

ORIGINAL

RECEIVED

'94 AUG 15 A9:31

STATE OF WASH  
UTIL. & TRANSP  
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of: )  
 )  
 KING COUNTY DEPARTMENT OF )  
 PUBLIC WORKS, SOLID WASTE )  
 DIVISION, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 SEATTLE DISPOSAL COMPANY, )  
 RABANCO LTD., d/b/a EASTSIDE )  
 DISPOSAL AND CONTAINER HAULING )  
 )  
 Respondent. )

---

Docket No. TG-940411

BRIEF OF RABANCO COMPANIES  
d/b/a EASTSIDE DISPOSAL AND  
CONTAINER HAULING

## Table of Contents

I.	INTRODUCTION	page 1		
II.	STATEMENT OF ISSUES	page 3		
III.	STATEMENT OF FACTS	page 3		
IV.	ARGUMENT	page 7		
	A.	King County Cannot Require the Commission to Adopt Rates that Conform to the Differentials Set Forth in the King County Code.	page 8	
		1.	The Commission has the sole authority to establish rates for certificated haulers.	page 8
		2,	The Commission has discretion in selecting appropriate ratemaking methodologies for solid waste collection.	page 9
		3.	Eastside Disposal is not required to file proposed or final tariffs that conflict with the Commission's directives regarding rate structure.	page 10
		4.	King County retains the means of implementing its solid waste goals and priorities.	page 12
	B.	Eastside Disposal's Rates are Consistent with the Priorities Set Forth in RCW 70.95.010.	page 13	
	C.	Eastside Disposal's Current Rate Structure and Billing System are Consistent with the Minimum Levels of Solid Waste Collection and Recycling Services Established by the County's Comprehensive Solid Waste Management Plan.	page 14	

D.	The Application of the Rate Differentials Contained in KCC § 10.18.020 Will Require the Use of a Balancing Account in Order to Prevent Rate Instability.	page 15
E.	The County Solid Waste Division Lacks Standing to Maintain this Action.	page 16
IV.	CONCLUSION	page 16

## I. INTRODUCTION

Rabanco Companies d/b/a Eastside Disposal ("Eastside Disposal") respectfully requests that the Commission deny the relief requested by the Complainant in this action. The Solid Waste Division of the King County Department of Public Works ("County" or "King County") has brought its complaint pursuant to RCW 81.04.110. Complaint, ¶ 3. This statute provides in pertinent part:

Complaint may be made by ... any body politic or municipal corporation ... setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

Thus, in order to prevail on its complaint, the County must prove that Eastside Disposal has violated a law, or an order or rule of the Washington Utilities and Transportation Commission ("Commission").

The County has proved no such violation. The core of the County's complaint is that Eastside Disposal's current rates do not sufficiently reflect the differentials called for by Section 10.18.020 of the King County Code ("KCC").<sup>1</sup> Reading between the lines of the County's complaint and its witnesses' testimony, the County apparently asserts that the Commission's decision not to incorporate these differentials into Eastside Disposal's rate structure constitutes a violation of RCW 81.77.030,

---

<sup>1</sup> KCC 10.18.020 provides, in relevant part, as follows:

C. Whenever certificated haulers file tariffs with the Washington Utilities and Transportation Commission (WUTC), it is the county's policy that the certificated haulers include all elements specified in subsection A. of this section in the tariffs and that an incentive solid waste collection rate structure be used rather than a strict cost of service rate structure. An incentive solid waste collection rate structure is one that rewards customers who recycle and includes substantial cost differentials between solid waste collection service levels. The tariffs filed shall include the following percentages of increases between levels of service: a minimum of sixty percent between mini and one can; a minimum of forty percent between one and two cans or equivalent; and a minimum of twenty five percent between two and three cans or equivalent. These percentages shall apply to the combined charge to the customer for both solid waste and recyclable materials collection. The WUTC is strongly encouraged to approve tariffs that are consistent with the policies set forth in this chapter, and that meet the minimum percentages specified in this section.

A copy of KCC § 10.18.020 is attached hereto as Appendix A.

and is inconsistent with the County's Comprehensive Solid Waste Management Plan ("SWMP") and implementing ordinances.

As explained in detail below, Eastside Disposal's rates comply fully with RCW 81.77.030 and are consistent with the County's SWMP. Even the County admits that the rates provide an incentive for customers to reduce their waste stream and recycle rather than dispose of waste. There has been no actionable violation of any provision of the County ordinances implementing the Plan because the Commission, not the County, has the statutory authority to prescribe a rate structure for Eastside Disposal.

Furthermore, the County has provided no basis for a rate revision. The relief sought by the County is vague. The County's complaint asks the Commission to repeal Eastside Disposal's tariff and adopt one "in compliance with RCW 81.77.030 and RCW 70.95.010." Complaint, Relief Requested. However, the County has declined to specify a rate-making methodology that it believes would better satisfy these statutes. The County's witnesses, on cross-examination, did not argue for the rejection of cost-of-service pricing. Rather they expressed three areas of dissatisfaction with the Commission's methodology, while providing no basis for revising that methodology. County witnesses:

- argued that additional external costs should be considered, although the only two costs they specifically identified are already elements of the County's tip fee at its landfill.
- stated that more costs should be assigned on a per-pound rather than a per-customer basis although they could not specify what costs these might be.
- expressed a preference for the Meeks or Skumatz can weights, although the use of those can weights, if unadjusted, would lead to over-recovery of the revenue requirement or, if adjusted, would not increase differentials in rates among levels of service.

The County has failed to prove that Eastside Disposal has violated any law and has failed to provide the Commission with any rational basis for revising Eastside Disposal's rates. The County's request for relief, therefore, should be denied.

## **II. STATEMENT OF ISSUES**

- A. Has the County Proven A Violation of RCW 81.04.110?**
1. Can King County require the Commission to adopt rates that conform to the specific rate structure set forth in King County Code § 10.18.020?
  2. Does the King County Code require Eastside Disposal to propose rates with a steeply inclining structure when Eastside Disposal has been informed that the Commission will not approve such a rate structure?
  3. If different rate structures are called for by a Commission order and by the King County Code, must Eastside Disposal comply with the Commission-approved structure?
  4. Are Eastside Disposal's current rate structure and billing system consistent with the solid waste management priorities set forth in RCW 70.95.010(8)?
  5. Are Eastside Disposal's current rate structure and billing system consistent with the minimum levels of solid waste collection and recycling services established by the County's Comprehensive Solid Waste Management Plan?
- B. If the County-Proposed Rate Structure Were Adopted, Should a Balancing Account be Established to Address Undue Erosion of Revenues?**
- C. Does the Solid Waste Division of the King County Department of Public Works Have Standing to Maintain This Action?**

## **III. STATEMENT OF FACTS**

On December 28, 1993, Eastside Disposal applied for increased garbage and residential rates in WUTC Docket No. TG-931585. The rates proposed by Eastside Disposal were as follows:

mini-can:	\$10.15
one can	\$11.50
two cans	\$13.60
three cans	\$17.00

Exhibit T-1 at 24 (Hansen).

The proposed rates were developed pursuant to Commission directives requiring Eastside Disposal to adjust the rate for a mini-can upward to more accurately reflect cost-of-service principles and to eliminate the subsidization of that level of service. TR 650-1 (Glasgo); TR 752-3 (Demas).

The proposed rates were based on a cost-of-service study prepared by Eastside Disposal, which used a test period that ended June 30, 1993. Exhibit T-76 at 3 (Glasgo); Exhibit T-95 at 2 (Demas).

Commission Staff ("Staff") recommended modifications to the pro forma adjustments included in the proposed rate structure based on cost-of-service principles. Exhibit T-76 at 5 (Glasgo); Exhibit 96 (Demas). On February 9, 1994, the Commission considered the proposed rate revision at its regularly scheduled open public meeting. Exhibit 96 (Demas). Representatives of King County spoke against the tariff revision, arguing that the rates would violate RCW 81.77.030 by creating a strong financial disincentive for customers to reduce rates and recycle. T-1 at 2-4 (Hansen). After considering the views of the County, Staff, and Eastside Disposal, the Commission decided to accept Staff's rate recommendations. Eastside Disposal then filed a conforming tariff revision that reflected the Commission's decision and established Eastside Disposal's current rates. See Tariff No. 8 for Rabanco Companies (Eastside Disposal and Container Hauling services). The rates filed by Eastside Disposal are as follows:

mini-can:	\$9.65
one can:	\$10.90
two cans:	\$12.75
three cans:	\$15.80

King County brought the present action on March 22, 1994. The County's complaint is based on its assertion that the rates approved for Eastside Disposal "create a strong financial disincentive for customers to reduce waste and recycle" and, therefore, violate RCW 81.77.030. Complaint ¶ 13. The County has also asserted that Eastside Disposal's filed rates are unlawful because they do not incorporate the rate differentials set forth in KCC § 10.18.020. TR 172-4 (Hansen).

The rate structure approved by the Commission for Eastside Disposal is a "variable can" rate structure that provides for higher rates for higher service levels. TR 55 (Hansen). The County's own witnesses have testified that variable can rate structures provide incentives to customers to reduce



waste and recycle. TR 437-8 (Skumatz). The rate structure approved for Eastside Disposal is, in fact, very similar to the rate structure set forth in KCC § 10.18.020; the only difference between the rate structure adopted by the Commission for Eastside Disposal in Docket No. TG-931585 and the rate structure set forth in KCC § 10.18.020 is the degree of differentials between the service levels. These differentials are illustrated by Exhibit 28. TR 78-80 (Hansen) (a copy of Exhibit 28 is attached hereto as Appendix B for reference). As Exhibit 28 illustrates, both rate structures are "inclining"-- customers at higher levels of service pay higher rates. The County-proposed rate structure simply inclines more steeply. Id.

Can weights for Eastside Disposal's cost-of-service study were derived from a March 1990 can weight study conducted by Eastside Disposal in which average container weights for one-can, two-can, 60-gallon toter, and 90-gallon toter customers were determined. T-76 at 7 (Glasgo). The can weights derived from this study, although less than the Meeks weights often used by the Commission to determine solid waste collection rates, accurately reflect the total tonnages actually collected and disposed of by Eastside Disposal. Exhibit T-76 at 7 (Glasgo); TR 595-600 (Glasgo). If the Meeks weights had been used to determine Eastside Disposal's rates, they would have led to an over recovery of Eastside Disposal's revenue requirement. TR 599-600 (Glasgo). If the Meeks weights had been adjusted to accurately reflect actual disposal tonnage, their use would have done very little to increase the differentials in rates among levels of service. TR 746 (Demas). Similarly the can weights derived by Dr. Skumatz, witness for the County, in her "garbage by the pound" study would have produced a similar rate structure. TR 751 (Demas). Staff found that Eastside Disposal had "performed a diligent attempt to determine the reasonable level of weights for their residential service . . ." and that the weights were "within a range of reasonableness." TR 714 (Demas).

The differentials between the levels of service in Eastside Disposal's current rates range from 13% to 24 %. Customers who reduce their level of service by just one level can save between \$1.35 and \$3.05 per month. The County's own witnesses have testified that differentials and savings in



these ranges encourage waste reduction and recycling. Exhibit T-65 at 12-13 (Skumatz). Thus, County witnesses effectively admit that rather than providing a strong disincentive to reduce and recycle, as alleged in King County's complaint, Eastside Disposal's current rates will actually provide an incentive to Eastside Disposal's customers to reduce and recycle waste.

Furthermore, the limited data that has been collected regarding the impact of the new rates suggests that the rates continue to provide an incentive for customers to reduce and recycle waste. Participation in Eastside Disposal's recycling and yard waste programs continues to increase. Exhibit T-76 at 13 (Glasgo).

The rate structure is designed to allocate Eastside Disposal's costs of providing service based upon each customer's contribution to those costs. Exhibit T-76 at 3-5 (Glasgo); Exhibit T-95 at 7 (Demas); TR 52 (Hansen). The County apparently endorses setting rates based on cost-of-service, and follows cost-of-service principles in setting the tip fee for its own landfill. TR 98-99 (Hansen). Although the County might apply it differently, the County has not argued that the cost-of-service methodology should not have been used by the Commission in establishing Eastside Disposal's rates. TR 63-64 (Hansen).

The steeply inclining rate structure proposed by the County could lead to rate instability as customers migrate to lower levels of service. Exhibit T-88 at 9 (Colbo). Because Eastside Disposal would not, under the County's approach, recover its costs of providing the lower levels of service, the company would be forced to return to the Commission to apply for further rate increases. Exhibit T-88 at 9-10 (Colbo); Exhibit T-76 at 15 (Glasgo). This rate instability would probably require Eastside Disposal to apply more frequently for rate increases than it does now. Exhibit T-76 at 16 (Glasgo). The costs of bringing these rate cases will increase Eastside Disposal's overall operating costs, costs that will be passed onto Eastside Disposal's customers. Id.

The Commission has used a credit or refund system to prevent revenue shortfalls to haulers and resulting rate instability. Exhibit T-95 at 4-5 (Demas); TR 750 (Demas). These systems have

been implemented in connection with *temporary* rates or rates for which no historical test period is available. Exhibit T-95 at 3-4 (Demas); TR 742-3 (Demas). Under these systems, rates are set somewhat higher than projected to prevent the hauler from suffering a revenue deficiency. *Id.* Any excess revenues are credited or refunded to customers. *Id.* The Commission has discretion to apply the credit or refund mechanism when it deems it necessary. Exhibit T-95 at 5 (Demas).

#### IV. ARGUMENT

RCW 81.04.110 authorizes a complaint before the Commission "setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission." As the complainant, King County carries the burden of proving, by a preponderance of the evidence, that Eastside Disposal has committed such a violation. See State Ex Rel. Arrow Transportation Co. of Delaware v. Washington Utilities and Transportation Commission, 66 Wn.2d 825, 830, 376 P.2d 433 (1962).

King County suggests that the rates established for Eastside Disposal in the tariff revision violate RCW 81.77.030 because: (1) they are not in compliance with King County ordinances designed to implement the local SWMP; and (2) they are inconsistent with the solid waste management priorities set forth in RCW 70.95.010.

King County has failed to establish that Eastside Disposal or its rates have violated any provision of law or any order or rule of the Commission as required under RCW 81.04.110. Respondent is entitled, therefore, to an order in its favor.<sup>2</sup>

---

<sup>2</sup> For convenience, Eastside Disposal has prepared proposed findings of fact and conclusions of law. They are attached hereto as Appendices C and D.

**A. King County Cannot Require the Commission to Adopt Rates that Conform to the Differentials Set Forth in the King County Code.**

King County has alleged that Eastside Disposal's rates violate County ordinances designed to implement the County's SWMP developed pursuant to chapter 70.95 RCW. The core of the County's complaint is that the rate structure is deficient because it does not incorporate the differentials for solid waste disposal rates set forth in KCC § 10.18.020. See TR 47 (Hansen). That code provision purports to require certificated haulers to file tariffs with the Commission that include the following minimum cost increases between levels of service: 60% between mini-can and one can; 40% between one can and two cans; and 25% between two cans and three cans. KCC § 10.18.020.

The County's efforts to regulate the rates of Commission-certificated haulers through implementation ordinances for its SWMP must be rejected. The Commission has the sole authority to determine the rate structure for Eastside Disposal and other certificated haulers.

*1. The Commission has the sole authority to establish rates for certificated haulers.*

The Commission has the authority to determine rates for certificated solid waste companies under state law. RCW 81.77.030 provides, in relevant part:

The commission shall supervise and regulate every solid waste collection company in this state,

- (1) By fixing and altering its rates, charges, classifications, rules and regulations;
- (2) By regulating the accounts, service, and safety of operations; [and]
- (3) By requiring the filing of annual and other reports and data.

The development of Eastside Disposal's rate design, therefore, is within the Commission's and not King County's discretion. See Seattle Electric Co. v. City of Seattle, 206 F. 955 (W.D. Wash. 1913) (Public Service Commission's power to regulate rates, rules, and regulations of carriers deprived City of authority to limit street car ticket prices). The County's efforts to dictate the parameters of the Commission's rate designs are misplaced and contrary to law. See People's Organization for Washington Energy Resources ("POWER") v. Utilities and Transp. Comm'n, 104

Wn. 2d 798, 812, 711 P.2d 319 (1985) (rejecting a challenge to WUTC's ratemaking methodology because "[i]n this State, the Legislature has conferred the ratemaking power on the WUTC").

The fact that RCW 81.77.030 directs the Commission to require compliance with the County's SWMP and related implementation ordinances does not change this analysis. The County was simply not granted the authority to set rates for certificated haulers; that authority remains with the Commission. There is nothing in chapter 70.95 RCW that indicates that this ratemaking authority has been extended to local jurisdictions. To the contrary, RCW 70.95.900 specifically provides that "nothing in this act shall be deemed to change the authority or responsibility of the Washington Utilities and Transportation Commission to regulate all intrastate carriers."<sup>3</sup> Neither Eastside Disposal nor the Commission is required to comply with an ordinance that exceeds the scope of the County's authority.

2. *The Commission has discretion in selecting appropriate ratemaking methodologies for solid waste collection.*

It is unclear whether the County believes that the Commission should not be using cost-of-service rate methodologies.<sup>4</sup> However, the County has argued that the cost-of-service methodology used by the Commission in establishing Eastside Disposal's rates was flawed and that more costs should have been allocated on the basis of weight rather than by customer. See Exhibit T-65 at 22 (Skumatz); TR 95-98 (Hansen). Yet the County has specifically acknowledged that the application of a cost-of-service methodology, including such allocation choices, must be based on judgment and policy. See Exhibit T-65 at 18-19 (Skumatz). These judgments and policy decisions are properly made by the Commission, the body charged with rate-making authority in this case, not the County.

---

<sup>3</sup> This provision was enacted in connection with the adoption of the Solid Waste Management Act, RCW 70.95.010 et. seq., which established "a comprehensive statewide program for solid waste handling which will prevent land, air, and water pollution and conserve the natural and economic resources of this state", RCW 70.95.020. This Act assigned primary responsibility for solid waste management to local jurisdictions. The Waste Not Washington Act amended and supplemented the Solid Waste Management Act. See Laws of 1989, Regular Sess., ch. 431.

<sup>4</sup> KCC § 10.18.020 calls for an incentive structure "rather than a strict cost-of-service rate structure." Compare TR 165 (Hansen) and TR 291-295 (Gaisford).

See POWER, 104 Wn. 2d at 812, 711 P.2d 319 (courts are not at liberty to substitute their judgment on ratemaking for that of the Commission, "within a fairly broad range, regulatory agencies exercise substantial discretion in selecting appropriate ratemaking methodologies").

Furthermore, the County was unable to articulate what costs should have been allocated on the basis of weight rather than by customer. See TR 95-98 (Hansen); TR 466-8 (Skumatz). Indeed the County's lead policy witness, Dr. Hansen, conceded that he was "not at all" familiar with the actual components of the Commission study that allocates costs based on tonnage. TR 156-157 (Hansen). Under these circumstances, the County's suggestion that the Commission should revisit its application of cost-of-service principles to Eastside Disposal's rate determination must be rejected.

3. *Eastside Disposal is not required to file proposed or final tariffs that conflict with the Commission's directives regarding rate structure.*

KCC § 10.18.020 purports to require Eastside Disposal to "file" rates that incorporate specific rate differentials. Eastside Disposal is clearly required under state law, however, to file rates that conform to the rates established by the Commission pursuant to its authority under chapter 81.77 RCW. See RCW 81.77.030; Miles v. Enumclaw Co-Op Creamery Corp., 12 Wn.2d 377, 379, 121 P.2d 945 (1942) (common carrier is required to charge and collect the rates fixed by the Commission's predecessor, the Department of Public Service).

Similarly, Eastside Disposal is barred under state law from charging rates that conflict with the schedule of rates filed with the Commission. See RCW 81.28.050; see also Puget Sound Navigation Co. v. Dep't of Public Works, 157 Wash. 557, 561, 289 Pac. 1006 (1930) (carriers are under an obligation to charge rates specified in filed schedule); Arizona Grocery Co. v. Atchison, T.& S.F. RY Co., 284 U.S. 370, 387 (1931) (ICC rates constitute lawful rates, "[t]he carrier cannot change a rate so prescribed and take its chances of an adjudication that the substituted rate will be found reasonable. . . [i]t is bound to conform to the order of the Commission").

County witnesses have indicated that Eastside Disposal violated KCC § 10.18.020 by submitting proposed rates to the Commission that did not incorporate the differentials laid out in that



section. TR 23-25 (Hansen). KCC § 10.18.020 purports to require certificated haulers such as Eastside Disposal, to "file" rates that incorporate specific differentials. Eastside Disposal did not file a tariff with the Commission, however, when it submitted proposed rates; the tariff incorporating its new rates was "filed" only after the Commission developed and approved the rates. See TR 174-175 (Hansen); see also RCW 81.28.040. As discussed above, King County does not have the authority to dictate the rates that will be charged by Eastside Disposal.

Furthermore, interpreting KCC § 10.18.020 to require Eastside Disposal to submit proposed rates to the Commission that conform to the specified differentials would be misleading to Eastside Disposal customers and contrary to Commission directives. Eastside Disposal was informed by the Commission that it would be required to develop rates that conform with cost-of-service principles. TR 650-1 (Glasgo); TR 752-3 (Demas). The proposed rates submitted by Eastside Disposal were prepared pursuant to those directives and were described in the notice of proposed rate change that Eastside Disposal must send to its customers. See RCW 81.28.050. If Eastside Disposal had ignored the Commission and submitted proposed rates that were sure to be rejected by the Commission, the notice of proposed rates would have misled Eastside Disposal customers as to how their rates would change. Moreover, when it revised its proposal, Eastside Disposal may have been required to send customers a second notice, at a substantial expense that customers would ultimately bear.

King County ordinances purporting to govern the design of the rates filed by Eastside Disposal place the company in the untenable position of having to violate either state or local law.<sup>5</sup> Under these circumstances, Eastside Disposal cannot be required to comply with County ordinances that exceed the scope of the County's municipal authority. In Seattle Electric Co., the court recognized the dilemma created by a city ordinance that conflicted with a Commission rate schedule and concluded that the local ordinance was invalid:

---

<sup>5</sup> The County's Dr. Hansen recognized this dilemma and did not know what the hauler would do when faced with conflicting County and Commission directives on rate differentials. TR 158 (Hansen).

If the plaintiff in this case obeys the ordinance in question, it violates the law of the state, because the charges are less than those fixed by the schedule on file; and if it obeys the law of the state it violates the city ordinance. Such a conflict of authority is not to be tolerated. For these reasons I am satisfied that the act of the municipality in enacting the ordinance in question as ultra vires . . ."

206 F. at 958-959.

Municipal entities have only those powers expressly conferred upon them or fairly implied by statute. Hite v. Public Utility Dist. No. 2 of Grant County, 112 Wn. 2d 456, 458-9, 772 P.2d 481. King County's statutory authority relating to solid waste collection includes determining what mix of services should be provided; it does not extend to rate regulation. See chapter 70.95 RCW. Nor does the County have implied authority to regulate rates in light of the fact that (1) the Commission does have that express statutory authority and two governmental bodies cannot regulate the rates of the same company for same customers; and (2) the Legislature unequivocally expressed its intent that the Commission's regulatory authority not be disturbed by legislation broadening counties' authority over solid waste management. See RCW 70.95.900.

4. *King County retains the means of implementing its solid waste goals and priorities.*

Although King County's efforts to directly dictate the rate design developed by the Commission for Eastside must be rejected, the County is not left without the means of implementing its solid waste goals and priorities. The County can and has established mandatory service levels to provide waste reduction and recycling opportunities to County residents. See Exhibit T-1 at 16-17 (Hansen). The County can and has implemented an extensive education program designed to educate County residents about the benefits of waste reduction and recycling and encourage them to reduce and recycle in their homes. The County can and has assisted residents in developing home waste reduction programs, such as backyard composting. TR 221 (Gaisford). The County could actively enforce its yard waste ban to divert more yard waste out of the disposal stream and into yard waste collection or composting. See TR 135-136, 155 (Hansen); TR 282 (Gaisford).



The County can also take steps that will lead to more steeply inclining rate structures for Commission-regulated haulers. The County, as owner and operator of the Cedar Hills Landfill, can adopt tipping fees designed to encourage waste reduction and recycling. Simply raising the tipping fees at the Landfill will have the effect of increasing the rate differentials among levels of service. See TR 644 (Glasgo). The County may implement other funding mechanisms designed to encourage waste reduction and recycling, such as subsidizing recycling and yard waste transfer fees. Such cost increases and subsidies would be incorporated into the rates used by certificated haulers under the Commission's cost-of-service principles. The Commission's rejection of the County's attempts to legislate rate design for certificated haulers such as Eastside Disposal will not leave the County without the means to implement its waste reduction and recycling goals.

**B. Eastside Disposal's Rates are Consistent with the Priorities Set Forth in RCW 70.95.010.**

Eastside Disposal provides solid waste collection service in certain areas pursuant to a certificate issued by the Commission under chapter 81.77 RCW. Under RCW 81.77.030(6) the Commission must require certificate holders under chapter 81.77 RCW to use rate structures and billing systems that are consistent with the solid waste management priorities set forth in RCW 70.95.010. These priorities are, in descending order, waste reduction, recycling, disposal of separated waste, and disposal of mixed waste. RCW 70.95.010(8). The evidence presented by Staff, the County, and Eastside Disposal demonstrates that the rates approved by the Commission for Eastside Disposal are consistent with these priorities. As the County has conceded, rates need do nothing more than provide an incentive for waste reduction and recycling to be consistent with the priorities. TR 64-5 (Hansen). Eastside Disposal's rates provide that incentive. See TR 189-190 (Gaisford).

First, by charging customers based on the volume of solid waste produced, Eastside Disposal's variable rates provide an economic incentive to reduce waste. Customers who produce greater volumes of waste are charged more under Eastside Disposal's rate structure; customers who produce smaller volumes are charged less. As the County's own witnesses have testified, variable rates

encourage customers to strive to produce less waste, and thereby support waste reduction goals. TR 437-438 (Skumatz). The voluntary nature of Eastside Disposal's yard waste program also encourages waste reduction; customers can avoid any yard waste charges by composting in their backyards, a program that has been vigorously supported by King County.<sup>6</sup> See TR 221 (Gaisford).

Second, the rates encourage recycling. Customers who recycle will produce smaller volumes of waste and, therefore, pay less for garbage service. Recycling charges are a mandatory component of Eastside Disposal's solid waste disposal charges. If customers do not recycle they will, while still paying for recycling service, be required to use a higher service level in order to properly dispose of their waste, producing an increase in their garbage bills. Customers who recycle save at least the cost of using the next higher level of service, an economic savings that ranges from \$1.25 to \$3.05 per month.<sup>7</sup> The County's own testimony indicates that customers will react to price signals in that range. See Exhibit T-65 at 12-13 (Skumatz).

By encouraging waste reduction and recycling, the rates developed for Eastside Disposal advance the priorities established in RCW 70.95.010, thereby satisfying RCW 81.77.030(6).<sup>8</sup>

**C. Eastside Disposal's Current Rate Structure and Billing System are Consistent with the Minimum Levels of Solid Waste Collection and Recycling Services Established by the County's Comprehensive Solid Waste Management Plan.**

The County's complaint alleged that the rates established for Eastside Disposal are not consistent with "the minimum levels of solid waste collection and recycling services" established

---

<sup>6</sup> King County initially opposed Eastside Disposal's voluntary yard waste program, arguing that it would decrease yard waste participation rates. See County's Petition for Reconsideration and, in the Alternative, rehearing and Amendment or Rescission, Docket TG-931585. In these proceedings, the County has not asserted that a universal yard waste program should be reinstated in Eastside Disposal's service territory. County witnesses, in fact, have testified that a universal yard waste program would be inconsistent with the County's waste reduction and recycling goals. TR 170, 177 (Hansen). The County has apparently dropped all claims based on yard waste service and pricing. Id.; see also TR 231-232 (Gaisford).

<sup>7</sup> These savings will, of course, be higher if a customer had to step up two levels of service.

<sup>8</sup> Because the statutory mandates are satisfied, whether the County's preferred rate structure would provide a stronger incentive is irrelevant. However, as a policy matter, it is unclear whether adoption of the County's structure would make a significant difference due to the paucity of analysis regarding the relative importance of rate incentives versus variables such as service availability, general rate levels, customer demographics, and customer education. See TR 313, 316-320, 370 (Pealy).

pursuant to local comprehensive waste management plans. See Complaint, ¶ 8, lines 12-16. It is uncontested, however, that Eastside Disposal provides the minimum levels of solid waste collection and recycling services required under the King County SWMP and related implementation ordinances. See TR 19-22,70 (Hansen). Eastside Disposal's current rate structure is, therefore, consistent with the minimum levels of solid waste collection and recycling services set forth in the County's SWMP and related ordinances. Again, RCW 81.77.030(6) is satisfied.

**D. The Application of the Rate Differentials Contained in KCC § 10.18.020 Will Require the Use of a Balancing Account in Order to Prevent Rate Instability.**

The application of the rate differentials contained in KCC § 10.18.020 could lead to rate instability and Eastside Disposal's inability to achieve its authorized revenue requirement, as customers migrate to the lower-priced levels of service. Eastside Disposal will be forced, therefore, to seek more frequent rate increases. Exhibit T-88 at 9-10 (Colbo); Exhibit T-76 at 15 (Glasgo). If the Commission determines that application of the County differentials is appropriate, the resulting threat of rate instability will require the use of a balancing account or other mechanism. This will ensure that Eastside Disposal's customers do not bear the high cost of frequent rate cases. See Exhibit T-76 at 16 (Glasgo). Eastside Disposal would have no objection to the use of the County's rate structure provided that an adequate balancing account or other true-up mechanism were adopted to make the company whole for revenue shortfall resulting from customers' downward migration.

The use of such mechanisms is not without precedent. The Commission has used a credit or refund system to prevent revenue shortfalls to haulers and resulting rate instability in connection with the implementation of new services for which no historical test period is available. Exhibit T-95 at 3-5 (Demas); TR 750 (Demas). The Commission clearly has the discretion to apply such rate mechanisms when it deems it necessary. Exhibit T-95 at 5 (Demas); see also POWER, 104 Wn. 2d at 812, 711 P.2d 319 (Commission exercises substantial discretion in developing appropriate rates).

**E. The County Solid Waste Division Lacks Standing to Maintain this Action.**

The complaint in this action was filed by the *Solid Waste Division* of the King County Department of Public Works. Complaint, ¶¶ 1, 3. The Solid Waste Division lacks standing to maintain this action. The action was brought under RCW 81.04.110. Complaint, ¶ 3. Governmental entities that can bring an action under this provision include only "body politics" and "municipal corporations." RCW 81.04.110. The Solid Waste Division of the King County Department of Public Works is neither. See McQuillens, Municipal Corporations, § 12.40 (1990); see also RCW 4.08.0110 (capacity of counties to sue). Therefore, as a technical matter, this action should be dismissed for complainant's lack of standing.

**V. CONCLUSION**

King County is not entitled to relief because it has failed to show any violation of law. Moreover, King County has not articulated any reasoned approach to revising the Commission's rate-setting policies and methodology as they were applied to Eastside Disposal's rates in Docket No. TG-931585. Accordingly, the County's complaint should be denied. In the event a balancing account or similar mechanism were adopted, Eastside Disposal would not object to the use of the County's rates.

DATED this 12<sup>th</sup> day of August, 1994.

PRESTON GATES & ELLIS

By 

Elizabeth Thomas WSBA # 11544

Anne D. Rees WSBA # 21989

Attorneys for Respondent  
Rabanco Companies  
d/b/a Eastside Disposal

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by United States mail, pursuant to WAC 480-09-120(2)(a):

Mary F. Perry  
Senior Deputy Prosecuting Attorney  
E-550 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104-7250

Kathryn A. Killinger  
Senior Deputy Prosecuting Attorney  
E-550 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104-7250

Anne E. Egeler  
Assistant Attorney General  
1400 S. Evergreen Park Drive  
P.O. Box 40128  
Olympia, WA 98504-0128

DATED this 12th day of August, 1994, at Seattle, Washington.

  
\_\_\_\_\_  
Teri A. Stone



## Appendix A

**10.18.020 Solid waste collection and recycling rates.** Certificate holders under chapter RCW 81.77 shall use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to the local comprehensive solid waste management plan, as required by RCW 81.77.

A. It is the county's policy that the certificated haulers include the following elements in the tariffs submitted to the WUTC:

1. A mini-can (10-20 gallon container) rate to reward people who reduce their level of solid waste collection service.
2. A recycling-only rate for program participants who decline solid waste collection service, but participate in recycling programs. Certificated haulers may include a fee to administer billing for this service.
3. A yard waste only rate for program participants who decline solid waste collection service, but participate in a yard waste collection program. Haulers may include a fee to administer billing for this service.
4. Billing that includes the cost of solid waste and recycling collection services on the same statement, as provided by chapter 81.77 RCW.
5. A rate structure designed to provide customers with adequate options and incentives to reduce their level of solid waste collection service as a result of their participation in waste reduction and recycling programs.
6. A rate structure that distributes the cost of the single family and multi-family recyclables collection programs among all rate payers in the franchise area where recycling and yard waste services are available.
7. A rate structure for single family yard waste collection services that charges only those customers subscribing to the service. To encourage recycling, the cost of yard waste collection shall be less than a comparable unit of solid waste.
8. The cost to produce and distribute program promotion and educational materials to customers, in accordance with K.C.C. 10.18.040.
9. A monthly administrative fee to compensate the division for the costs of program management and

promotional and educational programs. The monthly administrative fee is specified in K.C.C. 10.18.070.

10. Reduced solid waste and recyclables collection rates for eligible elderly and low-income program participants, as permitted by the WUTC.

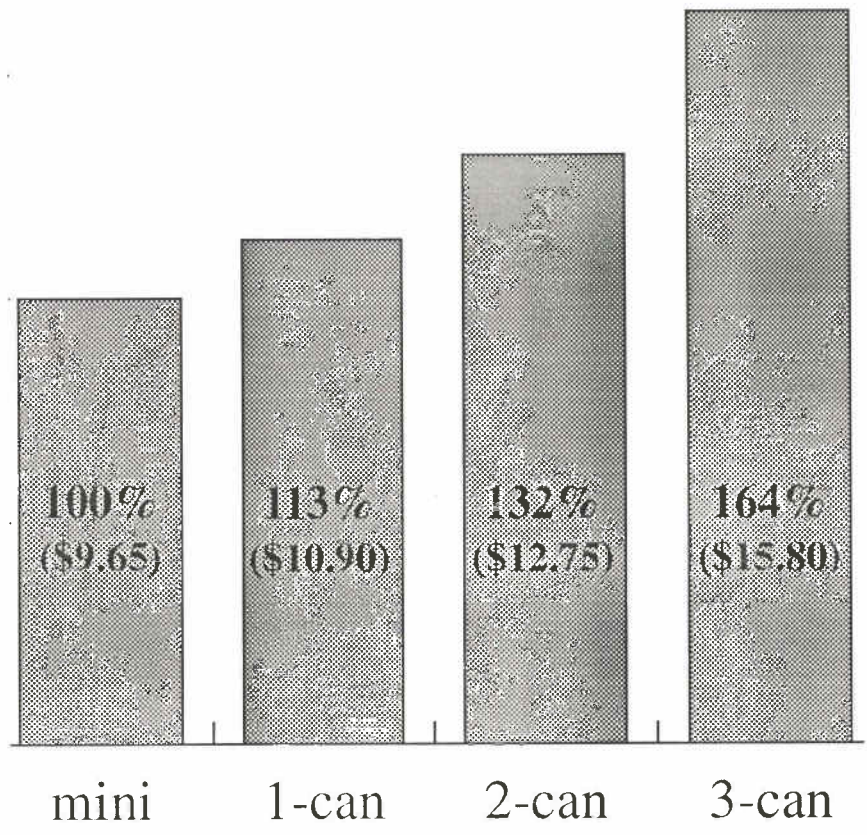
B. Certificated haulers shall file tariffs, with an effective date no later than July 31, 1991, with the Washington Utilities and Transportation Commission (WUTC). It is the county's policy that the rates include all elements specified in Subsection A. of this section and be designed to encourage participation in recyclables and yard waste collection programs, in accordance with the plan.

C. Whenever certificated haulers file tariffs with the Washington Utilities and Transportation Commission (WUTC), it is the county's policy that the certificated haulers include all elements specified in Subsection A. of this section in the tariffs and that an incentive solid waste collection rate structure be used rather than a strict cost of service rate structure. An incentive solid waste collection rate structure is one that rewards customers who recycle and includes substantial cost differentials between solid waste collection service levels. The tariffs filed shall include the following percentages of increases between levels of service: a minimum of sixty percent between mini and one can; a minimum of forty percent between one and two cans or equivalent; and a minimum of twenty five percent between two and three cans or equivalent. These percentages should apply to the combined charge to the customer for both solid waste and recyclable materials collection. The WUTC is strongly encouraged to approve tariffs that are consistent with the policies set forth in this chapter, and that meet the minimum percentages specified in this section. (Ord. 10446 § 2, 1992; Ord. 9928 § 3, 1991).

**10.18.030 County notification of WUTC tariff filings.** Whenever a certificated hauler files a proposed tariff revision for solid waste, recyclables and/or yard waste collection rates with the WUTC, the certificated hauler shall simultaneously provide the division manager with copies of the proposed tariff and all nonproprietary supporting materials submitted to the WUTC.

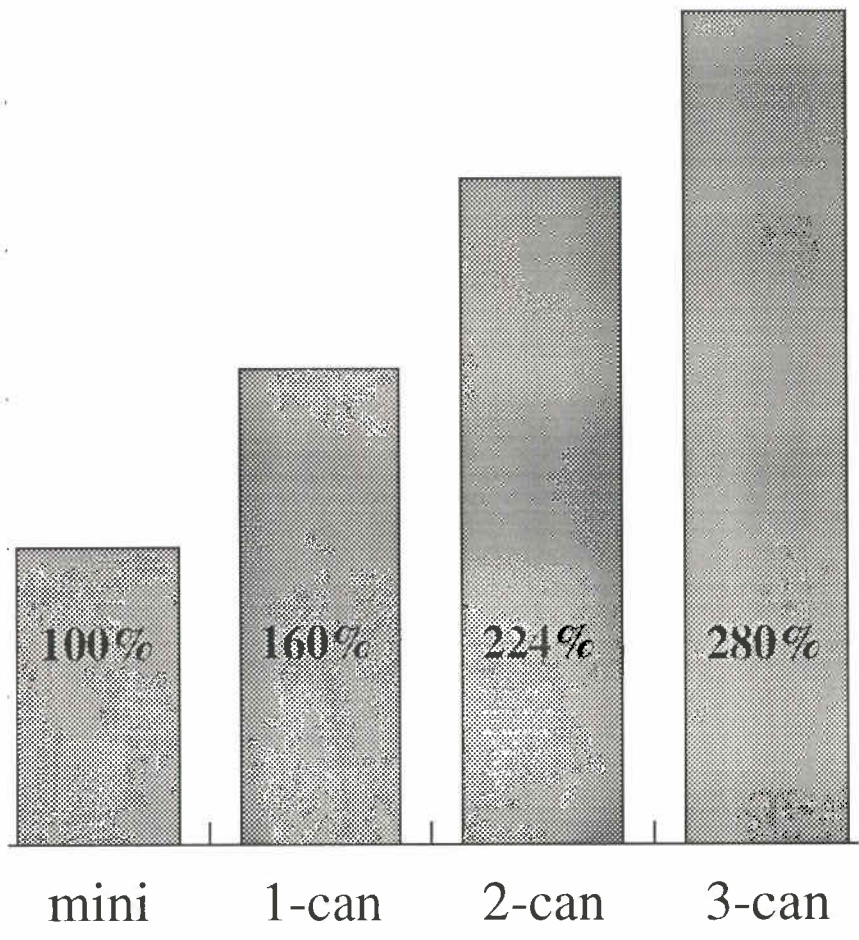
Appendix B

~~Cost of Service~~  
*Eastside's Current Rates*





*Differentials in*  
~~Steeply Inverted~~  
~~Rates~~  
*King County ~~Code~~*  
*Ordinance*



Appendix C

PROPOSED FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington. It has statutory authority to regulate rates of public service companies, including companies providing solid waste collection service.
2. Complainant, the Solid Waste Division of the King County Public Works Department ("King County") is an administrative agency of King County.
3. Respondent, Rabanco Companies d/b/a Eastside Disposal ("Eastside Disposal") furnishes solid waste collection service within unincorporated areas of King County, Washington.
4. Eastside Disposal filed Tariff No. 8, which reflected the Commission's decision in No. TG-931585. The residential rates filed in Tariff No. 8, which were effective February 15, 1994, are as follows:

mini-can:	\$9.65
one can:	\$10.90
two cans:	\$12.75
three cans:	\$15.80
yard waste:	\$6.00
5. The rates filed in Tariff No. 8 are based on a cost-of-service study prepared by Eastside Disposal. Can weights for the cost-of-service study were derived from a 1990 can weight study conducted by Eastside Disposal, taking into consideration actual disposal volumes and information from the Meeks study. These can weights are within the range of reasonableness and correlate with residential tonnages actually collected and disposed of by Eastside Disposal.
6. King County's complaint against Eastside Disposal is brought pursuant to RCW 81.04.110.
7. Hearings in this matter were held in Olympia and Bellevue July 14, 1994 through July 19, 1994. Testimony from the public was heard on July 19, 1994.
8. The rates filed in Tariff No. 8 are consistent with cost-of-service principals.
9. The rates filed by Eastside Disposal are variable can weights that encourage waste reduction and recycling by charging higher rates for higher service levels.

10. Eastside Disposal's voluntary yard waste program advances local and state waste reduction and recycling goals by encouraging customers to engage in waste reduction activities, such as backyard composting programs, and by providing an alternative to disposal of yard waste.
11. Eastside Disposal's mandatory recycling program encourages recycling by charging all customers for recycling services.
12. King County Code § 10.18.020 purports to require certificated haulers, such as Eastside Disposal, to file tariffs that contain the following differentials between levels of service: a minimum of sixty percent between mini and one can; a minimum of forty percent between one and two cans or the equivalent; and a minimum of twenty-five percent between two and three cans or the equivalent.
13. The rates set forth in Tariff No. 8 do not conform to the differentials set forth in KCC § 10.18.020.
14. Under the present circumstances, Eastside Disposal cannot comply simultaneously with both KCC § 10.18.020 and Commission orders.
15. The limited information that has been collected regarding the impact of the rates established in Tariff No. 8 suggests that the rates provide an incentive for customers to reduce and recycle waste.
16. Eastside Disposal provides the minimum levels of solid waste collection and recycling services required under the King County Comprehensive Solid Waste Management Plan and related implementation ordinances.
- [17. If the Commission finds that the County's rate structure should be adopted as a policy matter, the Commission should further find that a balancing account or further mechanism should be implemented to prevent undue erosion of Eastside Disposal's revenue and rate instability. The parties should work together to propose a specific mechanism.]

**Appendix D**

**PROPOSED CONCLUSIONS OF LAW**

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties of record.
2. King County cannot require the Commission to adopt rates that conform to the specific rate structure set forth in King County Code § 10.18.020.
3. King County cannot require Eastside Disposal to propose rates with a steeply inclining structure when Eastside Disposal has been informed by the Commission that the Commission will not approve such a rate structure.
4. If different rate structures are called for by a Commission order and by the King County Code, Eastside Disposal must comply with the Commission-approved structure.
5. Eastside Disposal's current rate structure and billing system, as set forth in Tariff No. 8, are consistent with the solid waste management priorities set forth in RCW 70.95.010(8) and conform with the requirements of RCW 81.77.030.
6. Eastside Disposal's current rate structure and billing system are consistent with the minimum levels of solid waste collection and recycling services established by the County's Comprehensive Solid Waste Management Plan.
- [7. In the event that the Commission adopts the County's rate structure: Eastside Disposal should file tariffs consistent with this Order after the parties have made recommendations regarding, and the Commission has approved by further order, a balancing account or similar mechanism designed to prevent rate instability and revenue erosion.]