

1 This petition is supported by the Memorandum in Support of King
2 County's Petition for Reconsideration and the attached exhibits.
3 King County reserves the right to supplement this petition with
4 additional information.

5 DATES this 18th day of February 1994.

6 Respectfully submitted,
7 NORM MALENG
8 King County Prosecuting Attorney

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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of Seattle
Disposal Company, Rabanco
Ltd., d/b/a Eastside Disposal
and Container Hauling, G-12
Tariff Revision

)
)
) DOCKET NO. TG-931585
)
) MEMORANDUM IN SUPPORT OF
) PETITION FOR RECONSIDERATION
) AND, IN THE ALTERNATIVE,
) REHEARING AND AMENDMENT OR
) RESCISSION
)
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COMES NOW King County, by and through the Office of the
King County Prosecuting Attorney, and submits this Petition for
Reconsideration and, in the alternative, Rehearing and Amendment or
Rescission of the tariff revision. TG-931585 and Supporting
Memorandum with exhibits.

I. STATEMENT OF FACTS

On December 28, 1993, Seattle Disposal Co., Rabanco Ltd., d/b/a
Eastside Disposal and Container Hauling ("Eastside") filed for
increased garbage and residential rates in Docket TG-931585. The
reasons stated for the filing were to recover wage increases,
recycling cost increases, and increased B& O taxes. Also, Rabanco

1 Recycle, an affiliated company of Eastside, had increased the
2 processing fee for recyclable products. (See Exhibit A). Upon
3 receiving notice of Eastside's tariff revision filing, representa-
4 tives of King County had repeated communications with WUTC staff
5 regarding Eastside's proposed tariff revision. (See Exhibit B). In
6 the course of those communications, King County expressed concerns
7 that the proposed tariff revision would create a disincentive for
8 achievement of the state and local goals of waste reduction and
9 residential recycling. Rod Hansen, Ph.D., Manager of the King
10 County Solid Waste Division (KCSWD) appeared at the WUTC hearing on
11 TG-931585 on February 9, 1994, at which he provided a statement in
12 opposition to the tariff revision. (Id.)

13 As expressed by Dr. Hansen at the February 9 hearing, King
14 County opposed the tariff revision because it violated RCW 81.77.-
15 030, which statutorily mandates the WUTC to supervise and regulate
16 solid waste collection companies by requiring certificate holders to
17 use rate structures and billing systems consistent with the solid
18 waste management priorities set forth under RCW 70.95.010 and with
19 the minimum levels of solid waste collection and recycling services
20 pursuant to local comprehensive solid waste management plans and by
21 requiring compliance with local solid waste management plans and
22 related implementation ordinances. (See RCW 81.77.030(5) and (6)).

1 On February 9, 1994, the WUTC adopted the WUTC staff recommend-
2 ed rate increases, with an effective date of February 15, 1994. The
3 prior and new rates are as follows:

	<u>Prior Rates</u>	<u>New Rates</u>
<u>Residential</u>		
4 Monthly rate for		
5 weekly pickup		
6 Mini can	\$ 5.64	\$ 9.65
7 One can	9.01	10.90
8 Two can	12.28	12.75
9 Three can	15.80	15.80
10 Yard waste Component	6.00	N/A
11 Recycle Component	4.03	4.44

12 (See Exhibit A).

13 King County's 1989 and 1992 Comprehensive Solid Waste Manage-
14 ment Plans ("Comp. Plans") established goals for the reduction of
15 the waste stream in King County. King County's goal is to reduce
16 and recycle 65% of its waste stream by the year 2000 with interim
17 goals of 35% by 1992 and 50% by 1995. (See Exhibit B). King County
18 met its 1992 goal of 35% primarily due to the expansion of residen-
19 tial curbside recycling programs county wide during the last few
20 years and the willingness of citizens to participate in recycling
21 programs and to reduce their level of garbage service. (Id.)

22 The willingness of customers to increase recycling and to
23 reduce garbage production is strongly influenced by financial
24 incentives contained in the garbage collection rate structure. Rod
25 Hansen's Declaration illustrates the direct relation between rate
incentives and waste reduction and recycling in King County and

1 other jurisdictions in this area. (See Exhibit B). Prior to the
2 implementation of rate incentives and recycling services by Waste
3 Management SnoKing and Rainier in unincorporated King County, over
4 sixty percent of customers were two-can or more customers. Since
5 implementation of those factors, almost sixty percent are now mini-
6 and one-can customers. (Id.).

7 Seattle noted a decline from an average of 3.5 33-gallon cans
8 per household to 1.0 cans per household after the implementation of
9 variable rates and a curbside recycling and yard waste program.
10 (Id.).

11 Prior to implementation of Lake Forest Park's contract with
12 Eastside Disposal, the overwhelming majority of its customers were
13 90-gallon toter customers. Following implementation of rate
14 incentives, the majority of customers had service of one can or
15 less. (Id.).

16 After the introduction of rate incentives, Mercer Island saw
17 mini-can subscriptions increase by 32% and one-can subscriptions
18 increase by 10% while two-can and three-can subscriptions fell.
19 (Id.).

20 King County cities (Bellevue, Issaquah, Mercer Island, Redmond,
21 and Renton) with substantial differentials between garbage service
22 levels recycle more (65 pounds per household) than unincorporated
23 areas with less substantial differentials (50 pounds per household).
24 (Id.). In addition, King County cities that have universal yard
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1 waste fees (i.e., yard waste is included in garbage service fees)
2 recycle over three times more yard waste (92 pounds per household
3 per month) than cities and unincorporated areas where yard waste
4 service is an added fee (28 pounds per household per month). (Id.).
5

6 When rate incentives are removed, participation in recycling
7 programs drops. In November 1993, the WUTC approved the elimination
8 of universal yard waste fees in Snohomish County, resulting in a
9 separate charge for yard waste service. Since this action was
10 taken, there has been a drop in the number of yard waste customers.
11 In Everett, there has been an 11 percentage point (almost 17%) drop
12 in the city's yard waste program. In November 1993, 66% of the
13 city's customers (3,936) participated in the yard waste program.
14 Today 55% of its customers (3,281) participate in the yard waste
15 program. In Lynnwood, there has been a 21.6 percentage point
16 (almost 30%) drop in participation in the city's yard waste program.
17 Participation in the yard waste program in August 1993 was 72.4%;
18 participation in December 1993 was 50.8%. (Id.).

19 On average, areas of King County that have stronger rate
20 incentives (i.e., a steeper percentage differential between garbage
21 service levels) recycle more. Areas that have stronger rate
22 incentives recycle 60 to 70 pounds per household per month, while
23 areas with lower rate incentives recycle 26 to 50 pounds per
24 household per month. (Id.).
25

1 Under the tariff revision that went into effect on February 15,
2 1994, Eastside's new rates do not encourage waste reduction. On the
3 contrary, they create a disincentive to waste reduction. Under the
4 old rates, a mini can customer paid \$11.64 per month for garbage,
5 recycling and yard waste service. To maintain the same service
6 level, that customer would now have to pay \$15.65 per month. The
7 same customer could save \$2.90 per month by dropping yard waste
8 service and signing up at the two can level for \$12.75.

9 King County instituted a curbside yard waste ban last October
10 (i.e., customers cannot put yard waste in with residential garbage).
11 When King County adopted the yard waste ban, it did so with the
12 assumption that citizens could subscribe to a yard waste collection
13 service and reduce their can subscription. This would reduce the
14 cost of their garbage collection, thus, providing a financial
15 incentive to subscribe to yard waste collection service. Eastside's
16 new rates penalize King County for initiating such a ban. In
17 combination, the yard waste ban and the new fees will encourage
18 individuals to behave illegally. It is relatively simple for people
19 to hide much yard waste among their garbage. The new rates give
20 them the financial incentive to do so. The anticipated increased
21 illegal activity will result in yard waste being deposited at Cedar
22 Hills and increased enforcement cost incurred by King County in an
23 effort to prevent such activity. (Id.).

1 Under the new rates, a one-can customer will pay less for
2 three-can service (\$15.80 per month) than he or she would for one
3 can service plus yard waste service (\$16.90 per month). At the same
4 time, a three-can customer, who can set out almost five times the
5 amount of garbage as a mini can customer, will see no increase in
6 his or her garbage bill. (Id.).

7 Under the new rates, the price per gallon of garbage service
8 drops the higher the service level. In other words, a customer pays
9 more per gallon of garbage capacity at the mini-can level than if he
10 or she were a three-can customer. Under the new rates, this
11 difference will be dramatic:

	Old Rates Cost/Gallon -----	New Rates Cost/Gallon -----
Mini Can	\$.30	\$.53
One Can	.28	.36
Two Cans	.19	.21
Three Cans	.16	.16

16 (Id.).

17 Lisa Skumatz, Ph.D, brings a national perspective to the issue
18 of rate incentives. She has conducted detailed studies of the
19 reaction of residential customers to incentive-based rates. Based
20 upon those studies, she has determined that customers react to rates
21 and that customers will change their behavior to reduce bills.
22 (Exhibit C). She has analyzed Eastside's new rates and concludes
23 that the incentives established by those rates are directly contrary
24 to the goals of waste reduction and recycling. (Id.).

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1 II. ARGUMENT

2 A. WUTC Reconsideration or Rehearing.

3 Rules relating to procedure for the WUTC provide for the
4 reconsideration of a final order of the WUTC. See WAC 480-09-810.
5 The rules also provide for the rehearing or reopening of commission
6 matters and for the amendment or rescission of final orders of the
7 WUTC. See WAC 480-09-820 and 480-09-815. The present matter is
8 unusual. It is unclear precisely what procedure applies. King
9 County is filing this petition with the WUTC in an effort to have
10 the WUTC revisit more fully the issues raised in connection with TG-
11 931585.

12 WAC 480-09-810 states that a petition for reconsideration is
13 deemed denied if the WUTC does not within twenty days from the date
14 the petition is filed dispose of the petition or serve the parties
15 with written notice specifying the date by which it will act on the
16 petition. Therefore, King County respectfully requests that the
17 WUTC respond to this petition within twenty days by acting on it or
18 specifying a date by which it will act upon it. If the WUTC does
19 not respond within twenty days, King County will consider this
20 petition denied.

21 King County has elected to exhaust its administrative remedies
22 and has not sought judicial review of the WUTC's order revising
23 Eastside's tariff at this time. Thus, King County brings this
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1 petition for reconsideration and, in the alternative, for rehearing
2 and amendment or rescission of the tariff revision.

3 B. The WUTC Has Ignored Its Statutory Mandate.

4 The legislature has given the WUTC the authority to supervise
5 and regulate solid waste collection companies operating within the
6 State of Washington. See RCW 81.77.030. However, that authority is
7 not without boundaries.

8 Rate-making is a legislative act. State v. Department of Public
9 Service, 19 Wn.2d 200, 219, 142 P.2d 498 (1943). The legislature
10 may delegate authority to an agency to set rates; however, that
11 agency is not given unbridled discretion. It must act within its
12 delegated statutory authority. Courts have recognized the WUTC's
13 broad generalized powers in rate setting matters; nonetheless, the
14 WUTC must act within its statutory authority in such matters.
15 Jewell v. Washington Utilities & Transportation Commission, 90 Wn.2d
16 775, 776-77, 585 P.2d 1167 (1978).

17 It is axiomatic that an administrative agency cannot exceed its
18 statutory authority. A rule, order or other action that exceeds the
19 agency's statutory authority is invalid. See RCW 34.05.570(2)(c)
20 34.05.570(3)(b), and 34.05.570(4)(c)(ii). Likewise, agencies do not
21 have the power to make rules which amend or change statutes. Bird-
22 Johnson Corp. v. Dana Corp., 119 Wn.2d 423, 428, 833 P.2d 375
23 (1992); Washington Federation of State Employees v. Personnel Board,
24 54 Wn. App. 305, 308, 773 P.2d 421 (1989).

1 In this instance the relevant statutory language states:

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

4 (5) By requiring compliance with local solid waste
5 management plans and related implementation ordinances;

6 (6) By requiring certificate holders under chapter 81.77
7 RCW to use rate structures and billing systems consistent with
8 the solid waste management priorities set forth under RCW
9 70.95.010 and the minimum levels of solid waste collection and
10 recycling services pursuant to local comprehensive solid waste
11 management plan....

12 RCW 81.77.030 (emphasis added).

13 C. Eastside's New Rates Are Inconsistent With The Solid Waste
14 Management Priorities Set Forth Under RCW 70.95.010.

15 The Legislature has established priorities for solid waste
16 management in Washington:

17 The following priorities for the collection, handling, and
18 management of solid waste are necessary and should be followed
19 in descending order as applicable:

20 (a) Waste reduction;

21 (b) Recycling, with source separation of recyclable
22 materials as the preferred method . . .

23 RCW 70.95.010(8).

24 The next section of the statute establishes a state goal of
25 achieving fifty percent recycling by 1995. RCW 70.95.010(9).

Eastside's new rates are not consistent with the state's
primary solid waste management goals. They will not encourage waste
reduction and recycling; rather they will discourage these activi-
ties. The evidence shows that positive rate incentives have reduced

1 waste disposal and encouraged recycling. This has been the
2 experience in unincorporated King County, Seattle, Lynnwood, Mercer
3 Island, Bellevue, Issaquah, Redmond, and Renton. (See Exhibit A).
4 This has also been the experience outside this region. (See Exhibit
5 C). It is irrefutable that customers respond to positive rate
6 incentives by reducing waste and increasing recycling.

7 When rate incentives are removed, participation in recycling
8 programs drops. Everett and Lynnwood observed substantial decreases
9 in the numbers of citizens participating in yard waste programs when
10 universal yard waste fees were eliminated. (See Exhibit B).
11 Eastside's new rates will likely have an even greater negative
12 effect upon levels of waste reduction and recycling in its service
13 areas.

14 Eastside's new rates penalize those customers who have done the
15 most to reduce waste and to recycle. A mini-can customer will
16 experience a 76% increase in the cost per gallon of garbage
17 collected. Although not as substantial an increase as experienced
18 by a mini-can customer, a one-can customer will experience the still
19 significant increase of 28%. At the same time, a two-can customer
20 will see only a 10% increase, and the three-can customer will see no
21 increase in the cost per gallon of garbage collected. This sends
22 customers a strong message that waste reduction and recycling will
23 not be rewarded; rather they will be penalized. As Dr. Skumatz
24 states, "Customers who produce low levels of garbage through careful
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1 buying, recycling, and yard waste separation will pay higher bills
2 than those who simply throw all their garbage in the trash." (See
3 Exhibit C).

4 The new rates also set up incentives for customers to illegally
5 place yard waste with their garbage. (See Exhibit B).

6 A rate structure that contains these strong disincentives to waste
7 reduction and recycling is not consistent with the priorities
8 established in RCW 70.95.010; it is contrary to those priorities.

9 D. Eastside's new rates do not comply with local solid waste
10 management plans or with related implementation ordinances.

11 Eastside's new rates do not comply with local solid waste
12 management plans or with related implementation ordinances;
13 therefore, they do not comply with RCW 81.77.030(5). King County's
14 1989 and 1992 Comp. Plans have set a goal to reduce and recycle 65%
15 of the unincorporated King County's waste stream by the year 2000.
16 Achievement of that goal depends upon the willingness of King County
17 citizens to reduce their level of garbage service and to participate
18 in recycling programs.

19 Eastside's new rates jeopardize the County's ability to meet
20 its goal because they remove the financial incentive to reduce the
21 waste stream. The experience of King County, Seattle and other
22 regional jurisdictions shows that customers respond to these
23 financial incentives. (See Exhibit B). The same result applies
24 nationally. (See Exhibit C). Eastside's new rates go beyond
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1 removing financial incentives for waste reduction and recycling
2 because, as described above, they create incentives for increased
3 waste disposal and reduced recycling.

4 King County has adopted ordinances to implement achievement of
5 the goals contained in the Comp. Plans. King County Code (KCC)
6 10.18.020 states in relevant part:

7 Certificate holders under chapter RCW 81.77 shall use rate
8 structures and billing systems consistent with the solid waste
9 management priorities set forth under RCW 70.95.010 and the
10 minimum levels of solid waste collection and recycling services
11 pursuant to the local comprehensive solid waste management
12 plan, as required by RCW 81.77.

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

16 1. A mini-can (10-20 gallon container) rate to reward
17 people who reduce their level of solid waste collection
18 service. . .

19 5. A rate structure designed to provide customers with
20 adequate options and incentives to reduce their level of solid
21 waste collection service as a result of their participation in
22 waste reduction and recycling programs. . .

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

1 consistent with the policies set forth in this chapter, and
2 that meet the minimum percentages specified in this section.

3 KCC 10.18.020.

4 King County does not question the WUTC's authority to set
5 rates. King County's concern in this instance is that the WUTC has
6 ignored the Comp. Plans and King County ordinances implementing the
7 goals established in the Comp. Plans, which is directly contrary to
8 the statutory mandate of RCW 70.95.010(5) and (6). By establishing
9 rates that are contrary to that mandate, the WUTC has acted outside
10 its statutory authority.

11 III CONCLUSION.

12 When it established Eastside's new rates, the WUTC ignored the
13 statutory requirements of RCW 81.77.030 and the priorities set forth
14 in RCW 70.95.010. As a result, the WUTC acted beyond its statutory
15 authority and the rates established are invalid. Accordingly, King
16 County respectfully requests that the WUTC reconsider Eastside's
17 tariff revision in accordance with RCW 81.77.030 and RCW 70.95.010.

18 DATED this 18th day of February, 1994.

19 Respectfully submitted,
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MEMORANDUM IN SUPPORT OF
PETITION FOR RECONSIDERATION, AND
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