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**ORIGINAL** STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

	)	
	)	Docket No. TG-971167
	)	
In the Matter of the Petition of	)	FINAL STATEMENT OF FACTS
Recycling and Disposal Systems, Inc.	)	(DELETING TEXT TO WHICH
for a Declaratory Order	)	OBJECTION WAS MADE AND
	)	SUSTAINED)
	)	
	)	

For the convenience of the Commissioners, the Administrative Law Judge and the parties, we submit the following finalized Statement of Facts in this case, deleting therefrom the text to which objection was made by Staff and sustained by the Administrative Law Judge:

**STATEMENT OF FACTS**

The following facts and circumstances are accepted in lieu of, and in substitution for, testimonial or documentary evidence:

- At least as long ago as 1951, the City of Bellingham ("City") contracted with City Sanitary Service (Sanitary Service Company's predecessor in interest) for the collection of residential and commercial solid waste within the City. The agreement included a provision for rates for collection of both types of waste. The agreement was for ten years and also required operation and maintenance of a sanitary landfill on a site furnished by the City.

1 2. In 1959, the City and City Sanitary Service renewed their agreement for  
2 collection of both residential and commercial waste. Both this and the predecessor  
3 agreement allowed the City, upon one year's notice, to take over collection and  
4 disposal of all solid waste. The contract term was seven years.

5 3. In 1965, the City expanded the site for the sanitary landfill, by agreement with  
6 Georgia-Pacific Corporation, to be used for "disposal of all wastes collected in the  
7 City of Bellingham."

8 4. In 1966, the City and Sanitary Service Company ("SSC") renewed the  
9 agreement once again in a brief two-page contract. The agreement was limited to  
10 residential collection, but the disposal site was still to be operated by SSC. The term  
11 of the agreement was five years.

12 5. In 1971, the City extended the existing contract for two years.

13 6. In 1973, the City by contract extended the agreement until such time as the  
14 existing disposal site could no longer be used, or, if the City found a new disposal site,  
15 until July 1974 -- whichever event came first.

16 7. Then, in 1974, the City entered into an agreement with SSC and Wilder  
17 Construction Company ("Wilder")-- the predecessor in interest of Thermal Reduction  
18 Company ("TRC"), which in 1990 changed its name to Recomp of Washington, Inc.  
19 ("Recomp"). Wilder and the partnership thereby formed jointly agreed not only to  
20 institute and operate "a complete collection and disposal service for all residential  
21 solid waste in the City of Bellingham and to furnish all transportation facilities and  
22 related services required therefor," but also to provide "a site for the disposal of  
23 commercial solid waste generated within the city as well as a place suitable for the  
24 disposition of stumps, demolition material and similar debris." Additionally, the City  
25 agreed to purchase and have constructed on the Wilder site six 12 1/2-ton incinerator  
26 modules., to be operated for the City by Wilder. The term of the contract was fifteen  
27 years.

28 8. At all times relevant hereto, both residential and commercial solid waste  
collected within the City has been delivered to a disposal facility specified by the City.

1 9. In conjunction with its 1974 agreement with SSC and Wilder, the City adopted  
2 an ordinance setting rates for residential garbage collection and restricting collection  
3 of solid waste from residences (and certain apartments) to the company having a  
4 collection contract with the City.

5 10. Since 1974, collection rates for residential solid waste within the City have been  
6 determined and adjusted annually in accordance with provisions of the contracts to  
7 which the City and SSC have been parties. Rate adjustments in each case are initially  
8 reviewed by the City's Department of Public Works and then presented to the  
9 Bellingham City Council, which generally adopts them as an ordinance. Since 1974,  
10 the City on at least eleven occasions has applied the formula for residential collection  
11 rate adjustment contained in its agreements with SSC so as to adjust SSC's rates.

12 11. Since 1974 at least, collection rates for commercial solid waste collected by  
13 SSC within the City have been determined by the Commission.

14 12. Since 1974, the City has contracted out to Wilder and its successor in interest,  
15 Recomp, disposal service for all solid waste (both residential and commercial)  
16 generated within the City. Disposal charges for all City solid waste during this period  
17 have been established and adjusted in accordance with the terms of those contracts.  
18 Each of the disposal and collection agreements referenced in the paragraphs above  
19 were executed in the name of the City by the mayor. As a city of the first class in  
20 Washington and pursuant to Bellingham's Charter, the mayor is authorized to act on  
21 administrative matters on behalf of the City. The City administration nevertheless has  
22 submitted all disposal contracts with Wilder and Recomp to the City Council for its  
23 approval before the mayor has signed them.

24 13. In 1982, the City entered into separate agreements with the parties. As to  
25 Recomp the parties agreed, among other things, that the City would designate which  
26 commercial haulers could use the facility, and that the contract was restricted to  
27 typical residential and commercial solid waste. The agreement with SSC made certain  
28 rate adjustments, and it also provided as follows:

2. DISPOSAL AT THERMAL REDUCTION FACILITY: For the  
term of this agreement, it shall be the obligation of the Company to  
exclusively use the Thermal Reduction disposal facility for disposal

1 of all the refuse and solid waste it collects within its  
2 Bellingham/Whatcom County service area....all industrial and  
3 commercial wastes collected within the City of Bellingham and  
4 Whatcom County which is acceptable to Thermal Reduction for  
incineration....

5 Section 4 of the 1982 agreement, after dealing with adjustments to be made in the  
6 SSC's rate for residential collection, states that following notification to SSC by the  
7 City of a disposal rate change:

8 It shall be the obligation of the Company to seek rate adjustment as necessary  
9 for its other services with the Washington Utilities and Transportation  
10 Commission. The City agrees to assist the Company with its petition for  
11 increases if requested.

12 14. A 1984 modification to the agreement with SSC also contained the above  
13 provisions.

14 15. In July 1985, the separate agreements which the City had with SSC and  
15 Recomp were amended by a single document to which all three of them were parties.  
16 Among other things, the 1985 amendments specified the price which SSC was to pay  
17 Recomp for Recomp's services and which SSC in turn was permitted to collect from  
18 the City, required Recomp to accept and process all of the City's incinerable solid  
19 waste (both residential and commercial); extended the term of the 1982 Disposal  
20 Agreement until May 1, 1996; conveyed title to the City-owned incineration  
21 equipment at Recomp's facility to Recomp but gave the City the option to purchase  
22 Recomp's facility; eliminated any liability by the City on account of the diversion  
23 from the waste stream of any source-separated household or commercial waste; and  
24 required any business replacing SSC as the collector "of the City's solid waste stream"  
25 to be added as a party to the parties' agreement.

26 16. At the time the foregoing amendments were made, Recomp's facility provided  
27 only incineration service; Recomp in 1989-90 added to its facility a transfer station,  
28 where solid waste is dumped from collection vehicles and transferred by Recomp into  
containers for long-haul to landfill.

1 17. In October 1985, SSC and the City extended their 1982 agreement until 1989.  
2 The recitals to this contract extension described the 1985 City/Recomp agreement as  
3 "a long term disposal arrangement for the City's residential and commercial refuse."  
4 Additionally, the disposal site destination for "all refuse and solid waste the Company  
5 collects within the City of Bellingham" continued to be Recom, unless the City  
6 directed otherwise.

7 18. In 1989, the City and SSC entered into another contract for collection of solid  
8 waste for a term of ten (10) years, terminating on December 31, 1999. Among other  
9 things, the contract requires SSC to provide the City with complete collection service  
10 for all residential solid waste and specifies the means by which the rate to be charged  
11 by SSC for collection of residential waste is to be established and adjusted. The  
12 contract between the City and SSC includes as Section 5.1 a provision stating:

13  
14 The City shall select and direct [SSC] to a site(s) for disposal for all  
15 solid waste collected by the Contractor in the City of Bellingham.

16  
17 The contract includes a provision acknowledging that SSC's rates "for non-residential  
18 solid waste collected in the City . . . are under the jurisdiction of the Washington  
19 Utilities and Transportation Commission."  
20

21 19. The Commission has set rates for collection of commercial solid waste within  
22 the City since 1961. The Commission has had knowledge of the contracts by which  
23 the City has established a system for managing solid waste generated within its  
24 boundaries. There is evidence at least since 1979 that the Commission has in all rate  
25 filings made by SSC permitted SSC to include in its base the disposal charges  
26 incurred by SSC in delivering to Recom commercial solid waste collected by SSC  
27 within the City.

28 20. [Paragraph Deleted--Objection To Paragraph Sustained.]

21 21. The City and Whatcom County in 1989 entered into an interlocal agreement to  
22 fulfill the City's obligations under Chapter 70.95 RCW for adoption of a local solid  
23 waste management plan. That Interlocal Agreement, as amended in 1991, specifically  
24 provided that rights and obligations conferred by that agreement upon the County  
25 (including the obligation to adopt a solid waste "flow control" ordinance) were not to  
26

1 supersede or interfere with the City's right to administer, interpret and enforce the  
2 provisions of the City's contractual agreements with Recomp and SSC. At the time  
3 the Interlocal Agreement was signed, and since that time, the City has been financially  
4 involved in improvements to the Recomp facility and other remedial environmental  
5 measures, and has made available to its citizens educational programs, moderate and  
6 hazardous waste disposal facilities, and a site for delivery of source-separated yard  
waste.

7 22. In May 1990, the State of Washington Department of Ecology approved the  
8 1990 Comprehensive Solid Waste Management Plan Update - Whatcom County (the  
9 "1990 Plan") which had been submitted by Whatcom County and incorporated cities  
10 within that county, including the City of Bellingham. Chapter 6 of the 1990 Plan,  
11 dealing with collection, states that "[i]n the City of Bellingham, collection service has  
12 long been provided through private contracting," and included as a recommendation  
13 the continuation of "the existing solid waste collection service structure in both the  
incorporated and unincorporated areas of Whatcom County." The 1990 Plan is still  
in effect today.

14 23. In 1993, the City and Recomp further amended their 1982 agreement,  
15 executing an Amended And Restated Solid Waste Disposal Agreement dated  
16 December 22, 1993. By that document, the City exercised its option to extend the  
17 parties' agreement through April 30, 2006; substituted in place of the adjustable  
18 disposal fee which had been provided for by the 1989 amendments a fixed disposal  
19 fee \$100.00 per ton (which included a component valued at an initial \$6.58 per ton to  
20 cover costs of landfilling ash from the incineration of residential and commercial City  
21 waste which Recomp was required to store in a permitted temporary ash storage  
22 facility on its property at a time when there was no landfill capable of accepting that  
23 ash); required Recomp as part of the services for which that fixed price was charged  
24 to provide processing for all "Clean Green" yard waste delivered to Recomp from  
25 the City's Lakeway yard waste center (which has accepted and continues to accept  
26 yard waste from both homeowners and businesses); put a cap on the tonnage of  
27 medical waste which Recomp could accept from others and incinerate; eliminated the  
28 City's option to purchase Recomp's facility. The 1993 amendments made it clear  
that the City is required "by ordinance, contract or other effective means" to cause  
all solid waste generated within the City (including both residential and commercial)  
to be delivered exclusively to Recomp's facility.

1 24. The City and Recomp have just recently further amended their contract. The  
2 disposal rate at the Recomp facility for the balance of the contract (until 2006) will  
3 now be \$69.50/ton. To this will be added a \$6.84 charge for Department of Ecology-  
4 mandated removal of incinerator ash for which the City is responsible. Recomp will  
5 continue to accept yard waste material at a \$65.00/ton rate, unless the City decides to  
6 dispose of this material itself or contracts with another less expensive disposal facility.

7 25. The \$6.84 per ton of solid waste delivered to Recomp pursuant to its contract  
8 with the City was intended to provide Recomp with funds sufficient to fulfill  
9 Recomp's obligation under that contract to remove incinerator ash which Recomp has  
10 stored in a temporary ash storage facility which Recomp constructed pursuant to its  
11 agreement with the City. Recomp is required both by its agreement with the City,  
12 and by separate agreement with the DOE, over time to remove and permanently  
13 dispose of the ash which it stored for the City in that temporary facility.

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

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

28 28. In the spring of 1997, RDS began soliciting waste from commercial drop box  
customers serviced by SSC. A number of commercial drop box customers used  
forms provided to them by RDS and directed SSC to deliver their waste to RDS.  
RDS offered to provide disposal service for solid waste in commercial drop boxes at

1 a price of \$65.00 per ton, and committed to maintain that price for at least a year, if  
2 the offeree would commit for at least a year to instruct SSC to deliver such drop  
3 boxes to RDS.

4 29. SSC sought input informally from City staff, who relayed to SSC their opinion  
5 that SSC was obligated to deliver all waste generated in the City, including drop box  
6 waste, to the City-designated facility. Therefore, City staff was concerned that SSC  
7 would be in default of its contract with the City if it were to deliver to RDS waste  
8 collected from drop box customers who requested that it do so.

9 30. SSC sought input informally from Commission staff, who relayed to SSC their  
10 opinion that SSC was not obligated to deliver commercial waste to the City-  
11 designated facility. Staff took the position that the contract between SSC and the  
12 City was for residential waste only.

13 31. While the City and Recomp were in the process of negotiating amendments to  
14 their contract, however, Recomp provided the City with written notice requesting  
15 that the City defer transmittal to SSC of any written demand that SSC cease  
16 delivering solid waste from commercial drop box customers to RDS. Between  
17 March 7, 1997 and September 10, 1997, over twenty drop box customers in the City  
18 directed SSC to deliver their waste to RDS, which SSC has done. There is nothing  
19 in any agreement to which SSC is a party which requires SSC to deliver drop boxes  
20 which it collects within the City to disposal facilities specified by those to whom it  
21 provides drop box collection service.

22 32. At a meeting attended by the City and SSC at the Attorney General's offices in  
23 Seattle, Washington on May 7, 1997, the Secretary of the Commission, with staff  
24 present, indicated that if the City and Recomp were to amend their agreement to  
25 provide for a market rate, and the City directed SSC to take all waste to Recomp, the  
26 Commission would probably not take action against SSC if SSC thereafter were to  
27 resume delivery to Recomp of the drop boxes in question. The Secretary also  
28 suggested that the City could address the issue of historical costs (disposal of ash in  
the temporary ash storage facility) by means of a separate assessment or tax on the  
collection of all solid waste, so as to have no effect on disposal charges, rather than  
adding such costs to the disposal charges of the City's designated disposal facility.



1 33. Following the approval by the City Council and execution by the City Mayor  
2 of the amendments to the contract between Bellingham and Recomp, in a letter dated  
3 September 10, 1997, the City instructed SSC that it was to deliver all waste collected  
4 in the City, including drop box waste, to Recomp. (See letter from John M. Garner  
5 attached as Exhibit 11).

6 34. In a recent letter, Gene Eckhardt, Assistant Director of Solid Waste for the  
7 Commission, informed SSC of staff's position: "Staff believes Sanitary Service  
8 must deliver drop box waste to RDS if the customer instructs Sanitary Service to  
9 deliver the waste to RDS."

10 35. If SSC fails to resume delivery of all commercial waste to Recomp, it faces the  
11 possibility that the City may declare it to be in default under its contract with the  
12 City. Section 17.2 of the contract between the City and SSC provides that:

13 Upon receipt by the Contractor [SSC] of [a] declaration of default, the  
14 Contractor agrees that it will discontinue the work hereunder, whereupon the  
15 surety on the bond [which SSC must provide] may, within ten (10) days of  
16 such declaration of default, assume the work that the Director of Public Works  
17 has ordered discontinued, and proceed to perform the same at its own cost  
18 and/or the City may proceed against what other forms of financial assistance  
19 has been approved in lieu of a surety bond.

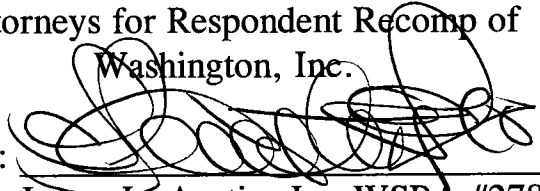
20 Section 17.4 goes on to provide that if the surety declines to take over SSC's  
21 business, then " the City shall have the right to take possession of and to use any or  
22 all of the vehicles and materials used by the Contractor in the performance of this  
23 Agreement, and to procure other vehicles and equipment necessary for completion of  
24 this Agreement, and to charge the cost of such items to the Contractor."  
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1 36. The City does not have an ordinance that directs solid waste to a designated  
2 disposal facility.

3 DATED this 6th day of October, 1997.

4  
5 KARR TUTTLE CAMPBELL,  
6 A Professional Service Corporation  
7 Attorneys for Respondent Recomp of  
8 Washington, Inc.

9 By:   
10 James L. Austin, Jr., WSBA #2786

11 CERTIFICATE OF SERVICE

12 I hereby certify that I have this day served the foregoing document upon  
13 petitioner Recycling and Disposal Services, Inc. and upon all of the additional parties  
14 and/or other persons in this proceeding listed on the below by depositing a copy of  
15 said document in the United States mail, addressed as shown on said list, with first  
16 class postage prepaid:

17 Service Effected Upon:

By Mailing Copy Addressed To:

18 Recycling and Disposal Services,  
19 Inc.

Robert A. Rowland, Esq.  
Attorney At Law  
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20  
21 Commission Staff

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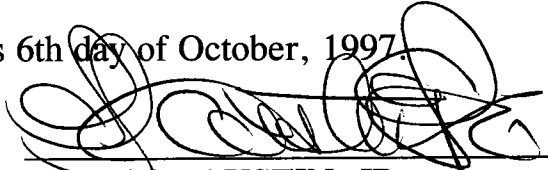
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9657 Levin Rd. N.W., Suite 240  
Silverdale, WA 98383

DATED at Seattle, Washington, this 6th day of October, 1997

  
\_\_\_\_\_  
JAMES L. AUSTIN, JR.