

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)
) DOCKET TG-101542 (*Consolidated*)
)
MASON COUNTY GARBAGE CO.,) ORDER 05
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,) ORDER 05
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)
) DOCKET TG-101548 (*Consolidated*)
)
AMERICAN DISPOSAL COMPANY,) ORDER 05
INC., G-87,)
)
Requesting Authority to Retain Fifty)
Percent of the Revenue Received From)
the Sale of Recyclable Materials)
Collected in Residential Recycling)
Service)
)
.....)

1 **Synopsis.** *This is an order on reconsideration of Order 01 in these dockets. The Commission grants, in part, the petitions for reconsideration, and makes the following conclusions on the issues of law arising out of interpretation of RCW 81.77.185: The statute (1) requires the Commission, not local government, to determine whether the plan that a solid waste company submits to the Commission demonstrates how the revenue from the sale of recyclable material the company retains will be used to increase recycling; (2) does not require the company to spend all retained revenue on recycling activities; (3) does not authorize the Commission to require a company to carry over to a subsequent plan period the retained revenue that the company does not spend on recycling activities within a given plan period; and (4) requires all revenue from the sale of recyclable materials, including retained revenue, that is not used to increase recycling to be passed on to residential customers. The Commission modifies Order 01 (1) to strike the restriction that the companies must carry over to a subsequent plan period any revenue that is not spent on recycling activities within a particular plan period and (2) to add a requirement that retained revenue not used for recycling be passed on to residential customers.*

BACKGROUND

2 **NATURE OF PROCEEDING.** This proceeding arises out of filings by Mason County Garbage Co., Inc., d/b/a Mason County Garbage, G-88 (Mason County Garbage), Murrey's Disposal Company, Inc., G-9 (Murrey's Disposal), and American Disposal Company, Inc., G-87 (American Disposal) (collectively Companies or Petitioners) to increase or maintain the percentage of the revenues the Companies are allowed to retain from the sale of recyclable materials that they collect in their residential recycling collection services during the recycling plan period of November 1, 2010, through October 31, 2011.

3 **APPEARANCES.** David W. Wiley, Williams Kastner, Seattle, WA, represents petitioners Mason County Garbage, Murrey's Disposal, and American Disposal. James K. Sells, Attorney at Law, Gig Harbor, WA, represents the Washington Refuse and Recycling Association. Polly L. McNeill, Summit Law Group, Seattle, WA, represents Waste Management of Washington, Inc. Fronda Woods, Assistant Attorney General, Olympia, WA, represents the Commission's regulatory staff (Commission Staff or Staff).¹

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the

- 4 **PROCEDURAL HISTORY.** On September 15, 2010, the Companies filed proposed tariff revisions to reflect changes in recyclable commodity revenue adjustments for residential and multi-family customers receiving recycling collection services. Murrey's Disposal and American Disposal also filed requests to increase from 30 percent to 50 percent the amount the companies are authorized to retain of the revenues they will receive from the sale of recyclable materials that they collect in their residential recycling collection services during the recycling plan period of November 1, 2010, through October 31, 2011. Mason County Garbage filed a request to retain 30 percent of such revenue.
- 5 The Companies' filings included recycling plans approved by Mason County (for Mason County Garbage) and Pierce County (for Murrey's Disposal and American Disposal). Under the plans, the Companies are entitled to their percentage of the retained recyclable commodity revenue based on meeting certain performance measures during the plan period. Both Mason and Pierce Counties informed the Commission that in the prior recycling plan period, August or September 2009 through October 31, 2010, the Companies' had satisfied the performance requirements in the plans and were entitled to the entire 30 percent of recyclable commodity revenues the Companies had retained during that plan period.
- 6 The Commission considered the filings during its October 28, 2010, Open Meeting and issued Order 01 in each of the three dockets. The Commission took no action on the Companies' revised tariffs thereby allowing the revised recycling commodity credits to go into effect on November 1, 2010, by operation of law. The Commission authorized Mason County Garbage to retain 30 percent, and Murrey's Disposal and American Disposal each to retain 50 percent, of the revenues they receive from the sale of recyclable materials collected in the residential recycling programs from November 1, 2010, through October 31, 2011, subject to recalculation if the Companies do not meet the performance measures in the plans. Order 01 in each docket also provided,

Revenues retained by [the Companies] not spent during the previous plan period are to be carried over into the next year, and revenues from this plan period that are not spent are to be carried over to the following year, unless the Commission orders some other treatment.²

- 7 On November 8, 2010, the Companies filed petitions for reconsideration of Order 01, specifically asking the Commission to revise the orders to authorize the Companies to retain all of their authorized percentage of the recycling revenues, including revenues not spent during the plan period, rather than require that unspent revenues be carried over into the next year.
- 8 The Commission considered the petitions for reconsideration at its November 24, 2010, Open Meeting and decided to refer them to the Administrative Law Division to develop the necessary record for a Commission determination. The Commission issued Order 02, which consolidated the three dockets and scheduled a prehearing conference.
- 9 On December 20, 2010, the Commission conducted a prehearing conference before Administrative Law Judge Gregory J. Kopta. At the prehearing conference, the Commission granted petitions to intervene by the Washington Refuse and Recycling Association (WRRRA) and Waste Management of Washington, Inc. (Waste Management). The Commission also agreed to the parties' proposal to address the threshold issues of the interpretation of RCW 81.77.185 and to consider other issues, if any, after the Commission resolves those issues. The Commission established a schedule for cross-motions for summary determination to develop the legal and policy arguments in support of the parties' positions.

SUMMARY DETERMINATION MOTIONS

- 10 The Petitioners, joined or supported by the intervenors, and Commission Staff each filed for summary determination on the issue of the interpretation of RCW 81.77.185(1). That statutory provisions 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

² Docket TG-101542, Order 01 ¶ 19; Docket TG-101545, Order 01 ¶ 20; Docket TG-101548, Order 01 ¶ 20.

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.

11 The Petitioners make the following arguments in support of their motion for summary determination and in opposition to Staff's motion:

- The statute requires that solid waste collection companies “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.”³ This interpretation of RCW 81.77.185 “may well be clear and unambiguous on its face,”⁴ but nevertheless finds support in the legislative history and the Commission’s prior practice both before and after the statute’s enactment. Staff’s interpretation of RCW 81.77.185 to require a future showing that the retained revenue is actually spent on recycling activities is inconsistent with the statutory language and eviscerates any incentive for companies to engage in recycling efforts, wholly undermining the intended purpose of revenue sharing.
- Contrary to Staff’s recitation of the legislative history, information presented to the legislature prior to and at the time RCW 81.77.185 was enacted demonstrates that the statute was intended to provide solid waste companies with a reward for implementing recycling programs by granting the companies a specified share of the revenue generated by the sale of recyclable materials they collect. In addition, until October 2010, the Commission had consistently implemented RCW 81.77.185 by routinely approving recycling plans certified by county governments without any requirement that unspent retained recycling revenue in one year be carried over to the next year.

12 WRRRA joins the Petitioners’ motion and opposes Staff’s motion, making the following arguments: RCW 81.77.185 vests primary responsibility with the local government to determine whether and the extent to which a company retains up to 50

³ Motion for Summary Determination by Petitioners ¶ 30.

⁴ *Id.* ¶ 9.

percent of the revenue it generates from the sale of recyclable materials. The Commission “does not lose its authority here, it is simply required to approve and adopt a rate structure that has been already vetted, approved and adopted by another entity.”⁵ “Neither the statute itself nor any of its legislative history even hints at authorizing the Commission to ‘freeze’ and/or require a carryover of any of this revenue stream.”⁶

13 Waste Management supports the Petitioners’ position and opposes Staff’s motion on the following basis: Revenue sharing plans that allow both the county and the company to pilot new recycling activities and programs lie at the heart of RCW 81.77.185, but the company has little incentive to participate in such plans without the ability to profit from that participation. The statutory language, particularly when viewed in the light of the immediately preceding bills that the legislature considered but ultimately did not adopt, “shows the legislative intent that a participating company be allowed to ‘own’ the retained percentage” of the recycling revenue.⁷ Settled expectations resulting from the Commission’s long-standing implementation of RCW 81.77.185, as well as the re-enactment of this statutory provision in 2010, support holding the Commission to its past interpretation.

14 Commission Staff in its motion for summary determination makes the following points in support of its motion for summary determination and in response to Petitioners and the intervenors:

- RCW 81.77.185 conditions eligibility for revenue sharing on two distinct conditions: (1) the company must submit a plan that is certified by the appropriate local government; and (2) the plan must demonstrate how the revenues will be used to increase recycling. The plain statutory language requires the Commission, not the local government, to determine whether the company has demonstrated how the revenue will be used to increase recycling, and Petitioners and the intervenors ignore the plain meaning of the statute in arguing otherwise.
- The phrase “will be used to increase recycling” requires that the company demonstrate how revenue actually will be spent on future efforts to increase recycling. The statutory language is about creating future revenue streams and

⁵ Joinder in Motion for Summary Determination by Intervenor WRRRA at 3.

⁶ *Id.*

⁷ Memorandum of Intervenor Waste Management ¶ 12.

“does not support an interpretation that lets companies keep unspent revenues as a reward for past performance.”⁸ Order 01 correctly implements RCW 81.77.185 by requiring the Companies to carry over all retained revenue that the Companies do not spend on recycling efforts.

- The challenged requirement in Order 01 is fully consistent with the legislative history and industry practice. Bills that the legislature considered before and after it passed RCW 81.77.185 would have expressly authorized the results the Companies seek, but the legislature did not enact them. At least two companies, moreover, recently submitted revenue sharing plans pursuant to RCW 81.77.185 that include the requirement that all unspent revenue be carried over into the next plan period. In addition, “[n]either 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.”⁹ The county officials’ opinions in the declarations attached to Petitioners’ motion are not entitled to any weight, if considered at all, in interpreting the statute.

DISCUSSION AND DECISION

- 15 The motions for summary determination, intervenors’ supporting arguments, and the responses of all parties serve to flesh out the petitions for reconsideration and identify three issues with the interpretation of RCW 81.77.185 arising from the Commission’s consideration of the recycling plans at issue in this proceeding: (1) whether the local government or the Commission determines whether the solid waste company’s recycling plan demonstrates how the revenue the company retains will be used to increase recycling; (2) whether the entirety of the revenue the company retains under the plan must be spent on recycling efforts; and (3) if not, the disposition of retained revenue that is not spent or otherwise used to increase recycling, including whether the Commission can require such revenue to be carried over to the following year.
- 16 Like a court, the Commission’s primary “objective in construing a statute is to determine the legislature’s intent.”¹⁰ The Commission agrees with the parties that the language of RCW 81.77.185 is the best indication of the legislature’s intent. “[I]f the statute’s meaning is plain on its face, then the court must give effect to that plain

⁸ Commission Staff’s Response to Petitioners’ Motion for Summary Determination ¶ 9.

⁹ *Id.* ¶ 22.

¹⁰ *Christensen v. Ellsworth*, 162 Wn.2d 365, 372, 173 P.3d 228 (2007).

meaning as an expression of legislative intent.’ Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.’¹¹

17 The Commission finds that the meaning of RCW 81.77.185 is plain on its face based on the ordinary meaning of the language, the context of the statute in which that provision is located, and the statutory scheme as a whole. Accordingly, the Commission need not resort to the legislative history proffered and discussed by the parties to determine the legislature’s intent in RCW 81.77.185. However, as discussed below, even if we were to consider the legislative history presented by Commission Staff and the other parties, our conclusions would remain the same. Similarly, county official opinions and other evidence parties have offered to show how the statute has been implemented since its enactment are not factors in the Commission’s statutory interpretation.

A. The Statute Requires the Commission, Not the Local Government, to Determine Whether a Plan Demonstrates How Retained Revenue Will Be Used to Increase Recycling.

18 RCW 81.77.185 requires the Commission to allow a solid waste company to retain up to 50 percent of the revenue it generates from the sale of recyclable materials if the company submits a plan to the Commission that satisfies two separate conditions:

- (1) *Certification*: the local government must certify the plan as being consistent with the local government’s solid waste plan; and
- (2) *Demonstration*: the company’s plan must demonstrate how the revenue will be used to increase recycling.

Under the first condition, the statute expressly states that the local government must certify the plan as consistent with the solid waste plan. With respect to the second condition, however, the statute does not expressly identify the entity that determines whether the plan demonstrates how the revenues will be used.

19 The Commission agrees with Staff that the plain meaning of the statute requires that a company’s recycling plan demonstrate to the *Commission* how the revenues will be used to increase recycling. Under the statutory language, the Demonstration condition is the second of two independent requirements applicable to the plan.

¹¹ *Id.* at 372–373, quoting *Dep’t of Ecology v. Campbell v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002) (citation omitted).

Removing the Certification condition for purposes of illustration, RCW 81.77.185 obligates companies to “submit a plan to the commission . . . that demonstrates how the revenues will be used to increase recycling.” The company submits its plan to the *Commission*, and the *Commission* must allow the company to retain revenues if that plan makes the requisite demonstration. Thus, the plain meaning of this language is that the *Commission* must determine whether the plan makes that demonstration.

20 The Petitioners and intervenors contend that the Commission merely ratifies the local government’s determination that the recycling plan demonstrates how the revenues will be used to increase recycling, but none of those parties explain how the statutory language supports that interpretation. They simply assert that the requisite demonstration “is an analysis for *both* local and state governments through the submission and evaluation of the revenue share plans.”¹² Petitioners make no attempt to show how the language of RCW 81.77.185 establishes such a dual role for the counties and the Commission, and we find no such showing in our review of that language.

21 Nor can Petitioners’ position be squared with “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.”¹³ RCW 81.77.185 is one provision in Chapter 81.77 RCW, which establishes Commission jurisdiction over solid waste companies and describes the Commission’s obligations with respect to regulating such companies. In various provisions of that chapter, the legislature specifically states the circumstances in which Commission jurisdiction or responsibility is limited in favor of another governmental entity.¹⁴ Consistent with this statutory scheme, RCW 81.77.185 provides that company recycling plans must be “certified by the appropriate local government authority as being consistent with the local government solid waste plan.” However, the legislature did not expressly require the local government to certify or otherwise determine that the plan “demonstrates how the revenues will be used to increase recycling.” Presumably, the

¹² Petitioners’ Response in Opposition to Staff’s Motion for Summary Determination ¶ 3 at 2 (emphasis in original).

¹³ *Id.*

¹⁴ *See, e.g.*, RCW 81.77.030(6) (requiring the Commission to require the solid waste companies it regulates “to use rate structures and billing systems consistent with . . . the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans”); RCW 81.77.130 (“The provisions of chapter 81.77 RCW shall not apply . . . to any city or town which itself undertakes the collection and transportation of source separated recyclable materials from residences”).

absence of such a requirement is intentional and, accordingly, we conclude that the legislature intended no such local government role.¹⁵

- 22 The Petitioners and WRRRA nevertheless contend that the company develops its recycling plan in conjunction and consultation with the local government, and accordingly, the local government, which is “‘closest’ to and in the best position to oversee and evaluate the local and practical impacts of recycling program initiatives,” is the entity to which the plan must make the requisite demonstration.¹⁶ This contention is largely irrelevant. A plan may be the collaborative work product of a county and the company,¹⁷ but in discerning the plain meaning of a statute, we do not look to extrinsic evidence of how that statute has been implemented. The statute, both Chapter 81.77 RCW in general and RCW 81.77.185 in particular, vests jurisdiction to regulate certificated solid waste companies in the Commission, and in the absence of an express requirement to the contrary, the Commission, not the county, must determine whether such a company’s recycling plan satisfies the statutory prerequisites.
- 23 RCW 81.77.185, however, does not *preclude* a county or other local government from developing, recommending, or even requiring provisions in a plan that describe how retained revenue will be used to increase recycling as part of the certification that the plan is consistent with the local government’s solid waste plan. Indeed, as discussed further below, the statute contemplates that local governments may play a role in developing such provisions. We conclude only that the statute establishes the Commission as the entity with ultimate authority to determine whether the plan demonstrates how the retained revenue will be used to increase recycling as a condition of a Commission decision to allow the company to retain a percentage of its recycling revenue. The Commission, therefore, does not defer to the counties but independently reviews the recycling plans submitted in these dockets to determine

¹⁵ The same conclusion results from applying the canon of statutory construction that “‘to express one thing in a statute implies the exclusion of the other.’ We therefore presume that the absence of such language . . . was intentional.” *State v. Delgado*, 148 Wn. 2d 723, 729, 63 P.2d 792 (2003), quoting *In re Detention of Williams*, 147 Wn.2d 476, 491, 55 P.2d 597 (2002). Having expressly stated that the local government must certify the plan as consistent with the local government’s solid waste plan, the absence of language requiring the local government to determine that the plan demonstrates how the revenues will be used for recycling means that the legislature intended no such local government determination.

¹⁶ Motion for Summary Determination by Petitioners ¶ 33, at 16.

¹⁷ See Declaration of Stephen C. Wamback in Support of Petitioners’ Motion for Summary Adjudication to Allow Revenue Share Retention ¶ 9.

whether those plans demonstrate how the retained revenues will be used to increase recycling.

B. The Statute Does Not Require a Company to Spend All Retained Revenues on Recycling Activities.

- 24 The statute requires the solid waste company seeking to retain recycling revenue to submit a plan to the Commission “that demonstrates how the revenues will be used to increase recycling.” Staff interprets this condition to require the company to spend all retained revenues on recycling efforts: “The plain meaning of ‘will be used’ suggests future action, not past performance. The language suggests that the Legislature expected companies to provide details about how they will spend retained revenue to increase recycling prospectively.”¹⁸ The language of RCW 81.77.185 is not reasonably susceptible to this limitation.
- 25 “Plain meaning is discerned from the ordinary meaning of the language at issue”¹⁹ The ordinary meaning of “used” is “employed in accomplishing something.”²⁰ Revenue can be employed in accomplishing an increase in recycling by being spent, but being spent is not necessarily the only means by which revenue can be used to accomplish that goal. The term “used” thus can include, but is not limited to, “spent.”
- 26 The legislature, moreover, did not identify *by whom* the retained revenues “will be used.” Use of the passive voice, as in this sentence, is appropriate when identifying the object of the action is more important than the subject or when the subject is unknown or uncertain.²¹ Here, the legislature’s language indicates that the goal of increasing recycling is more important than the entity or entities using the retained revenue to accomplish that goal, and those entities may vary. The company is one such entity, but the local government and the Commission also have a role in accomplishing the legislature’s goals. The statutory language provides solid waste companies with the flexibility to submit a plan that authorizes the local government or the Commission, as well as the company, to use the revenue to increase recycling.
- 27 The statute, therefore, requires that the recycling plan demonstrate that the company, the local government, or the Commission will employ the retained revenue to

¹⁸ Commission Staff Motion for Summary Determination ¶ 22.

¹⁹ *Christensen v. Ellsworth*, 162 Wn.2d 365, 372, 173 P.3d 228 (2007).

²⁰ G. & C. Merriam Co., *Webster’s Third New International Dictionary* 2529 (1976).

²¹ See, e.g., W. Strunk, Jr. & E.B. White, *The Elements of Style* 18 (3d ed. 1979).

accomplish the goal of increasing recycling. Company expenditures on recycling activities are the most obvious such use. Petitioners and the intervenors, however, assert that RCW 81.77.185 also allows the recycling plan to use the retained revenue as an incentive to the company in the form of a reward or profit for meeting certain performance objectives. Stated in terms of the statute, the plan would demonstrate that the local government or the Commission will use at least some portion of the revenue as a reward to provide an incentive to the company to develop and implement recycling efforts and thereby increase recycling. We agree with these parties that such use of the retained revenue is fully consistent with the plain meaning of RCW 81.77.185.

- 28 Staff argues that under such an interpretation, the companies “would not have to use any of their share of the revenues on activities designed to increase recycling, so long as recycling increases.”²² The plan, however, must *demonstrate* to the Commission *how* the revenue will be used to increase recycling, and a plan that does not require any expenditure of retained revenue on recycling activities would not be able to make the requisite demonstration. No party advocates otherwise. Both of the plans at issue in this proceeding require the companies to spend most of the retained revenue on such activities, and the Commission expects all recycling plans submitted to include comparable requirements.
- 29 Staff makes additional credible arguments in support of its position on this issue, but we do not believe they are strong enough to overcome the flexibility embodied in the statute. Staff maintains that the statute does not expressly create incentives or authorize the companies to receive a reward for developing and implementing recycling plans. While that is true, neither does RCW 81.77.185 expressly prohibit such incentives or rewards. The legislature intends to increase recycling, and the statutory language affords the companies, local governments, and the Commission the flexibility to develop and implement plans to accomplish that goal.
- 30 The Commission Staff further argues that the legislative history of RCW 81.77.185 shows that the legislature considered, but rejected, proposals that would have specifically authorized companies to retain a percentage of the recycling revenues.²³ Though, as noted above, we are basing our decision on the plain language of the statute and need not consider legislative history, even if were to consider the evidence

²² Commission Staff Motion for Summary Determination, ¶ 22.

²³ *Id.* ¶¶31-44.

of sequential drafts of the legislation, we would reach the same conclusion for two reasons. First, we are reluctant to give too much credence to evidence of sequential drafts where, as here, the legislative drafting process extended over several years and more than one legislature.²⁴ Second, the thorough historical analysis offered by Staff does not reveal that the Legislature considered, but rejected, the precise and narrow incentive mechanism at issue here. The various drafts before the Legislature that would have provided for retention of revenues were not as detailed as the incentive program in the plans at issue in this proceeding. In sum, we are not willing to derive a negative implication in the 2003 statute from legislation not enacted in 2001, particularly when the end result is consistent with the overall legislative purpose to encourage recycling.

31 We reiterate that we are only deciding this issue in the context of the recycling plans before us, which is whether RCW 81.77.185 permits a company, consistent with the jurisdictional solid waste management plan, to include in its recycling plan a mechanism that would allow the company to retain some portion of recycling revenues upon the meeting of certain stated performance goals. We determine that the statute allows such a mechanism and that the Commission may determine, as we do here, that such an incentive mechanism may be part of the company demonstration of how the revenue will be used to increase recycling.²⁵

²⁴ The Washington Supreme Court has been somewhat critical of reliance on sequential drafts to ascertain legislative intent. In *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 449, 536 P. 2d 157 (1975), the Court stated:

The unstated assumption of such a sequential focus is that each subsequent draft is consciously, deliberately, and meticulously drafted in view of all of the language in each preceding draft. But as a very pragmatic, starkly realistic fact of life, the time constraints and pressures inherent in the legislative process may operate or prevent the legislature from functioning in such a deliberate and conscious fashion. Numerous legal scholars have recognized this and have, therefore, cautioned against over-emphasis and over-reliance upon the fact or happenstance of successive drafts as an absolute determinant, rule, or tool for interpreting a statute.

The Court has subsequently found analysis of such sequential drafts relevant, but generally only where the drafts are in the same session. See *Bellevue Firefighters Local 1604 v. City of Bellevue*, 100 Wn.2d 748, 753, 675 P.2d 592 (1984).

²⁵ We are not deciding the broader question of whether RCW 81.77.185 would permit a company to simply retain a percentage of the recycling revenues as “profit” where there are no associated performance goals. That issue is before the Commission in another proceeding. See *Washington*

C. All Recycling Revenues, Including Retained Revenue, Not Used to Increase Recycling Must Be Distributed to Residential Customers.

- 32 The final issue is the disposition of the revenue a company retains that is not spent on recycling efforts or otherwise used to increase recycling. Staff’s position is that the Commission correctly required the companies to carry over to the next year any such unused retained revenue. Petitioners and the intervenors, on the other hand, contend that the companies are entitled to keep all retained revenues the plan allocates to them. None of the parties correctly interprets RCW 81.77.185 with respect to this issue.
- 33 The statute requires the Commission to “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 company submits a recycling plan that satisfies two conditions, and “[t]he *remaining* revenue shall be passed to residential customers.”²⁶ The legislature thus expressly required revenue from recycling either to be retained by the company or to be passed on to residential customers. The statutory language does not evidence any legislative intent to authorize the Commission to require the company to carry over a portion of the revenue to be spent in a future year.
- 34 Staff asserts that “[t]he Commission’s orders requiring the Companies to carry over any unspent revenues into the next reporting period are consistent with the language of RCW 81.77.185,”²⁷ but Staff does not identify any statutory language that authorizes the Commission to take such action. As discussed above, Chapter 81.77 RCW delineates Commission authority over solid waste companies, and RCW 81.77.185 requires the Commission to allow such companies to retain recycling revenue if the company satisfies two conditions. The statute does not expressly authorize the Commission to adopt its own conditions on the disposition of that revenue. The Commission has the authority to determine whether the plan demonstrates how retained revenues will be used to increase recycling, but such authority does not include the ability to impose an additional requirement to carry a portion of those revenues over into another plan period.

Utilities & Transportation Comm’n v. Waste Management of Washington, Inc., Dockets TG-101220, TG-101221, and TG-101222 (consolidated).

²⁶ RCW 81.77.185(1) (emphasis added).

²⁷ Commission Staff Motion for Summary Determination ¶ 24.

- 35 That does not mean, however, that the company is entitled to keep all retained revenue. To the contrary, the plan must demonstrate how such revenue “will be used to increase recycling.” That demonstration would be meaningless if the company were entitled to keep all retained revenue, regardless of whether that revenue is used for the purpose the legislature prescribed. By authorizing the company to retain “up to” 50 percent of the revenue and requiring the “remaining” revenue to be passed to residential customers, the legislature permitted the Commission the flexibility to ensure that the retained revenue is used for its intended purpose. The plain meaning of RCW 81.77.185, therefore, is that retained revenue that is not used to increase recycling must be passed on to residential customers.
- 36 Petitioners and the intervenors claim that once the Commission has authorized a company to retain a specified percentage of its recycling revenue, the company is entitled to keep that percentage, even if all of that revenue is not used to increase recycling.²⁸ The statute confers no such entitlement.
- 37 RCW 81.77.185 does not require the Commission to permit a company to retain a fixed percentage of recycling revenue. Rather, the statute provides that the Commission must allow a company to retain “up to” 50 percent of such revenue. The preposition “up to” is “to the limit of.”²⁹ The statute thus provides that a company may retain a *maximum* of 50 percent of the revenue it generates from the sale of recyclable materials if it satisfies the statutory conditions. A plan may allocate a specific percentage of recycling revenue to the company, as do the plans in these dockets, but that percentage represents only the upper limit on the revenue the company could retain, not necessarily the actual amount the company ultimately keeps.
- 38 The remainder of RCW 81.77.185 reinforces the ordinary meaning of this language. A company may retain up to 50 percent of its recycling revenue if the plan it submits

²⁸ Waste Management goes a step further, likening a recycling plan to a contract with a condition precedent and contending that once the condition precedent is satisfied – *i.e.*, the plan has demonstrated how the specified percentage of retained revenue will be used to increase recycling – the “contract” is effective and not subject to reconsideration at a later date. That argument, however, is beyond the scope of this proceeding. Order 01 expressly provides that the Commission will revisit and potentially reduce the percentage of recycling revenue the Companies are authorized to retain if that revenue is not used as prescribed in the recycling plans. Docket TG-101542, Order 01, ¶ 18; Docket TG-101545, Order 01, ¶ 19; Docket TG-101548, Order 01, ¶ 19. The Petitioners did not seek reconsideration of this aspect of Order 01, and Waste Management, therefore, may not raise that issue here.

²⁹ G. & C. Merriam Co., *Webster’s Third New International Dictionary* 2519 (1976).

to the Commission “*demonstrates* how the revenues will be used to increase recycling.” The ordinary meaning of “demonstrate” is “to manifest clearly, certainly, and unmistakably.”³⁰ A recycling plan can only clearly, certainly, and unmistakably manifest how retained revenue will be used to increase recycling if the plan ensures that the revenue will *not* be used for any other purpose. An acceptable recycling plan, therefore, not only must detail the planned use of the retained revenue to increase recycling but must also require that all retained revenue that is not used as planned be passed on to residential customers.

- 39 The plain meaning of RCW 81.77.185 is that a company may retain a percentage of the revenue it generates from the sale of recycling material that is used to increase recycling up to a maximum of 50 percent of the company’s total recycling revenue. The statute, however, does not authorize the company to retain revenue that is not used for that purpose.

D. Order 01 Should Be Modified to Reflect the Commission’s Interpretation of RCW 81.77.185.

- 40 Having resolved the issues presented concerning the interpretation of RCW 81.77.185, the Commission must determine the impact of that resolution on Order 01. We agree with the Petitioners that the language they have challenged in their petitions is inconsistent with the statute and should be deleted. The Commission, however, also must determine whether deletion of that language, as well as the Commission’s clarification of RCW 81.77.185, materially affects the Commission’s prior determination that the plans at issue in these dockets demonstrate how the revenue Petitioners retain under their plans will be used to increase recycling.

- 41 We do not find it necessary to reopen the determination in Order 01 that the plans submitted in this docket have demonstrated how the retained revenue will be used to increase recycling. The plans, particularly those submitted by Murrey’s Disposal and American Disposal, tie revenue retention to the company satisfying detailed recycling requirements, including a measurable increase in recycling rates. Neither our decision nor Staff’s recommendation in that decision was dependent on the requirement that retained revenue not spent on recycling activities be carried over into the next plan period. Removal of that condition thus does not undermine the Commission’s rationale for allowing the Petitioners to retain an amount up to the percentage of recycling revenues they requested.

³⁰ *Id.* at 600.

- 42 As a practical matter, moreover, more than six months have elapsed in the current recycling plan period for Petitioners. Additional proceedings to re-examine the plans would require further time, as could County review of any resulting additions or modification to the plans to certify that they are consistent with the Counties' solid waste plans. Petitioners are unlikely to be able to resubmit revised or modified plans for the current plan period significantly in advance of the time on which they presumably will be filing plans for the next recycling period. Rather than prolong any uncertainty, we believe the course most likely to further the legislature's goal of increasing recycling is not to revisit our prior determination. Instead, Petitioners, the Counties, and Commission Staff should review the current plans in light of the statutory requirements as we have interpreted them and make any adjustments to future recycling plans.
- 43 The plans, however, are legally deficient in one respect. Both plans specify the total percentage of revenue the company is authorized to retain and break that total down into subtotals associated with categories of tasks, performance metrics, or accomplishments the company must achieve. Neither plan, however, addresses what happens to the retained revenue if the company does *not* achieve the required goals. To the extent that the plans are implemented in a manner that permits the company to retain the revenue even if it does not meet the plan requirements, the plans as a matter of law fail to demonstrate that all of the retained revenue will be used to increase recycling under RCW 81.77.185.
- 44 Accordingly, we will modify Order 01 to include the requirement that any retained revenue that is not used to increase recycling will be passed on to residential customers. Such "passed on" revenue would include all amounts associated with any plan obligation or performance measure the company does not meet to the satisfaction of both the County and the Commission.³¹ We find this requirement consistent with the spirit, if not the letter, of the plans, as well as necessary to comply with the statutory requirements.

³¹ Thus, for example, if Mason County Garbage does not "achiev[e] and demonstrat[e] an increase in recycling per household per month, year-over-year" as required in Section VII.b. of its plan, the ten percent of the commodity revenue allocated to satisfying that requirement would be passed on to the company's residential customers. Similarly, up to 21 percent of the commodity revenue American Disposal and Murrey's Disposal may retain must be passed on to residential customers if the company does not "achiev[e] and demonstrate[e] a recycling increase of 25% per household pounds per month compared to a 2004 baseline, as well as year-over-year improvement compared to a 2009 baseline" as required under Section VII.c. of those companies' plans.

CONCLUSIONS OF LAW

45 Having discussed above all matters material to this decision, the Commission now
makes the following summary conclusions of law, incorporating by reference
pertinent portions of the preceding detailed conclusions:

- 46 (1) The Washington Utilities and Transportation Commission has jurisdiction over
the subject matter of, and parties to, these proceedings.
- 47 (2) RCW 81.77.185 requires the Commission to determine whether the recycling
plan that a solid waste company submits to the Commission demonstrates how
the revenue from the sale of recyclable material the company retains will be
used to increase recycling.
- 48 (3) RCW 81.77.185 does not require the solid waste company to spend all retained
revenue from the sale of recyclable materials on recycling activities.
- 49 (4) RCW 81.77.185 does not authorize the Commission to require a solid waste
company to carry over to a subsequent plan period the retained revenue from
the sale of recyclable materials that the company does not spend on recycling
activities within a given plan period.
- 50 (5) RCW 81.77.185 requires all revenue from the sale of recyclable materials,
including revenue the company initially retains, that is not used to increase
recycling to be passed on to residential customers.
- 51 (6) The recycling plans submitted to the Commission in these dockets sufficiently
demonstrate how the revenue the company retains from its sale of recyclable
materials will be used to increase recycling as required by RCW 81.77.185
only if express recycling performance goals are set forth that must be met
before retention of any revenues would be allowed and all retained revenue
that is not used to increase recycling will be passed on to residential
customers.

ORDER

THE COMMISSION ORDERS THAT:

- 52 (1) The Petitions for Reconsideration are granted in part and denied in part.

- 53 (2) The following sentence is deleted from paragraph 19 or 20, as applicable, in Order 01:

Revenues retained by [the Companies] not spent during the previous plan period are to be carried over into the next year, and revenues from this plan period that are not spent are to be carried over to the following year, unless the Commission orders some other treatment.

- 54 (3) The following sentence is added to paragraph 19 or 20, as applicable, in Order 01:

Revenues retained by [the Companies] that are not used to increase recycling must be passed on to residential customers, including but not necessarily limited to revenues allocated to undertaking specific tasks or meeting performance goals established in the recycling plan if [the Companies] do not complete those tasks or meet those performance goals to the satisfaction of the County and the Commission.

Dated at Olympia, Washington, and effective May 6, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner