

ORIGINAL

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

)
) Docket No. TG-971167
 In the Matter of the Petition of)
 Recycling and Disposal Systems, Inc.) OPENING BRIEF OF
 for a Declaratory Order) RECOMP OF WASHINGTON, INC.
)

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BACKGROUND

In lieu of testimony in this case, the parties in this proceeding were directed by the Administrative Law Judge to submit a proposed statement of facts and proposed exhibits. Parties wishing to object to any aspect of the proposed statement of facts or proposed exhibits were given the opportunity to do so, and the Administrative Law Judge has ruled on objections which were made. A Final Statement Of Facts (Deleting Text To Which Objection Was Made And Sustained) has been filed with the Commission, which along with exhibits which have been filed constitutes the evidence in this case.¹ Because the pertinent facts have already been set out in detail in the Facts, we provide only a summary of them here.

For many decades, the City of Bellingham has undertaken solid waste collection and disposal for its citizens.

Since at least 1951, the City of Bellingham (the "City") has contracted for solid waste collection service from Sanitary Service Company, Inc. or its predecessors in interest (collectively "SSC"). The original agreements between the City and Sanitary provided and set rates for collection of both residential and non-residential waste, and for operation and maintenance by SSC of a sanitary landfill by SSC on a site furnished by the City. Facts, ¶¶ 1, 2. Renewals of that agreement made it clear that the City's disposal site was to be used for "disposal of all wastes collected in the City of Bellingham. Facts, ¶ 3.

¹ We refer throughout this brief to the Final Statement Of Facts (Deleting Text To Which Objection Was Made And Sustained) simply as the "Facts." Exhibits are referred to by their respective exhibit numbers.

1 As part of a renewal of the contract between the City and SSC in the 1960s, the
2 City effectively ceded to the Commission authority over SSC's collection of non-
3 residential waste within the City. Facts, ¶ 4. The City continued, however, by
4 contract to establish the terms and conditions under which SSC would collect
5 residential waste within the City, and continued to provide for disposal by SSC of all
6 of the waste collected by SSC within the City. Id.

7 In 1974, the City entered into an agreement jointly with SSC and with the
8 predecessor in interest of Recomp of Washington, Inc. ("Recomp") under which it
9 contracted jointly with them for the collection of residential waste within the City and
10 for the establishment of a new site for the disposal of both residential and commercial
11 solid waste generated within the City. Facts, ¶ 7, Exhibit 1, § 2. The new site was
12 operated by Recomp (which at the time was known as "Thermal Reduction
13 Company") as an incineration facility, using incinerators purchased and owned by the
14 City. Id.

15 Beginning in the early 1980s, the City began contracting separately with SSC
16 and Recomp. Its contracts with SSC over the years have continued to require SSC to
17 collect residential waste within the City (charging rates established by contract and
18 affirmed by ordinance, Facts, ¶ 11), and to deliver *all* solid waste collected within the
19 City to the facility specified by the City. Facts, ¶ 13-18.

20 Their 1982 "Modification To Residential Refuse Collection Contract," for
21 example, stated that "[f]or the term of this agreement, it shall be the obligation of the
22 Company [SSC] to exclusively use the Thermal Reduction disposal facility for
23 disposal of all the refuse and solid wastes it collects within its Bellingham/Whatcom
24 County service area, *including but not limited to . . . all industrial and commercial
25 wastes collected within the City of Bellingham. . .*" Exhibit 3, § 2. Exception was
26 made only to the extent that the volume of waste collected exceeded the capacity of
27 Recomp's facility (which at the time was only an incineration facility). Id; Facts,
28 ¶ 16.

A contract extension executed in 1985, which referred to the parties' contract as
"a long term *disposal* arrangement for the City's residential *and commercial* refuse"
specified Recomp's site as the destination for "*all refuse and solid waste the Company*

1 *collects within the City of Bellingham*" unless the otherwise directed by the City.
2 Facts, ¶ 17.

3
4 The current contract, executed in 1989, similarly provides that "the City shall
5 select and direct the Contractor to a site(s) for the disposal of *all solid waste* collected
6 by Contractor in the City of Bellingham," and that " the City shall at all times be
7 responsible for selecting the final site(s) for disposal of *all the City's solid waste* and
8 for approving and establishing the rate(s) for disposal." Exhibit 7, §§ 5.1, 5.2.

9
10 The Commission has set rates for collection of commercial solid waste within
11 the City since the 1960s. Facts, ¶ 19. It has had knowledge of the contracts by
12 which the City has established a system for managing solid waste generated within its
13 boundaries. *Id.* Since at least 1979, the Commission has in all rate filings made by
14 SSC permitted SSC to include in its base the disposal charges incurred by SSC in
15 delivering to Recomp commercial solid waste collected by SSC within the City. *Id.*
16 No evidence has been produced which would suggest that the Commission at any
17 prior time ever refused to permit SSC to include such charges in its rate base.

18
19 In May 1990, the State of Washington Department of Ecology approved the
20 1990 Comprehensive Solid Waste Management Plan Update - Whatcom County (the
21 "1990 Plan") which had been submitted by Whatcom County and incorporated cities
22 within that county, including the City of Bellingham. Facts, ¶ 22. Chapter 6 of the
23 1990 Plan, dealing with collection, states that "[i]n the City of Bellingham, collection
24 service has long been provided through private contracting," and included as a
25 recommendation the continuation of "the existing solid waste collection service
26 structure in both the incorporated and unincorporated areas of Whatcom County."
27 *Id.*; Exhibit 14, § 6.4(1), page 6-4. The 1990 Plan is still in effect today. Facts,
28 ¶ 22.

29
30 Recomp is one of a number of solid waste facilities designated under the 1990
31 Plan as facilities which were to be available for use in the disposal of waste generated
32 within the incorporated and unincorporated areas of Whatcom County, including the
33 City. Exhibit 14, page 7-3, Table 7-1. Location of "a transfer facility . . . at the ROW
34 incinerator" was specifically called for by the 1990 Plan. *Id.*, § 7.3, page 7-7.

1 The City's contract with Recomp required Recomp to operate a disposal facility
2 and to accept and dispose of (initially by incineration, and more recently by any
3 means which Recomp is permitted by law to use) of all City solid waste (up to the
4 limit of Recomp's capacity up to December of 1993, and without any stated capacity
5 limit since that time). Exhibits 2, § 1; Exhibit 9, § 2.2. As required by the City's
6 contracts with SSC, the City's contract with Recomp has established the rates which
7 Recomp has been permitted to charge for disposal of all of the City's solid waste, both
8 residential and commercial. *Id.* At all times relevant hereto, both residential and
commercial solid waste collected within the City has been delivered by SSC to
Recomp, the facility specified by the City. Facts, ¶ 8.

9 The City has had, and continues to have, a substantial economic involvement in
10 Recomp's facility. Facts, ¶ 21. For example, situated on the Recomp site is a
11 temporary ash storage facility, which Recomp installed for the City at a time when
12 there was no landfill to which Recomp could transport ash produced through its
13 incineration for the City of the City's residential and commercial garbage. Facts, ¶ 25.
14 That ash, for which the City may be held responsible under environmental laws, must
15 be removed over a course of years and transported to landfills which are now available
16 to accept that ash. *Id.*; Exhibit 10, ¶ 6(a) (amending § 2.4(a) of the City's agreement
17 with Recomp). The funds which Recomp needs in order to accomplish the removal
18 and final disposal of that City ash are generated through a surcharge imposed on
19 residential and commercial City waste delivered to its facility. Facts, ¶ 25. Unless
Recomp receives all of the City's residential and commercial waste, it cannot
accomplish the removal and disposal of that ash, because it will not be able to
generate the revenues necessary for that purpose.

20 In order to enable Recomp to guarantee a fixed, long-term per-ton disposal fee
21 for all City waste, both residential and commercial, and to meet its other contractual
22 obligations to the City for the processing and/or disposal of all City solid waste, the
23 contract between Recomp and the City requires the City in turn to "continuously
24 through the term of this Agreement . . . require by ordinance, contract or other
25 effective means that: (i) *all City Solid Waste* be delivered exclusively to the [Recomp]
26 Facility; and (ii) the Solid Waste Collection company that is authorized to collect City
27 Solid Waste (presently Sanitary Service Company) deliver *all City Solid Waste* that it
28 collects to the [Recomp] facility." Exhibit 9, § 3.1(a). The agreement defines "City

1 Solid Waste” to encompass all solid waste generated within the boundaries of the
2 City. Id., § 1.

3 As amended during the pendency of this proceeding, the City’s contract with
4 Recomp requires Recomp to charge for all City solid waste which it accepts, both
5 residential and commercial, a disposal fee of \$69.50. Exhibit 10, § 10 (amending
6 § 6.1 of the parties’ agreement). To this will be added a \$6.84 charge for Department
7 of Ecology-mandated removal of incinerator ash for which the City is responsible.
8 Facts, ¶ 24. Recomp accepts and processes source-separated yard waste material
from the City’s “Clean Green” at a \$65.00/ton rate. Id.

9 The \$69.50/ton disposal fee provided for by the amendments to the City-
10 Recomp contract in September 1997 is consistent with disposal fees charged for
11 similar service by other privately owned and operated solid waste handling facilities
12 in the Puget Sound region, taking into account relative costs of transportation to
13 available landfills. Facts, ¶ 26. The amendments establishing that reduced disposal
14 fee were unanimously approved by the Bellingham City Council on September 8,
15 1997 following a review of Recomp’s financial records (including records reflecting
16 Recomp’s operating costs) by an independent certified public accountant hired by the
17 City. Id.

18 As of September 9, 1997, the date on which Recomp and the City agreed to a
19 new disposal price of \$69.50 per ton for all City waste delivered to Recomp’s
20 facility, all collected non-City waste within Whatcom County (both residential and
commercial) was being delivered by solid waste collection companies to RDS, which
was charging them a price of \$71.00 per ton. Facts, ¶ 27.

21 In the spring of 1997, petitioner Recycling and Disposal Services, Inc.
22 (“RDS”) began soliciting waste from commercial drop box customers serviced by
23 SSC. Facts, ¶ 28. A number of commercial drop box customers used forms
24 provided to them by RDS and directed SSC to deliver their waste to RDS. Id. RDS
25 offered to provide disposal service for solid waste in commercial drop boxes at a
26 price of \$65.00 per ton, and committed to maintain that price for at least a year, if
27 the offeree would commit for at least a year to instruct SSC to deliver such drop
28 boxes to RDS. Id.

1 SSC sought input informally from Commission staff, who relayed to SSC their
2 opinion that SSC was not obligated to deliver commercial waste to the City-
3 designated facility. Facts, ¶ 30. Staff took the position that contractual provisions
4 between SSC and the City for disposal of City waste applied only to residential
5 waste. Id.

6 Between March 7, 1997 and September 10, 1997, over twenty drop box
7 customers in the City directed SSC to deliver their waste to RDS, which SSC has
8 done for fear of adverse action by the Commission. Facts, 31. However, there is
9 nothing in any agreement to which SSC is a party which requires SSC to deliver drop
10 boxes which it collects within the City to disposal facilities specified by those to
11 whom it provides drop box collection service. Id.

12 At a meeting attended by the City and SSC at the Attorney General's offices in
13 Seattle, Washington on May 7, 1997, the Secretary of the Commission, with staff
14 present, indicated that if the City and Recomp were to amend their agreement to
15 provide for a market rate, and the City directed SSC to take all waste to Recomp, the
16 Commission would probably not take action against SSC if SSC thereafter were to
17 resume delivery to Recomp of the drop boxes in question. Facts, ¶ 32.

18 Following the approval by the City Council and execution by the City Mayor
19 of the amendments to the contract between Bellingham and Recomp which reduced
20 Recomp's disposal fee to \$69.50 per ton, the City instructed SSC by letter that SSC
21 is to deliver *all waste* collected in the City, including drop box waste, to Recomp.
22 Facts, ¶ 33; Exhibit 11. The letter pointedly informed SSC that "[f]ailure to comply
23 with this directive will place you in default of your contract." Id.

24 Upon review of the City's letter to SSC, Gene Eckhardt, Assistant Director of
25 Solid Waste for the Commission, proceeded by letter to "advise" SSC of staff's
26 position that "Sanitary Service must deliver drop box waste to RDS if the customer
27 instructs Sanitary Service to deliver the waste to RDS." Facts, ¶ 34; Exhibit 12.
28 The letter claims that this has been "long maintained" by Commission staff, but no
evidence of such a long-time position was provided in the letter, and none has been
submitted in this proceeding. The letter provided no legal basis whatever for staff's
position.

1 If SSC fails to resume delivery of all commercial waste to Recomp, and if the
2 City as a consequence declares SSC to be in default of its contract with the City, the
3 City would have the right to order SSC to cease all further performance of its
4 contract, to place SSC's business in the hands of the surety which has bonded
5 performance of SSC's obligations or, if the surety is not willing to guarantee
6 performance of SSC's obligation to deliver all City waste to Recomp, to take over
7 SSC's business itself. Facts, ¶ 35; Exhibit 7, §§ 17-18, pages 16-19.

8 The positions taken by Commission staff have placed SSC in an awful no-win
9 situation. If SSC continues to deliver non-residential solid waste to Recomp, as
10 every contract with the City which SSC for decades has required, SSC faces the
11 possibility that staff would seek to prevent SSC from including disposal charges it is
12 obliged to incur to Recomp in its collection rate base, which could be financially
13 disastrous to its business. On the other hand, if SSC does as staff apparently would
14 have it do--i.e., thumb its nose at its contract with the City--SSC faces a declaration
15 of default by the City and the disastrous consequences which would ensue from such
16 a declaration.

17 For the reasons expressed below, we submit that the Commission should reject
18 the positions taken by staff, and should make it clear by declaratory order all charges
19 which it SSC is obliged by its contract to incur through the deliver to Recomp's
20 facility of all solid waste which SSC collects within the City are to be included in
21 SSC's collection rate base.

22 ***ISSUES***

- 23 1. Shall the Commission include in Sanitary Service Company's commercial
24 collection rates the disposal charges of the facility to which it is directed by the
25 City of Bellingham to deliver the non-residential solid waste which it collects
26 within the City of Bellingham?
- 27 2. Do persons who receive from Sanitary Service Company drop box collection
28 service regulated by the Commission have the right by law to direct SSC to
deliver the drop boxes collected from them to disposal facilities of such persons'
own choosing?

1 **DISCUSSION OF ISSUES**

2
3 **A. The Commission Should Declare That SSC May Include In Its Collection**
4 **Rate Base All Charges Which It Incurs In Fulfilling Its Contractual Obligation To**
5 **Deliver Solid Waste To The Facility Specified By The City.**

6 RDS’s petition asks the Commission determine to whether it is “in the public
7 interest” for SSC to deliver non-residential waste which it collects within the City to
8 Recomp’s facility, as the City’s contract with SSC requires SSC to do, if there is a
9 disposal facility available willing to accept that waste at a lower charge.

10 As Staff correctly pointed out in its Notice Of Intent To Participate, RDS has
11 failed in its petition to correctly frame the issue(s) needing to be resolved.

12 The issue is not whether the Commission may regulate local governments in
13 the exercise of their responsibilities for solid waste management. Local governments
14 in our state are vested with the primary and ultimate authority over the collection and
15 disposal of solid waste generated within their boundaries. *Washington Constitution*,
16 Art. 11, Sec. 11²; *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498
17 (1994); *Citizens For Clean Air v. Spokane*, 114 Wn.2d 20, 34, 785 P. 2d 447
18 (1990); *Shaw Disposal, Inc. v. Auburn*, 15 Wn.App. 65, 68, 546 P.2d 1236 (1976).
19 As the court stated in the latter case (adopting the statement made by the court in
20 *Davis v. Santa Ana*, 108 Cal.App. 669, 676, 239 P.2d 656 (1952)) :

21 The accumulation of garbage and trash within a city is deleterious to
22 public health and safety. The collection *and disposition* of garbage and
23 trash by the city constitutes a valid exercise of police power and a
24 governmental function which the city may exercise in all reasonable
25 ways to guard the public health. It may elect to collect *and dispose* of
26 the garbage itself or *it may grant exclusive collection and disposal*
27 *privileges to one or more persons by contract. . . .*

28

26 ² Art. 11, Sec. 11 confers upon local governments the authority “to make and enforce within its limits all
27 such local police, *sanitary* and other regulations as are not in conflict with general laws.”

1 15 Wn.App. at 68. See, also, *City Sanitary Service Co. v. Rausch*, 10 Wn. 2d 446,
2 450, 117 P.2d 225 (1941) (second class cities, like cities of the first and third class,
3 is empowered to contract for collection and disposition of garbage).

4 The power of a city to contract for solid waste handling and disposal services
5 is additionally provided for by statute. RCW 35.21.152³; RCW 70.95.020.⁴

6 It is thus local governments in our state which have been given the right--
7 indeed, the responsibility--to determine where, how, by whom and at what price
8 solid waste generated or collected within their boundaries is to be disposed of.

9 The Commission, by contrast, has regulatory authority (subject to the
10 exception provided for by RCW 81.77.020, discussed below) with respect to the
11 *collection* of solid waste. The Commission has no regulatory authority over solid
12 waste *disposal* or over facilities engaged in solid waste handling and disposal. RCW
13 36.58.050 (solid waste handling and disposal facilities, and the transportation of solid
14 waste between them, is "exempt from regulation by the Washington utilities and
transportation commission as provided in chapter 81.77 RCW").

15 In those areas in which the Commission has regulatory authority (such as solid
16 waste collection), the Commission's principal function--indeed, the function which
17 the Legislature had foremost in mind when it created the Commission--is the setting
18 of charges which are "fair, just, reasonable and sufficient." *People's Organization
19 For Washington Energy Resources v. Utilities And Transportation Commission*,

20 _____
21 ³ RCW 35.21.152 states in pertinent part that "a city or town may enter into agreements with public or
22 private parties to: (1) Construct . . . or operate publicly or privately owned or operated solid waste handling
23 systems, plants, sites or other facilities; (2) establish rates and charges for those systems, plants, sites, or
24 other facilities as disposal sites; (3) designate particular publicly or privately owned or operated systems,
plants, sites or other facilities as disposal sites; and (4) sell the materials or products of those systems,
plants, or other facilities. Any agreement entered into shall be for such term and under such conditions as
may be determined by the legislative authority of the city or town.

25 ⁴ RCW 70.95.020 states the intention of the Legislature that "local governments be encouraged to use the
26 expertise of private industry." Our state's Supreme Court has expressly interpreted RCW 70.95.020 to
27 mean that "private entities may contract with local government for solid waste handling." *Weyerhaeuser v.
Pierce County*, *supra*, at 40.

1 104 Wn.2d 798, 808, 711 P.2d 319 (1985); *Pacific Northwest Bell Telephone Co. v.*
2 *Utilities And Transportation Commission*, 66 Wn.2d 411, 427, 403 P.2d 73 (1965).

3 The issue, then, is not whether SSC should be permitted to satisfy the
4 obligation it has under its contract with the City to deliver to Recomp all solid waste
5 which SSC collects within the City (including non-residential waste collected under
6 its certificate of public convenience and necessity). The Commission does not have
7 any regulatory authority over local decisions relating to solid waste disposal, whether
8 effected by local regulation or by contract.

9 Even if the authority granted by the Legislature to the Commission could be
10 read so broadly as to confer upon the Commission a right to restrict or prohibit solid
11 waste collection companies from contracting with local governments for utilization of
12 disposal facilities which operate under contract with those local governments, the
13 Commission has never adopted any rules imposing any such restriction or
14 prohibition.⁵ There is, quite simply, no statute, rule or other basis upon which the
15 Commission might exercise regulatory authority over the City's contract with SSC or
16 the performance of that contract by either of the parties to it, either on a "public
17 interest" basis or on any other basis.

18 Although the contract between the City and SSC is not itself something over
19 which the Commission has authority, the Commission does have authority to
20 determine the rates which SSC will be permitted to charge in providing non-
21 residential waste collection service within the City. It is appropriate, we think, that
22 the Commission determine through this proceeding whether SSC is to be permitted to
23 include in its collection rate base the disposal charges which SSC is compelled to

24 ⁵ Even if the Commission had the authority to restrict or prohibit arrangements between solid waste
25 collection companies and local governments for disposal of waste collected under a certificate issued by the
26 Commission, such restrictions or prohibition would be invalid unless promulgated as rules in accordance
27 with Part III of the Administrative Procedure Act, RCW 34.05.310-395. *Simpson Tacoma Kraft Co. v.*
28 *Department of Ecology*, 119 Wn.2d 640, 647-49, 835 P.2d 1030 (1992). Any rule promulgated at this point
impairing the City's contract with SSC would be invalid under both the U.S. Constitution and our own state
constitution. U.S. Constitution, Art. 1, § 10, cl. 1; Washington Constitution, Art. 1, § 23. See, *Ruano v.*
Spellman, 81 Wn.2d 820, 825-29, 505 P.2d 447 (1973); *Hearde v. Seattle*, 26 Wn.App. 219, 221-22, 611
P.2d 219 (1980).

1 incur by its contract with the City.⁶ That issue, however, is one to which no “public
2 interest” standard applies, whether the waste in question be non-residential waste in
3 general or drop box waste in particular. Nowhere, either in Title 81 or in any
4 Commission rule, or in any case involving the setting of rates by the Commission, is
5 there anything suggesting that the standard to be applied with respect to matters
6 involving the setting of rates is a “public interest” standard.⁷

7 The resolution of that issue requires that the Commission address and resolve a
8 number of questions:

9 *1. Is the Commission required by RCW 81.77.020 to recognize and give effect*
10 *to provisions of the City’s contract with SSC pertaining to the disposal of solid*
11 *waste over which the Commission sets collection rates?*

12 *2. Even if the Commission is not compelled by RCW 81.77.020 to give*
13 *deference to the City’s agreement with SSC, is the Commission required by*
14 *RCW 81.77.160 to include in SSC’s collection rate base the charges it incurs*
15 *in disposing of non-residential City waste at Recomp’s facility?*

16 *3. Even if neither RCW 81.77.020 nor RCW 81.77.160 compels the inclusion*
17 *of such charges in SSC’s collection rate base, is the inclusion of such charges*
18 *necessary or appropriate in order to provide SSC with a rate which is “fair,*
19 *just, reasonable and sufficient”?*

20 We address each of these three questions in turn:

21
22
23
24 ⁶ As we indicated in our Notice Of Intent To Participate, at pp. 3-4, Recomp is not amenable to a
25 determination in this proceeding which addresses false issues.

26 ⁷ The only matter with respect to which a “public interest” standard applies under rules established by the
27 Commission is a request for temporary authority under WAC 480-70-130. However, SSC has not requested
28 temporary authority--it already holds a certificate of public convenience and necessity.

1 1. RCW 81.77.020 precludes the Commission from exercising
2 regulatory authority in a manner inconsistent with those aspects of SSC's operations
3 which are governed by SSC's contract with the City.

4 The statute which confers upon the Commission regulatory authority over solid
5 waste collection companies expressly places beyond the Commission's authority
6 those operations of SSC which are governed by its contract with the City. RCW
7 81.77.020 states in pertinent part:

8 No person, his lessees, receivers, or trustees, shall engage in the
9 business of operating as a solid waste collection company in this state,
10 except in accordance with the provisions of this chapter; PROVIDED,
11 That *the provisions of this chapter shall not apply to the operations of*
12 *any solid waste collection company under a contract of solid waste*
disposal with any city or town. . . .

13 There can be no serious dispute as to the applicability of the above proviso to
14 SSC's delivery of solid waste to Recomp's facility. No one disputes that SSC is a
15 solid waste collection company, or that the City of Bellingham is a city. The current
16 contract between SSC and the City, like all previous agreements between them, is
17 undeniably a contract "of solid waste disposal" (Section 5 of that contract, entitled
18 "Disposal," makes that abundantly clear, as did the prior 1985 extension which
19 referred to the parties' arrangement as a "*long-term disposal arrangement for the*
20 *City's residential and commercial refuse*"). When SSC delivers to Recomp's facility
21 all solid waste which SSC collects within Bellingham, it unquestionably is operating
22 under that contract, since the contract itself requires SSC to do so. Exhibit 7,
23 §§ 5.1-5.2.

24 We anticipate that RDS and/or Staff will argue that RCW 81.77.020 only
25 exempts those operations of a solid waste collection company which pertain to waste
26 *collected* under a *collection* contract between a solid waste collection company and a
27 city or town. However, that is not what the statute says. The proviso in RCW
28 81.77.020 exempts operations under a "*disposal* contract." The exemption
established by RCW 81.77.020 does not require such a contract to be one dealing
with collection at all. Indeed, the proviso says nothing about collection.

1 Of course, a disposal contract between a solid waste collection company and a
2 city may deal not only with disposal, but also with collection of some or all of the
3 waste generated within the city. That is the situation here. In such a case, the
4 company's collection activities under the contract, like its disposal activities, are
5 exempt, since the exemption provided for by RCW 81.77.020 unambiguously
6 extends to all "operations" under such a contract.

7 Perhaps RDS or Staff will argue that the reference in RCW 81.77.020 to a
8 "disposal contract" should be construed to mean a "collection contract" instead.
9 Such a construction is impermissible. The Legislature clearly understood the
10 distinction between "collection" and "disposal," repeatedly using the two terms in
11 juxtaposition with each other even within Chapter 81.77 itself. See, RCW
12 81.77.010(1),(3), and (7); RCW 81.77.040; RCW 81.77.070.⁸ It obviously
13 understood "collection" and "disposal" to be two different things (as of course they
14 are). Had the Legislature meant by RCW 81.77.020 to exempt only *collections*
15 under a contract for solid waste *collection*, it obviously would not have referred to
16 "*operations . . .* under a contract for solid waste *disposal*."

17 The Commission is not free to read into RCW 81.77.020 words which are not
18 there, or to modify the unambiguous language of that statute under the guise of
19 interpretation. *Vita Food Products v. Washington*, 91 Wn.2d 132, 134, 587 P.2d
20 535 (1978); *Jepson v. Department of Labor & Industries*, 89 Wn.2d 394, 403, 537
21 P.2d 10 (1977); *Ellen v. Employment Security Department*, 83 Wn.2d 145, 148,
22 156 P.2d 1032 (1973); *King County v. Seattle*, 70 Wn.2d 988, 991, 425 P.2d 887
23 (1967); *State ex rel. Thigpen v. Kent*, 64 Wn. 2d 823, 826, 394 P.2d 686 (1964). It
24 must apply the statute as it is, not as RDS or Staff might wish it to be.

25 Since SSC's delivery of waste to Recomp's facility in accordance with SSC's
26 contract for solid waste disposal with the City is not subject to regulation by the
27 Commission under Chapter 81.77, the Commission necessarily must recognize and
28 give effect to that contract. It would be entirely repugnant to RCW 81.77.020 for the
Commission to interfere with SSC's performance of its obligations under that

⁸ There are literally dozens of additional instances in which the Legislature has adopted statutes
distinguishing between solid waste "collection" and "disposal." See, e.g., RCW 29.01.005; RCW
35.02.160; RCW 35A.14.900; RCW 36.58.060; RCW 36.58.130; RCW 38.52.420; and RCW 82.18.010.

1 contract by refusing to permit SSC to pass through the costs which it incurs through
2 the performance of those obligations.⁹ If RCW 81.77.020 requires anything, it
3 requires the Commission to defer to such a contract, not undercut it.

4 2. RCW 81.77.160(1) requires the Commission to include in SSC's base for
5 collection rate purposes the charges which SSC incurs in disposing of solid waste at
6 Recomp's facility.

7 RCW 81.77.160(1) states:

8 (1) The commission, in fixing and altering collection rates charged by
9 every solid waste collection company under this section, shall include in
10 the base for the collection rates:

11 (a) All charges for the disposal of solid waste at the facility or
12 facilities designated by a local jurisdiction under a local comprehensive
13 solid waste management plan or ordinance; and

14 (b) All known and measurable costs related to implementation of
15 the approved county or city comprehensive solid waste management
16 plan.

17 Each of the above subsections require the Commission in this case to include in
18 SSC's rate collection base the charges SSC incurs in delivering City non-residential
19 waste to Recom's facility:

20
21 _____
22 ⁹ We respectfully submit that such action by the Commission would be inconsistent as well with any concept
23 of fairness and equity, and would serve no conceivably beneficial purpose. It is essential to the public good,
24 we submit, that the Commission recognize and give effect to arrangements by which a city secures for its
25 citizens stable long-term disposal rates, particularly where (as was the case when the respective agreements
26 between the City and SSC and Recom were entered into) there was only one disposal facility available to
27 solid waste collection companies. Should not a city be encouraged to protect its citizens against exorbitant
28 pricing by such a facility through arrangements under which the disposal facility commits to a reasonable
disposal charge in return for a commitment that it will receive the city's waste? Failure to give effect to
such arrangements will undermine the most effective means available to municipalities to protect their
citizens from exorbitant pricing.

1 a. RCW 81.77.160(a) requires the Commission to include in SSC's rate
2 collection base the charges SSC incurs in delivering City non-residential waste to
3 Recomp's facility.

4 Subsection (a) of RCW 81.77.160(1) was amended in the 1997 legislative
5 session as part of S.H.B. 1657, which became effective in July of this year. The bill
6 expanded the scope of the charges which the Commission is required to pass through,
7 by amending subsection (a) so as to apply to:

8 All charges for the disposal of solid waste at the facility or facilities ~~that~~
9 ~~the solid waste collection company is required to use~~ designated by a
10 local jurisdiction under a local comprehensive solid waste management
11 plan or ordinance ~~designating disposal sites; and~~

12 As the above amendments indicate, subsection (a) previously applied only to
13 disposal charges incurred at a facility which a solid waste collection company was
14 *required* to use by a local comprehensive solid waste management plan designating
15 that facility. Since the amendment became effective, however, it is no longer is
16 necessary under subsection (a) that the facility be one which the solid waste
17 collection company is required to used; it is merely necessary that the facility be one
18 which is "designated" under a local comprehensive solid waste management plan or
19 ordinance.

20 For purposes of RCW 81.77.160(1)(a) the question, then, is simply this: *Is*
21 *Recomp's facility one which is "designated" under the applicable local*
22 *comprehensive solid waste management plan?* If it is, subsection (a) requires that the
23 charges incurred by SSC in delivering solid waste to that facility be included in
24 SSC's collection rate base.

25 Words used in a statute, when not specially defined, are given their ordinary
26 dictionary meaning. *Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97,
27 758 P.2d 480 (1988); *Brenner v. Leake*, 46 Wn.App. 852, 854-855, 732 P.2d 1031
28 (1987).

29 The verb "designate" most commonly means "1 a: to point out the location of
30 < a marker *designating* the crest of the flood waters > b: to make known directly as

1 if by sign: SIGNIFY, INDICATE <any reasonable task *designated* by the
2 employer> c: to distinguish as to class: DENOMINATE, IDENTIFY, LABEL
3 <the area we — as that of spiritual values - J.B. Conant> d: SPECIFY,
4 STIPULATE <sending food packages to *designated* recipients in Europe> <a gift
5 designated by the donor to be used for faculty compensation>.” *Webster’s Third
International Dictionary* (1981).

6 The Commission will note that the verb “designate,” as customarily used, does
7 not have any coercive aspect to it--something is “designated” if it is merely signified,
8 identified or specified.

9 The Recomp facility, along with others, is a disposal facility designated under
10 the currently-effective local comprehensive solid waste management plan, and called
11 for location of the transfer station which now exists there. Exhibit 14, Table 7-1,
12 page 7-3, and § 7.3, page 7-7.

13 RDS or Staff may argue that the reference in subsection (a) to a disposal
14 facility or facilities “designated . . . under a local comprehensive solid waste
15 management plan” should be understood to mean only those facilities which the plan
16 compels the solid waste collection company to use. However, merely “designating”
17 something does not require its use. Had the Legislature meant subsection (a) to
18 continue to apply only to disposal charges incurred to facilities which a collection
19 company is required to use, there would have been no point in amending subsection
20 (a)--that is what subsection (a) said before it was amended. When a statute is
21 amended and a material change is made in the wording, there is a presumption that
22 the legislature intended to change the law. *Childers v. Childers*, 89 Wn.2d 592,
23 546, 575 P.2d 201 (1978); *Ronald Sewer District v. Brill*, 28 Wn.App. 176, 178,
24 622 P.2d 393 (1980) (applying rule to statute authorizing sewer assessments against
25 “those receiving such service” amended to apply to “those to whom such service is
26 available”). In the case of the recent amendments made to RCW 81.77.160(1)(a), it
27 therefore must be presumed that the Legislature intended to *change* the law, by
28 allowing collection companies henceforth to include in their rate base disposal
charges incurred to any local disposal facility identified under a local comprehensive
solid waste management plan, whether the plan requires the collection company to
use the facility or not.

1 Because Recomp's facility is among those designated in the current Plan, SSC
2 is entitled under RCW 81.77.160(1)(a), as amended earlier this year, to have all
3 disposal charges it incurs to Recomp included in its collection rate base.¹⁰

4 b. RCW 81.77.160(b) also requires the Commission to include in SSC's
5 rate collection base the charges SSC incurs in delivering City non-residential waste to
6 Recomp's facility.

7 Subsection (b) of RCW 81.77.160 requires the Commission to include in
8 SSC's collection rate base "all known and measurable costs related to implementation
9 of the approved county or city comprehensive solid waste management plan."

10 The applicable comprehensive solid waste management plan in this case is one
11 referring to the fact that collection for many years has been undertaken within the
12 City by the City's private "collection contractor," Exhibit 14, § 6.1, page 6-1.
13 Among the provisions of the Plan dealing with collection is one which specifically
14 calls for continuation of the existing collection structure within all incorporated areas
15 of the County (which includes the City). Exhibit 14, § 6.4(1), page 6-4.

16 Both at the time the current comprehensive solid waste management plan was
17 approved by the Department of Ecology, and for many years prior to that time, the
18 structure under which solid waste was collected in the City was the same as it is

19 ¹⁰ We note that the underlying purpose of the subsection as originally adopted was to permit solid waste
20 collection companies to pass through charges which they were compelled to incur as a consequence of a
21 local municipality's exercise of its power to determine where, how and by whom solid waste for which it
22 is responsible is to be disposed of. The sponsors of that legislation in both houses of the Legislature, in
23 clarifying remarks, stated on the floor that the subsection was intended to deal "with the revenues required
24 by a [solid waste collection] company to cover its operating expenses." 1 1989 Senate Journal, Reg. Sess.,
25 at 1528; II 1989 House Journal, Reg. Sess., at 2024. In construing a statute, courts are required to give
26 effect to the legislative intent. *State v. Elgin*, 118 Wn.2d 551, 555, 825 P.2d 314 (1992). Even in the
27 absence of the recent amendments made to subsection (a), we submit that pass-through of the charges
28 incurred by SSC to Recomp would be necessary to give effect to the underlying purpose behind the
subsection, which, as indicated by the legislative history, was to assure that collection companies would be
able to pass through to ratepayers disposal charges they were obliged to incur. It would be inconsistent with
the underlying purpose of subsection (a), even as that subsection was originally enacted, for the
Commission to pass through disposal charges which a collection company is obliged to incur by ordinance
or by a comprehensive solid waste management plan, but to refuse to pass through those costs when the
same obligation is imposed by equally legitimate (if not more legitimate) means.

1 today. The current contract between the City and SSC, which already had been in
2 effect for well over a year when that plan was approved, was then and is now an
3 essential part of that structure. That contract, like the ones which preceded it, gave
4 SSC the right to collect residential waste within the City in return for SSC's
5 commitment to deliver *all* solid waste collected within the City to the entity to whom
6 the City had contracted out disposal service (i.e., Recomp), while leaving to the
7 Commission the regulation of rates charged by SSC for non-residential waste
8 collected within the City.

9 Plan provisions calling for retention of the existing collection structure cannot
10 be implemented except through the performance of the contract between SSC and the
11 City which serves as the cornerstone of that structure. Costs incurred by SSC in the
12 performance of its obligations under that contract--including its obligation to deliver
13 all waste which it collects within the City to Recomp--thus necessarily are costs
14 "*related* to implementation of the approved . . . comprehensive solid waste
15 management plan." Because those costs are both "known and measurable," they are
16 ones which the Commission is required by RCW 81.77.160(1)(b) to include in SSC's
17 collection rate base.

18 3. Inclusion in SSC's rate base of charges it is obliged to incur by its
19 contract with the City is in any event essential if SSC is to be allowed to charge a
20 collection rate which is "fair, just, reasonable and sufficient," as required by RCW
21 81.28.010, 81.28.230 and 81.77.170.

22 Even in those instances in which disposal charges do not fall within the scope
23 of RCW 81.77.160, the Commission is required to treat such charges as "a normal
24 operating expense of the solid waste collection company" which the company is
25 entitled to build into its rate, if the resulting rate will be one which is "just, fair,
26 reasonable and sufficient." RCW 81.77.170; RCW 81.28.010, 230; *Waste
27 Management of Seattle, Inc. v. Utilities And Transportation Commission*, 123 Wn.
28 2d 621, 628-29, 869 P.2d 1034 (1994).

We respectfully submit that a rate which does not allow SSC to recover the
costs which SSC is obliged to incur through the performance of its contract with the
City would be *unjust, unfair, unreasonable* and most definitely *insufficient* under any
rational standard.

1
2 This is not a case involving a rogue or non-compliant company; Commission
3 staff in the very recent rate-adjustment hearing involving SSC held that company out
4 as a model for collection companies generally. SSC's contract with the City involves
5 a perfectly legitimate exercise by the City of the authority conferred upon cities by
6 our state's constitution, by our state's statutes, and by court decisions pertaining to
7 municipal powers and responsibilities. Its contract with the City violates no statute,
8 and contravenes no rule or order which has ever been issued by the Commission.
9 Over the many years during which the Commission has regulated the rates charged
10 by SSC, the Commission has had full knowledge of the terms of SSC's contracts with
11 the City, Facts ¶¶ 19, but has never once suggested that there was anything
12 objectionable with provisions of those contracts requiring SSC to deliver solid waste
13 to Recomp. On the contrary, the Commission in every instance has included in
14 SSC's collection rate base all disposal charges which SSC is obliged to incur. The
15 Commission should be estopped at this point from refusing to permit SSC to include
16 the charges it incurs to Recomp in its collection rate base. *Kramarevcky v.*
17 *Department of Social and Health Services*, 64 Wn.App. 14, 822 P.2d 1227 (1992),
18 *reconsideration denied, affirmed after review granted*, 122 Wn.2d 738, 863 P.2d 535
19 (1993).

20 It would be one thing if the per-ton disposal charge which SSC incurs to
21 Recomp were a charge established by the whim of Recomp, but it is not. Recomp's
22 charge to SSC is established by a separate (but related) contract between the City and
23 Recomp. Amendments to that contract, approved unanimously by the Bellingham
24 City Council during the pendency of this proceeding following an independent review
25 of Recomp's costs by a certified public accountant, have substantially reduced
26 Recomp's disposal charges. Facts, ¶ 26. The maximum per-ton tipping fee which
27 Recomp is now permitted to charge SSC is in fact *less* than the amount which the
28 petitioner itself was charging SSC and other solid waste collection companies for
non-City waste when the amendments became effective, Facts, ¶ 27. Recomp's
disposal charge is consistent with that of other private disposal facilities in the Puget
Sound region, taking into consideration differences in costs of transportation to
available landfills. Facts, ¶ 26. The latter fact alone satisfies the "just, fair,
reasonable and sufficient" standard, there being no evidence that the comparable

1 rates charged throughout the region by other similar facilities are unreasonable.¹¹
2 *Cole v. Washington Utilities And Transportation Commission*, 79 Wn.2d 302, 311,
3 485 P.2d 71 (1971).

4 The “fair, just, reasonable and sufficient” standard, which has been applied to
5 a wide variety of public service companies since at least 1911¹², is one which is
6 intended to guarantee regulated businesses a profit. *Tauscher v. Puget Sound Power*
7 *& Light Co.*, 96 Wn.2d 274, 286, 635 P.2d 426 (1981). It recognizes that a
8 regulated company “must have sufficient rates or it cannot continue to exist.” *State*
9 *ex rel. Seattle v. Public Utility Commission*, 107 Wash. 17, 23, 180 Pac. 913
10 (1919). A rate which would not allow SSC to cover the costs which it must incur to
11 provide collection service by definition would not be a “fair, just reasonable and
sufficient” rate. If the word “sufficient” means anything in the context of RCW
81.28.010 and RCW 81.28.230, it means “sufficient to cover unavoidable costs.”

12 For the Commission to force SSC to “eat” any portion of the disposal charges
13 which it is obliged to incur through the fulfillment of its contract with the City at best
14 would prevent SSC from earning a fair profit, and at worst would force SSC to
15 operate at a loss--something which, as our Supreme Court noted in *State ex rel.*
16 *Seattle v. Public Utility Commission, supra*, no company can continue to do if it is to
17 exist. SSC’s financial viability would be jeopardized, putting at risk not only the
18 investment of its owners but also the very service in which it is authorized by the
19 Commission to engage. The only way SSC could avoid the potentially ruinous
20 consequences of such Commission action would be to breach its obligation to deliver
waste to Recomp, thereby exposing itself to a declaration of default by the City and
the equally ruinous consequences which would ensue from such a declaration.¹³

21 ¹¹ Municipally-established rates such as the disposal charges which SSC incurs to Recomp are presumptively
22 valid, and the burden of proving that they are unreasonable rests with the party challenging them (in this
23 case, RDS and/or the Staff). *Faxe v. Grandview*, 48 Wn.2d 342, 352, 294 P.2d 402 (1956). No facts have
24 been submitted to the Commission from which the Commission might conclude that Recomp’s charges are
anything but fair, just and reasonable.

25 ¹² See, *State ex rel. Seattle v. Public Service Commission*, 103 Wash. 72, 76-77, 173 Pac. 737 (1918);
Tacoma Railway & Power Co. v. Public Service Commission, 101 Wash. 601, 609, 172 Pac. 890 (1918).

26 ¹³ Section 17 of SSC’s contract states that if the City declares SSC to be in default, its operations must be
27 turned over to a surety committed to fulfilling SSC’s responsibilities or, if the surety will not give that
28 commitment, to the City itself. Facts, ¶ 35. The contract does not give SSC any opportunity to cure once a

1
2 And what conceivably beneficial purpose would be served by jeopardizing
3 SSC's business? What rational reason could there be for the Commission to force
4 SSC--a company which has done nothing but comply in good faith with its
5 obligations to everyone concerned--into such a Hobson's choice? Why would the
6 Commission take action so patently unprecedented, arbitrary and destructive? We
7 can fathom no good reason for such a thing.

8 To refuse to permit such charges from being fully incorporated into SSC's
9 collection rate base would be to deny SSC a rate which is "fair, just, reasonable and
10 sufficient," and would serve no beneficial purpose whatsoever.

11 B. Generators of non-residential solid waste from whom SSC collects drop
12 boxes have no legal right to dictate where SSC disposes of the solid waste contained
13 in them.

14 The principles discussed above apply to all non-residential waste collected by
15 SSC within the City, including waste deposited in drop boxes which SSC collects.

16 Staff nevertheless has contended, in a letter recently written to SSC, that SSC
17 is not at liberty to comply with its contractual obligation to deliver solid waste in
18 drop boxes to Recomp, but must instead deliver waste collected in drop boxes
19 according to the dictates of the person from whom such waste is collected. Facts,
20 ¶ 34; Exhibit 12.

21 This hitherto-unheard-of proposition is a classic example of improper "rule-
22 making by beaurocratic fiat." Although provided to SSC as (unsolicited) "advice,"
23 its purpose was transparently compulsory, carrying with it the implied threat of
24 adverse consequences to SSC if Staff's "advice" is not heeded.¹⁴

25 default is declared by the City. Such a declaration thus effectively would force SSC immediately out of
26 business. The City already has threatened to declare SSC in default if it does not observe its contractual
27 obligation to deliver all City solid waste to Recomp. Facts, ¶ 33; Exhibit 11.

28 ¹⁴ As discussed above, at n.5 above, if the Commission wishes to give drop box users the right to tell
collection companies where to take waste collected from them, it may do so only by promulgation of a rule
to that effect in compliance with the rule-making procedures set forth in Administrative Procedure Act.
Such a rule, even if it were adopted, could not constitutionally be applied to drop boxes collected by SSC

1
2 Staff's letter was an intrusion into matters exempt from Commission regulation
3 under RCW 81.77.020. Regardless of what Staff may think about the matter, SSC's
4 disposal of drop box waste collected within the City is a subject governed by SSC's
5 contract of solid waste disposal with the City, and thus is not subject to regulation by
6 the Commission. Put bluntly, Staff had no business giving SSC "advice" on matters
beyond the Commission's jurisdiction.

7 What is worse, there is no legal basis for Staff's contention.¹⁵ Staff offered no
8 authority for its contention, and the contention appears in fact to have been
9 manufactured entirely out of thin air. No federal or state statute purports to give
10 those who use drop boxes the right direct where waste collected from them is taken;
11 no rule confers any such right upon drop box users; and no court decision remotely
suggests such a thing.

12 The one Commission rule which does pertain to drop box collection is
13 inconsistent with Staff's contention. WAC 480-70-780 states:

14 Disposal fees charged to drop box users customers [sic] shall not
15 exceed the actual cost to the company. Solid waste collection companies
16 shall assess the customer the disposal fees contained in their lawfully
17 filed tariffs applicable to the dump site actually used for disposal, and
18 not that of any other sites. Each solid waste collection company shall
19 amend its tariff(s) as necessary to track fees imposed at the dump site or
sites used.

20
21 within the City, since it would impair the City's contract with SSC. (We question in any event whether the
22 Commission has the authority to promulgate such a rule, conflicting as it would with the well-established
23 right of local governments by contract or other legitimate means to determine where, how and by whom the
solid waste for which they are ultimately and primarily responsible.)

24 ¹⁵ And precisely what it is that Staff seeks to accomplish by making the contention is anything but clear. Is
25 Staff seriously contending that the Commission should order SSC to breach its contract with the City? Is
26 Staff contending that the Commission should refuse to permit SSC to include in its collection rate base the
27 difference between the \$69.50/ton price charges by Recomp and the \$65.00/ton which RDS apparently is
willing to charge for non-residential waste in drop boxes? Does Staff seek some other result? Hopefully,
28 the brief submitted on Staff's behalf will make clear just what its purpose is.

1 Nothing in the above rule states, or even remotely suggests, that a drop box user may
2 tell a solid waste collection company which dump site to use. In fact, the rule
3 indicates just the opposite, since it requires collection companies to charge drop box
4 users the fee of the disposal facility upon which the collection company's collection
5 rates are based, and not any other facility. It would make no sense to require a solid
6 waste collection company to charge drop box users disposal fees based upon the
7 amount charged by the disposal facility upon which the collection rate is based if drop
8 box users were free to the collection company to use a different facility (one which
9 conceivably might charge either a lower *or a higher* disposal fee than the one used by
10 the collection company).

11 Such a rule, we respectfully submit, in any event would lead to ridiculous and
12 inequitable consequences. It would mean that a business in Bellingham, in order to
13 reduce the disposal charges it pays, could direct SSC to deliver drop boxes collected
14 from it to a regional landfill in south central Washington or northern Oregon (where
15 disposal fees are much cheaper than they are at transfer facilities in Whatcom
16 County), thereby forcing SSC to incur additional transportation costs which SSC
17 could recoup only by building them into the collection rate it charges to ratepayers
18 generally. Such a business thus effectively could reduce its own disposal costs by
19 forcing SSC to incur additional costs of transportation which ultimately would have
20 to be borne by others. What sense would that make?

21 Not only is there no statute, no rule, no case law and no logic supporting
22 Staff's contention that drop box customers have the right to specify where solid waste
23 collection companies dump the waste collected from them, no contract confers such a
24 right upon SSC's drop box customers in this case. SSC has not entered into any
25 contract with anyone under which it has undertaken to deliver waste collected in drop
26 boxes to any facility other than Recomp's. Facts, ¶ 31. Perhaps Staff or RDS
27 contend that RDS's agreements which SSC's drop box customers impose such an
28 obligation on SSC; but if they do, they are mistaken. It is an basic principle of
contract law that parties to a contract cannot impose obligations on third persons who
are strangers to their contract, a contract being enforceable only against those who
are party to it. *State v. Antoine*, 82 Wn.2d 440, 444-45, 511 P.2d 1351 (1973);
McIntyre v. Johnson, 66 Wash. 567, 570, 120 Pac. 92 (1912). If A and B enter into
an agreement giving B the "right" to direct C to perform some service for A, C is

1 free, absent some agreement under which C has agreed to provide service to A at B's
2 direction, to tell both of them to go fly a kite.¹⁶

3 Staff's contention that generators of waste within the City who utilize drop
4 boxes have the right to tell SSC where to dump the waste it collects from them is
5 devoid of any legal basis. No such legal right has ever been recognized, and none
6 exists.

7 **CONCLUSION**

8 For the reasons stated in this Brief, and for the reasons stated in the briefs
9 submitted by the City, SSC and the Washington Refuse and Recycling Association,
10 the Commission should declare that SSC is to be permitted to include in its collection
11 rate base disposal charges it incurs in fulfilling its contractual obligation to deliver to
12 Recomp all solid waste which SSC collects within the City.

13
14 DATED this 7th day of October, 1997.

15 KARR TUTTLE CAMPBELL,
16 A Professional Service Corporation
17 Attorneys for Respondent Recomp of
18 Washington, Inc.

19 By: 
20 James L. Austin, Jr., WSBA #2786

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that I have this day served the foregoing document upon
23 petitioner Recycling and Disposal Services, Inc. and upon all of the additional parties
24 and/or other persons in this proceeding listed on the below by depositing a copy of
25

26 _____
27 ¹⁶ The reason SSC is obligated to deliver the waste which it collects within the City to Recomp is not
28 because Recomp and the City have agreed that it should do so, but because SSC itself has made an
agreement with one of those parties under which it has agreed to do so.

1 said document in the United States mail, addressed as shown on said list, with first
2 class postage prepaid:

3 Service Effected Upon:

By Mailing Copy Addressed To:

4
5 Recycling and Disposal Services,
6 Inc.

Robert A. Rowland, Esq.
Attorney At Law
2602 Westridge Ave. W., Suite M-301
Tacoma, WA 98466

7
8 Commission Staff

Mary M. Tennyson, Esq.
Ann E. Rendall, Esq.
Attorney General of Washington
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128

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10
11
12
13 Sanitary Service Company, Inc.

Polly McNeil, Esq.
Summit Law Group P.L.L.C.
1505 Westlake Avenue N., Suite 300
Seattle, WA 98109

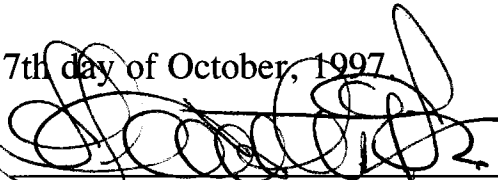
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15
16
17 City of Bellingham

Richard N. Little, Esq.
Bellingham City Attorney
210 Lottie Street
Bellingham, WA 98225

18
19
20
21 Washington Refuse & Recycling
22 Association

James K. Sells, Esq.
Ryan, Sells, Uptegraft & Decker
9657 Levin Rd. N.W., Suite 240
Silverdale, WA 98383

23
24
25 DATED at Seattle, Washington, this 7th day of October, 1997

26 

27 JAMES L. AUSTIN, JR.
28