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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

KING COUNTY DEPARTMENT OF PUBLIC
WORKS, SOLID WASTE DIVISION,

Plaintiff,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION AND
SEATTLE DISPOSAL COMPANY,
RABANCO LTD., d/b/a/ EASTSIDE
DISPOSAL AND CONTAINER HAULING,

Respondents.

No. 94-2-25014-1

TRIAL BRIEF OF RABANCO
COMPANIES

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MAY -3 1997

I. INTRODUCTION

Rabanco Companies d/b/a Eastside Disposal and Container Hauling ("Eastside Disposal") respectfully requests that this Court deny the relief requested by the King County Department of Public Works, Solid Waste Division (the "County"). The County's Petition for Review of Administrative Decision, brought pursuant to chapter 34.05 RCW, arises out of the Washington Utilities and Transportation Commission's ("Commission's") dismissal of the County's complaint against an Eastside Disposal solid waste collection tariff.

This case centers around a dispute between the County and the Commission over each entity's authority to establish rates or rate structures for certificated solid waste haulers operating within King County. As such a hauler, Eastside Disposal has been placed squarely in the middle of this dispute

1 and in the position of receiving contradictory mandates from two separate authorities. This Court
2 should protect Eastside Disposal from this untenable position by affirming the Commission's dismissal
3 of the County's complaint, which is supported by applicable Washington law.

4 In dismissing the County's complaint, the Commission made the following legal and factual
5 findings and conclusions:

- 6 • The Commission has exclusive jurisdiction over solid waste rate design;
- 7 • The County cannot require the Commission to adopt rates that conform to the specific
8 rate structure set forth in King County Code § 10.18.020;
- 9 • The County cannot require Eastside Disposal to propose rates with a steeply inclining
10 structure when Eastside Disposal has been informed by the Commission that the
11 Commission will not approve such a rate structure;
- 12 • If different rate structures are called for by a Commission order and by the
13 County Code, Eastside Disposal must comply with the Commission-approved
14 structure;
- 15 • Eastside Disposal's current rate structure and billing system are consistent with the
16 solid waste management priorities set forth in RCW 70.95.010(8) and conform with
17 the requirements of RCW 81.77.030; and
- 18 • Eastside Disposal's current rate structure and billing system are consistent with
19 the minimum levels of solid waste collection and recycling services established by the
20 County's Comprehensive Solid Waste Management Plan. CR 206-207.

21 II. STATEMENT OF FACTS

22 On December 28, 1993, Eastside Disposal filed a proposed tariff revision with the
23 Commission. In developing the proposed rates set forth in the tariff revision filing, Eastside Disposal
24 was informed by the Commission's staff that the Commission would not approve a steeply inclining
25 rate structure that did not accurately reflect cost-of-service principles. Tr. 650-1; 749-53. The tariff
26 revision that Eastside Disposal submitted complied with this directive and was based on cost-of-
service principles.¹ See Exhibit T-76, CR 1168-1185.

¹Eastside Disposal's tariff revision proposed the following rates:

mini-can:	\$10.15
one can	\$11.50

1 The County has adopted ordinances that implement its solid waste management plan pursuant
2 to chapter 70.95 RCW. See King County Code ("KCC"), chapter 10.18. These ordinances purport
3 to require certificated haulers such as Eastside Disposal to file tariffs with the Commission that
4 comply with specified minimum percentage differentials.² KCC 10.18.020. These ordinances also
5 "strongly encourage" the Commission to approve tariffs that are consistent with the policies set forth
6 in the County code and the minimum percentage differentials. Id. The proposed tariff revision
7 submitted by Eastside Disposal did not comply with these minimum differentials.

8 A hearing on the proposed tariff revision was held on February 9, 1994. At this hearing, Mr.
9 Rod Hansen, Manager of the King County Solid Waste Division, made a statement in opposition to
10 the tariff revision. Exhibit T-1 at 3, CR 262. The County asserted that the proposed tariff revision
11 violated RCW 81.77.030. This statute provides that the Commission must require certificate holders
12 to use rate structures and billing systems that are consistent with the solid waste management
13 priorities set forth in RCW 70.95.010 and with the minimum levels of solid waste collection and
14 recycling services established pursuant to local comprehensive solid waste management plans. It
15 further provides that the Commission must require certificate holders to comply with local solid waste
16 management plans and related implementation ordinances. RCW 81.77.030.

17 The Commission adopted rates for Eastside Disposal that were recommended by Commission
18 staff. These rates were based on cost-of-service principles. See Exhibit T-1 at 24, CR 283. The
19 County filed a complaint against the rates on March 23, 1994. CR 2-8. The Commission held
20 hearings on the complaint on May 8, July 14, 15, 18, and 19, 1994. The parties to the hearing were
21 King County, Eastside Disposal, and the Commission.

two cans	\$13.60
three cans	\$17.00

22 Exhibit T-1 at 24, CR 283.

23
24
25 ²The King County Code purports to require certificated solid waste haulers to submit tariffs that
26 incorporate the following differentials 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.

1 On September 14, 1994, the Commission issued the Third Supplemental Order Dismissing
2 Complaint on Commission ("Third Supplemental Order"). CR 179-228. The County filed a Petition
3 for Review of Administrative Decision in this Court on October 3, 1994, asking this Court to set
4 aside the Commission's Third Supplemental Order.

5 III. ARGUMENT

6 This case involves a dispute between the Commission and the County over each agency's
7 authority to establish rates for certificated solid waste haulers operating within King County. The
8 County contends that the rates established by the Commission for Eastside Disposal violate RCW
9 81.77.030 because: (1) they do not comply with County ordinances designed to implement the
10 County's solid waste management plan; and (2) they are inconsistent with the solid waste management
11 priorities set forth in RCW 70.95.010. See generally, King County's Trial Brief. However, Eastside
12 Disposal interprets state law to require it to charge Commission-established rates in the event of a
13 conflict between those rates and County directives as to rate structure. Under current Washington
14 law, this Court must reject the County's arguments and affirm the Commission's Third Supplemental
15 Order.

16 A. The Commission, not the County, is Empowered to Establish Eastside Disposal's Rates.

17 The County asserts that the rates approved for Eastside Disposal violate County ordinances
18 designed to implement the County's solid waste management plan developed pursuant to chapter
19 70.95 RCW. The core of the County's complaint is that Eastside Disposal's rate structure is deficient
20 because it does not incorporate the differentials for solid waste disposal rate structures set forth in
21 KCC § 10.18.020. That code provision purports to require certificated haulers to file tariffs with the
22 Commission that include the following minimum cost increases between levels of service: 60%
23 between mini-can and one can; 40% between one can and two cans; and 25% between two cans and
24 three cans.

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

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

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

8 The development of Eastside Disposal's rate structure is, therefore, within the Commission's
9 and not King County's discretion. See Seattle Electric Co. v. City of Seattle, 206 F. 955 (W.D.
10 Wash. 1913) (Public Service Commission's power to regulate rates, rules, and regulations of carriers
11 deprived City of authority to limit street car ticket prices). The County's efforts to dictate the
12 parameters of Eastside Disposal's rate structure is contrary to law and must be rejected. See People's
13 Organization for Washington Energy Resources v. Utilities and Transp. Comm'n, 104 Wn. 2d 798,
14 812, 711 P.2d 319 (1985) (rejecting a challenge to WUTC's ratemaking methodology because "[i]n
15 this State, the Legislature has conferred the ratemaking power on the WUTC").

16 The fact that RCW 81.77.030 directs the Commission to require compliance with the County's
17 solid waste management plan and related implementation ordinances does not change this analysis.
18 The County was simply not granted the authority to set rates for certificated haulers; that authority
19 remains with the Commission. See RCW 70.95.090 (contents of solid waste management plans).
20 RCW 70.95.900, in fact, specifically provides that "nothing in this act shall be deemed to change the
21 authority or responsibility of the Washington utilities and transportation commission to regulate all
22 intrastate carriers."³

23 ³ This provision was enacted in connection with the adoption of the Solid Waste Management Act,
24 RCW 70.95.010 et. seq., which established "a comprehensive statewide program for solid waste
25 handling which will prevent land, air, and water pollution and conserve the natural and economic
26 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.

1 Municipal entities have only those powers expressly conferred upon them or fairly implied by
2 statute. Hite v. Public Utility Dist. No. 2 of Grant County, 112 Wn. 2d 456, 458-9, 772 P.2d 481
3 (1989). King County's statutory authority relating to solid waste collection does not extend to rate
4 regulation. See chapter 70.95 RCW. Nor does the County have implied authority to regulate rates in
5 light of the fact that (1) the Commission does have that express statutory authority and two
6 governmental bodies cannot regulate the rates of the same company for same customers; and (2) the
7 Legislature unequivocally expressed its intent that the Commission's regulatory authority not be
8 disturbed by legislation broadening counties' authority over solid waste management. See RCW
9 70.95.900.

10 The County's attempts to establish rate structures for certificated haulers places Eastside
11 Disposal in the untenable position of having to violate either state or local law. In Seattle Electric
12 Co., the court recognized the dilemma created by a city ordinance that conflicted with a Commission
13 rate schedule and concluded that the local ordinance was invalid:

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

19 206 F. at 958-959. Eastside Disposal has been placed in the same position as the plaintiff in Seattle
20 Electric Co. Under these circumstances, King County's attempts to dictate Eastside Disposal's rates
21 must be rejected.

22 B. Eastside Disposal's Rates are Consistent with the Priorities Set Forth in RCW
23 70.95.010 and Satisfy the Requirements of RCW 81.77.030.

24 The County asserts that the cost-of-service rates developed by the Commission violate RCW
25 81.77.030 and RCW 80.01.040. This argument is not supported by a fair reading of RCW 81.77.030
26 and the evidence developed in this case.

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, the

1 Commission must require certificate holders to use rate structures and billing systems that are
2 consistent with the solid waste management priorities set forth in RCW 70.95.010. These priorities
3 are, in descending order, waste reduction, recycling, disposal of separated waste, and disposal of
4 mixed waste. RCW 70.95.010(8). The evidence presented before the Commission demonstrates that
5 the rates approved by the Commission for Eastside Disposal are consistent with these priorities. As
6 the County has conceded, rates need do nothing more than provide an incentive for waste reduction
7 and recycling to be consistent with the priorities. Tr. 64-65. Eastside Disposal's rates provide that
8 incentive. See Tr. 189-190.

9 First, by charging customers based on the volume of solid waste produced, Eastside Disposal's
10 variable rates provide an economic incentive to reduce waste. See Tr. 437-438. Customers who
11 produce greater volumes of waste are charged more under Eastside Disposal's rate structure;
12 customers who produce smaller volumes are charged less. As the County's own witnesses testified,
13 variable rates encourage customers to strive to produce less waste and thereby support waste
14 reduction goals. Tr. 437-438. The voluntary nature of Eastside Disposal's yard waste program also
15 encourages waste reduction; customers can avoid any yard waste charges by composting in their
16 backyards, a program that has been vigorously supported by King County. See Exhibit T-76 at 11-
17 13, CR 1178-1180; Tr. 221.

18 Second, the rates encourage recycling. Customers who recycle will produce smaller volumes
19 of waste and, therefore, pay less for garbage service. Tr. 438. Recycling charges are a mandatory
20 component of Eastside Disposal's solid waste disposal charges. See Exhibit T-1 at 24, CR 283.
21 Customers who recycle can save at least the cost of using the next higher level of service, an
22 economic savings that ranges from \$1.25 to \$3.05 per month. Id. The County's own testimony
23 indicates that customers will react to price signals in that range. See Exhibit T-65 at 12-13, CR 1020-
24 1021.

1 By encouraging waste reduction and recycling, the rates developed for Eastside Disposal
2 advance the priorities established in RCW 70.95.010, thereby satisfying RCW 81.77.030.⁴

3 **V. CONCLUSION**

4 Eastside Disposal stands in the middle of a dispute between the Commission and the County
5 regarding local control over Commission-established rates. Pursuant to RCW 34.05.570, the County
6 bears the burden of the demonstrating that the Commission's dismissal of the County's complaint was
7 invalid. The County has not met this burden. Under current Washington law, this dispute must be
8 resolved in favor of the Commission, which is empowered to establish rates for Eastside Disposal and
9 other certificated haulers.

10 DATED this 2nd day of May, 1995.

11 Respectfully submitted,

12 PRESTON GATES & ELLIS

13 By 

14 Elizabeth Thomas, WSBA # 11544

15 Anne D. Rees, WSBA # 21989

16 Attorneys for Respondent
17 Rabanco Companies

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26 ⁴ Because the statutory mandates are satisfied, whether the County's preferred rate structure would provide a stronger incentive is irrelevant.