

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 RESPONSE
TO MOTION FOR SUMMARY
DETERMINATION BY
PETITIONERS MASON COUNTY
GARBAGE, MURREY'S
DISPOSAL COMPANY, INC.,
AND AMERICAN DISPOSAL
COMPANY, INC.

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1 The Motion for Summary Determination by Petitioners Mason County Garbage, Murrey’s Disposal Company, Inc., and American Disposal Company, Inc., in Support of Revenue Retention Authorization should be denied. Under the plain language of RCW 81.77.185, supported by its legislative history, solid waste collection companies are not entitled to keep unspent revenues from the sale of recyclable materials during the prior plan period so as to accrete to the companies’ bottom line or general operating accounts. In Order 01 entered in each of these consolidated dockets, the Washington Utilities and Transportation Commission (“Commission”) properly ordered Mason County Garbage, Murrey’s Disposal Company, and American Disposal Company (“the Companies”) to carry forward revenues not spent during the previous plan period into the next plan period.

I. PROCEDURAL HISTORY

2 Commission Staff agrees with the Companies’ procedural synopsis of this case.¹ Commission Staff also incorporates herein the more complete description given in the Commission Staff Motion for Summary Determination and Argument in Support Thereof.²

II. ISSUES

3 The Companies frame the issue as follows:³

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

¹ *In re Mason County Garbage Co., Inc. d/b/a Mason County Garbage, G-88*, Docket TG-101542; *In re Murrey’s Disposal Co., Inc., G-9*, Docket TG-101545; *In re American Disposal Company, Inc., G-87*, Docket TG-101548 (consolidated), [Motion for Summary Determination by Petitioners Mason County Garbage, Murrey’s Disposal Company, Inc. and American Disposal Company, Inc. in Support of Revenue Retention Authorization](#) ¶¶ 4, 5 (Feb. 9, 2011) (hereinafter “Companies’ Motion for Summary Determination”).

² Dockets TG-101542/TG-101545/TG-101548, [Commission Staff Motion for Summary Determination, and Argument in Support Thereof](#) ¶¶ 2-12 (Feb. 9, 2011).

³ [Companies’ Motion for Summary Determination](#) ¶ 6.

solid waste collection company?

Commission Staff generally agrees with that description of the issue, with two exceptions.

4 First, the Commission did not “approve” the Companies’ recycling plans under RCW 81.77.185.⁴ In 2009, the Companies asked the Commission for permission to retain thirty percent of the revenue they would receive from the sale of recyclable materials. In support of their requests, they submitted recycling plans certified by county officials. The Commission authorized the Companies to retain the revenue, with instructions to report how much they retained, and how much they spent on the activities described in the recycling plans.⁵ When the Companies provided that information a year later, it showed they had not spent all of the revenue they had retained:⁶

Company (reporting period)	Recycling Revenue Retained	Recycling Plan Expenditures	Revenue Retained Minus Expenditures
Mason County Garbage (8/16/09 – 8/31/10)	\$71,937	\$82,672	(\$10,735)
Murrey’s Disposal Co. and American Disposal Co. (9/1/09 – 8/31/10)	\$487,961	\$408,277	\$79,684 unspent revenues

The Commission ordered the unspent revenues to be carried over into the next reporting

⁴ [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.

⁵ *In re Mason County Garbage Co., Inc.*, G-88, Docket TG-090899, [Order 02](#) ¶¶ 5, 11, 13 (Aug. 13, 2009); *In re Murrey’s Disposal Co., Inc.*, G-9, Docket TG-091463, [Order 01](#) ¶¶ 4, 10, 12 (Oct. 29, 2009); *In re American Disposal Co., Inc.*, G-87, Docket TG-091467, [Order 01](#) ¶¶ 4, 10, 12 (Oct. 29, 2009).

⁶ 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).

period.⁷ According to Intervenor Washington Refuse and Recycling Association (WRRRA), the issue here is whether the Commission exceeded its statutory authority in doing that.⁸ Commission Staff agrees that is the issue.

5 Second, the Companies incorrectly characterize the Commission’s orders as having “frozen” the unspent revenues. The unspent revenues from the 2009-2010 plan period are not “frozen.” At this time they remain available to the Companies to “be used to increase recycling” during the 2010-2011 plan period, along with the new revenues that the Commission has authorized the Companies to retain during the 2010-2011 period.⁹

6 Intervenor Waste Management of Washington, Inc. (“Waste Management”), describes the issue as whether RCW 81.77.185 “authorize[s] a loan which confers only a temporary right to use the revenues, or does it authorize a payment which confers permanent ownership of the revenues?”¹⁰ Commission Staff does not agree that this case presents the issue Waste Management describes. At this time, the Commission has not ordered the Companies to return unspent revenues to customers. It has not treated the unspent revenues as a “loan which confers only a temporary right to use the revenues.” The Commission ordered that “revenues not spent during the previous plan period are to be carried over into the next year.”¹¹ That means the unspent revenues from the 2009-2010 plan period remain

⁷ *In re Mason County Garbage Co., Inc. d/b/a/ Mason County Garbage*, G-88, Docket TG-101542, [Order 01](#) ¶ 19 (Oct. 28, 2010); *In re Murrey’s Disposal Co., Inc.*, G-9, Docket TG-101545, [Order 01](#) ¶ 20 (Oct. 28, 2010); *In re American Disposal Co., Inc.*, G-87, Docket TG-101548, [Order 01](#) ¶ 20 (Oct. 28, 2010).

⁸ Dockets TG-101542/TG-101545/TG-101548, [Joinder in Motion for Summary Determination by Intervenor Washington Refuse and Recycling Association](#) (Feb. 8, 2011).

⁹ The Commission has authorized Mason County Garbage to retain up to thirty percent of the revenue the company receives from the sale of recyclable materials between November 1, 2010 and October 31, 2011, and it has authorized Murrey’s Disposal and American Disposal to retain up to fifty percent. Docket TG-101542, [Order 01](#) ¶ 17; Docket TG-101545, [Order 01](#) ¶ 18; Docket TG-101548, [Order 01](#) ¶ 18.

¹⁰ Dockets TG-101542/TG-101545/TG-101548, [Memorandum of Intervenor Waste Management of Washington, Inc.](#) ¶ 2 (Feb. 9, 2011) (hereinafter “Waste Management Memo”); *see id.* ¶ 13.

¹¹ Docket TG-101542, [Order 01](#) ¶ 19; Docket TG-101545, [Order 01](#) ¶ 20; Docket TG-101548, [Order 01](#) ¶ 20.

available to the Companies to “be used to increase recycling” during the 2010-2011 plan period.¹²

III. ARGUMENT

A. Legal Standards for Motions for Summary Determination.

7 Commission Staff agrees with the Companies that the issue for resolution is relatively straightforward.¹³ The parties’ cross-motions present a legal question that is appropriate for determination under WAC 480-07-380(2)(a), which provides:

A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the Washington superior court’s civil rules.

8 Under superior court Civil Rule 56, a factual issue is “genuine” only if reasonable persons could reach different conclusions.¹⁴ A “material fact is one that affects the outcome of the litigation.”¹⁵ Here, there is no genuine issue as to any material fact, but the Companies are not entitled to a judgment as a matter of law. Their motion should be denied, and the Commission Staff Motion for Summary Determination should be granted.

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

9 Commission Staff agrees with the Companies and WRRRA that the Legislature’s intent is discernible from the plain text of RCW 81.77.185. As described in Staff’s Motion

¹² See [RCW 81.77.185\(1\)](#).

¹³ [Companies’ Motion for Summary Determination](#) ¶ 6.

¹⁴ *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695, 698 (2009); accord *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-52 (1986) (interpreting Fed. R. Civ. P. 56).

¹⁵ *Owen v. Burlington N. Santa Fe R.R.*, 153 Wn.2d 780, 789, 108 P.3d 1220, 1224 (2005); accord *Anderson*, 477 U.S. at 248 (interpreting Fed. R. Civ. P. 56).

for Summary Determination, however, the plain text supports the Commission's action.¹⁶ A company is eligible for revenue sharing only if it submits 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.¹⁷

The Companies interpret the statute to mean that their share of the revenue is whatever is left over at the end of the year, *after* they have carried out the tasks in the recycling plan for that year.¹⁸ The statutory language, however, is about the future. It creates a revenue stream for a company that demonstrates "how the revenues *will be used* to increase recycling" in accordance with the recycling plan. It does not support an interpretation that lets companies keep unspent revenues as a reward for past performance.

10 Nor does the statutory language support WRRRA's interpretation that local governments have sole authority to regulate companies' use of revenue-sharing money. WRRRA argues that, if a local government certifies a company's plan, the Commission "shall" allow the company to keep the money, period.¹⁹ The statute, however, 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."²⁰ The phrase "and

¹⁶ [Commission Staff Motion for Summary Determination](#) ¶¶ 17-24. Commission Staff incorporates herein the arguments in Staff's Motion.

¹⁷ [RCW 81.77.185](#)(1) (emphasis added).

¹⁸ See Dockets TG-101542/TG-101545/TG-101548, [Declaration of David Baker](#) in Support of Petitioners' Motion for Summary Adjudication to Allow Revenue Share Retention ¶¶ 8, 9, 12 (Feb. 9, 2011).

¹⁹ Dockets TG-101542/TG-101545/TG-101548, [Joinder in Motion for Summary Determination by Intervenor Washington Refuse and Recycling Association](#) (Feb. 8, 2011); see Dockets TG-101542/TG-101545/TG-101548, [Declaration of Stephen C. Wamback](#) in Support of Petitioners' Motion for Summary Adjudication to Allow Revenue Share Retention ¶¶ 11, 13 (Feb. 9, 2011).

²⁰ [RCW 81.77.185](#)(1) (emphasis added).

that” refers back to the plan, not to the local government certification.²¹ The plan must demonstrate *to the Commission* “how the revenues will be used to increase recycling.”²²

The Commission is not simply a rubber stamp for decisions made elsewhere.

C. The Legislative History of RCW 81.77.185 Does Not Support the Companies’ Interpretation.

11 As described in Staff’s Motion for Summary Determination, the legislative history of RCW 81.77.185 supports Staff’s interpretation, not the Companies’ or WRA’s.²³

12 The Companies use isolated statements in the legislative history to draw inaccurate conclusions that are not supported by the legislative history as a whole. Citing the February 25, 2000, Senate Bill Report on Substitute House Bill 2939, the Companies argue that Commission Staff opposed revenue-sharing legislation because of a concern that revenue sharing would increase companies’ profit without increasing recycling. The Companies appear to suggest that the Legislature rejected that concern.²⁴ The legislative history does not support that view, however.

13 In fact, it shows that Commission Staff did not oppose the original version of House Bill 2939.²⁵ As described in Commission Staff’s Motion for Summary Determination, when House Bill 2939 was introduced during the 2000 legislative session, it contained language

²¹ 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. Washington courts may rely on *The Chicago Manual of Style* to interpret statutes. See *State v. Wilson*, 170 Wn.2d 682, 687, 244 P.3d 950, 952 (2010).

²² [RCW 81.77.185\(1\)](#).

²³ [Commission Staff Motion for Summary Determination ¶¶ 26-55](#).

²⁴ [Companies’ Motion for Summary Determination ¶¶ 15-17](#).

²⁵ See House Bill Rpt., HB 2939 (56th Leg.), at 3. Commission Staff has previously provided this report with the [Commission Staff Legislative History of RCW 81.77.185 \(Excerpts\)](#) filed on February 9, 2011, in these dockets (hereinafter *Leg. Hist. Excerpts*). The report is also available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bill%20Reports/House/2939.HBR.pdf>.

similar to the language that the Legislature ultimately enacted in 2002.²⁶ The House amended the revenue-sharing section of House Bill 2939, however. Among other things, the amendment deleted the requirement that companies submit a plan certified by a local government authority. The original language and the amendment are shown below.

House Bill 2939, 56 th Leg., § 1(1) ²⁷ (as introduced)	Substitute House Bill 2939, 56 th Leg., § 1(1) ²⁸ (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 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.	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 <u>in the jurisdiction served by the company</u> and that demonstrates how ((the revenues will be used to increase)) recycling <u>will be increased</u> . The remaining seventy percent of the revenue shall be passed to residential customers served ((throughout the state)) <u>by the collection company</u> .

14

It was this amendment, not the original bill, that drew opposition from Commission Staff. When Substitute House Bill 2939 reached the Senate, Commission Staff testified against it. According to the Senate Bill Report, the reason for the opposition was 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.”²⁹

²⁶ House Bill 2939, 56th Leg., § 1 (*Leg. Hist. Excerpts*, Page 19; also available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bills/House%20Bills/2939.pdf>).

²⁷ *Leg. Hist. Excerpts*, Page 19; also available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bills/House%20Bills/2939.pdf>.

²⁸ *Leg. Hist. Excerpts*, Page 26; also available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bills/House%20Bills/2939-S.pdf>.

²⁹ *Companies’ Motion for Summary Determination* ¶ 15; Senate Bill Rpt., SHB 2939 (56th Leg.), at 3 (copy attached as Attachment A; also available at <http://apps.leg.wa.gov/documents/billdocs/1999->

15 Thereafter, the Senate substantially reworked Substitute House Bill 2939, and it was never seen again.³⁰ Ultimately, the law that the Legislature enacted in 2002 did not contain the language to which Commission Staff had objected in Substitute House Bill 2939.³¹ Unlike Substitute House Bill 2939, the law the Legislature enacted requires solid waste collection companies to demonstrate to the Commission “how the revenues will be used to increase recycling” in accordance with a plan certified by a local government.

16 Waste Management asserts that the legislative history shows the Legislature intended to “authorize a payment which confers permanent ownership” of retained revenues.³² The legislative history does not support that view, either.

17 Waste Management notes that the revenue-sharing legislation, as originally introduced in 2000, would have allowed solid waste collection companies to retain “up to thirty percent of the revenue” from recyclable materials, while requiring “[t]he remaining seventy percent of the revenue” to be passed to residential customers.³³ Waste Management correctly observes that “up to 30” + 70 does not necessarily equal 100.³⁴ As Waste Management notes, the percentages do add up to 100 in the legislation that was finally enacted. The 2002 legislation said companies could retain “up to thirty percent,” while requiring “[t]he remaining revenue” to be passed to residential customers.³⁵

[00/Pdf/Bill%20Reports/Senate/2939-S.SBR.pdf](#)).

³⁰ [Commission Staff Motion for Summary Determination ¶¶ 35-36](#).

³¹ 2002 Wash. Laws ch. 299, § 6 ([Leg. Hist. Excerpts](#), Page 155; also available at <http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bills/Session%20Law%202002/2308-S.SL.pdf>).

³² [Waste Management Memo ¶¶ 2, 12](#).

³³ House Bill 2939, 56th Leg., § 1 ([Leg. Hist. Excerpts](#), Page 19; also available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bills/House%20Bills/2939.pdf>); Senate Bill 6715, 56th Leg., § 4 ([Leg. Hist. Excerpts](#), Page 65; also available at <http://apps.leg.wa.gov/documents/billdocs/1999-00/Pdf/Bills/Senate%20Bills/6715.pdf>).

³⁴ [Waste Management Memo ¶¶ 10, 11](#).

³⁵ 2002 Wash. Laws ch. 299, § 6 ([Leg. Hist. Excerpts](#), Page 155; also available at

18 Waste Management says the arithmetical defect in the original bills “shows the legislative intent that a participating company be allowed to ‘own’ the retained percentage.”³⁶ Waste Management reads far too much into language that was never enacted, and that underwent many revisions before 2002. As described in Commission Staff’s Motion for Summary Determination, the legislators considered many alternative revenue-sharing bills during the 2000 and 2001 sessions.³⁷ There is no logical connection between the language of the original bills and Waste Management’s view of the enacted legislation.

D. The Commission’s Implementation of RCW 81.77.185 Does Not Support the Companies’ Interpretation.

19 The Companies appear to argue that Commission Staff once agreed with the Companies’ interpretation of RCW 81.77.185, but later changed its mind. There is no evidence that Commission Staff ever agreed with the Companies’ interpretation.

20 According to the Companies, a notice Commission Staff sent to stakeholders in August 2002 demonstrates that Staff were then interpreting RCW 81.77.185 as the Companies do now.³⁸ The Companies acknowledge, however, that the August 2002 materials announced only “informal” meetings and an “initial” implementation plan.³⁹ The paragraphs that the Companies quote do not purport to interpret RCW 81.77.185. A better indication of Commission Staff’s interpretation at the time is a report about the implementation of RCW 81.77.185 that Staff completed in early 2003.⁴⁰ The report

<http://apps.leg.wa.gov/documents/billdocs/2001-02/Pdf/Bills/Session%20Law%202002/2308-S.SL.pdf>).

³⁶ [Waste Management Memo](#) ¶ 12.

³⁷ [Commission Staff Motion for Summary Determination](#) ¶¶ 31-44.

³⁸ [Companies’ Motion for Summary Determination](#) ¶¶ 21, 22.

³⁹ [Companies’ Motion for Summary Determination](#) ¶ 21.

⁴⁰ *Recycling Revenue Sharing: A Staff Summary of the Implementation of RCW 81.77.185 (SHB 2308)* (Wash. Utils. & Transp. Comm’n May 2003) (hereinafter *Staff Summary*) (available at <http://www.wutc.wa.gov/webdocs.nsf/b8da29aede8fdd67882571430005a9c1/f4ba8447a5c62a1688256d9f000>)

provided guidance about how companies and local governments could work together. The guidance suggests that Commission Staff expected then, as now, that companies would spend retained revenues on measures designed to increase recycling.⁴¹

What might the County want to see in the Company Recycling Plan?

- a. A detailed description of the current program, including collection type (source-separated, comingled, bins, toters), frequency of pick-up, commodities being collected, etc.
- b. Attach a copy of the ordinance that makes recycling mandatory.
- c. A detailed description of the proposed program, including how it will integrate with the existing program.
- d. A clear description showing what percentage of the money from the sale of commodities will be used to increase recycling.
- e. *A detailed budget showing how the money will be spent to increase recycling, directly cross-referenced with the detailed description of the proposed program.*

(Emphasis added.) Nothing in the May 2003 report suggests that Commission Staff thought companies could pocket whatever is left over as profit, as the Companies now propose.⁴²

21 Finally, the Companies appear to suggest that the Commission has recently changed its practice for handling revenue-sharing matters. According to the Companies, their revenue-sharing matters used to be handled as “No Action” or “Consent” items on the Commission’s Open Meeting agendas, and the different treatment in these dockets may signal a shift in the Commission’s interpretation of RCW 81.77.185.⁴³

22 Neither the location of an item on the Commission’s Open Meeting agenda nor acquiescence in the Companies’ prior practices says anything about the Commission’s interpretation of RCW 81.77.185. In fact, the Commission still handles some revenue-

[0c0a2/\\$FILE/Recycling%20Revenue%20Sharing%20Staff%20Summary%20May%202003.pdf](#)).

⁴¹ [Staff Summary](#) at 16-17.

⁴² [Companies’ Motion for Summary Determination ¶¶ 6, 25](#).

⁴³ [Companies’ Motion for Summary Determination ¶¶ 25, 29](#); see Dockets TG-101542/TG-101545/TG-101548, [Declaration of Irmgard R. Wilcox](#) in Support of Petitioners’ Motion for Summary Adjudication to Allow Revenue Share Retention (Feb. 9, 2011).

sharing matters as “Consent” items. For example, two solid waste collection companies recently submitted revenue sharing plans that describe in detail how they will use revenues received during 2011 to increase recycling. The Commission approved the companies’ tariffs as “Consent” items during its December 30, 2010 Open Meeting.⁴⁴ Both orders contain a requirement, like the one at issue in these dockets, that any unspent revenues be carried over into the next plan period.⁴⁵

E. Opinions of Local Government Officials are Not Evidence of Legislative Intent.

23 The Companies have provided the declaration of two county officials describing what they think RCW 81.77.185 means.⁴⁶ Statements of individual legislators or lobbyists, especially if written years after a legislative enactment, are not evidence of legislative intent.⁴⁷ The county officials’ opinions in this matter are not relevant to the determination of what RCW 81.77.185 means and should be given no weight if they are considered at all.⁴⁸

IV. CONCLUSION

24 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 to accrete to the companies’ bottom line or general operating accounts. The legislative history is consistent

⁴⁴ See [Open Meeting Agenda](#) and [Minutes](#) (Wash. Utils. & Transp. Comm’n, Dec. 30, 2010).

⁴⁵ *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).

⁴⁶ [Wamback Declaration](#) ¶¶ 11-13, 16, 17; [Baker Declaration](#) ¶ 11; see [Companies’ Motion for Summary Determination](#) ¶ 30.

⁴⁷ *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 611, 998 P.2d 884, 891 (2000).

⁴⁸ See [Wash. R. Evid. 401](#) (“Relevant evidence’ means evidence having any tendency to make the existence of any fact that is or consequence to the determination of the action more probable or less probable than it would be without the evidence.”); [Wash. R. Evid. 402](#) (“Evidence which is not relevant is not admissible.”); [Wash. R. Civ. P. 56\(e\)](#) (“Supporting and opposing affidavits . . . shall set forth such facts as would be admissible in evidence”); [RCW 34.05.452](#) (presiding officer in adjudicative proceedings may refer to Washington Rules of Evidence as guidelines).

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 independent authority to determine whether a company's plan "demonstrates how the revenues will be used to increase recycling."⁴⁹

25 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 and their Motion for Summary Determination. There is no genuine issue as to any material fact, and Commission Staff is entitled to a judgment as a matter of law.⁵⁰ The Commission should grant the Commission Staff Motion for Summary Determination.

DATED this 11th day of March 2011.

Respectfully submitted,

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Transportation Commission Staff

⁴⁹ RCW 81.77.185(1).

⁵⁰ WAC 480-07-380(2)(a); see Wash. R. Civ. P. 56(c).

ATTACHMENT A

To

*Commission Staff Response to Motion For Summary Determination
by Petitioners Mason County Garbage, Murrey's Disposal Company, Inc.
and American Disposal Company, Inc.,
Dockets TG-101542/TG-101545/TG-101548*

Fifty-Sixth Washington Legislature, Second Session (2000)

Senate Bill Report, SHB 2939 (February 25, 2000)

SENATE BILL REPORT

SHB 2939

As Reported By Senate Committee On:
Environmental Quality & Water Resources, February 25, 2000

Title: An act relating to recycling and waste reduction.

Brief Description: Providing guidelines for recycling and waste reduction.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives Linville and G. Chandler).

Brief History:

Committee Activity: Environmental Quality & Water Resources: 2/17/2000, 2/25/2000 [DPA, DNP].

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Eide, Vice Chair; Jacobsen, McAuliffe, Morton and Swecker.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Staff: Richard Ramsey (786-7412)

Background: The Waste Not Washington Act of 1989 established a policy framework for waste reduction, reuse, and recycling that included setting a goal for the state to recycle 50 percent by 1995, expansion of local government solid waste planning, conduct of a waste characterization survey, reporting requirements, and regulation of solid waste collection companies.

The Utilities and Transportation Commission (UTC) sets rates for solid waste collection companies. These rates cover all costs of service and a guaranteed rate of return. Currently, 100 percent of the proceeds from the sale of recycled materials is passed back to the residential customers. However, prior to the mid 1990s, solid waste collection companies bore the risk of marketing recycled materials, retaining revenue from positive sales, or covering the costs for losses.

Current law authorizes only the UTC to establish rates for solid waste collection companies. A superior court spoke directly to this issue in *King County v. Eastside Disposal*, prohibiting a local government's attempt to establish incentive rates for recycling.

The state's recycling rate reached a high of 39 percent in 1996 and declined to 33 percent in 1997. The Department of Ecology convened a recycling assessment panel to evaluate

causes in the recycling rate decline and to recommend responses. The panel's draft report includes recommendations for legislation.

Summary of Amended Bill: The Department of General Administration (GA) must work with the construction industry to develop job-site construction waste management planning guidelines and establish goals for recycled and environmentally preferable products. The standards for state purchasing are expanded to include building materials/products and also apply to post-secondary education institutions. GA must adopt standards for strawboard products and state-funded building products are required to use recycled content standards if cost-effective and readily available.

Governments, the private sector and consumers are encouraged to discuss product stewardship. Solid waste collection companies may retain 20 percent of revenues from the sale of recycled materials above the 1999 base. The hauler's plan must be certified by the local government as consistent with the local solid waste plan. Local governments may set recycling incentive rate structures

The Department of Ecology may assess penalties for failure to file recycling reports. The state goal for 50 percent recycling is extended to 2005 and a new goal is added to establish programs to eliminate yard waste/debris disposal in landfills by 2010.

Construction, demolition, and land clearing debris, and major organics are evaluated. The Department of Ecology is prohibited from adopting rules for best management practices for evaluated wastes.

Amended Bill Compared to Substitute Bill: The substitute bill requires the UTC to allow residential solid waste collection companies to retain 30 percent of the revenue from the sale of recyclable materials; the amended bill allows a 20 percent revenue sharing on revenues for recyclable materials above the 1999 base tonnage. In the amended bill, the hauler's plan must be certified by the local government as consistent with the local solid waste plan.

The following provisions are added to the substitute bill:

GA must work with the construction industry to develop job-site construction waste management planning guidelines and establish goals for recycled and environmentally preferable products. The standards for state purchasing are expanded to include building materials/products and also apply to post-secondary education institutions. State-funded building products are required to use recycled content standards if found to be cost-effective and readily available. Governments, the private sector and consumers are encouraged to discuss product stewardship. The Department of Ecology may assess penalties for failure to file recycling reports. The Department of Ecology is prohibited from adopting rules for best management practices for evaluated wastes.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill does not incorporate all of the recycling panel's recommendations; rather the provisions of the bill are a way to keep recycling moving and to provide incentives. The main issue is the 30 percent revenue sharing. It was the clear direction from the recycling panel and a simpler way to accomplish it.

Testimony Against: Haulers are concerned about how the incentive rates structures will be adopted and implemented. The rates should not change until the cost to provide service has been examined by the UTC.

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 showed the 30 percent revenue sharing would increase residential collection 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 return on investment will increase from 16 percent to 36 percent and return on equity will increase from 26 percent to 70 percent.

Testified: Representative Kelli Linville, prime sponsor (pro); Jim Boldt, Rabanco Co. and Allied (pro with questions); Gene Eckhardt, Teresa Osinski, Utilities and Transportation Commission (con); Jim Sells, Washington Refuse and Recycling Association (pro).