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7 BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

8 In the Matter of the Petition of  
9 MASON COUNTY GARBAGE CO., INC.  
10 d/b/a MASON COUNTY GARBAGE, G-88,  
11 Requesting Authority to Retain Thirty  
12 Percent of the Revenue Received From  
13 the Sale of Recyclable Materials  
Collected in Residential Recycling Service

Docket TG-101542  
(Consolidated)

14 .....  
14 In the Matter of the Petition of  
15 MURREY'S DISPOSAL COMPANY, INC.,  
16 G-9,  
17 Requesting Authority to Retain Fifty  
18 Percent of the Revenue Received From  
19 the Sale of Recyclable Materials  
Collected in Residential Recycling Service

Docket TG-101545  
(Consolidated)

20 .....  
20 In the Matter of the Petition of  
21 AMERICAN DISPOSAL COMPANY, INC.,  
22 G-87,  
23 Requesting Authority to Retain Fifty  
24 Percent of the Revenue Received From  
25 the Sale of Recyclable Materials  
Collected in Residential Recycling Service

Docket TG-101548  
(Consolidated)

INTERVENOR WASHINGTON  
REFUSE AND RECYCLING  
ASSOCIATION'S RESPONSE TO  
STAFF'S MOTION FOR  
SUMMARY DETERMINATION

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motion.doc 3.9.11

1           **COMES NOW** Intervenor Washington Refuse and Recycling Association  
2 (WRRRA) and respectfully submits the following:

3           1)     As is so often the case, Mr. Wiley, representing Petitioners, has so  
4 far thoroughly covered the case law and legislative history here and can be  
5 expected to continue to do so in his Reply Brief. Thus, there is little, if  
6 anything, left for Intervenor to add in response to Staff's well-written and  
7 researched brief, other than to assert that its conclusion is incorrect. Staff's  
8 position is simply wrong, for two primary reasons. First, it relies on  
9 "legislative history" to the point where the actual bill that was passed, and is  
10 now the law, becomes almost a second thought. Secondly, it diminishes the  
11 role of counties to that of mere spectators who do all of the "heavy lifting" to  
12 obtain the stated goal of increased recycling, only to stand by while another  
13 agency can negate all its efforts with the stroke of a staff pen or the click of a  
14 mouse.

15           2)     Regarding legislative history, it can be a useful tool in deciphering  
16 "legislative intent" which, admittedly, sometimes can be obscure at best.  
17 However, the only true measure of what a law says is just that, what it says.  
18 Those familiar with the legislative process know full well there are a myriad of  
19 reasons for changes in bill language and/or introduction of competing bills.  
20 Some of the time, in the real world of legislative "give and take," this means  
21 nothing as to "intent," although it may mean everything about getting the bill,  
22 or perhaps an entirely unrelated bill, passed. Reliance on unadopted drafts,  
23 committee reports or statements of legislators which conflict with, or even  
24 appear to explain an enacted law is a dangerous business indeed. *see Hama*  
25 ***Hama Co. v. Shorelines Hearings Board***, 85 Wn.2d 441, 449, 536 P.2d 157  
26 (1975).

          That which the Commission should consider here is the existing law  
itself, not what was not made into law. This statute seems to Intervenor to be  
clear on its face, and there is no need to clear out the dusty cobwebs of  
legislative intent and history to discern its meaning. Its meaning is what it

1 says. The only conclusions to be reached here are found in a close and  
2 careful reading of the law itself.

3 3) Once the plain language of RCW 81.77.185 is analyzed, it seems  
4 clear that the law grants to local government much more authority than Staff  
5 would have the Commission believe. It provides that counties review and  
6 approve plans which, in the county's view, will increase recycling in that  
7 particular county; then goes on to clearly state that the Commission "shall  
allow" the retention. (emphasis added.)

8 It is the use of the word "shall" which defines this statute, and which is  
9 not addressed by Staff in its argument. There certainly is no need to  
10 laboriously research legislative history to figure out what "shall" means. What  
11 is not in the law is any reference to some sort of "carryover" of fund retention  
12 or a nebulous "future reward" for past performance. That simply is  
13 Commission accounting staff either ignoring or seriously misinterpreting the  
14 plain language of the law, and thereby defeating the very purpose of the act;  
15 i.e., to increase recycling at the local level based upon local investigation and  
16 approval. Staff would have the Commission go far beyond the parameters of  
17 the law, which seem simple and straightforward.


18 It is a very basic "carrot and stick" analysis. The "carrot" is retention of  
19 additional recycling revenue, while the "stick" is the necessity to have a plan  
20 approved by the local jurisdiction. No plan approved, no revenue retention.  
21 Seems so simple. Perhaps that is the problem?

22 This is a local situation for which the Legislature has provided a local  
23 solution. To somehow look beyond the clear language of the law and grant  
24 the Commission a veto power not found in the law is to give Commission  
25 Staff, and ultimately the Commission itself, the powers of the legislative  
26 branch, a result we can be sure was never intended.

27 The Commission should grant Petitioner's Motion and reject that of  
28 Staff; thereby removing what is an artificial impediment to the real issue here  
29 – increased residential recycling based upon local scrutiny and approval. The  
30 Commission clearly has a role; that is, to review and approve local

1 government's process. It is not to "second guess" the manner of revenue  
2 retention once that process is determined to be sound and appropriate under  
3 the particular circumstances of the local government involved.

4 DATED this 11<sup>th</sup> day of March 2011.

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8 JAMES K. SELLS  
9 WSBA No. 6040  
10 Attorney for Washington Refuse and  
11 Recycling Association  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 11<sup>th</sup>, 2011 I caused to be served the  
3 original and 3 copies of the foregoing document to the following address via  
4 first class mail, postage prepaid to:

5 David Danner, Executive Director and Secretary  
6 Policy and Legislative Issues  
7 Washington Utilities and Transportation Commission  
8 PO Box 47250  
9 1300 S. Evergreen Park Dr. SW  
10 Olympia, WA 98504-7250

11 I certify I have also provided to the Washington Utilities and Transportation  
12 Commission an official electronic file containing the foregoing document via  
13 e-mail to: records@utc.wa.gov.


14 I also certify that I have served via e-mail and first class mail the  
15 foregoing document on:

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Messenger  
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8 DATED at Silverdale, Washington, this 11<sup>th</sup> day of March 2011.

9   
10 Cheryl L. Sinclair