

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 KING COUNTY DEPARTMENT OF )  
4 PUBLIC WORKS, SOLID WASTE )  
5 DIVISION, )  
6 Complainant, )  
7 vs. )  
8 SEATTLE DISPOSAL COMPANY, )  
9 RABANCO LTD., d/b/a EASTSIDE )  
10 DISPOSAL AND CONTAINER )  
11 HAULING, )  
12 Respondent. )  
13 ----- )

DOCKET NO. TG-940411  
VOLUME I  
PAGES 1-33

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FOR THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
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14 A hearing in the above matter was held on  
15 May 9, 1994 at 1:34 p.m., at 1300 South Evergreen Park  
16 Drive Southwest, Olympia, Washington, before  
17 Administrative Law Judge ALICE L. HAENLE and  
18 Commissioner RICHARD HEMSTAD.

19 The parties were present as follows:

20 KING COUNTY DEPARTMENT OF PUBLIC WORKS,  
21 SOLID WASTE DIVISION by Mary Farver Perry and Kathryn  
22 A. Killinger, Senior Deputy Prosecuting Attorneys,  
23 E550 King County Courthouse, Seattle, Washington  
24 98104-2312.

25 NORTHWEST WASTE INDUSTRIES, INC. by Richard  
A. Finnigan, Attorney, 1900 First Interstate  
Plaza, 1201 Pacific Avenue, Tacoma, Washington 98402.

SEATTLE DISPOSAL COMPANY, RABANCO LTD.,  
d/b/a EASTSIDE DISPOSAL AND CONTAINER HAULING by  
Elizabeth Thomas, Attorney, 701 Fifth Avenue, #5000,  
Seattle, Washington 98104.

THE COMMISSION by Anne Egeler, Assistant  
Attorney General, 1400 South Evergreen Park Drive  
Southwest, Olympia, Washington 98504.

Lisa K. Nishikawa, CSR, RPR, Court Reporter

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I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS EXAM

(None.)

EXHIBIT MARKED ADMITTED

(None marked.)

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P R O C E E D I N G S

JUDGE HAENLE: The hearing will come to order. This is a prehearing conference in Docket Number TG-940411. This is King County Department of Public Works, Solid Waste Division, complainant, versus Seattle Disposal Company, Rabanco Limited, d/b/a Eastside Disposal and Container Hauling, respondent. Notice of hearing was issued April 19, 1994 specifying that the prehearing conference would be heard today, that is, May 9, 1994, at 1:30 at Olympia.

We've discussed before we went on the record a number of things that we're going to talk about at the prehearing conference, and there are a couple things that I would like you to discuss off the record after the prehearing conference as well and I'll indicate what those things are.

I would like to take appearances, please, beginning with the representative for the county. And I've indicated that I would like each of the entities to designate one specific person to be that entity's contact person so that service on that person will constitute service on the entity to avoid having to run around and send several copies of things.

For the county, please.

1 MS. PERRY: I'm Mary Perry. I'm senior  
2 deputy prosecuting attorney with King County  
3 Prosecuting Attorney's office. I represent the King  
4 County Department of Public Works, Solid Waste  
5 Division in this matter. I would be the point of  
6 contact for King County.

7 JUDGE HAENLE: And your address, please.

8 MS. PERRY: It is E550, King County  
9 Courthouse, Seattle, Washington, 98104.

10 JUDGE HAENLE: Thank you. And for the  
11 Commission -- I'm sorry. For the respondent,  
12 Eastside.

13 MS. THOMAS: My name is Elizabeth Thomas.  
14 I'll be the contact person. My address is Preston  
15 Gates & Ellis, 5000 Columbia Center, 701 Fifth Avenue,  
16 Seattle, Washington, 98104.

17 JUDGE HAENLE: Thank you. And for the  
18 Commission.

19 MS. EGELER: Yes, your Honor. Anne Egeler,  
20 assistant attorney general, appearing on behalf of the  
21 Commission. My address is 1400 South Evergreen Park  
22 Drive Southwest, Olympia, 98504.

23 JUDGE HAENLE: Thank you. Mr. Finnigan.

24 MR. FINNIGAN: Thank you. Richard Finnigan  
25 with the firm Vandeberg Johnson & Gandara, 1201

1 Pacific Avenue, Suite 1900, Tacoma, Washington, 98402.  
2 Appearing on behalf of Northwest Waste Industries,  
3 Inc., and I would be the contact person.

4 JUDGE HAENLE: And you have filed a  
5 petition to intervene this morning -- I'm sorry --  
6 this afternoon.

7 MR. FINNIGAN: Yes, we have.

8 JUDGE HAENLE: Is there anyone else present  
9 in the hearing room that needs to enter an appearance  
10 in this matter? Hearing no response, then I assume  
11 that those of you who entered individual petitions  
12 will be the contact person for the entity.

13 The first order of business is Mr.  
14 Finnigan's petition to intervene. Have you  
15 distributed that to all counsel, Mr. Finnigan?

16 MR. FINNIGAN: I believe so.

17 JUDGE HAENLE: Let's go off the record to  
18 allow that to be distributed and to allow Ms. Egeler  
19 to look it over.

20 (Discussion off the record.)

21 JUDGE HAENLE: Let's be back on the record.  
22 Now that everyone has had the chance to look over the  
23 motion to intervene, is there any objection or comment  
24 on the petition to intervene by Northwest Waste  
25 Industries, Inc. from the county or Eastside?

1 MS. THOMAS: No comment, your Honor.

2 MS. EGELER: No comment.

3 JUDGE HAENLE: Okay. Well, if there is no  
4 objection, tell me what -- since this is a complaint  
5 against Eastside's rates, Mr. Finnigan, what is your  
6 client's interest in this?

7 MR. FINNIGAN: Northwest Waste Industries  
8 provides curbside yard waste collection and curbside  
9 recycling services within King County and is very  
10 interested in the issues presented by the complaint.  
11 Presumably, the resolution of those issues will affect  
12 how Northwest Waste Industries operates within King  
13 County as well on some of the more -- issues of  
14 policy as opposed to -- as opposed to perhaps the  
15 specific rate level for the Rabanco Companies.

16 JUDGE HAENLE: Your petition indicates  
17 you're not seeking to broaden the issues, does it not?

18 MR. FINNIGAN: That is correct.

19 JUDGE HAENLE: Do you have questions of Mr.  
20 Finnigan, Commissioner?

21 COMMISSIONER HEMSTAD: I don't.

22 JUDGE HAENLE: I'm sorry, I should have  
23 indicated. My name is Alice Haenle, I'm the  
24 administrative law judge assigned to the case, and  
25 the prehearing conference is being held before

1 Commissioner Richard Hemstad.

2 All right. Then I'll grant the petition of  
3 Northwest Waste Industries to intervene and remind Mr.  
4 Finnigan that we will not allow broadening of the  
5 issues in this matter.

6 Anyone else present in the hearing room who  
7 needs to move to intervene or otherwise participate in  
8 this hearing? Okay. Hearing no response, let's go on  
9 to the other matters at hand then.

10 There has been a -- the Commission notified  
11 the county by letter of April 28, 1994 that it would  
12 have a week's delay in the prefiling date, which  
13 prefiling date had been announced in the notice of  
14 prehearing conference. The county's prefiled material  
15 is now due May 16, according to that letter, and the  
16 Commission wanted to remind the county that it  
17 specified some issues in the notice of hearing that it  
18 did want addressed in that prefiled testimony. We can  
19 once we've -- well, maybe we should talk about them  
20 now. Are there specific issues that you wanted to add  
21 to that Commissioner?

22 COMMISSIONER HEMSTAD: No. I'm only  
23 concerned if there are questions about the issues to  
24 be covered, they ought to be discussed now.

25 MS. PERRY: I would like to state a point

1 of clarification. Some of that information is not  
2 available to the county regarding, for example,  
3 customer mix, et cetera, that would be more available  
4 to Rabanco, and we don't have access to that  
5 information. We do intend and are addressing all of  
6 those issues that we can address and we will state  
7 those that we feel that we don't have adequate  
8 information to address.

9 JUDGE HAENLE: I know that the Commission  
10 was particularly interested in getting any hard data  
11 you may have about the results of any pilot programs  
12 or the results of any experience you've had with these  
13 too to substantiate the claims that you make about  
14 certain kinds of rates leading to certain behavior.  
15 If you've had any experience in those areas, the  
16 Commission is particularly interested in any hard data  
17 that might back up those to help the Commission make a  
18 determination on that.

19 MS. PERRY: We will provide that.

20 JUDGE HAENLE: Thank you. Is there  
21 anything else -- I suppose since prefile has not been  
22 filed yet it's a little early to discuss narrowing the  
23 issues or see if there's potential for stipulation of  
24 fact or anything like that. Have you all discussed  
25 that at all, anybody?



1                   Like I say, it may be a little early, but  
2 it's going to be a relatively short process, so the  
3 Commission would encourage you any time during this  
4 process to talk among yourselves with an eye toward  
5 any agreements of fact, anything that can be  
6 stipulated that would help to narrow down the issues  
7 that still need to be testified about.

8                   Was anyone going to request the discovery  
9 rule be invoked in this matter?

10                  MS. EGELER: Yes, your Honor. We would  
11 like the discovery rule invoked and we would like to  
12 request that the response time is shortened to five  
13 working days.

14                  JUDGE HAENLE: The discovery rule which is  
15 WAC 480-09-480 provides certain methods by which  
16 information can be gathered from various parties. I  
17 do think that this is probably a matter in which the  
18 discovery rule would be useful. Is there any comment  
19 on that?

20                  MR. FINNIGAN: No objection.

21                  JUDGE HAENLE: I share Ms. Egeler's concern  
22 with the usual length of time that would be available  
23 for responses to discovery of ten days, that because  
24 we're trying to get this wrapped up as efficiently as  
25 possible, Ms. Egeler's made the suggestion that the

1 response time be five working days. Any thoughts on  
2 that? Any objection to that?

3 MS. PERRY: No.

4 JUDGE HAENLE: Is that all right with  
5 everybody?

6 MS. THOMAS: I think we may find Rabanco  
7 Companies is the object of a lot of requests for many  
8 of the requests for data, and I guess, just depending  
9 on the scope and breadth of the request, we may need  
10 to ask for an extension of time on a particular  
11 request. I hope not. I hope the requests are narrow  
12 and we can comply promptly. But if it's, Tell us  
13 everything about all your customers over the last ten  
14 years, it'll take us a little while to get that  
15 information together.

16 MS. EGELER: Normally the rules provide for  
17 a response in five days stating if you can't get that  
18 information quickly. Perhaps we can get that response  
19 down in two or three days.

20 If we could also get parties to agree to  
21 both fax and mail too, we could get things to people  
22 as quickly as possible.

23 MS. THOMAS: We have no objection to  
24 implementation of the discovery rule to a standard  
25 five business day response for discovery requests.

1 With any response specifying that we're not going to  
2 be able to comply within five days, that type of a  
3 response will be due within three days.

4 JUDGE HAENLE: Okay. Is that all right  
5 with you, Ms. Perry?

6 MS. PERRY: Yes, it is, your Honor, unless  
7 it's going to have an impact upon a prefiling date.

8 JUDGE HAENLE: That's the reason we're  
9 doing this, is to be sure that, okay, if you find that  
10 you're running into a prefiling date, you're going to  
11 need to talk among yourselves, but hopefully we won't  
12 run into that situation.

13 MS. PERRY: I want to reserve the right to  
14 perhaps move for continuance or some other measure if  
15 it appears we are unable to receive information in  
16 adequate time to prefile.

17 JUDGE HAENLE: I would encourage all of you  
18 to make your data requests right away to give as much  
19 time as possible for the other parties to respond, to  
20 try to avoid running into any deadlines. Is that all  
21 right with you, Mr. Finnigan?

22 MR. FINNIGAN: That's fine. No objection  
23 to the schedule.

24 JUDGE HAENLE: I'll invoke the discovery  
25 rule and adopt those two revisions to the usual

1 process.

2 MS. THOMAS: Your Honor, further with  
3 respect to discovery requests, we would like to be  
4 sure that a protective order is in place before we are  
5 required to comply with any discovery request or  
6 respond to it.

7 JUDGE HAENLE: We have a request somewhere.

8 MS. EGELER: Before we get to that, your  
9 Honor, could I formally request staff be provided with  
10 copies of all responses to data requests regardless of  
11 who made the request?

12 JUDGE HAENLE: Okay. You can do that kind  
13 of thing among yourselves if you would like. The  
14 general rule would be that only the party requesting  
15 gets copies, but if you want copies of everything,  
16 then let the other parties know to be sure that you  
17 will get what you need.

18 There's been a request from your client,  
19 Ms. Thomas, for a protective order and there was a  
20 response from King County that was filed I believe on  
21 Friday. The response from King County raises two  
22 issues that are specific to the county being a county  
23 as opposed to being a private company. Have you all  
24 received copies of that?

25 MS. THOMAS: Yes, your Honor.

1                   JUDGE HAENLE: Okay. I had asked you  
2 before we went on the record whether you had talked  
3 about specific language to prevent the problems that  
4 the county has pointed out or to get to the same point  
5 without putting anyone in an untenable position. What  
6 I have asked you to do is to get together after the  
7 prehearing conference, work together right away to  
8 come up with alternate language, and then I will put  
9 alternate language in a protective order. Is there  
10 anyone that objects to a protective order?

11                   MR. FINNIGAN: No, but, your Honor, I want to  
12 point out I believe King County and a number of other  
13 public agencies are parties to a protective order  
14 issued in the US West term loops case that used the  
15 standard format and none of -- just offer this for the  
16 record -- none of the public entities -- and there  
17 were very many -- objected to the standard format in  
18 that proceeding.

19                   JUDGE HAENLE: Have you seen --

20                   COMMISSIONER HEMSTAD: This has to do with  
21 what, the public record issues?

22                   MS. PERRY: Number one, the first issue had  
23 to do with the fact that this sample order restricts  
24 the dissemination of information only to attorneys and  
25 experts, and we restrict dissemination to officers or

1 employees of a client. Well, since King County is a  
2 governmental agency as opposed to competitor of  
3 Rabanco, and since it seems essential to us that our  
4 officers or employees may need to see some of this  
5 information in order to prepare our case, we are  
6 arguing that that specific provision doesn't apply.

7 The other provision had to do with the  
8 Public Records Act and handling requests for records  
9 and having us agree that we will protect these under a  
10 couple of exemptions. I'm concerned that could open  
11 us up to liability and would propose we would agree to  
12 notify Rabanco of any requests that we receive for the  
13 records, not release those records until Rabanco had  
14 the opportunity to intervene and argue why the  
15 exemption applies to a particular record.

16 JUDGE HAENLE: Is your expert a county  
17 employee?

18 MS. PERRY: No, she is not.

19 JUDGE HAENLE: Okay. What I suggest we do,  
20 as I say, once the prehearing conference -- if no one  
21 has an objection to a prehearing conference order  
22 going out in general, the Commission will issue then  
23 a -- I'm sorry -- a protective order. The Commission  
24 will issue a protective order. But what I would like  
25 to do is, as I said, have you talk about specific

1 language when we're done with the prehearing  
2 conference. Then you can give me the language to put  
3 in the protective order. If there is still -- I don't  
4 think you'll probably get to the point that there's  
5 something you need ruled on, but we will -- I can  
6 recess the prehearing conference with an eye toward  
7 that if there is something you genuinely cannot  
8 resolve, but hopefully you will be able to come up  
9 with some language to put in here. For the time being  
10 then, you can expect the Commission to issue a  
11 protective order and we'll get the language from you  
12 after the prehearing conference.

13 Did you have anything to add to that,  
14 Commissioner?

15 COMMISSIONER HEMSTAD: No.

16 JUDGE HAENLE: Okay. Maybe I should ask if  
17 your expert is not an employee of the county, why is  
18 there a problem with the language?

19 MS. PERRY: Because our expert is not the  
20 only person who's going to be testifying, and we can  
21 see a need to provide this information to employees of  
22 the county in order to prepare our case, because we  
23 have employees of the county who will be testifying  
24 and we have no problem with those employees signing  
25 the confidentiality agreement so that they will not

1 disclose the information any further.

2 JUDGE HAENLE: Okay. Sounds to me like  
3 you're not going to have too much trouble coming up  
4 with language then, with those thoughts in mind. And  
5 I need to remind you as well that the Commission  
6 encourages you, once the protective order is issued,  
7 to mark as confidential as little as possible so that  
8 the Commission has the broadest range of information  
9 available to it. Be sure if you mark something that's  
10 confidential, that you're darn sure that it really is.  
11 We like to have as little as possible marked as  
12 confidential. Commissioner?

13 COMMISSIONER HEMSTAD: Just a comment.  
14 The problem presents itself when you -- when testimony  
15 is presented involving those exhibits, we have to  
16 close the hearing and so on. It makes it awkward.

17 JUDGE HAENLE: And I'll remind you that  
18 anything that you prefile that has confidential  
19 material in it when you send -- for the purposes of  
20 this case, you will need to prefile an original plus  
21 19 of everything. You will file that through the  
22 Commission's secretary. And on the matter of things  
23 that are confidential, you will need to separate out  
24 the confidential pieces of it so that you'll have a  
25 pile of original and 19 of things, then you'll have a



1 pile of original and 19 of confidential pieces, so  
2 that they can be properly protected and not  
3 distributed by mistake.

4 I do not want sent to my office -- I'm at  
5 the Office of Administrative Hearings. People  
6 generally send me a courtesy copy of things. I do not  
7 want confidential materials sent to me, please. I  
8 will get my copy through the Commission. I want to be  
9 sure that there's no potential for fumbling on any of  
10 these confidential materials. Is there anything else  
11 we need to discuss about protective order?

12 We have in the past from time to time  
13 agreed that -- it takes a couple of days for the  
14 Commission to issue a protective order. Parties have  
15 agreed to act as if they are bound by the protective  
16 order before the thing actually goes out, as long as  
17 they agree among themselves. That's up to you whether  
18 you want to do that or not. It has been done  
19 routinely in the past. But it takes a couple of days  
20 to actually get the things printed up, signed, and  
21 sent out. So I'll leave that to you.

22 Let's see. Do you, beyond the shortened  
23 response time, need any more discussion about a formal  
24 discovery schedule or do you want to work that out on  
25 your own?

1                   MS. THOMAS: Might save your time if we try  
2 to talk about it among ourselves and get a sense of  
3 what we need.

4                   JUDGE HAENLE: That's fine. Please do talk  
5 about it among yourselves if you haven't talked about  
6 it yet. That sounds really good.

7                   I might indicate also with -- I was talking  
8 to you about filing an original and 19 of prefiled  
9 materials. Remember that that does not include  
10 responses to staff data requests. When the staff as a  
11 party to this matter requests data under staff data  
12 request number whatever, your response would be  
13 directly to Ms. Egeler. You would not send it through  
14 the secretary of the Commission, to be sure that it is  
15 not by mistake distributed. So any response to staff  
16 data requests should be sent directly to Ms. Egeler.  
17 Any other things we need to discuss about discovery?  
18 Okay.

19                   I read you before we went on the record the  
20 schedule that was given to me by the Commission and  
21 suggested that if you have problems with that  
22 schedule, you require some revision to that schedule  
23 later on, you would need to make a motion to the  
24 Commission for a revision of that schedule. That  
25 schedule is the following. Prefiling of King County

1 testimony May 16. Prefiling of Eastside, staff,  
2 intervenor, public counsel, if he's involved. I'm not  
3 sure. I guess we need to check that. Anyway,  
4 prefiling of that testimony June 20. Prefiling of  
5 King County rebuttal July 7. Hearings July 14, 15,  
6 and 18, which is a Thursday, Friday, and a Monday.  
7 Public hearing somewhere in King County that hasn't  
8 yet been determined July 19. And briefs due August  
9 15.

10 Let's see. There was one other matter that  
11 you had brought up before we went on the record, Ms.  
12 Thomas. Do you want to cover that now?

13 MS. THOMAS: Yes, your Honor. Thank you.  
14 I had requested by telephone of each of the counsel  
15 about a week ago, except for Mr. Finnigan who I only  
16 learned recently is interested in intervening, I had  
17 asked counsel if they would be willing to stipulate  
18 not to object to Commissioner Nelson sitting on this  
19 case.

20 The reason for my request was there is a  
21 potential argument that Chairman Nelson should recuse  
22 herself because she's married to my law partner Tom  
23 Allison. Tom Allison will have no part in my firm's  
24 work on this case. He will have no knowledge of  
25 proceedings. He will be completely walled off from

1 it.

2                   And typically when my firm does appear in  
3 matters before the Commission, we do ask the parties  
4 to stipulate that they will not challenge the  
5 authority of Commissioner Nelson to hear the case.  
6 This prevents problems down the road, should someone  
7 allege or bring up the issue of whether Chairman  
8 Nelson should have recused herself, and then there may  
9 only be a majority of one on a decision, which creates  
10 some problems. And that was the reason for my  
11 request.

12                   As I understand it, counsel, except for Ms.  
13 Perry, have agreed to the request. Ms. Perry is  
14 consulting her client on it.

15                   JUDGE HAENLE: Ms. Egeler, this has been  
16 discussed with you?

17                   MS. EGELER: Yes, it has, and the staff has  
18 no objection.

19                   JUDGE HAENLE: Mr. Finnigan?

20                   MR. FINNIGAN: No objection.

21                   JUDGE HAENLE: You want to make your  
22 statement, Ms. Perry?

23                   MS. PERRY: Simply that I do not have a  
24 definitive answer from my client yet. I will have  
25 that within a day or two. I will notify the

1 Commission and Ms. Thomas and the other parties in  
2 writing of our decision at that point.

3 JUDGE HAENLE: Okay. We may need to get  
4 back together if there's -- if the decision of your  
5 client is not to agree to waive that objection. But  
6 let's cross that bridge if we come to it. I'm going  
7 to issue a prehearing conference order in this matter.  
8 I would like to have your written response before I  
9 issue that, if possible. So could you fax it to me,  
10 and I'll give you the fax number after the prehearing  
11 conference.

12 Okay. Commissioner Hemstad, did you have  
13 anything else that you wanted to discuss in this  
14 prehearing conference?

15 COMMISSIONER HEMSTAD: No, I don't.

16 JUDGE HAENLE: Was there anything else we  
17 had talked about or that we need to talk about now  
18 that we haven't covered?

19 MR. FINNIGAN: Your Honor, there's nothing  
20 that -- we didn't talk about this before the hearing,  
21 but there is something I would like to note for the  
22 record. The caption lists Seattle Disposal Company  
23 and then Rabanco Limited d/b/a Eastside Disposal and  
24 Container Hauling. Just note for the record that the  
25 Rabanco Companies are in the process of changing the

1 name on their permits. Seattle Disposal Company is a  
2 d/b/a of Northwest Waste Industries. And so I don't  
3 want there to be any confusion down the line and so  
4 forth. Clarification purposes, I'm indicating that  
5 that is the case and that the Rabanco Companies are in  
6 the process of having the name changed on their  
7 permit.

8 JUDGE HAENLE: That's real interesting. So  
9 you are in some manner an affiliated interest of  
10 the --

11 MR. FINNIGAN: No. There is no  
12 affiliation. It's just a matter of clarifying the  
13 name. The Northwest Waste Industries took the name  
14 Seattle Disposal Company during a reorganization  
15 process.

16 JUDGE HAENLE: So there is no affiliation  
17 whatsoever?

18 MR. FINNIGAN: Absolutely not.

19 JUDGE HAENLE: Okay.

20 MS. THOMAS: We're trying to change the  
21 name. The question is what to change the name to.  
22 And we've been working with staff on that question.

23 JUDGE HAENLE: That sounds like a challenge  
24 certainly, but not a challenge that I have to face, so  
25 I just wanted to be sure we didn't have some kind of

1 odd multiple party interaction that I wasn't aware of.  
2 Thank you for letting us know that, Mr. Finnigan.

3 MR. FINNIGAN: Thank you.

4 JUDGE HAENLE: When those names change,  
5 would you let the Commission know in writing what  
6 those are so we can make all the corrections that need  
7 to be made.

8 MS. THOMAS: Yes, your Honor. Maybe to  
9 help keep it clear as we go along, I could suggest  
10 that my client be referred to as Rabanco Companies so  
11 we try to keep the name "Seattle Disposal" out of the  
12 pleadings for the most part.

13 JUDGE HAENLE: Okay. Rabanco Companies.  
14 And we'll call you Northwest Waste Industries, Mr.  
15 Finnigan.

16 MR. FINNIGAN: Thank you very much.

17 JUDGE HAENLE: Okay.

18 COMMISSIONER HEMSTAD: If I could pursue  
19 that point a bit further, Mr. Finnigan. Is there any  
20 historical connection between the two parties?

21 MR. FINNIGAN: Yes. There's a corporate  
22 reorganization out of which Northwest Waste  
23 Industries, Inc. was created. There was a series  
24 of corporations and partnerships that were generically  
25 known as Rabanco Companies. And we had several

1 filings before the Commission a year to 18 months ago,  
2 maybe as far back as two years ago, that went through  
3 the process of this corporate reorganization where one  
4 set of companies went a different direction and that  
5 became Northwest Waste Industries. In that  
6 reorganization the d/b/a, the name Seattle Disposal  
7 Company, went to the new entity and has been -- this  
8 is actually the last item we have to clean up on the  
9 Commission's records, but there is a complete break  
10 between the companies. There is no relationship. No  
11 cross interests at all.

12 JUDGE HAENLE: Okay.

13 MS. PERRY: Point of clarification. Just  
14 to clarify, there's no difficulty in referring to  
15 Eastside Disposal, however, as the --

16 MS. THOMAS: That's fine.

17 MS. PERRY: -- as the company that was  
18 affected by these rates?

19 MS. THOMAS: That's fine.

20 JUDGE HAENLE: Is there anything else we  
21 need to discuss in the prehearing conference before we  
22 break and have you discuss the specific language of  
23 the protective order? Anything? Let's recess now.  
24 We'll come back on the record to verify that you have  
25 come up with language or to take, if there needs to be



1 some discussion on the record, to take that  
2 discussion. Okay, thank you.

3 (Recess.)

4 JUDGE HAENLE: Let's be back on the record.  
5 During the time we were off the record, counsel were  
6 discussing changes to the language in the form  
7 protective order that we use. Do I understand  
8 correctly, Ms. Thomas, that you have been the  
9 scrivener and will provide me with those changes?

10 MS. THOMAS: Yes, your Honor.

11 JUDGE HAENLE: And everyone has agreed to  
12 the changes?

13 MS. THOMAS: Yes, your Honor.

14 JUDGE HAENLE: Anyone that has not agreed,  
15 please speak up. Okay. Excellent. So the Commission  
16 will issue a protective order. I'll get it going as  
17 soon as I can, but it does take a couple of days to  
18 get it printed up and signed and everything, and I  
19 will issue it as soon as I can.

20 Ms. Egeler, you have a matter you brought  
21 up during the break.

22 MS. EGELER: I would like to request that  
23 the Commission revisit the issue of the motion to  
24 intervene. I too got caught a bit in the division of  
25 the Rabanco Companies and their separation as Mr.

1 Finnigan and Ms. Thomas described earlier.

2           Apparently Northwest Waste Industries may  
3 not have any residential customers within King County  
4 other than customers within Seattle, and City of  
5 Seattle has undertaken regulation itself so that area  
6 is exempt from Commission regulation. Mr. Finnigan  
7 has represented during the break that there is a  
8 possibility that they have a few customers, but he is  
9 uncertain at this time. The Commission staff would  
10 like to object to the intervention unless Northwest  
11 Waste Industries show that it does indeed have an  
12 actual interest in the issue in this proceeding.

13           JUDGE HAENLE: Mr. Finnigan?

14           MR. FINNIGAN: As I did indicate during  
15 the break, it was my impression, although it was  
16 subject to confirmation with the client as to whether  
17 or not there are any county customers in King County,  
18 there are residential yard waste and residential  
19 recycling customers in Snohomish County. And clearly  
20 if the Commission is going to establish policies for  
21 the mechanisms by which and the manner in which it  
22 will price those services, those policies will carry  
23 over to Northwest Waste Industries' operations in  
24 Snohomish County. So whether or not there are  
25 customers in King County, while of interest to the

1 specifics of this case, would not preclude Northwest  
2 Waste Industries' basis for intervention where the  
3 Commission -- which are the issues we're interested in  
4 anyway, to the extent the Commission is establishing  
5 in this case its policy on the pricing for residential  
6 yard -- excuse me -- curbside yard and curbside  
7 recycling services.

8 MS. EGELER: May I respond briefly.

9 JUDGE EGELER: Yes. I would like to take  
10 comments from others if they have them.

11 MS. EGELER: This is not an NOI. Mr.  
12 Finnigan's client had an opportunity to respond to the  
13 Commission NOI on the ratemaking issues. This case  
14 specifically involves King County solid waste plan and  
15 whether or not the rates established by the Commission  
16 comply with RCW 81.77 and RCW 70.95. The issues in  
17 this case do not include addressing across the board  
18 the policy issues involved in ratemaking. That  
19 opportunity, as I stated, was presented with the NOI.  
20 This case strictly involves King County and the rates  
21 established for Ms. Thomas's client.

22 JUDGE HAENLE: Did you have any comments,  
23 Ms. Thomas?

24 MS. THOMAS: We had not had an opportunity  
25 to consider the issue, and Mr. Glasgo from Eastside

1 Disposal is trying to determine right now whether the  
2 company wishes to take a position on it. He just  
3 stepped out to make a phone call.

4 JUDGE HAENLE: Ms. Perry?

5 MS. PERRY: I would agree with the AG's  
6 assessment of this. The Commission has made a  
7 determination in this case. It's quite clear when the  
8 Commission's policy is behind that. The real issue  
9 here is King County's challenge whether or not the  
10 Commission has followed a particular statutory  
11 requirement. That doesn't seem to be something that  
12 Northwest has a real interest that rises to the level  
13 of the need to intervene. While it may be of interest  
14 to Northwest, it doesn't seem that their intervention  
15 will contribute anything to this except to confuse the  
16 issues because they have no King County customers.

17 JUDGE HAENLE: Commissioner, do you have  
18 questions before we take Mr. Finnigan's response?

19 COMMISSIONER HEMSTAD: I would like to hear  
20 from Mr. Finnigan.

21 JUDGE HAENLE: Go ahead, sir.

22 MR. FINNIGAN: First, the Commission does  
23 not act solely through its NOI. We're fully aware of  
24 the NOI process and the involvement in it. We think  
25 that the challenge raised by King County raises very

1 legitimate interests to the Commission's position that  
2 is taken on curbside yard waste and curbside recycling  
3 and believe that the issues and the manner in which  
4 this case is decided will have an effect on other  
5 carriers.

6 COMMISSIONER HEMSTAD: What about issues  
7 like agreeing on an agreed statement of facts or  
8 whatever? Much of this may end up being defined as  
9 issues of law rather than of disputed fact. You have  
10 no involvement in the fact issues at all, I take it?

11 MR. FINNIGAN: We will have very little --  
12 well, again, subject to checking with my client as to  
13 the scope of their operations, but it is not our  
14 intent to become heavily involved in -- how can I say?  
15 Our position would be that if the complainant and the  
16 respondent were able to agree on a set of facts, I  
17 would find it extremely unlikely that we would object  
18 to a stipulation of fact between the two primary  
19 parties.

20 Our role as an intervenor is not to unduly  
21 -- not even -- not to prolong these proceedings in any  
22 way, whether unduly or not, and we have committed that  
23 we will not in any respect broaden the issues that are  
24 involved in this case. So other than the time it  
25 takes for people to read a brief, you know, where we

1 would address the issues, we have no intention at this  
2 stage of putting on a witness, so that's where we come  
3 out on it.

4 JUDGE HAENLE: Commissioner?

5 COMMISSIONER HEMSTAD: That's all I have  
6 right now.

7 JUDGE HAENLE: Anything else anybody?

8 MS. EGELER: Your Honor, I would briefly  
9 respond that Mr. Finnigan's response simply confirms  
10 what Ms. Perry and I have stated, that they have no  
11 factual interest in this other than the potential to  
12 broaden the issues to consider policy measures in  
13 general. The purpose of this case is to consider  
14 whether or not there's a conflict between the  
15 Commission's policies and King County's policies and  
16 whether that is legal, however it's resolved. It's  
17 not to consider what policies the legislature will  
18 take, what broad statewide policies this Commission  
19 will take, or what policies Snohomish county will  
20 take.

21 JUDGE HAENLE: Anybody else? Okay. We're  
22 going to recess for a few minutes. We need to go back  
23 and talk about this. We'll be back in I don't know  
24 how many minutes, probably five or ten minutes. So  
25 we'll recess until that time.

1 (Recess.)

2 JUDGE HAENLE: Let's go back on the record.  
3 During the time we were off the record, we were  
4 discussing the motion to reconsider our ruling on the  
5 intervention. During that time I got a note from you,  
6 Ms. Thomas, indicating that your client had taken a  
7 position.

8 MS. THOMAS: Yes, your Honor. Rabanco  
9 Companies supports staff request that the intervention  
10 be denied.

11 JUDGE HAENLE: Okay. Commission, after  
12 looking at Mr. Finnigan's petition and recalling the  
13 oral argument and statements that were given, agrees  
14 with Ms. Egeler that Mr. Finnigan has not demonstrated  
15 an interest sufficient to allow him to participate in  
16 this, which is the issues being King County's policy,  
17 the interaction of King County's ordinances, and the  
18 UTC's ratemaking. I don't think that people in  
19 Snohomish County need to be brought into this. I  
20 think it would broaden the issues.

21 We're also concerned that we've got a very  
22 tight schedule for hearing this case and want to be  
23 sure that the issues are not broadened unnecessarily  
24 and kept within what the Commission had in mind. Did  
25 you have anything to add, Commissioner Hemstad?

1                   COMMISSIONER HEMSTAD: I don't see how  
2 the interests of your client are, at least from the  
3 perspective of the Commission, are able to be  
4 differentiated from that of Rabanco and in this  
5 proceeding, and I'm not sure what additional interest  
6 you bring to the table here.

7                   MR. FINNIGAN: Well, first of all  
8 let me respond to a statement about the schedule and  
9 broadening of issues. We've made a commitment that we  
10 will not broaden the issues. We have made a  
11 commitment that we did not object to the schedule.  
12 And I think my firm's involvement in proceedings  
13 before this Commission past has demonstrated that  
14 ability to live with its commitments, so I would  
15 object to at least that portion of the order, because  
16 there's absolutely no basis that we -- to indicate  
17 that we would do anything that would broaden the  
18 issues or make it any more difficult to meet the  
19 current time line.

20                   That being said, I understand the other  
21 basis for the ruling is that there is nothing that  
22 will happen in this case that will affect Northwest  
23 Waste's operations in any other county and, as I said,  
24 I'm not -- I was trying to confirm and was not able to  
25 whether or not there are residential customers within



1 King County. And the premise being that there will be  
2 nothing of precedential value coming out of this  
3 Commission decision which will affect Northwest  
4 Waste's operations in other counties, if I understand  
5 your Honor's ruling.

6 JUDGE HAENLE: Is there anything else we  
7 need to discuss? Anyone? Okay. Prehearing  
8 conference order will issue then, and it has  
9 instructions on it. If I've missed anything or  
10 misstated anything, make sure you let me know within  
11 the ten days. And the hearing will be adjourned.  
12 Thank you.

13 (Adjourned at 2:53 p.m.)

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As Court Reporter, I hereby certify that  
the foregoing transcript is true and  
accurate and contains all the facts,  
matters, and proceedings of the hearing  
held on: 5-9-94

*Lin K. Meshikawa*  
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