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	)	DOCKET TG-101542 *(Consolidated)*
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	)	DOCKET TG-101545 *(Consolidated)*
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	)	DOCKET TG-101548 *(Consolidated)* PETITIONERS MASON COUNTY GARBAGE, MURREY'S DISPOSAL COMPANY, INC. AND AMERICAN DISPOSAL COMPANY, INC.'S RESPONSE IN OPPOSITION TO STAFF'S MOTION FOR SUMMARY DETERMINATION

TABLE OF CONTENTS

I. INTRODUCTION TO REPLY TO LEGISLATIVE INTENT ARGUMENT IN STAFF MOTION 1

II. ARGUMENT IN RESPONSE TO STAFF MOTION 1

A. Response to Staff Statutory Construction Argument 1

1. The Staff's Rendition of "Future Showing" Eliminates Genuine Revenue "Sharing." 2

2. The Staff Constructs a "Barrier to Retention" in its Unilateral Interpretation of the Statute. 3

3. "Future Showing" Constitutes Perpetual Retention Carryover According to the Staff. 4

B. A Sequential Analysis of the Legislative History underlying RCW 81.77.185 is Unreliable. 5

C. The Historical Treatment of Revenue Share Plans has Never Previously Involved Frozen Unspent Revenues or the Prospect of Perpetual Carryover. 9

III. CONCLUDING ARGUMENT IN OPPOSITION TO STAFF'S SUMMARY DETERMINATION MOTION AND MANDATE FOR FREEZE OF UNSPENT REVENUE SHARE RETENTION 10

IV. PRAYER FOR RELIEF 13

1 Mason County Garbage, Murrey's Disposal Company, Inc. and American Disposal Company, Inc. (hereinafter "Petitioners"), pursuant to WAC 480-07-380(2)(c), hereby file their Response Opposing the WUTC Staff's Motion for Summary Determination ("Staff Motion") and supporting the Petitioners' simultaneous Motion for Summary Determination seeking a finding, as a matter of law, that unspent revenue share retention proceeds pursuant to RCW 81.77.185 need not be frozen or carried over to subsequent reporting years.

I. INTRODUCTION TO REPLY TO LEGISLATIVE INTENT ARGUMENT IN STAFF MOTION

2 In its Motion, Staff's argument against the allowance of unspent revenue share retention hinges on three primary premises. First, that the language in the above statute unambiguously supports the staff conclusion that what they repeatedly label as a "performance benefit model,"[1] is completely absent from the now eight-year plus statute. Second, that review of proposed and ultimately unsuccessful legislative bills in the 2000-2002 interval left on "the cutting room floor" demonstrates that Petitioners' view of the revenue share statute is fatally flawed. Finally, that the Petitioners' interpretation of the statute is inconsistent with "industry implementation" of revenue share.[2] All of these arguments are ultimately inaccurate and miscast the premise of Petitioners in filing their original Motion for Reconsideration and in bringing their Motion for Summary Determination.

II. ARGUMENT IN RESPONSE TO STAFF MOTION

A. Response to Staff Statutory Construction Argument

3 Both the Staff and the Petitioners presented discussion and argument in their respective Motions for Summary Determination on the statutory construction issue which need not be reiterated in this Response. However, contrary to the Staff's rhetorical contention that the Petitioners' view of the approval of the participating hauler's revenue share program excludes a

[1] Staff Motion § 39 at 16.

[2] Staff Motion §§ 56, 57 at 21, 22.

role for the Commission by ignoring the conjunction "and" in the second condition of the statute demonstrating "how the revenues will be used to increase recycling,"[3] Petitioners here have never suggested the two-prong evaluation is meaningless. But that demonstration of how revenues "will be used to increase recycling" is an analysis for *both* local and state governments through the submission and evaluation of the revenue share plans. The Commission's role is not exclusive on that criterion as Staff infers, nor is the counties. It is a shared responsibility just as the statute provides that retained recycling revenues are shared between companies and customers. Again, as previously highlighted in Petitioners' Motion,[4] the literal language of the statute, as implemented, fully supports the premise that revenue share is not an illusion when it comes to prospects for participation in proceeds by the solid waste collection company.

1. The Staff's Rendition of "Future Showing" Eliminates Genuine Revenue "Sharing."

4 What the Petitioners do dispute in Staff's argument is that a "plan submitted to the Commission" and "certified by the appropriate local government authority . . ." "and that demonstrates how the revenues will be used to increase recycling" (RCW 81.77.185(1)), means that the "will be used" element always must be demonstrated later rather than presently in the certified plan. ("The language suggests that the Legislature expected companies to provide details about how they will spend retained revenue to increase recycling prospectively.")[5] The Staff's view also institutionalizes that future conditional showing in such a way that wholly precludes retention of unspent revenues and eviscerates any incentive the strained interpretation of the statute would provide any participant.

5 Indeed, nothing in the featured statute suggests that the demonstration of how revenues "will be used to increase recycling" was intended to be a future condition precedent, working to preempt and prevent solid waste collection company revenue share retention. The now

---

[3] Staff Motion § 15, at 6.

[4] Petitioners' Motion for Summary Determination § 33, fn. 16, at 16.

[5] Staff Motion § 22 at 9.

refashioned WUTC Staff perspective, if consistently applied, wholly undermines the intended purpose of the revenue share program as originally envisioned by the Recycling Assessment Panel in 1999 and the consistent treatment of revenue share plans by all participants and parties prior to the Staff's apparent interpretive transition on revenue share beginning in 2009, as the Petitioners outlined in their Motion for Summary Determination.[6]

2. The Staff Constructs a "Barrier to Retention" in its Unilateral Interpretation of the Statute.

6 As described above, the Staff's premise in interpreting RCW 81.77.185 is relatively simple: you never get to retain unspent revenue because your showing of how revenues were used to increase recycling is always a forward-looking analysis, i.e., you bifurcate the recycling plan certification to a past and future analysis. The present is merely a middle point between examination of past expenditures and future demonstrations of how recycling has increased so that there is no retention of revenues, merely "custodianship" of funds, albeit for the express purpose of enhancing recycling.

7 The Staff has thus now crafted a deferred accounting program for revenue share comparable in operable effect to the deferred commodity credit program under WAC 480-70-351. The problem with that approach (aside from ignoring the legislative intent issue) is it overlooks the prevailing practice of WUTC plans certification and submissions at least until 2009, and nullifies the concept of "shall approve" and "passing" the "*remaining* revenue to residential customers" [emphasis added] language of the law. The Staff's position now means the "up to 50%" of the revenues are merely transitory dollars that the participating hauler "fronts" to expend on recycling program enhancement. The only allowable "retention" again is a temporary one, apparently the use of the money for programs intended by the statute according to the Staff. No other incentive or objective exists.[7]

---

[6] *See* Petitioners' Motion for Summary Determination § VII at 11-14.

[7] It also ignores the language in the Commission's own related rule which expressly uses terms such as "provides an incentive to the parties who control the actions or behaviors that the program intends to change . . ." WAC 480-70-351(1)(a).

8 The Staff statutory construction argument also magnifies the interpretive divide between the parties here. Nothing in the statutory language requiring the demonstration of how revenues "will be used" to increase recycling mandates that showing in the future. Rather, the showing of how revenues "will be used" can be and is made in the present through earmarking of funds, i.e., quantifying the cost of education of customers, cost allocation to pilot and other experimental projects, benchmarking of statistical goals etc., which is all exactly what Petitioners did in the plans submitted to Pierce and Mason Counties subsequently certified by them and which were partially summarized in Sections 4 of the Orders No. 1 here on review.

3. "Future Showing" Constitutes Perpetual Retention Carryover According to the Staff.

9 Yet, in now emphasizing that the "plain meaning of 'will be used' suggests future action, not past performance,"[8] it is the Staff that is artificially construing the statutory language by placing two, not one conditions on that future showing. It does so by qualifying its approval of the "up to 50/30%" revenue share increment (for Murrey's/American and MCG respectively) on the evaluation of the prospective reporting period's performance benchmarks AND by decreeing that any retained revenues that are unspent be carried over to the following year.

10 That interpretation facilely accomplishes revenue share retention nullification for any participating solid waste collection company and renders superfluous the "remaining revenue" reference in the second sentence of RCW 81.77.185: "[t]he remaining revenue shall be passed to residential customers." Again, under the Staff's analysis, revenue retention is wholly conditional. You either spend it all on the assigned tasks to the last penny or any leftover is kicked over to the next year and the next. There is thus no "remaining revenue" retained by the hauler who, under the Staff's view, is merely a placeholder for funds that are either completely spent, held in limbo until the next reporting year or otherwise directed to third party beneficiaries some time in the indefinite future. All of which suggests "revenue share"

[8] Staff Motion § 22 at 8, 9.

legislation was not "sharing" at all, but was tantamount to a "line of credit" program to enhance recycling and never intended to directly reward regulated collection companies.[9]

11 While the Recycling Assessment Panel at the start of the last decade had spoken so hopefully of providing incentives to the private sector to increase recycling and admonished the legislature to create "an incentive system" that would transcend "existing UTC models,"[10] the Staff's current interpretation of the legislative goals of revenue share merely reverts back to traditional ratemaking concepts and again, dilutes those ambitious goals by converting revenue share into commodity sale proceeds' "qualified custodianship."

B. A Sequential Analysis of the Legislative History underlying RCW 81.77.185 is Unreliable.

12 At least in terms of page quantity, in their major argument on Motion, the Staff next contends that the Respondents . . . "seem to be arguing that this or something like it, is the model the Legislature enacted".[11] Here, they largely refer to a 2000 Senate Bill 6715 and amendments apparently offered in the House where, not only revenue share sunsetted on its face on December 31, 2006, but which apparently also focused on quantitative increases in recycling rather than the actually-enacted prerequisite that requires a showing of how revenues will be used to increase recycling.

13 Ironically, the Petitioners have never expressly or implicitly made such an argument nor have they sought to rely on previous versions or elements of failed legislation to assert a right to

---

[9] Again this constrained depiction of revenue share is very different from the one advanced by the Staff in their original formal summary of the implementation of the law in May, 2003. There, they not only emphasized they believed it would be " . . . inappropriate to promulgate rules that would delay or obstruct this experimentation" [of new recycling programs stimulated by revenue share], "Recycling Revenue Sharing," *Id.* at 4, they also used much broader inclusive language to describe the legislative model.

> Staff believes this means the company and the local government must work together to create a Company Recycling Plan that describes the proposed recycling program, how the company proposes to measure changes in the recycling rate, and how the money retained will be used to increase recycling. The concept behind this model of revenue sharing is that if solid waste carriers are allowed to keep more recycling revenue, they will have greater financial interest in encouraging their customers to recycle more and in finding buyers for the recyclable commodities.

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

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

[11] Staff Motion § 38 at 15-16.

retention of unspent revenues based on plan certification criteria specified in current and originally enacted RCW 81.77.185.

14 The Staff here argues that a sequential analysis of the legislative history underlying RCW 81.77.185 supports its position that no incentive or revenue share retention is authorized by the statute. In looking at various unadopted bills spanning a two-year time period in 2000-2002, the Staff insists these bills show " . . . that the Legislature considered, but did not adopt, the Companies' position."[12], [13] In addition to presuming too much, the contention is ultimately not persuasive.

15 As observed above, statutory analysis begins with the statute's plain language.[14] The plain language of RCW 81.77.185 is evident in this case and Petitioners believe demonstrates the accuracy of their premise. As noted, the Commission Staff argues alternatively that the Legislature's intent in passing RCW 81.77.185 may also be deduced by sequentially reviewing the histories of various unadopted bills that preceded the current statute.[15]

16 Case law generally cautions against this sequential analysis.[16] In *The Hama Hama Company v. Shorelines Hearings Board*, the Washington State Supreme Court addressed a similar argument interpreting a statute in light of preceding, unadopted drafts. The court in *Hama Hama* rejected the proposed analysis as incompatible with the realities of legislative process and, accordingly, unrealistic.[17] Specifically, the court noted that a sequential analysis requires adopting the "unstated assumption...that each subsequent draft is consciously, deliberately, and meticulously drafted in view of all the language in each preceding draft."[18] The court also

---

[12] Staff Motion § 25 at 10.

[13] Albeit, a position the Staff asserts in argument that the **Companies** made.

[14] *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)).

[15] Staff Motion §§ 25-55 at 10-21.

[16] *See e.g. The Hama Hama Company v. Shorelines Hearings Board*, 85 Wn.2d 441, 449, 536 P.2d 157 (1975); *Trailmobile Co. v. Whils*, 331 U.S. 40, 91 L. Ed. 1328, 67 S. Ct. 982 (1947); *Andrews v. Hovey*, 124 U.S. 694, 31 L. Ed. 557, 8 S. Ct. 676 (1888).

[17] *Hama Hama* at 449-450.

[18] *Id.* at 449.

noted that "the legislative process may operate to prevent the legislature from functioning in such a deliberate and conscious fashion"[19] and cited Radin's *Statutory Construction* for support:

> Successive drafts of a statute are not stages in its development. They are separate things of which we can only say that they followed each other in a definite sequence, and that one was not the other. But that fact gives us little information about the final form, since we never really know why one gave way to any other. There were doubtless many reasons, some of them likely enough to be personal, arbitrary, and capricious –the fondness of the draftsman for a special locution, his repugnance to another, a misconception of the associations of some word, a chance combination, and often enough, a mere inadvertence. That is not to say that some conclusions, principally negative ones, can not be drawn from the legislative history of the statute. *But in the end, all that we know is that the final form displaced the others, and that fact is not disputed.*[20]
>
> (Emphasis added).

Professor Radin's analysis cited in *Hama Hama* illustrates the risk of the Commission Staff's sequential analysis argument. In this case, as in *Hama Hama*, the only conclusion that may be drawn from a sequential analysis of legislative history is that RCW 81.77.185 is the final form of the statute and displaced all other precatory proposals.[21] The universe of potential factors in statutory drafting is typically too vast to adopt general conclusions beyond this fact. While as a threshold matter, *Hama Hama* makes clear that a sequential analysis may be utilized "under appropriate circumstances, but even then its value should not be considered conclusive."[22]

17 The cases cited by the Commission Staff in their Motion also include facts that are not present here. In *Lewis v. Dep't of Licensing*, for example, cited for the proposition that a "court

---

[19] *Id.*

[20] *Id.* at 449-450 (*quoting* Radin, *Statutory Construction*, 43 Harv. L. Rev. 863, 873 (1930)).

[21] In addition, as Intervenor Waste Management of Washington, Inc. has suggested in its Opening Memorandum, the disposition of draft bills in the 2000-2001 interval as contrasted with the final language in HB 2308 actually support Petitioners' interpretation of retention of unspent revenue share. Indeed, once the "up to" qualifier was added in the bills that either progressed the furthest in the 2000 session and in the successfully enacted HB 2308 in 2002, it was inconsistent to quantify the percentage of the revenue "to be passed to residential customers" since that remainder could be anything from 70 (now 50) percent or less depending on the approved revenue share. Contrary to the Staff's premise in this context, the sequence in bill language originally proposed and that ultimately adopted strongly supports the interpretation that the retention increment was an intentional dichotomy: "up to 30/50" percent of revenues could be retained by the solid waste collection company upon meeting the specified statutory criteria and the "variable remainder" percentage then "passed to residential customers."

[22] *Hama Hama* at 450.

may consider sequential drafts of a bill in order to help determine the legislature's intent,"[23] the court reviewed a bill that was introduced, debated, revised, and passed in the short span of approximately two months.[24] Consequently, the causal effect of legislative deliberation and action was much more truncated and direct than here. Here, unlike *Lewis*, the Commission Staff urges the Commission to rely on a sequential analysis spanning more than two years and three separate legislative sessions and multiple texts, some of which apparently were not even introduced into their respective chamber, let alone were subject to a hearing.[25] The defects identified by the court in *Hama Hama* are correspondingly magnified with the greater amount of time elapsed and increasing number of bills reviewed. Accordingly, the "appropriate circumstances" unique to *Lewis* are not present here.[26]

18 In sum, the sequential analysis of legislative history proposed by the Commission Staff, covering multiple bill drafts over the course of approximately two years, is unpersuasive. Adopting the Commission Staff's analysis that Petitioners are arguing for a result on the legislative "cutting room floor" subjects review of RCW 81.77.185 to the precise unknown, speculative and potentially "personal, arbitrary, and capricious" factors identified by Radin.[27] Absent the "appropriate circumstances" cited by *Hama Hama*, such as a measurably brief period of time between the bill's introduction, amendment, and passage (*Lewis*) or identical statutory language between drafts (*Buchanan*), the innumerable variables and contingencies of legislating

---

[23] Staff Motion § 32, fn. 39 at 12.

[24] Staff Motion § 32, fn. 39 at 12; *See* HB 2903, 1st Sess., (Wash. 2000) (Bill introduced on January 24, 2000, and signed by Governor on March 29, 2000).

[25] Staff Motion §§ 25-55 at 10-21.

[26] The Commission Staff Motion also cites *Buchanan v. Simplot Feeders, Ltd.* for an example of use of "legislative history of failed 1991 legislation in determining intent of identical 1992 legislation that passed." Commission Staff Motion, fn. 39 at 12. *Buchanan*, however, addressed a situation where the court engaged in a sequential analysis of *identical* statutory language. *Buchanan v. Simplot Feeders*, Ltd., 134 Wn.2d 673, 688, 952 P.2d 610, 617 (1998) ("Since the 1992 amendment used the identical damages sentence as was considered in 1991, the 1991 legislative history informs our analysis of the 1992 amendment.") *Id.* When the language is identical, the variables identified by the court in *Hama Hama* become significantly less problematic and the causal relationship between legislative deliberation and action more direct. Here, the various bills cited by the Commission Staff in 2000 that preceded RCW 81.77.185 contain different language with only limited explanation regarding the changes. As the U.S. Supreme Court noted in *Trailmobile Co. v. Whils*, "the interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers." *Trailmobile*, 331 U.S. at 61.

[27] Radin at 873.

render any conclusions drawn from a sequential analysis highly unreliable and ultimately distracting from the underlying construction of the actual wording contained in the legislation.

C. The Historical Treatment of Revenue Share Plans has Never Previously Involved Frozen Unspent Revenues or the Prospect of Perpetual Carryover.

19 There is some irony in the Staff's attempt to point to "industry implementation practices" in the concluding salvo of its Motion[28] in support of its proposition that revenue share does not allow for unexpended revenue retention. For that premise, Staff cites to two just-completed filings that were the subject of Commission Orders on December 30, 2010 (issued admittedly two months **after** the Orders here on review). First, those filings, cited at footnotes 66 and 67 of Staff's Motion, involve revenue share plans in King County, not Pierce or Mason. Secondly, those December 30, 2010 Orders were the first time either cited company had apparently ever been subject to a specific mandate in a Commission Order to carry over unspent revenue share dollars to the next reporting which, after all, is the **only** issue on review in this proceeding.[29] Third, Staff fails to here acknowledge that the only other revenue share "recent historical practice," involving Waste Management of Washington, Inc. in Dockets TG-101220, TG-101221 and TG-101222, *is* currently on review, and involves a challenge to whether a company and county can include a return or profit element in an approved revenue plan which hardly establishes a consistent "industry implementation pattern." And finally, of course, the premise of "consistent . . . industry implementation" characterized by the Staff, is refuted by the broad range of legislative panel reports, historic county plan authorizations and most importantly, WUTC Staff policy papers and filing approval practices throughout the 1999-2009 interval noted in Petitioners' original Petition and Motion which provide the necessary, pre and post legislative enactment context for the revenue share plan legislation. In the aggregate, that evidence highlights the Staff's current interpretation of revenue share in stark contradiction to

---

[28] Staff Motion §§ 56-57 at 21-22.

[29] *See* in contrast, Orders No. 1 in TG-091801, *Rabanco Ltd. d/b/a Allied Waste Services of Kent, Rabanco Companies and SeaTac Disposal* (December 23, 2009); TG-091802, *Rabanco Ltd. d/b/a Eastside Disposal, Container Hauling, Rabanco Connections and Rabanco Companies* (December 23, 2009).

previous broadly-accepted interpretations of the goals, substantive provisions and implementation of RCW 81.77.185 in the considerable number of years before the Orders on review were entered.

III. CONCLUDING ARGUMENT IN OPPOSITION TO STAFF'S SUMMARY DETERMINATION MOTION AND MANDATE FOR FREEZE OF UNSPENT REVENUE SHARE RETENTION

20 In staking out their position for the first time in late summer/fall 2010 Open Meeting memoranda that any unspent revenues from revenue share proceeds should be frozen or otherwise carried over to the next reporting year, there may well be "echoes" of the Staff's antecedent doubts about the entire program initially noted in their Appendix to the 1999 Recycling Assessment Panel Report.[30] This development may lead one to question whether Staff may now be attempting to accomplish administratively what they originally apparently could not thwart legislatively at the inception of revenue share by seeking to block retention by regulated haulers of revenue share proceeds from county-certified and approved programs. As noted in the Petitioners' Motion for Summary Determination, the Staff actually testified against the initial bill in the Legislature, in 2000, expressing concerns related to potential overearning that the initial draft legislation could well involve in their view.[31] While the December, 1999 Appendix correspondence from Mr. Eckhardt also noted the Staff's then reassurance in the requirement for annual plan submissions and evaluations in the revenue share legislation envisioned by the Recycling Assessment Panel, now, apparently, in the wake of a sizable increase in the potential revenue share retention percentage in legislation within the last year, those material reservations may be reappearing through evaluation of ongoing participant plans.

21 WUTC Staff's contrasting treatment of revenue share plans again, though, has only surfaced in the last year or so coincident with enactment of SHB 2539. And before 2010, no one

---

[30] *See* fn. 7, § 16 Petitioners' Motion for Summary Determination.

[31] *See* fn. 5, § 15 Petitioners' Motion for Summary Determination.

had ever referenced a concept of unspent revenue share carryover, nor had their been any inference that counties had not been appropriately evaluating revenue share plans for attainment of statutory criteria.

22 This revised Staff perspective is fraught with pitfalls for the participating solid waste collection industry. First, as noted frequently in these post-order proceedings, the Staff position on revenue share retention freeze is literally and fundamentally a new interpretation of the statute by the Staff previously unannounced to affected haulers.[32] It quite literally turns on its head what was believed to be mutually accepted goals of the two-sentence statute, particularly as concerns incentives for participants.[33] Further, it disturbs what was the accepted sequential pattern for compilation, submission, certification and county approval of revenue share plans and the criteria for final approval of certified plans by the Commission itself, albeit one with no accompanying specific rule directive. This view is also being delivered incrementally through individual orders in a complete absence of dialogue, let alone notice of inquiry and/or potential stakeholder sessions with participating companies and local governments.[34]

23 The latter two quite apparently hold divergent views of the workings and goals of the revenue share statute than the current Commission Staff. And, contrary to the unfortunate statement in the Staff's Opening Motion, none of this concern can or should be attributed to a

---

[32] Recall in contrast the findings of Staff cited in the Petitioners' Motion at §§ 21 and 25 at 10, 12 and language such as "[S]taff will make every effort not to influence the outcome of the Company Recycling Plan" announced in "Recycling Revenue Sharing, A Staff Summary of the Implementation of RCW 81.77.185," (SHB 2308), May, 2003 at 10.

[33] "Incentive" was the noun and concept used so frequently by the Staff themselves earlier in organizing and implementing processes as the original legislation was adopted in 2002 and formally summarized in 2003 and which, by the filing of Staff's Motion for Summary Determination in 2011, seems to have wholly vanished (or been banished) from the lexicon.

[34] Petitioners also observe this is not dissimilar to what recently transpired in Docket No. A-042090. There, a long-established practice for submission and approval of fuel surcharges for the solid waste and other select regulated transportation industry members was almost cancelled on very limited notice to the industry that Staff viewed fuel surcharges as no longer reasonable or necessary and were proposing elimination by an isolated Open Meeting Agenda Item on September 30, 2010. That summary cancellation was only initially thwarted by opposition in letters and arguments in the September 30 Open Meeting record and through Commission action to delay implementation for a December stakeholder session and a subsequent January, 2011 special Open Meeting session to explore the fuel surcharge mechanism's continued efficacy in the face of dramatically rising fuel prices. Now the initial rescission date of January 31, 2011 has been continued until at least May 2, 2011 (*See*, Order 04, Modifying Order 03 and Clarifying Applicability to Solid Waste Companies Docket A-042090 (Jan. 2011)). Petitioners believe that far-reaching policy transitions like fuel surcharge cancellation and revenue share pronouncements deserve more due process than shorthand notation of an Open Meeting Agenda Item or a Staff memorandum announcing a new regulatory direction that is recommended be inserted into Orders issued upon Open Meeting motion actions.

belief that revenue share is simply "none of the Commission's business."[35] Petitioners well understand that state and local governments jointly review and approve revenue share and fully respect the Commission's role in that evaluation.

24 The dispute here, however, remains one of how that role is carried out and whether in the context of the review of revenue share plans, the Commission can or should apply a condition to its approval which Petitioners believe at least partially defeats the purpose of revenue share by removing financial incentive to haulers that they will ever share in any residual proceeds.

25 Even if ultimately the Commission somehow concludes here that revenue share retention carryover is fully consistent with its independent interpretation of RCW 81.77.185, this controversy points up in Petitioners' view, (as noted in footnote 34, above), a significant vacuum in administrative process to date that is unquestionably damaging to the public interest. Again, revenue share is not a new program nor regulatory premise. At least until mid-2009 and the change in the statutory retention percentage then circulating and adopted the following spring by the Legislature, certified revenue share plan evaluation and approval was fairly established and settled. If the Commission Staff then believed there was a failure of consensus on revenue share retention mechanics (that the present dispute so acutely highlights), wasn't there some need for industry and local government-wide collaboration on that subject rather than broaching that in isolated portions of Staff memoranda on Open Meeting Agenda items that had historically been assigned to the Consent or No Action Agenda?

26 This proceeding is unfortunate testament to the results of an anecdotal, incremental approach to revenue share plan approval interpretation. The present philosophical divide of the parties on this issue and the Staff challenge to previously accepted approval practices now demonstrate that the Staff and the revenue share plan participants and their counties apparently hold sharply opposing perspectives on the fundamental enabling legislation and administration

---

[35] Staff Motion for Summary Determination, § 15 at 6.

of the subsequent programs developed under those goals and objectives. None of this, however, should obscure the original and abiding public policy goal of optimization of the solid waste stream through transformation and expansion of secondary markets and enhancement to and increase of recycling.

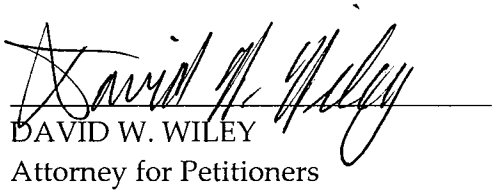
27 Finally, the current dispute suggests that at least for these Petitioners, "the rules of the road" for achieving that goal may need not only clarification, but recalibration, if revenue share should be construed by the Commission as effectively a "line of credit" for recycling program expenses. If so, participating haulers and local and state governments all undoubtedly face a new round of discussions to ensure current legislation or prospective changes thereto fully reflect any shared understandings in the processes and benefits of the revenue share program. This, at a minimum, will be necessary if all parties are to continue to strive to achieve the goals first envisioned by the Recycling Assessment Panel over a decade ago and those rearticulated by the Washington State Climate Action Team in 2008.

IV. PRAYER FOR RELIEF

28 Petitioners Mason County Garbage, Murrey's Disposal Company, Inc. and American Disposal Company, Inc. in response therefore respectfully ask that the Commission grant their Motion for Summary Determination, that Staff's corresponding Motion be denied and that Orders No. 1 be modified to remove the requirement that unspent revenue share be frozen, suspended or otherwise carried over to the next or future reporting years.

Dated at Seattle, Washington this 11th day of March, 2011.

Respectfully submitted,



DAVID W. WILEY
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 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.

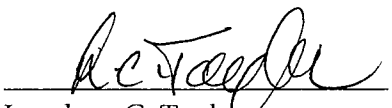
I also certify that I have served via email and first class mail the foregoing document on:

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