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7 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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9 In re Joint Applications GA-79141, GA-79142,  
10 and GA-79159 of Rabanco, Ltd.

ORDER TG-030433  
ORDER TG-030434  
ORDER TG-030590

11 **KING COUNTY'S MEMORANDUM**  
12 **OF AUTHORITY IN SUPPORT OF**  
13 **PETITION TO AMEND ORDERS**  
14 **TG-030433, TG-030434, TG-030590**

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18 **I. REQUEST FOR RELIEF**

19 Collection companies should not be allowed to use the WUTC's administrative  
20 procedure of G-Certificate Consolidation to thwart State and local requirements to deliver waste  
21 to specific disposal sites.

22 King County therefore respectfully petitions the Commission to amend Orders  
23 TG-030433, TG-030434, and TG-030590 such that all certificates of necessity and convenience  
24 transferred to Rabanco, Ltd. and consolidated as Certificate G-12 are issued as separate  
25 certificates for each county in which Rabanco, Ltd. is authorized to collect waste.

26 This amendment would create six certificates of convenience and necessity for Rabanco,  
Ltd.; one for territories in each of King, Snohomish, Klickitat, Skamania, Yakima, and Kitsap  
Counties currently included in Certificate G-12 (August 22, 2003). To the extent that there is  
any authority to collect solid waste in Pierce County (even though G-12 excludes Pierce  
County), an additional certificate would be issued.

KING COUNTY'S MEMORANDUM OF AUTHORITY  
IN SUPPORT OF PETITION TO AMEND ORDERS  
TG-030433, TG-030434, TG-030590 - 1

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## II. STATEMENT OF FACTS

A solid waste collection company must have a certificate of convenience and necessity (“G-Certificate”) to operate. RCW 81.77.040. WUTC tracks G-Certificates using maps, but those maps “had fallen into disarray” and “decades of transfers of certificates and purchases of multiple certificates by a few companies” worsened the situation.<sup>1</sup> Beginning in the late 1990s, the WUTC began a project to “update its mapping and information systems” in order to provide “better mapping for accuracy in the description of those areas subject to WUTC jurisdiction, and ... a better source of information to companies, consumers, and the public.”<sup>2</sup> “WUTC Staff worked with the solid waste collection companies to rectify and address” these issues.<sup>3</sup>

As a result of WUTC Staff efforts, several solid waste collection companies chose to consolidate their G-Certificates.<sup>4</sup> These consolidations were purely administrative, intended to improve and ease mapping and record-keeping for both WUTC and the company.<sup>5</sup> As part of these administrative consolidations, WUTC Staff *did not* review Rabanco’s application to consolidate for any substantive issues relating to possible issues with RCW 36.58.040 or King County’s ordinance that designates disposal sites for solid waste.<sup>6</sup>

Rabanco’s application to consolidate G-Certificates 12, 41, and 235 was approved on August 21, 2003, combining Rabanco’s multiple collection territories from three certificates to a single Certificate, No. G-12.<sup>7</sup> With the exception of one area that includes territory in Klickitat, Skamania, and Yakima counties, all of the individually listed collection areas in the new G-12 certificate are wholly within a single county. the confines of the county in which each is located.<sup>8</sup>

23 <sup>1</sup> Declaration of Eugene Eckhardt at ¶3, attached to Haag Dec. at Ex. A.

24 <sup>2</sup> Declaration of Eugene Eckhardt at ¶3, attached to Haag Dec. at Ex. A.

25 <sup>3</sup> Declaration of Eugene Eckhardt at ¶4, attached to Haag Dec. at Ex. A.

26 <sup>4</sup> Declaration of Eugene Eckhardt at ¶4, attached to Haag Dec. at Ex. A.

<sup>5</sup> Declaration of Eugene Eckhardt at ¶5, attached to Haag Dec. at Ex. A.

<sup>6</sup> Declaration of Eugene Eckhardt at ¶6, attached to Haag Dec. at Ex. A.

<sup>7</sup> See Order at Haag Dec. Exhibit B.

<sup>8</sup> G-12 Certificate at Haag Dec. Ex. C.

1 Since the consolidation and re-issuance of Rabanco's G-Certificates, Rabanco has sued  
2 King County. In the lawsuit, Rabanco alleges, in part, that under RCW 36.58.040, Rabanco  
3 may dispose of solid waste collected pursuant to its G-certificate wherever it pleases in the  
4 absence of an interlocal agreement to the contrary.<sup>9</sup> WUTC Executive Secretary has already  
5 opined that Rabanco's interpretation "makes no sense."<sup>10</sup> The WUTC did not intend for its  
6 consolidation procedure to be used to support a collection company's strained statutory  
7 interpretations.

### 8 III. STATEMENT OF ISSUES

9 The following issue is presented for resolution by the Commission:

10 **1. Should Rabanco's "G-Certificates" be separated on a county-by-county basis to**  
11 **prevent Rabanco from circumventing county disposal site designation ordinances?**

### 12 IV. EVIDENCE RELIED UPON

13 King County relies upon the papers and pleadings on file and the documents attached as  
14 exhibits to the Declaration of Justin D. Haag.

### 15 V. ARGUMENT

#### 16 A. Authority for Review

17 The WUTC has general power to "Make such rules and regulations as may be necessary  
18 to carry out its other powers and duties." RCW 80.01.040(4). Either by petition or on its own  
19 motion, the WUTC "may alter, amend, or rescind any order that is has entered."  
20 WAC 480-07-875. King County is properly before the WUTC because "[a]ny person affected  
21 by a final order may file a petition for rehearing." WAC 480-07-870. Rabanco's strained  
22 assertions about the impacts of consolidating its G-Certificates have only recently become  
23 known to King County as a result of Rabanco's lawsuit. Accordingly, King County now brings  
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25  
26 <sup>9</sup> See King County Superior Court Cause No. 04-2-06720-1SEA.

<sup>10</sup> May 7, 2002 letter from Executive Secretary Carole J. Washburn to Theresa Jennings at Haag Dec. Ex. D.

1 this petition for review and modification of the Commission's Order consolidating and re-  
2 issuing Rabanco's G-12 Certificate.

3 **B. Certificate G-12 Should be Amended to Prevent Unintended Consequences of**  
4 **Consolidation.**

5 The WUTC consolidated Rabanco's G Certificates for administrative ease, but should  
6 now amend that Order because Rabanco is using its consolidated G Certificate in an attempt to  
7 evade King County's, and potentially other counties', disposal site designation ordinances.<sup>11</sup>  
8 WUTC Assistant Director Eugene Eckhardt has confirmed that "[t]he consolidation was not a  
9 planned or policy-driven effort of the WUTC to address or direct substantive matters. Rather,  
10 the GIS mapping process that led some companies to choose to consolidate was simply an  
11 administrative and record-keeping function of the WUTC."<sup>12</sup> This demonstrates that any  
12 potential change in the flow of waste or the authority of counties to designate disposal sites was  
13 not contemplated by the WUTC in agreeing to consolidate and re-issue Rabanco's  
14 G-Certificates.

15 Prior to consolidation, Rabanco would have been *completely unable* to assert its current  
16 theory of unconstrained movement of solid waste for disposal. Thus, RCW 36.58.040  
17 governing cross-boundary collection simply did not apply to King County. Only after  
18 consolidation was Rabanco even able to erroneously contend that its consolidated G-Certificate  
19 allows it to dispose of King County waste anywhere it wishes. Likewise, it is only after  
20 consolidation that Rabanco can suddenly argue that is the County's responsibility to pursue  
21 interlocal agreements with numerous counties in the far-flung corners of Washington in order to  
22 ensure the efficacy of its site designation ordinance under RCW 36.58.040.

23 The WUTC Executive Secretary has already stated that a G-Certificate containing  
24 collection areas for several counties, but no cross-border collection areas, does not require King

25 <sup>11</sup> See Order; KCC §10.08.020 ("Unless specifically authorized by a King County ordinance, it is unlawful for any  
26 commercial hauler or other person or entity to deliver any county solid waste to a place other than a disposal  
facility designated by the county to receive the particular waste.")

<sup>12</sup> Declaration of Eugene Eckhardt at ¶5, attached to Haag Dec. at Ex. A.

1 County to sign interlocal agreements in order to enforce its site designation ordinance.<sup>13</sup>  
2 Unfortunately, Rabanco persists in pursuing its theory in court – at significant cost to King  
3 County ratepayers. Moreover, the WUTC is the organization charged with supervising and  
4 regulating solid waste companies including by “requiring compliance with local solid waste  
5 management plans and related implementation ordinances.” RCW 81.77.030. Rabanco’s  
6 position would undermine the intricate checks and balances that stabilize Washington’s solid  
7 waste collection system.

8 Further, unless Rabanco’s various G-12 certificate collection areas are “delinked,” into  
9 separate G Certificates, counties around the state would potentially have to expend thousands of  
10 dollars to negotiate unnecessary interlocal agreements. Moreover, these interlocal agreements  
11 will serve only to put the counties back in the same *status quo ante*: both the Legislature and the  
12 WUTC have determined that a county has the authority to designate disposal sites for waste  
13 collected within its unincorporated territory.

14 Rabanco has used the administrative procedure of G-Certificate consolidation to assert a  
15 strained statutory interpretation that will potentially undermine Washington’s solid waste  
16 collection system. By amending the order re-issuing Rabanco’s G-12 Certificate, WUTC can  
17 prevent these unintended – and harmful – consequences.

## 18 VI. CONCLUSION

19 Although the WUTC rightly believes that RCW 36.58.040 is not applicable to  
20 Rabanco’s G-12 Certificate, delinking of the various certificates that were consolidated is  
21 necessary to ensure that King County is able to designate disposal sites as the Legislature  
22 intended. Rabanco should not be allowed to use the administrative procedure of consolidation  
23 to thwart that legislative intent. For the foregoing reasons, King County respectfully requests  
24 that this petition be granted and Orders TG-030433, TG-030434, and TG-030590 be amended to  
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26 <sup>13</sup> May 7, 2002 letter from Executive Secretary Carole J. Washburn to Theresa Jennings at Haag Dec. Ex. D.

1 create six G-Certificates for Rabanco, Ltd.; one each for the territory of King, Snohomish,  
2 Klickitat, Skamania, Yakima, and Kitsap Counties included in Certificate G-12 dated  
3 (August 22, 2003). If Pierce County is also included, a seventh certificate should be issued for  
4 that County.

5 DATED this 29th day of September, 2004.

6  
7 NORM MALENG,  
PROSECUTING ATTORNEY

8 FOSTER PEPPER & SHEFELMAN PLLC

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