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August 15, 1994

Mr. Steve Mc Lellan
Secretary
Washington Utilities and Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: King County Department of Public Works, Solid Waste Division
v. Seattle Disposal Company, Rabanco Ltd., d/b/a Eastside
Disposal and Container Hauling, Docket No. TG-940411

Dear Mr. Mc Lellan:

Enclosed for filing are the original and nineteen copies of King County's Hearing Brief. A Certificate of Service is also enclosed.

Very truly yours,

For NORM MALENG, King County Prosecuting Attorney

Mary F. Perry for

MARY F. PERRY
Senior Deputy Prosecuting Attorney

cc: Anne E. Egeler
Elizabeth Thomas

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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

KING COUNTY DEPARTMENT OF)
PUBLIC WORKS, SOLID WASTE)
DIVISION,)
Complainant,)
vs.)
SEATTLE DISPOSAL COMPANY,)
RABANCO, LTD., d/b/a/EASTSIDE)
DISPOSAL AND CONTAINER HAULING)
Respondent.)

DOCKET NO. TG-940411
KING COUNTY'S HEARING BRIEF

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I. INTRODUCTION

This hearing brief is submitted on behalf of King County Public Works Department, Solid Waste Division ("King County"), in connection with its complaint against Seattle Disposal Co., Rabanco Ltd., d/b/a Eastside Disposal and Container Hauling ("Eastside Disposal") tariff revision, Docket No. TG-931585. A four-day hearing on this matter was held on July 15, 16, 18 and 19, 1994. At that hearing much of the testimony dealt with factual matters and economic theory. Although that testimony was significant and relevant to several issues in this matter,

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1 critical legal questions of substantial significance are also at
2 issue.

3 The WUTC acted beyond its authority by establishing Eastside
4 Disposal's rates contrary to statutory mandate that the WUTC
5 ensure haulers' compliance with the King County Comprehensive
6 Solid Waste Management Plan and ordinances that implement the
7 plan. The rates were also adopted contrary to other requirements
8 of the "Waste Not Washington Act". The rates are not reasonable
9 and the evidence presented at the hearing demonstrates that they
10 were not adopted in a reasonable manner. The WUTC seeks to
11 deprive King County of its statutorily authorized policy
12 instrument of incentive-based rates. The evidence at the hearing
13 showed that the effectiveness of incentive-based rates in reducing
14 waste disposal and encouraging disposal is supported by empirical
15 data and sound economic theory and that the WUTC's arguments for
16 rejecting such rates is unsupported by empirical data or economic
17 theory.

18 For both legal and factual reasons, the WUTC should
19 reconsider the Eastside Disposal rates and revise those rates in a
20 reasonable manner in compliance with statutory authority and the
21 King County Comprehensive Solid Waste Management Plan and
22 implementing ordinances.

1 II. ARGUMENT

2 A. Eastside Disposal's Rates Violate RCW 81.77.030.

3 RCW 81.77.030 provides that the WUTC has the authority to
4 supervise solid waste companies by fixing and altering their
5 rates. This authority is not unlimited however. RCW 81.77.030(5)
6 states that the WUTC shall require solid waste companies'
7 compliance with local solid waste management plans and related
8 implementation ordinances. RCW 81.77.030(6) further requires
9 certificate holders to use rate structures and billing systems
10 consistent with the solid waste management priorities set forth
11 under RCW 70.95.010 and the minimum levels of solid waste
12 collection and recycling services pursuant to local comprehensive
13 solid waste management plans. As shown by empirical data and
14 testimony, Eastside Disposal's current rates are not consistent
15 with King County's Comprehensive Solid Waste Management Plan,
16 ordinances that implement that plan, or with statutory solid waste
17 management priorities.

18 RCW 81.77.030(5) and (6) were enacted as part of the "Waste
19 Not Washington Act" in 1989, which provided for major solid waste
20 reform. Another part of the "Waste Not Washington Act" contains
21 detailed legislative findings. Among these are the finding that
22 county and city governments shall assume primary responsibility
23 for solid waste management, including the responsibility to
24 develop and implement aggressive and effective waste reduction and
25 source separation strategies. RCW 70.95.010(6)(c). The

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1 legislature found that state government has the responsibility to
2 ensure that local governments are providing adequate source
3 reduction and separation opportunities and incentives to all. RCW
4 70.95.010(6)(d) (emphasis added). The legislature also found that
5 steps should be taken to make recycling at least as affordable and
6 convenient to the ratepayer as mixed waste disposal. RCW
7 70.95.010(10). Eastside Disposal's current rates do not provide
8 adequate incentives and have created a disincentive to waste
9 reduction and recycling.

10 Also among the legislative findings of the "Waste Not
11 Washington Act" are the solid waste management priorities referred
12 to in RCW 81.77.030(6). The two highest priorities, in descending
13 order of significance, are waste reduction and recycling, with
14 source separation of recyclable materials as the preferred method.
15 RCW 70.95.010(8).

16 As part of exercising its primary responsibility for solid
17 waste management, a county is tasked with developing a
18 comprehensive solid waste management plan which must include a
19 comprehensive waste reduction and recycling element that, in
20 accordance with the priorities contained in RCW 70.95.010(8),
21 provides programs to achieve three goals: (a) reduce the amount of
22 waste generated; (b) provide incentives and mechanisms for source
23 separation; and (c) establish recycling opportunities for the
24 source separated waste.

1 The "Waste Not Washington Act" provides a mechanism for
2 review of a county's draft comprehensive solid waste management
3 plan by the WUTC. The WUTC reviews the draft plan and advises the
4 county of the probable cost impacts and the effects of the plan's
5 recommendations on rates. RCW 70.95.096.

6 The current King County Comprehensive Solid Waste Management
7 Plan ("Comp Plan") was adopted in 1992. In compliance with RCW
8 70.95.010(8), that Comp Plan contains specific program direction
9 regarding waste reduction and recycling rate incentives. Exhibit
10 T-1 at 14 - 15; Exhibit 10; Exhibit 13; and Exhibit 14.

11 King County adopted ordinances to implement the Comp Plan,
12 including establishing service level standards for residential
13 recyclables collection and incentive rate structures. King County
14 Code (KCC) 10.18.020(A)(5) requires certificated haulers to
15 include a rate structure designed to provide adequate options and
16 incentives to reduce their level of solid waste collection as a
17 result of their participation in waste reduction and recycling
18 programs in tariffs submitted to the WUTC. Exhibit 15 at 366-12.
19 KCC 10.18.020(C) states that whenever certificated haulers file
20 tariffs with the WUTC, it is the County's policy that an incentive
21 solid waste collection rate structure be used rather than a strict
22 cost of service rate structure. The code section explains that an
23 incentive solid waste collection rate is one that rewards
24 customers who recycle and includes substantial cost differentials
25 between solid waste collection service levels. The code provides

1 that tariffs filed with the WUTC shall include the following
2 percentage differentials between levels of service: a minimum of
3 sixty percent between mini and one can; a minimum of forty percent
4 between one and two cans; and a minimum of twenty-five percent
5 between two and three cans. These percentages should apply to the
6 combined charge to the customer for both solid waste and
7 recyclable material collection. The code further provides that
8 the WUTC is strongly encouraged to approve tariffs that are
9 consistent with the policies set forth in the code and that meet
10 the minimum percentages specified in the section. Exhibit 15 at
11 366-13.

12 King County adopted the percentage differentials contained in
13 KCC 10.18.020(C) as the result of a long, open and public process.
14 Tr. 101. The differentials were adopted based upon an analysis
15 that they would provide incentives for waste reduction and
16 recycling and as the result of discussion and compromise with
17 haulers and the WUTC staff. Tr. 102. The specific differentials
18 were selected after discussion and consultation with haulers and
19 WUTC staff because the percentage differentials were achievable.
20 Tr. 122.

21 The County adopted the differentials as one "tool" in its
22 comprehensive "tool box" for achieving its overall waste reduction
23 and recycling goals. Tr. 166. Other "tools" used by King County
24 to achieve these goals include establishing minimum levels of
25 residential recycling service, encouraging backyard composting,

1 and public education programs. Exhibit 15 at 366-9 to 366-12 and
2 366-13 to 366-15; T-44 at 29 and Tr. 200.

3 Prior to the rates approved in February 1994, Eastside
4 Disposal filed tariffs that came close to compliance with the
5 differentials contained in KCC 10.18.020(C). Exhibit T-1 at 22 -
6 23. Although these rates did not strictly conform to the
7 differentials contained in the code, they complied with KCC
8 10.18.020(A)(5), which requires that a rate structure provide
9 customers with adequate incentives to reduce their level of solid
10 waste collection service. Exhibit T-1 at 23.

11 The rates filed by Eastside Disposal in December 1993 and
12 approved by the WUTC in February 1994 differ dramatically from
13 Eastside Disposal's earlier rates. As filed by Eastside Disposal,
14 the differential between the mini-can and one-can rate is thirteen
15 percent; the differential between the one-can and two-can rate is
16 eighteen percent; and the differential between the two-can and
17 three-can rate is twenty-five percent. As approved by the WUTC,
18 the differential between the mini-can and one-can rate is thirteen
19 percent; the differential between the one-can and two-can rate is
20 seventeen percent; and the differential between the two-can and
21 three-can rate is twenty-four percent. Exhibit T-1 at 24-25.
22 These rates do not provide adequate incentives to customers to
23 reduce their level of solid waste collection. Exhibit T-61 at 5;
24 Exhibit T-1 at 30; and Exhibit T-65 at 22-23.

1 Eastside Disposal filed rates in December 1993 that widely
2 diverged from the differentials contained in the King County Code
3 at the direction of WUTC staff. Tr. 650 - 651; Tr. 681; Tr. 684.
4 By filing these rates, Eastside Disposal violated KCC
5 10.18.020(A)(5) and KCC 10.18.020(C). By directing Eastside
6 Disposal to file rates in violation of those code provisions and
7 by approving those rates, the WUTC violated RCW 81.77.030(5) and
8 RCW 81.77.030(6).

9 The language of RCW 81.77.030(5) is unambiguous. It states
10 that the WUTC "shall supervise and regulate every solid waste
11 collection company in this state (5) By requiring compliance with
12 local solid waste management plans and related implementation
13 ordinances." RCW 81.77.030(6) is equally clear. It says that
14 the WUTC shall require "certificate holders under chapter 81.77
15 RCW to use rate structures and billing systems consistent with the
16 solid waste management priorities set forth under RCW 70.95.010
17 and the minimum levels of solid waste collection and recycling
18 services pursuant to local comprehensive solid waste management
19 plans."

20 Where a statute is unambiguous, a court will determine the
21 Legislature's intent from the language of the statute alone.
22 Waste Management v. Washington Utilities & Transp. Comm'n., 123
23 Wn.2d 621, 629, 869 P.2d 1034 (1994). RCW 81.77.030 states that
24 the WUTC shall require compliance with local solid waste
25 management plans and implementation ordinances and shall require

1 certificate holders to use rate structures consistent with the
2 solid waste management priorities in RCW 70.95.010. The use of
3 the word "shall" imposes a mandatory duty. Id.

4 The "Waste Not Washington Act" contains several sections
5 which relate to the same subject. In addition to RCW 81.77.030 is
6 the finding in RCW 70.95.010(6)(c) that county and city
7 governments shall assume primary responsibility for solid waste
8 management, including the responsibility to develop and implement
9 aggressive and effective waste reduction and source separation
10 strategies; the finding in RCW 70.95.010(6)(d) that state
11 government has the responsibility to ensure that local governments
12 are providing adequate source reduction and separation
13 opportunities and incentives to all; and the finding in RCW
14 70.95.010(10) that steps should be taken to make recycling at
15 least as affordable and convenient to the ratepayer as mixed waste
16 disposal. The act also requires that a local comprehensive solid
17 waste management plan must provide programs to achieve goals that
18 include reducing the amount of waste generated and providing
19 incentives for source separation. RCW 70.95.010(8).

20 Where statutes relate to the same subject, they must be read
21 together as a unified whole so that a "harmonious total statutory
22 scheme evolves which maintains the integrity of the respective
23 statutes. Waste Management v. Washington Utilities & Transp.
24 Comm'n., 123 Wn.2d at 630. The "Waste Not Washington Act" must be
25 read as an entirety. Read as a whole, the act designates cities

1 and counties as the primary solid waste management authorities.
2 It requires cities and counties to put into effect aggressive
3 waste reduction and recycling programs that specifically include
4 incentives for source separation. Under the act, the state
5 government's responsibilities include the requirement that the
6 WUTC ensure that solid waste haulers comply with local
7 comprehensive solid waste management plans and the ordinances that
8 implement them. In doing so, the WUTC must assure as a minimum
9 that the solid waste haulers rate structures are consistent with
10 the "Waste Not Washington Act's" solid waste management priorities
11 as they are sought to be achieved through local comprehensive
12 solid waste management plans and implementing ordinances.

13 To read the act otherwise would render parts of it
14 inoperative. For example, to read the act in the manner that it
15 must be read to support the WUTC's current policy, one has to
16 ignore RCW 70.95.010(6)(c), 70.95.010(6)(d), 70.95.010(10),
17 81.77.030(5), and 81.77.030(6). A court will not read one part of
18 a statute in a way to render another provision inoperative. Waste
19 Management v. Washington Utilities & Transp. Comm'n., 123 Wn.2d at
20 630.

21 The WUTC must act within its statutory authority, Jewell v.
22 Washington Utilities & Transp. Comm'n., 90 Wn.2d 775, 777, 585
23 P.2d 1167 (1978), and agencies do not have the power to make rules
24 that amend or change legislative enactments. Washington
25 Federation of State Employees v. Personnel Board, 54 Wn. App. 305,

1 308, 773 P.2d 421 (1989). The WUTC cannot simply ignore statutory
2 requirements because it disagrees with them or because it believes
3 that the Legislature's assumptions underlying the "Waste Not
4 Washington Act" were incorrect. See Exhibit 50. If the WUTC
5 disagrees with the act, the appropriate course is to address its
6 concerns to the Legislature rather than to ignore the legislation.

7
8 **B. The WUTC's Cost Of Service Methodology Violates RCW**
9 **81.77.030 And RCW 80.01.040.**

10 Under RCW 80.01.040, the WUTC is given general powers and
11 duties to regulate in the public interest and to make such rules
12 as are necessary to further this objective. In prescribing rates,
13 the WUTC may use any standard, formula, method, or theory of
14 valuation that is reasonably calculated to achieve just and
15 reasonable rates. RCW 81.04.250. In doing so, the WUTC also may
16 give consideration, in addition to other factors, to the public
17 need for the lowest level of charges consistent with the provision
18 of service and to the carrier's need for revenue sufficient to
19 cover its costs plus profit. RCW 81.04.250(2) and 81.04.250(3).

20 While the WUTC is granted wide discretion in adopting cost
21 models, it is also tasked with broad duties. RCW 80.01.040(1)
22 requires the WUTC to perform all duties prescribed by Titles 80
23 and 81 and any other law. Pursuant to RCW 81.77.030(5), the WUTC
24 shall regulate solid waste carriers by requiring compliance with
25 comprehensive solid waste management plans and related
implementation ordinances. In addition, the WUTC shall fix rates

1 and shall require compliance with rate structures that are
2 consistent with state solid waste management priorities and with
3 locally adopted minimum service levels. RCW 81.77.030(1) and
4 81.77.030(6). RCW 81.04.250 and 81.77.030 relate to the same
5 subject and must be read together as a unified whole in harmony.
6 Waste Management v. Washington Utilities & Transp. Comm'n., 123
7 Wn.2d at 630. Reading the statutes together indicates that the
8 WUTC is duty bound to develop a cost model that complies with
9 state priorities, local plans, and local implementing ordinances.
10

11 The WUTC has adopted a strict cost of service model, which
12 prohibits "subsidies" across customer service levels. As
13 discussed in the previous section of this brief, it is apparent
14 that the current model does not comply with state priorities, the
15 King County Comprehensive Solid Waste Management Plan, and King
16 County ordinances that implement the plan. From the testimony of
17 WUTC staff, it appears that the current model seeks the lowest
18 charge to each customer and limits such charges to those that
19 simply cover the cost of providing each level of service. Exhibit
20 T-88 at 7-8. While RCW 81.04.250 provides for consideration of
21 low charges, that consideration is discretionary rather than
22 mandatory. Furthermore, the statute suggests that low charges may
23 be considered along with other factors. Thus, there is nothing in
24 the statute that compels the adoption of a strict cost of service
25 model, nor is there anything in the statute that prohibits

1 "subsidization" across different levels of service. It is also
2 important to note that the intent behind implementation of
3 incentive rates is not to create a "subsidy". The intent is to
4 comply with statutory requirements. While there is no legal
5 requirement that the WUTC use the cost of service model it has
6 adopted, there are statutory requirements that the current cost of
7 service model violates.

8
9 **C. Eastside Disposal's Current Rates Are Not Reasonable.**

10 While it is clear that the cost of service model does not
11 comply with the requirements of RCW 80.01.040 and RCW 81.77.030,
12 as applied, it violates RCW 81.04.250. The current Eastside
13 Disposal rates cannot be said to have been derived in a reasonable
14 manner.

15 Eastside Disposal's witness, Paul Glasgo, prepared the cost
16 of service study in conjunction with the tariff submittal. Tr.
17 586. In his view, reasonableness is subjectively defined and
18 meets only his personal standards. Tr. 598. The basis for
19 Eastside Disposal's can weights and spreads contained in its cost
20 of service study is an indefensible and nonrepeatable can study,
21 which by Mr. Glasgo's admission is not statistically valid. Tr.
22 619-20, 630, and 638. The only study of can weights performed by
23 Eastside Disposal was used only to demonstrate that the weight
24 ratio from one can level to the next was not purely geometric.
25 Tr. 591-92. Eastside Disposal has made no effort to determine the

1 actual weight of a mini-can. Tr. 613. Thus, the spreads between
2 levels, which are the key to his allocation model and have never
3 been changed, were developed through a process no more precise
4 than his playing with numbers on a spreadsheet. Tr. 615, 637,
5 and 596.

6 The testimony shows that the WUTC staff's review of Eastside
7 Disposal' tariff submission was inadequate. Lane Demas, the
8 Revenue Requirements Specialist responsible for verifying the
9 accuracy of the information submitted by Eastside Disposal,
10 testified that he placed little or no confidence in the March 1990
11 weight study, the only empirical underpinning of the Eastside
12 Disposal cost of service study. Tr. 727. The only other basis
13 for the weights and allocations used in the cost of service study
14 is the spreadsheet that Mr. Glasgow prepared. Tr. 730. The WUTC
15 staff performed no independent analysis to verify the accuracy of
16 the information submitted. Tr. 731.

17 While the WUTC's goal is reasonableness, the staff's
18 methodology is subjective and unsupported by empirical evidence.
19 The methodology is not detailed or documented and highly
20 subjective. Although the WUTC is concerned that subscribers at
21 one service level not subsidize customers at another service
22 level, the unsupported and subjective process employed to allocate
23 the various service levels does not withstand scrutiny. It is
24 impossible to say with certainty whether the Eastside Disposal
25

1 rates truly reflect the actual cost of service; thus, those rates
2 cannot be said to be reasonable.

3
4 **D. Incentive Rates Are An Effective Tool To Reduce Waste**
5 **And To Encourage Recycling.**

6 King County employs a multi-faceted approach to meeting waste
7 reduction and recycling requirements. Exhibit 15 at 366-9 to 366-
8 12 and 366-13 to 366-15; T-44 at 29 and Tr. 200. The single most
9 effective of these tools, incentive rates, is the one which will
10 be most harmed by the WUTC's setting of Eastside Disposal's rates.

11 The effectiveness of this tool has been amply demonstrated by
12 statistical studies performed by King County Solid Waste Division,
13 City of Seattle Solid Waste Utility and by an outside, independent
14 expert. Exhibit T-61 at 2-5; Exhibit T-49 at 7-9; Exhibit T-73 at
15 5-6. These studies show conclusively that customers respond to
16 the incentive rates with a statistically significant demand
17 elasticity which is of a similar magnitude to the demand responses
18 observed in the electric utility and other telecommunications
19 industries. Exhibit T-73 at 6-8.

20 Indeed, King County estimates that a change from incentive
21 rates to the rates recommended by the WUTC will result in an
22 increase in waste disposal of approximately 9% among Eastside
23 Disposal's customers alone. Exhibit T-61 at 4-5. This effect
24 will be compounded across the state if similar rate structures are
25 instituted by other haulers.

1 Only the WUTC seems to question the effectiveness of
2 incentive rates. In addition to the testimony of King County's
3 witnesses on the subject, at the public hearing that was held as
4 part of this matter, witnesses representing Kitsap County,
5 Snohomish County, Whatcom County, the Cities of Lake Forest Park
6 and Mercer Island, the National Recycling Coalition, and the
7 Washington State Recycling Association attested to the
8 effectiveness of incentive rates. Tr. 793-94; Tr. 796, 799-801;
9 Tr. 807-09; 812; Tr. 815-16; Tr. 821-26; Tr. 829-30; Tr. 835-37.
10 In addition, Eastside Disposal customers who appeared at the
11 hearing testified in favor of incentive rate programs and against
12 the WUTC's proposed rate structure. Several of them noted that the
13 new Eastside Disposal rates will reduce the incentive to reduce
14 waste and to recycle and are a slap in the face to those who have
15 aggressively attempted to reduce waste and to recycle in the past.
16 Tr. 783-87; Tr. 801-03; Tr. 818-19; Tr. 825-28; Tr. 831-33.
17 Several also complained about dramatic increases in their rates
18 over short periods of time. Tr. 784-85; Tr. 802-803; Tr.826; Tr.
19 831-32. Rate shocks of this nature violate principles of
20 reasonable rate setting. Tr. 509. Not one individual appeared at
21 the public hearing to offer testimony in support of Eastside
22 Disposal's new rate structure.

23 In 1990 the WUTC initiated a "Notice of Inquiry on Solid
24 Waste Collection Rate Design" (NOI) in which it sought the input
25 of interested parties regarding the question of cost or rate

1 design. Exhibit T-88 at 5. Over twenty-five parties responded to
2 the NOI, including haulers, local governments, non-profit
3 organizations and a legislator. Exhibit 89, Executive Summary at
4 1. The WUTC staff also conducted a workshop in March 1992 at
5 which many of the parties provided input and comments. Exhibit T-
6 88 at 6. Despite the fact that almost every participant in the
7 NOI strongly supported an incentive rate design, the WUTC rejected
8 incentive rate design because of the "relative paucity of hard
9 empirical evidence demonstrating that incentive-based variable
10 rates actually change people's behavior. Exhibit 90 at 3.

11 The WUTC can no longer say that there is a paucity of hard
12 evidence to demonstrate that incentive-based variable rates
13 actually change people's behavior. King County has presented the
14 statistical evidence by three experts to attest to the
15 effectiveness of incentive rates in reducing waste generation.
16 This is supported by the experiences of public agencies,
17 organizations, and private individuals attested to at the public
18 hearing.

19 In contrast, WUTC has performed no empirical studies
20 regarding the efficacy of incentive-based rates. Exhibit T-101 at
21 16. The WUTC staff witnesses offered only theoretical
22 possibilities based on flawed assumptions or without quantifiable
23 benefits to replace King County's single most effective waste
24 reduction policy instrument, incentive rates.

1 WUTC staff offers the testimony of Phillip Popoff as its
2 economics expert. Rather than testify regarding economics, Mr.
3 Popoff offers testimony regarding changing the tastes and
4 preferences of solid waste customers. Mr. Popoff's testimony
5 indicates that economists do not attempt to determine what
6 preferences are and how they are determined. Exhibit T-101 at
7 3.¹ Despite his admission that determining how tastes and
8

9 ¹A leading economist has said:

10 The economist is content to let the division
11 of intellectual labor operate in this way, and
12 leave the explanation and prediction in tastes
13 or goals as a task for the sister social
14 sciences. (A task on which they have made
15 regrettably small scientific progress!)

16 Jack Hirshleifer, Price Theory and Applications, 1976, p. 9.

17 Another economist has stated:

18 Economists do not thereby assert that tastes
19 and preferences of individuals do not matter.
20 Quite the contrary. Preferences are asserted
21 to affect individual choices, as mentioned
22 above. What the paradigm of economics
23 recognizes is that it is possible to obtain
24 answers regarding marginal quantities, i.e.,
25 how total quantities change, without a
specific investigation of individual
preferences.

Eugene Silberberg, The Structure of Economics: A Mathematical
Analysis, 1978,
p.5.

26 A third has written:

27 It used to be common for economists to take a
28 cowardly shelter behind the phrase "changes in
29 tastes" to explain the failure of predictions.
30 Most economists would now consider that, in
31 principle, such changes must have some cause
32 which can be identified not necessarily by
33 economists themselves.

34 Kelvin Lancaster, Introduction to Modern Microeconomics, 1969, p.
35 186, fn. 3.

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1 preferences are formed, Mr. Popoff suggests that King County
2 abandon the one policy instrument for which there is a
3 demonstrable, quantifiable impact, price incentives, in favor of
4 other policy instruments that he calls "demand shifters". Exhibit
5 T-101 at 15.

6 Mr. Popoff suggests that incentive rates should be abandoned
7 because, as calculated by the King County witnesses, the demand
8 elasticities for such rates are so inelastic as to be
9 insignificant. Exhibit T-101 at 18-10. Mr. Popoff's conclusions
10 are flawed for a number of reasons.

11 Most of important of all, Mr. Popoff is wrong as a factual
12 matter in saying that the magnitude of the price effect is small.
13 Using an elasticity of $-.2$, which Mr. Popoff dismisses as
14 insignificant, Dr. Albert calculates a 9% increase in waste
15 tonnage as a result of Eastside Disposal's new rate structure.
16 Exhibit T-61 at 3-5. This is hardly an insignificant impact.
17 While in a textbook sense an elasticity of $-.2$ may be "inelastic";
18 its effect in the real world may be dramatic as illustrated here.

19 Second, the elasticities calculated by King County witnesses
20 are of similar magnitude to demand elasticities for residential
21 demand for electricity and business and residential demand for
22 local measured calling and local toll call telephone service.
23 Most such utilities and utility commissions use these elasticity
24 estimates in calculating the effects of proposed rate changes.

1 Also, they are greater than the elasticity for residential and
2 business demand for telephone lines (-0.01 to -0.03) which are
3 used by commissions in determining the effect of changes on
4 universal service requirements. Exhibit T-73 at 6-8.

5 Third, the demand elasticity, as estimated by King County's
6 model, is approximately -0.2. The standard error is reported as -
7 0.4, which means that the 95% confidence interval is +/- .08,²
8 that is, there is less than 2.5% chance that the true value of the
9 elasticity is less than -.12 (in an absolute sense). The fact
10 that the 95% confidence interval does not include zero implies
11 that the elasticity estimate is statistically significantly
12 different from zero, or no price response. Exhibit 59 at 4 and 8.

13 Fourth, Mr. Popoff's dismissal of the price effect is
14 inconsistent with empirical literature and reflects his limited
15 experience and the fact that he has performed no demand studies of
16 his own. Tr. 771, Tr. 865-66. For example, Mr. Popoff questions
17 King County's demand model; however that model uses a double
18 logarithmic specification, i.e., both the level of the demand
19 variable and the independent variables are expressed in
20 logarithms. Exhibit 59. As a consequence, the demand elasticity
21 remains constant along the entire range of the demand curve³ and
22 is consequently independent of the price level. Alternative

23
24 ² The 95% confidence interval is calculated as +/-1.96
times the standard error.

25 ³ A property that is widely known in economic literature
as "isoelastic". T. 840-41.

1 transformations of the variables can lead to models where the
2 elasticity varies with the price level. However, whether or not
3 the elasticity is independent of the price level is an empirical
4 issue that can be resolved by testing alternative models. King
5 County has determined that the double logarithmic specification
6 provided the best fit (among other criteria). Exhibit 59.

7 To replace incentive rates, Mr. Popoff offers a set of
8 theoretical policy instruments. His suggestions are devoid of
9 content and quantifiable benefits. Mr. Popoff suggests that King
10 County abandon incentive rates as a policy instrument and replace
11 them with education, additional recycling opportunities
12 (substitutes) and making recycling easier. Exhibit T-101 at 15.
13 Nonetheless when asked to provide concrete examples of these
14 instruments, he demonstrated his ignorance of King County's
15 existing programs. For example, he states that King County should
16 emphasize education. King County currently budgets \$800,000
17 annually for education programs and won an award from the State
18 Department of Ecology in 1993 for the Best Public
19 Information/Education Program on Waste Reduction and Recycling.
20 Tr. 425; Exhibit T-44 at 28-29. It is apparent that King County
21 is doing more to educate the public regarding waste reduction and
22 recycling than any other county in the state.

23 The point of a consumer education program is to make people
24 aware of alternatives and their costs; thus, the impact of such a
25

1 program is to reinforce the price effect -- it does not operate
2 separate from price. Tr. 573-75.

3 When asked to name substitutes, Mr. Popoff named programs
4 that King County already has in place, which he was unaware of.
5 Tr. 850-51.

6 The thrust of Mr. Popoff's argument is that King County
7 should abandon rate incentives and place all of its emphasis on
8 attempting to change individuals' tastes and preferences. Of
9 greatest significance is that Mr. Popoff testified that he could
10 not say whether any of the policy instruments that he suggested as
11 a replacement for incentive rates will have a demonstrable,
12 quantifiable effect as great or greater than that of incentive
13 rates. Tr. 860. This is because, unlike price, economists cannot
14 quantify the effects of tastes and preferences as "demand
15 shifters", as Mr. Popoff calls them. Tr. 506-07; Tr. 547.

16 Economists are appalled by the analysis offered by Mr.
17 Popoff. See footnote 1. The accepted economic approach assumes
18 that tastes and preferences remain constant, or at least do not
19 systematically vary during a demand analysis. Even Mr. Popoff
20 admits that "it is important to understand that economists take
21 preferences as given." Exhibit T-101 at 3. Mr. Popoff contend
22 this is because it will "simplify the analysis." Tr. 868.
23 However, this is not so. It is instead because economists do not
24 feel qualified to comment on what affects individuals' tastes and
25

1 preferences and, therefore, do not formulate theories on how they
2 will be affected. See footnote 1.

3 Finally, it is well known to credible economists that in
4 Discrete Choice analysis tastes and preferences, when incorporated
5 into demand equations are included in the error, or stochastic,
6 term. Tr. 505; Tr. 865-67. That is, they are random and
7 unpredictable.

8 By contrast the effect of price is quantifiable and
9 demonstrable. Exhibit T-61 at 2-5; Exhibit T-49 at 7-9; Exhibit
10 T-73 at 5-6. Mr. Popoff suggests that King County discard the one
11 tool it has that has a quantifiable, demonstrable effect in favor
12 of who knows what because King County already has implemented the
13 policy instruments he suggests. Also, Mr. Popoff's proposal
14 ignores the fact that the most effective programs and those that
15 are easiest to identify already have been identified and
16 implemented. The unidentified programs are most likely to have a
17 smaller impact and be more costly to implement according to the
18 economic proposition known as the "law of diminishing returns".
19

20 III. CONCLUSION

21 As currently applied, the WUTC's cost of service methodology
22 is at odds with statutory authority. The language of the "Waste
23 Not Washington Act" must be read in its entirety. It designates
24 cities and counties as the primary solid waste management
25 authorities in the state. It requires local authorities to

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1 implement aggressive waste reduction and recycling programs that
2 specifically include incentives for source separation. It also
3 requires the WUTC to ensure that solid waste haulers comply with
4 local comprehensive solid waste management plans and the
5 ordinances that implement them. In doing so, the WUTC must assure
6 as a minimum that the hauler's rates structures are consistent
7 with the solid waste management priorities set forth in the act.
8 Read as a whole, it is clear that the WUTC's current policy and
9 Eastside Disposal's current rates violate the act.

10 Eastside Disposal's rates were not derived in a reasonable
11 manner. The methodology employed by the WUTC staff in reviewing
12 the rate submittal was unsupported by empirical evidence,
13 undocumented and highly subjective. As a result, it is impossible
14 to say with certainty whether those rates truly reflect the actual
15 cost of service at each service level and to base arguments that
16 the rates are fair is highly misleading.

17 The overwhelming evidence presented at the hearing
18 demonstrates that incentive rates work to reduce waste disposal
19 and to encourage recycling. The economic evidence supplied by the
20 county is detailed, documented and empirically sound; while the
21 economic evidence supplied by WUTC staff is unsupported by
22 empirical data and woefully deficient of economic content.
23 Furthermore, it offered nothing concrete to King County to replace
24 incentive rates or, more importantly, to remediate the anticipated
25 9% increase in disposal as a result of the new rates.

1 King County respectfully requests that the WUTC comply with
2 the requirements of the "Waste Not Washington Act" and ensure that
3 Eastside Disposal comply with the King County Comprehensive Solid
4 Waste Management Plan. While the WUTC's cost of service
5 methodology, as currently applied, does not comply with the act, a
6 cost of service methodology that distributes the cost across all
7 rate levels (Tr. 823-25), a long range marginal cost methodology
8 (Exhibit T-73 at 21-22), or any other recognized and accurate
9 methodology for achieving just and reasonable rates could
10 accommodate compliance with the requirements of the "Waste Not
11 Washington Act".

12 For the foregoing reasons, King County respectfully requests
13 the WUTC to reconsider Eastside Disposal's rates and revise those
14 rates in a reasonable manner in compliance with statutory
15 authority and the King County Comprehensive Solid Waste Management
16 Plan and implementing ordinances.

17 DATED this 15th day of August, 1994.

18 Respectfully submitted,

19 NORM MALENG
20 King County Prosecuting Attorney

WSBA #16342

21 By: *Kathryn A. Killinger* for
22 MARY F. PERRY, WSBA #15376
23 Senior Deputy Prosecuting Attorney
24 Attorneys for King County
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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

KING COUNTY DEPARTMENT OF)
PUBLIC WORKS, SOLID WASTE)
DIVISION,)
Complainant,)
vs.)
SEATTLE DISPOSAL COMPANY,)
RABANCO, LTD., d/b/a/EASTSIDE)
DISPOSAL AND CONTAINER HAULING)
Respondent.)

DOCKET NO. TG-940411
CERTIFICATE OF SERVICE

I hereby certify that on August 15, 1994, I served King County's
Hearing Brief in the above matter on all parties of record in this
proceeding, by hand delivery, pursuant to WAC 480-09-120(2)(a).

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1 Dated this 15th day of August, 1994 at Seattle Washington.

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Sandra A. Courtway
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