



A T T O R N E Y S

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

May 6, 2004

The Honorable Ann E. Rendahl
Administrative Law Judge
Washington Utilities and Transportation Commission
PO BOX 47250
Olympia, WA 98504-7250

Re: *Application of Rubatino Refuse Removal, Inc.;*
Application No. 79266, Docket No. TG-040553

Dear Judge Rendahl:

Kleen Environmental Technologies, Inc. is **opposed** to the consolidation of the application of Rubatino Refuse Removal, Inc. (Application No. 79266, Docket No. TG-040553) with the already consolidated applications of Harold LeMay Enterprises, Inc. and Kleen Environmental Technologies, Inc. (Application Nos. GA-079251 and GA-079254, Docket Nos. TG-040221 and TG-040248).

While all three applications seek to transport biomedical waste, there is not an overlap of territories involving the Rubatino application with either the LeMay or the Kleen applications. Consolidation is only permitted if the applications overlap. WAC 480-70-111. Absent an overlap of territories sought to be served there is not an overlap of the applications that would permit the consolidation being considered.

The consolidation of the Rubatino application into the already consolidated applications of LeMay and Kleen is also not required under the Ashbacker doctrine which only concerns mutually exclusive applications. Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). The Rubatino application will not be effected in any way by the outcome of the LeMay and Kleen applications and can and should stand on its own merit.

In fact, Kleen amended its application to restrict it against the territory being sought by Rubatino for this very reason; to avoid a consolidation of all three applications. If the three applications are consolidated, Kleen's amendment will be withdrawn and its application amended again to seek state wide authority, including authority in Snohomish, Skagit and Whatcom counties.

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Kleen and LeMay have chosen not to intervene in the Rubatino application and are not opposed to it. Kleen, however, is opposed to any further consolidation because it will cost Kleen unnecessary time and money. Kleen and LeMay have no reason to be present during testimony of witnesses for and against Rubatino. Kleen and LeMay have no reason to brief or review briefs on the issues involving the Rubatino application.

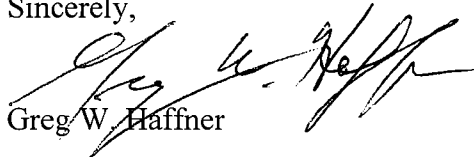
The only beneficiary of a further consolidation might be Stericycle, which is opposed to all three applications. However, the burden on Kleen and LeMay of participating in a three-way consolidated hearing will outweigh any benefit to Stericycle. The evidence against each applicant which Stericycle will need to establish will be different for each application. The operations of Stericycle in the territory sought to be served by Rubatino are irrelevant to the applications of Kleen and LeMay. The challenges Stericycle will have to the proposed operations of Rubatino are irrelevant to the applications of Kleen and LeMay. To the extent Stericycle might duplicate direct testimony of its own operations, that testimony can be submitted in written pre-filed statements. Kleen and LeMay should not have to be part of a proceeding involving Rubatino's cross examination of Stericycle's witnesses for territory Kleen and LeMay have no interest in serving.

Rubatino's presence at a consolidation of all three applications will clearly lengthen the proceedings because Rubatino will have the same opportunity to question witnesses as the other parties. Even if limits are imposed on the parties and their counsel with respect to examination of witnesses, it is highly likely that counsel, including the undersigned, will be accused during a three-way consolidated hearing of exceeding those limits. Furthermore, how does one set such limits without imposing on rights of due process?

Rubatino and LeMay are also currently represented by the same counsel, James Sells. Further consolidating the applications could require Rubatino or LeMay to obtain alternative counsel, adding yet another layer of complexity to the proceeding and unfairly burdening both Rubatino and LeMay.

The Commission should not try to cut corners on the rights of these three applicants by consolidating all three applications. Clearly there is a legal requirement for the applications of Kleen and LeMay to be consolidated. However, there is no such requirement to add the application of Rubatino to that process and doing so will not be fair to the three applicants.

Sincerely,


Greg W. Haffner

GWH/gwh

cc: Kleen Environmental Technologies, Inc. (Allen McCloskey)
James K. Sells
Stephen B. Johnson
Greg Trautman, Assistant Attorney General