of providing an incentive to the private sector to recycle more through a revenue sharing plan will result in a benefit to all customers served in Utilities

and Transportation Commission-regulated areas. Yet, this incentive system does not fit into the Utilities and Transportation Commission's existing model."[3]

14 In the 2000 legislative session, a bill was introduced responsive to the Panel's recommendation, HB 2939 and SHB 2939. The House Bill Analysis of February 3, 2000 alluded to the material findings of the Recycling Assessment Panel noting " . . . [o]ne of the recommendations offered before the Panel involves allowing solid waste collection companies to retain a percentage of the revenue they receive from the sale of recyclable materials to encourage growth in recycling. At present companies are required by the Washington Utilities and Transportation Commission to return all of the revenue back to their customers."[4]

15 The SHB 2939 Senate Bill Report of February 25, 2000 appears to reflect the only articulated opposition to revenue share that was identified in legislative history materials in the 2000-2002 interval prior to adoption of RCW 81.77.185 in 2002. The Senate Bill Report there reflects opposition to revenue share, apparently in testimony from two Commission staff representatives: Gene Eckhardt and Teresa Osinski.[5] The bill report for the proposed legislation, while also noting some haulers concerns about the timing of process for adoption and implementation, referenced the WUTC staff opposition testimony that "without the safeguards of local government certification of how recycling will be increased with the 30 percent revenue retained, haulers will simply see additional profit. An audited recycling rate case [unidentified] showed the 30 percent revenue sharing would increase residential rates by $5.11 each year, with the 30 percent revenue share, the hauler's net income after taxes will increase from $45,000 to $118,000, the

[3] *Id.* at 12.
[4] H.R. Rep. HB 2939, 1st Sess., at 1 (Wash. 2000).
[5] S. Rep. SHB 2939, 1st Sess., at 3 (Wash. 2000).

return on investment will increase from 16 percent to 36 percent and return on equity will increase from 26 percent to 70 percentage."[6]

16 These observations echoed an earlier concurring "appendix" by Mr. Eckhardt, as one of the Recycling Assessment Panel members in 1999. Indeed, attached to the Recycling Assessment Panel Report, while endorsing the Panel's overall recommendations, Mr. Eckhardt qualified his endorsement of the report's recommendations by noting that the amount of revenue share dollars was "significant" and that " . . . [t]o 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 . . . Because of these requirements, I believe that risks to ratepayers are sufficiently limited to make the revenue sharing approach acceptable."[7]

17 Those modest reservations/qualifications of late 1999 clearly had accelerated by the time of the testimony by staff of the Commission opposing the first revenue share legislation in 2000. That legislation did not achieve passage in any form in 2000, nor in at least one additional proposal (SHB 1907) in the 2001 legislative session.

18 Interestingly, in 2001, the Commission on April 23, 2001, as a part of its then broad rulemaking revisions of WAC 480-70, adopted for the first time its own formal rule on programs to encourage recycling and compute recycling credits and charges, WAC 480-70-351, which provides:

> (1) Programs to encourage recycling. The commission encourages solid waste collection companies to develop programs intended to increase recycling. The commission will, among other things, consider whether a proposed program:
>
> (a) Provides an incentive to the party who controls the actions or behaviors that the program intends to change;

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[6] *Id.* at 3,4.

[7] Letter of Eugene K. Eckhardt to Cullen Stephenson, Program Manager, of December 28, 1999 attached as Appendix to Recycling Assessment Panel Report.

(b) Defines measurable outcomes reasonably attributable to the proposed program; and

(c) May have any unintended results or consequences.

(2) Recycling credits or charges. 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.

19 That rule provision, again, predated the adoption in 2002 of revenue share legislation. It is interesting to note that in WAC 480-70-351(1), the goal of increased recycling and the concept of incentivizing behavior is prominently featured as is the measurement of outcomes fostered by the program at least in terms of facts to be considered by the Commission in reviewing any recycling rate proposal.

20 WAC 480-70-351 may well have consciously anticipated the adoption of new legislation which, as indicated, finally occurred in 2002 with the passage of SHB 2308. SHB 2308's House Bill Report again expressly alluded to the Recycling Assessment Panel's recommendations and plans to increase recycling by allowing solid waste collection companies to retain "up to 30 percent" of the revenue paid to the companies for recyclable materials if the company submits a certified plan showing how the revenues will be used to increase recycling rates. Indeed, SHB 2308, in Section 6, added a new section, (codified as RCW 81.77.185), which expressly provided:

(1) The commission shall allow solid waste collection companies collecting recyclable materials to retain up to thirty percent of the revenue[8] 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.

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[8] Now changed to up to 50 percent by SSHB 2539 effective June 10, 2010. *See* SSHB 2539, 1st Sess. (Wash. 2010).

(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.

21 After the passage of SHB 2308, the Commission staff convened informal meetings of affected stakeholders prior to formal stakeholder sessions in October, 2002. In initially announcing the meetings on August 20, 2002, staff member Deb Reynolds provided an initial implementation plan to parties and a "Notice of Opportunity to Increase Recycling" overview which set forth some outlines of the anticipated program in the wake of the new legislation. In the Notice of Opportunity to Increase Recycling Overview were the following references:

Description of Opportunity

The solid waste collection companies in the state have the opportunity to see for themselves how they can increase participation and volume of recyclables **and be rewarded at the same time. The company's reward for trying to increase recycling is the opportunity for each company to keep part of the revenue from commodity sales.** [Emphasis added.]

Companies' Role

Work with Commission and local government to prepare a Company Recycling Program plan (CRP). File tariff pages with the Commission if necessary. Choose a program start date. Implement CRP.

Local Government Role

Work with company and Commission to understand CRP. Certify that the CRP complies with the local solid waste management plan. Certify that the CRP is for a "new program." **Establish incentive amount to be kept by company (between 1% and 30% of commodity revenue).** [Emphasis added.]

22 Petitioners would thus assert there was no "disconnect" or misunderstanding about incentives for revenue share retention from the outset of the legislation in 2002 with Commission staff.

VII. REVENUE SHARE PLANS PROCESSING/2010 LEGISLATIVE "FINE TUNING" OF REVENUE SHARE PROGRAM

23 From 2002 to approximately 2009, regulated solid waste collection companies revenue share plans and documentation submitted by Petitioners and others were annually reviewed and approved by the Commission after evaluation by the Commission staff as required by law, typically as "No Action" Consent Agenda Items (*See* ¶¶6 and 7 of the Declaration of Irmgard Wilcox).

24 Until 2009, these approvals apparently did not occur by formal Commission Order and indeed, as Exhibits "1" and "2" attached to the Declaration of Irmgard Wilcox reflect, were normally handled as "No Action" or "Consent Agenda" items by the Commission in adjustment of the commodity credits, with annual recycling program certification and revenue share approvals processed by separate, simultaneous correspondence and filing with the Commission. Indeed, for Petitioners, it was not until October, 2009 that commodity credit adjustments and revenue share plans were even subject to approvals by individual orders of the Commission (*See*, Orders No. 1, TG-091461, 091463).[9] Significantly, none of these recent Orders (which again, were only first entered in the latter half of 2009), *ever* addressed the issue on reconsideration, i.e. revenues retained by Petitioners, unspent during the previous or current plan period mandated to be carried over to the following year.[10] Thus, the Orders now on reconsideration and the subject of this Motion only first broached this mandate of unspent revenue carryover in late October, 2010. It is this directive that the Petitioners specifically assert overreaches

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[9] Mason County Garbage instituted its commodity credit revenue share program in summer, 2009 after passage of Mason County Ordinance 147-08 which implemented a mandatory pay residential curbside recycling program. The Commission approved Mason County Garbage's initial revenue share plan and deferred accounting credits in Order No. 2, TG-090899 (August, 2009).

[10] This requirement derived verbatim from a recommendation of WUTC staffer David Gomez set forth in the Open Meeting Agenda of October 28, 2010 (*See*, i.e. Open Meeting Agenda, October 28, 2010, Item B5 "American Disposal Company, Inc. G-87) at 3.

the legislative intent and statutory scope of recycling revenue share as expressly established by RCW 81.77.185.

25 Moreover, neither the WUTC Staff Report summarizing the implementation of SHB 2308 in May, 2003, nor the legislative history and statutory wording themselves appear to support the premise that unspent revenues "shared" by the participating solid waste collection company be frozen/held in limbo or otherwise carried over to the next reporting period. In that initial comprehensive report to the Legislature in 2003 by the WUTC staff, the staff even underscored the goal behind " . . . this model of revenue sharing is 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."[11] This concept comports with the Petitioners' read of the legislation and legislative intent of SHB 2308 and the subsequent established practice of obtaining county approval/certification of annual recycling plans and revenue share expenditures and the prevailing practice in submission of the requests for approval by the Commission up until at least the fall of 2009. While Petitioners are not aware of any issue arising from what had become a rather routine approval and evaluation process as witnessed by the "No Action Agenda" treatment of commodity credit adjustments and revenue share plan submission historically, there clearly was a change in the degree of evaluation of revenue share plans by staff in fall, 2009.

26 Somewhat ironically, shortly after this apparent "stricter scrutiny" through the staff's review of revenue share plans in fall 2009, new, related legislation was introduced in the 2010 Legislature, HB 2539: "Optimizing the Collection of Source Separated Materials." This bill mandated a variety of new measures including updating of local solid waste

[11] "Recycling Revenue Sharing, A Staff Summary of the Implementation of RCW 81.77.185," (SHB 2308) May 2003, at 5.

management plans every five years, a requirement in certain counties to provide collection of source separated recyclable materials and products, organic materials and wastes from single and multiple family residences in urban areas, other provisions allowing certain counties and residences exemptions or "opt out" capabilities, and a pertinent change to allow qualifying solid waste collection companies to retain up to **50** percent of the revenue paid to the companies for recyclable material.

27 The 2010 House Bill Report for HB 2539 included a brief synopsis of the effect of the revision to revenue share retention in the proposed legislation:

> The UTC must allow solid waste collection companies collecting recyclable materials to retain up to 50 percent of the revenue paid to the companies for the recyclable material if the companies submit a plan to the WUTC that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how those revenues will be used to increase recycling.[12]

28 The companion Senate Bill Report, E2SHB 2539, of February 25, 2010, contains a similar description of the relevant change in the retention percentage, noting "[t]he UTC must allow solid waste collection companies, which have submitted a plan to the UTC demonstrating how recycling will be increased to retain up to 50 percent of the revenue received from recyclable materials."[13], [14] Governor Gregoire signed SHB 2539 on April 2, 2010 and the up to 50 percent from 30 percent retention amount was codified in RCW 81.77.185. No other changes to that provision were effected by the legislation including any of the county certification, demonstrable improvements in recycling or how the revenues would be used to increase recycling premise requirements.

29 The present dockets, TG-101542, 101545 and 101548, represent the first commodity credit adjustments and revenue share plan submissions by the Petitioners since the

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[12] H.R. Rep. HB 2539, 1st Sess., at 3 (Wash. 2010) (as reported by H. Comm. on Ecology & Parks, Ways & Means, February 2010).
[13] S. Rep. E2SHB 2539, 1st Sess., at 2 (Wash. 2010).
[14] There is also no indication in the legislative history of HB 2539 that the WUTC staff expressed opposition to the increased retention percentage or any element of the revised legislation.

passage of SHB 2539 in spring, 2010 and the increased statutory retention allowance. They again thus pose the first challenge to the concept of revenue share retention carryover in reference to the only statutory provision guiding the process for review.

VIII. LOCAL GOVERNMENT ROLE AND PERSPECTIVES, PLAN CERTIFICATION AND PERFORMANCE CRITERIA

30 As noted initially by Mr. Stephen Wamback, Pierce County Solid Waste Administrator, in his letter to the Commission of October 27, 2010 regarding Docket Nos. 101545 and 101548, and as addressed as well in his attached declaration, the recommendation of the WUTC staff in its Open Meeting Agenda for the Petitioners' items which were addressed by the Commission's Order No. 1 apparently contravenes the Legislature's intentions in response to the Recycling Assessment Panel's recommendations of now over a decade ago: the creation of financial incentives to optimize recycling systems. It should be noted that in order to enable retention of any revenue share proceeds, a solid waste collection company has previously reported all revenues retained, the amount of money it spent on the activities identified in the company's recycling and revenue share plan and the effect the activities had on increasing recycling. The Petitioners do not perform this process in a legal vacuum. The law requires (and these Petitioners have thoroughly conformed to the prerequisite, *see* attached Declarations of Stephen Wamback and David Baker) that they achieve local government certification of their revenue share plans and performance and that these be evaluated as consistent with the applicable local comprehensive solid waste management plan coupled with a showing to the County's satisfaction of how the revenues would be used to increase recycling. Despite some possible inferences in Comments by staff at the October, 2010 Open Meeting to the contrary, this process has not been perfunctory. It has historically involved meetings at the local government level and typically contacts of or meetings with the Commission staff testing and developing benchmarks and other criteria to

measure enhancement of recycling activities by the regulated solid waste collection companies and achievements (or any lack thereof) of locally-designed performance measures. (*See*, ¶¶ 14 and 15 of the Declaration of Stephen Wamback attached hereto).

31 It is also noteworthy that revenue sharing is unquestionably a statutory compliment of the Commission's role under RCW 81.77.030(5) and RCW 81.77.030(6). Those provisions expressly require companies it regulates to comply with local solid waste management plans and related ordinances and to utilize rate structures and billing systems consistent with local laws and ordinances and "recycling services pursuant to local solid comprehensive solid waste management plans." RCW 81.77.030(6).

32 Again, as initially foreshadowed by the 1999 DOE Recycling Assessment Panel report, the actual legislation in 2002, the 2003 WUTC Staff Report evaluating the implementation thereof and the 2010 augmentation to revenue share retention, the goal here was and remains increasing and optimizing recycling and waste stream separation and reduction by incentivizing behaviors of all the various waste stream participants and reducing greenhouse gasses, the latter as previously identified by the Washington State Climate Action Team Report.[15] This necessarily involves consultation, coordination and oversight with and by both the county and state governments. Petitioners believe the now-established system for approval of revenue share is both straightforward and relatively uncomplicated and has worked to the benefit of customers, providers and all citizens of the state since 2002. And while the focus by Commission staff on revenue share may have intensified over the past 18 or so months, the goal of optimization of the waste stream and incentivization of the participants therein has never changed.

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[15] *See* WASH. DEP'T. OF ECOLOGY, CLIMATE ACTION TEAM, LEADING THE WAY: IMPLEMENTING PRACTICAL SOLUTIONS TO THE CLIMATE CHANGE CHALLENGE (2008).

33 The initial and primary gatekeeper in evaluating the annual recycling program, performance measures and approving and certifying the contents thereof is the counties under Washington law. This is only logical, since counties are "closest" to and in the best position to oversee and evaluate the local and practical impacts of recycling program initiatives. (*See,* i.e. the Declaration of Stephen Wamback at ¶13). Indeed, the legislature has specifically assigned " . . . county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies." RCW 70.95.010(6). Provided all statutory conditions are met, nothing in the law or materials that Petitioners have identified implicates any parallel, independent oversight role in the Commission to block a solid waste collection company from retaining revenues paid for the material upon submission of a certified plan, or to otherwise parse or condition county approval through earmarking any remaining retention proceeds by certified program participants into the next year.[16]

IX. RCW 81.77.185 IS A UNIQUE STATUTORY PROVISION UNDER TITLE 81.77

34 While this is clearly a departure from the Commission's plenary oversight role under RCW 81.04, RCW 81.77 and RCW 81.28 in regulating solid waste collection rates, it is neither inconsistent with RCW 81.77.030's jurisdictional intersection nor the legislature's decision on how to enhance recycling participation rates of almost a decade ago. Again, that legislative purpose was to provide tangible incentives to regulated solid waste

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[16] Any argument that the statutory requirement of demonstrating how the revenues "will be used" to increase recycling means there can be a perpetual carryover of unspent revenues into the future based on that prospective showing effectively nullifies the antecedent "the Commission shall approve" language in the statute rendering revenue share retention illusory. "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous," *State v. Hirschfelder*, 170 Wn.2d 536, 543, 242 P.3d 876, 879 (2010) quoting *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003). That argument also undermines the central concept of incentivizing behavior that the Recycling Assessment Panel Report, WAC 480-70-351, the 2003 WUTC staff statutory implementation report and previous circulars, county solid waste advisory committee recommendations and the collective legislative history materials suggest was an underlying goal of the legislation since the outset.

companies to make additional infrastructure, program and personnel investments in attempt to increase recycling rates and transform product types while minimizing waste generation and maximizing secondary market stimulation.[17] Although clearly not a programmatic guarantee nor institutionalized add-on to the statute under RCW 81.77.185, the prospect of unspent revenues being retained by haulers after all other conditions of the statute are met is fully consistent with the original goal as articulated by the Recycling Assessment Panel in 1999 as quoted at page 6, above, of incentivizing behavior and investment.

35 Petitioners believe any new directive that freezes county-approved and certified recycling revenue share retention contravenes RCW 81.77.030(6) and RCW 81.77.185 itself, by engineering policy strictures otherwise appropriate under primary ratemaking criteria onto a statutory provision and legislative initiative that was never intended. Until the entrance of the Orders on review, neither Petitioners nor the affected counties ever had notice that the Commission staff held such a sweeping interpretive view of parallel evaluative criteria and disposition of certified recycling plan expenditures or that any excess revenue shares were subject to carryover or potential "claw back."

X. CONCLUSION/PRAYER FOR RELIEF

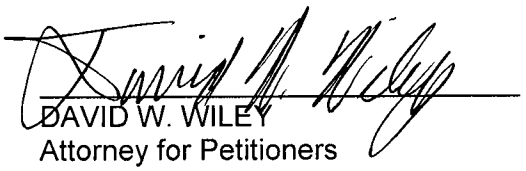
36 Upon further reflection and consideration, Petitioners urge that any such prospective policy shift be appropriately considered first by the Legislature which, as noted, only just recently revisited the statute at issue. Petitioners ask that the Commission find that it is fully consistent with the statutory language of RCW 81.77.185 and legislative history and intent that Petitioners be permitted to retain any unspent revenue share proceeds upon satisfaction of the criteria specified by law, including the prerequisite comprehensive review and certification by Pierce or Mason Counties of the specific revenue share plans

[17] *See*, i.e., ¶ 11 of the Declaration of David Baker.

at issue. Petitioners therefore ask that the Commission grant the instant Motion for Summary Determination and modify Order No. 1 to remove any requirement that unspent recycling revenue share under a certified plan and county endorsement be frozen, suspended or otherwise carried over to the next (or even subsequent) reporting years.

Dated at Seattle, Washington this 9th day of February, 2011.

Respectfully submitted,



DAVID W. WILEY
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2011, I caused to be served the original and three (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 email and first class mail the foregoing document on:

Hon. Gregory J. Kopta
Administrative Law Judge
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250
Email: gkopta@utc.wa.gov

Fronda Woods
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
PO Box 40128
Olympia, WA 98504-0128
Email: fwoods@utc.wa.gov

James K. Sells
Attorney at Law
PMB 22
3110 Judson Street
Gig Harbor, WA 98335
Email: jamessells@comcast.net

Polly L. McNeill
Summit Law Group, PLLC
315 Fifth Avenue S., Ste. 1000
Seattle, WA 98104
Email: pollym@summitlaw.com

Lyndsay C. Taylor