

SUMMIT LAW GROUP

*a professional limited liability company*

POLLY L. MCNEILL  
DID: (206) 676-7040  
E-MAIL: pollym@summitlaw.com

October 7, 1997

**Via Facsimile**  
**Original Via U.S. Mail**

Mr. Steve McLellan, Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

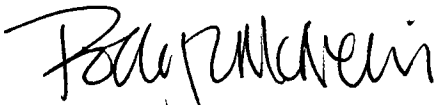
**Re: In Re the Petition of Recycling and Disposal Services, Inc., for a  
Declaratory Order; Docket No. TG-971167**

Dear Mr. McLellan:

Enclosed are the original and four copies of the Opening Brief of Sanitary Service Company and Certificate of Service in the above-referenced matter. Please accept the same for filing.

Sincerely yours,

SUMMIT LAW GROUP PLLC



Polly L. McNeill

Enclosures

cc: All Parties

RECEIVED  
97 OCT -8 AM 8:59  
STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

1505 WESTLAKE AVE N SUITE 300  
SEATTLE, WASHINGTON 98109  
telephone 206 281-9881  
facsimile 206 281-9882

000584

RECEIVED  
97 OCT -9 AM 8:59  
STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION  
COMMISSION

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of )  
Recycling and Disposal Services, )  
Inc., for a Declaratory Order )  
\_\_\_\_\_ )  
Docket No. TG-971167  
OPENING BRIEF OF  
SANITARY SERVICE COMPANY

COMES NOW Sanitary Service Company, Certificate of Convenience and Necessity No. G-14, by and through Polly L. McNeill of Summit Law Group, and respectfully submits the following Opening Brief in Docket No. TG-971167.

**A. INTRODUCTION**

At its heart, this matter centers around the need to reconcile municipal powers over solid waste with the authorities granted by the legislature to the Washington Utilities and Transportation Commission (“WUTC” or “Commission”). Sanitary Service Company (“SSC”) finds itself in the middle of other parties’ disputes about how the two governmental entities should exercise their respective powers, and welcomes the relief that a ruling from the WUTC may afford. Regardless of the outcome, SSC – and indeed, all the parties to this action – will be better off having certainty about how to proceed in the future.

SSC believes that the ratepayers and citizens of Bellingham would be best served if the WUTC decided in ruling on this Petition that 1) the City of Bellingham has acted within its statutory and constitutional authority by creating through contract a system for disposing of commercial solid waste; 2) that the City may direct SSC to deliver commercial waste to the

City's designated facility, both container and drop box; and 3) that, in regulating the collection of commercial solid waste in Bellingham, the WUTC will continue to include in SSC's collection rates disposal fees at facilities to which SSC is required by the City to deliver its waste, just as it has in the past.

## **B. RECONCILIATION OF RESPECTIVE AUTHORITIES - LEGAL BACKGROUND**

### **1. Municipal Authority.**

Municipalities are authorized to control the disposition of waste generated within their boundaries. Setting up a system for solid waste handling through contracts is completely consistent with municipal authority under state law. See RCW 35.21.152.<sup>1</sup> Such authority is also conveyed to cities directly by the Washington Constitution, under which municipalities are granted police powers over solid waste. Wash. Constitution, art. 11, sec. 11; Spokane v. Carlson, 73 Wn.2d 76, 83 (1968).

Under these authorities, Bellingham has since at least 1951 contracted with private parties for solid waste handling services. Acting on behalf of its citizens, the City has historically negotiated service agreements that involve both collection and disposal of solid waste. There can be no dispute that Bellingham was authorized to enter into the various contracts with the parties regarding solid waste handling. Even if there were no statutory provision specifically granting this power to Bellingham, its constitutional powers allow for it.

---

<sup>1</sup> The pertinent provisions of RCW 35.21.152 provide: A city or town may enter into agreements with public or private parties to: (1) construct, lease, purchase, acquire, manage, maintain, utilize, or operate publicly or privately owned or operated solid waste handling systems, plants, sites or other facilities; (2) establish rates and charges for those systems, plants, sites, or other facilities; (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.

Originally, Bellingham had a contract for collection of both residential and commercial waste, but its 1966 agreement with SSC for the first time limited the collection services to residential only. Since then, and most recently in 1989 following a bid proposal, the City has contracted with SSC for collection of waste from residential customers.

On a similar track, for many years Bellingham has contracted with a private party for disposal. In exchange for obtaining for the citizens of Bellingham a long-range assurance of disposal capacity at a bargained-for rate, the City agreed to direct its waste to Recomp (and its predecessors in interest). As one means of meeting its end, the City's contract with SSC includes a provision that requires SSC to deliver all waste which it collects in Bellingham to the facility designated by the City. The designation provision is not limited to residential waste.

Contracting for solid waste handling is only one part of the Bellingham story. Bellingham not only has the right to ensure that solid waste is managed properly within its boundaries, it has the obligation. Under Ch. 70.95 RCW, local governments are required to plan for how solid waste will be managed. RCW 70.95.020 provides that while private entities may contract with local government for solid waste handling, the primary responsibility is that of the local government. Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 40 (1994) ("disposal of solid waste is a governmental function," quoting Citizens for Clean Air v. Spokane, 114 Wn.2d 20, 39 (1990), King Cy v. Algona, 101 Wn.2d 789 (1984), and Shaw Disposal, Inc. v. Auburn, 15 Wn. App. 65 (1976)).

To meet its planning obligations, Bellingham entered into an interlocal agreement with Whatcom County to prepare a joint city-county plan for solid waste management. The Plan, which was approved by the Department of Ecology in 1990, acknowledged Bellingham's contractual arrangements and recommends to "Continue the existing solid waste collection

service structure in both the incorporated and unincorporated areas of Whatcom County.” It identifies Recomp as one of the existing solid waste facilities.

For both the contracts and the Plan, the citizens of Bellingham have been informed through requisite public notices and proceedings. The contracts were all duly approved and executed pursuant to Bellingham’s charter. Whether by ordinance or resolution, by Council approval or Mayorial execution, entering into these contracts involved a public process which afforded the citizens of Bellingham an opportunity to be informed and provide input on the City’s contractual activities. The Plan, too, involved public approval and comment procedures, in accordance with Ch. 70.95 RCW.

**2. WUTC Authority.**

In 1961, Ch. 81.77 RCW was enacted, giving the WUTC authority to regulate the transportation companies in the business of providing solid waste collection services. The WUTC supervises and regulates solid waste collection companies by fixing and altering its rates, and generally by overseeing service and safety of operations.

The statute does not expressly grant the WUTC responsibility for regulating solid waste disposal, and it is only through its ratemaking authority that the WUTC considers disposal operations.

The WUTC has general statutory authority to establish rates that are “just, fair, reasonable and sufficient.” RCW 81.77.030. However, in most cases disposal fees are usually “passed through” to the collection company’s rates. Where the disposal charges are incurred at a facility designated by a local jurisdiction under a local comprehensive solid waste management plan or ordinance, the WUTC is required to include the fees in the base for collection rates. RCW 81.77.160(1)(a). In addition, all known and measurable costs related to implementation of

the city comprehensive solid waste management plan are to be included in the rate base. RCW 81.77.160(1)(b). When these circumstances are present, the WUTC's inquiry is limited to determining whether the costs fall under either of these specific provisions, and it may not evaluate the reasonableness of the charges. Waste Management of Seattle, Inc. v. WUTC, 123 Wn.2d 621, 630 (1994).

RCW 81.77.020 provides an exemption to the WUTC's statutory responsibilities, and states:

[T]he provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste.

Thus, the WUTC may not regulate the operations of a solid waste company operating pursuant to such a contract.

With regard to its oversight of SSC's operations in Bellingham, the WUTC has passed through the disposal charges at the facility designated by the City. Evidence is only available back to 1979, but in no instance has the WUTC refused full approval of those disposal fees from that time to the present.

**C. RECONCILIATION OF RESPECTIVE AUTHORITIES - LEGAL ANALYSIS**

**1. Overview.**

While the WUTC has never asserted direct jurisdiction over disposal, the issues in this case revolve around disposal charges that are included in SSC's regulated commercial collection rates. In a sense, SSC is caught in the struggle between the City and the Commission to reconcile their two respective spheres of control.

In the past, the interrelationship of the City's contracts and the WUTC's authorities has worked without issue. Since at least 1979, the WUTC has always passed through to SSC's

collection rates the disposal charges at the facility designated by the City, without regard to the source of the waste stream. SSC has delivered commercial drop box waste to the City's designated facility, and identified those disposal fees as Item 230 in the tariffs approved by the WUTC.

Recently, however, developments have occurred in and around Bellingham that trigger this proceeding. Perhaps the most important is that Petitioner RDS itself commenced operation of its transfer station. As a business hoping to compete with Recomp's existing facility, RDS is understandably intent on getting as much of the City's waste stream as possible. In the spring of 1997, RDS began soliciting waste from commercial drop box customers serviced by SSC. Using forms provided to them by RDS, the customers directed SSC to deliver their waste to RDS.

This has resulted in a Hobson's Choice for SSC: the company must either incur costs that may not be allowed in its rate base, thus causing a significant and injurious loss of revenue - or it must violate its agreement with the City, which may potentially lead to an immediate and incurable declaration of default.

SSC submits that the WUTC has de facto already ruled on these issues. In the context of numerous rate filings from SSC, the Commission and the City have worked out a balance of responsibilities that has served the mutual goals of protecting the ratepayers and serving the citizens of Bellingham. The Commission has inferred its acknowledgement of Bellingham's responsibility to manage solid waste disposal, just as the City has deferred to the agency's oversight of commercial collection. To achieve this balance, the Commission has historically passed through the disposal charges at the designated facility.

SSC believes that the Commission's past practice is important. It may be that the Commission is estopped from reconsidering its pattern of behavior, and to do so now may be

arbitrary and capricious. Regardless of those legal arguments, though, SSC submits that the Commission's historical acts are evidence of what would be reasonable to expect from the agency now and in the future. The only thing missing has been a clear statement by the WUTC of its rationale behind this practice, an element that can be provided by this proceeding and thereby meaningfully guide the parties' future behavior.

SSC therefore believes that the issue before the Commission in this Petition is whether the WUTC should now change its historic manner by which it has reconciled its own authority with Bellingham's legitimate exercise of its powers to contract for waste disposal. The specific question is whether the WUTC should include the disposal charges at the designated site in SSC's collection rates. A variation of this question is whether the WUTC should require SSC to deliver commercial drop box waste to the facility designated by the customer, or continue its practice of allowing the City to exercise its contractual right to have all waste generated within its boundaries delivered to its designated facility by SSC.

## **2. Possible Theories of Reconciliation.**

There are several plausible legal grounds for the WUTC's historical practice: whether it is because the contract for disposal between Bellingham and SSC is exempted from the Commission's jurisdiction under RCW 81.77.020; or whether it is because the City's contractual scheme is tantamount to a required pass-through under RCW 81.77.160; or whether it is simply because including the disposal fees at the City-designated facility in SSC's collection rates is necessary to make them "just, fair, reasonable and sufficient" – all are possible rationales for why the Commission has acted the way it has in the past, and for anticipating how the Commission may act in the future.



**a. Does RCW 81.77.020 Exempt Jurisdiction of the Commission Over the Contract Between Bellingham and SSC?**

One plausible theory for reconciling Bellingham's municipal powers with the Commission's statutory authority is that the exemption in RCW 81.77.020 applies. By the plain language of the statute, it appears to be controlling, since Section 5.1 of the contract between SSC and the City seems to be "a contract of solid waste disposal." It is noteworthy that the language of the statute refers to a disposal contract, and not a collection contract.

Where a municipality takes over all aspects of solid waste, both collection and disposal, clearly it has completely taken jurisdiction out of the Commission's hands and RCW 81.77.020 applies. This is the more familiar and typical situation.

However, the express language of the statute does not require that the city wholly "opt out" and seems to specifically contemplate what has been referred to in this case as a "partial opt out" or "split jurisdiction" situation. It may be because the facts surrounding Bellingham's contractual arrangements are relatively unique in this state that neither the Commission nor the courts have been called upon to construe RCW 81.77.020 under facts similar to those before the Commission in this case. Construction of this statutory provision appears to be one of first impression, since most local governments use flow control ordinances with or without contracts, and thus the issue of "split jurisdiction" does not arise. However, in another context one court has viewed the statutory scheme and concluded, "Thus, there is no expression of a legislative intent to provide for the regulation of garbage disposal within cities and towns." Spokane v. Carlson, 73 Wn.2d 76, 84 (1968) (discussing whether Ch. 81.77 RCW "enlarge[d] those purposes" of Ch. 81.80 RCW in the context of a misdemeanor violation for unlawfully collection garbage within the city limits) (emphasis added). Certainly, the particular facts in the case at hand appear to fit into the plain language of the statute.

Alternatively, the City has indicated its intention to also argue that, because it established a system for managing solid waste within its jurisdiction prior to the enactment of Ch. 81.77 RCW, the question is not whether it has “opted out” under RCW 81.77.020; but rather whether the City in fact relinquished only limited jurisdiction to the WUTC when the statutory scheme was enacted in the first instance. Because Bellingham had in place its “contract of solid waste disposal,” the WUTC never had authority over this aspect of SSC’s operations, according to the City. Instead, by its 1966 agreement with SSC, the City ceded to the WUTC authority over collection of commercial waste only. This position is consistent with the fact that the City’s authorities are grounded in the Constitution, and it does not need statutory authority to exercise its police powers. The Commission, on the other hand, is a creature of the legislature and has only those authorities conferred on it by statute.

This argument has appeal, at least partly because it is not likely to set any precedents elsewhere in the state. There may be other local jurisdiction that have established control over solid waste disposal through contract; but certainly few if any have done so in an uninterrupted fashion since at least 1951, as Bellingham has. This logic may provide a good rationale for why the Commission has historically included the disposal fees at the City-designated facility in SSC’s commercial collection rates, and allowed the fees as Item 230 pass-throughs, and why it may continue that practice in the future.

**b. Does Bellingham’s Contractual Arrangement Qualify for a Pass-Through Under RCW 81.77.160?**

Another rationale that could be used to support continuing to allow the disposal fees at the City’s site to be included in SSC’s collection rates is that RCW 81.77.160 applies, under one of several theories.

First, arguably the City's designated disposal contractor is indeed the facility "designated by a local jurisdiction under a local comprehensive solid waste management plan" and therefore RCW 81.77.160(1)(a) requires that the rates be passed through. While the discussion in the Plan about Bellingham is admittedly brief, the Department of Ecology apparently thought it was sufficient to meet the City's planning requirements under Ch. 70.95 RCW. And the Plan does in fact include Recomp as a designated facility. In contrast, for instance, RDS is not even acknowledged in the Plan. For this argument, it is important to note that RCW 81.77.160(1)(a) was amended in 1997 to delete the requirement "that the solid waste collection is required to use" the designated facility – merely having the facility designated under a plan is sufficient to meet the statutory standards. 1997 Wash. Laws SHB 1657 (55<sup>th</sup> Legislature).

For similar reasons, it might be argued that the disposal fees at the City-designated facility qualify as "known and measurable costs related to implementation of the approved county or city comprehensive solid waste management plan" under RCW 81.77.160(1)(b). Again, this argument is based on the Plan's identification of Recomp, and its reference to continuing the existing structure in the incorporated cities, i.e. Bellingham. The disposal charges are "known and measurable" and using the designated facility is a cost of "implementation."

Alternatively, it is possible that the City's contractual arrangements are equivalent to an "ordinance" for purposes of requiring a pass-through pursuant to RCW 81.77.160(1)(a). The various contracts were authorized by the City's legislative body and executed by the executive branch with public notice and comment, similar to an ordinance. In fact, Bellingham's scheme is more legally sound than a mere flow control ordinance which may be constitutionally invalid as in interference with interstate commerce. This is because the City has utilized contractual rather than regulatory powers to accomplish flow control objectives as a "market participant." See,

SSC Corp. v. Town of Smithtown, 66 F.3d 502 (2d Cir. 1995), cert. denied 116 S.Ct. 911 (1996); USA Recycling, Inc. v. Town of Babylon, 66 F.3d 1272 (2d Cir. 1995), cert. denied, 116 S.Ct. 1419 (1996).<sup>2</sup> It would be strange policy indeed if the City were required to pass a constitutionally-suspect ordinance in order for the WUTC to acknowledge the binding nature of its acts. It is not unreasonable to expect that the Commission continue its practice of including disposal fees at the City-designated facility on the basis of this rationale.

**c. Should the Commission Continue to Include Disposal Fees at the City-Designated Facility in SSC's Collection Rates to Make Them "Just, Fair, Reasonable, and Sufficient"?**

Finally, the Commission may wish to continue its past practice of including the disposal fees in SSC's commercial collection rates simply because to do otherwise would not result in rates that are "just, fair, reasonable, and sufficient." Certainly, there is evidence that the disposal fees at Recomp are not unreasonable. Given that the disposal charge is \$69.50 per ton with an added surcharge for the Department of Ecology's mandated removal of incinerator ash, the disposal fees are not out of line with the \$65.00 per ton being offered to City commercial customers by RDS. In fact, the Commission on September 24 approved SSC's recent filing to adjust its collection rates for this disposal fee.

There are good policy reasons for allowing rates that are established by a long-term contract, even if the disparity were significant. Such a contractual system is in the interest of the citizens of Bellingham. It must be remembered that the City entered into its original contract for disposal in order to protect against the risk of predatory pricing that could occur if only one facility were controlling the market. The contract thus ensures availability of a disposal location at a price that is reasonable, and therefore it is in the interests of not only the citizens of

---

<sup>2</sup> There is no relation between Sanitary Service Company and the "SSC Corp." in the Smithtown case.

Bellingham but also the ratepayers for the Commission to acknowledge the validity of the contract by including the fees in SSC's rates.

Also, knowing that SSC is actually incurring the disposal charges at the rates set by Recomp, the Commission would not be setting rates that are "sufficient" if it were to not allow those charges in SSC's rate base. SSC would be forced to operate at a loss, which is inconsistent with the statutory exhortation that its rates be "sufficient."

### **3. Drop Boxes.**

The Petitioner and the WUTC staff have inferred that SSC is required to deliver waste from commercial drop box customers to the disposal facility designated by them, instead of the one designated by the City. There is no good policy objective for such a position, and indeed it would wreak havoc with existing practices throughout the state if the Commission were to adopt it now.

In a letter from Gene Eckhardt, the staff stated that commercial drop box customers have the right to designate their own disposal facility, saying that "staff has long maintained that a drop box customer has the right to choose which facility a hauler will use to dispose of its waste." The letter, however, cites to no statute, regulation or Commission statement, opinion or guidance document in support of such an outrageous assertion. Indeed, the Washington Refuse and Recycling Association believes that such a position would be a significant change from the Commission's past practices. Certainly, with SSC and in Bellingham, the Commission has heretofore never taken such a stance.

The only Commission statement of policy that even touches on this subject is a guidance letter that was issued December 7, 1988 (attached). In that missive, the Commission sent a notice to all certificated haulers regarding Item 230 pass-throughs. It says nothing about the

right of customers to direct their waste. All the notice says is that, “It is the Commission’s intent that disposal fees charged to drop box users under Item 230 not exceed the actual cost to the carrier. The disposal fee represents a pass-through of costs set by agencies other than the Commission, . . . .” In the latter sentence, the Commission asserts that disposal is controlled “by agencies other than the Commission” – and thus inferring its tacit acknowledgement of the authority cities may have to direct waste to facilities at which they control the price.

Petitioner RDS has referred to RCW 36.58.060 for support. It says:

Ownership of solid waste shall be vested in the person or local jurisdiction managing disposal and/or resource recovery facilities upon the arrival of said solid waste at said facility: Provided, That the original owner retains ownership of the solid wastes until they arrive at the disposal site or transfer station or detachable container, and the original owner has the right of recovery to any valuable items inadvertently discarded; . . . .

This statute, though, is not determinative for several reasons. First, and most obviously, such an interpretation goes beyond the statute, which clearly is intended to return to the owner her inadvertently thrown away diamond ring, or some other similar situation. Second, it does not apply to Bellingham: it is located in Title 36, which governs counties. Counties do not have authority over collection of solid waste, and therefore have different concerns and considerations than cities. This statute is inapplicable to the situation before the Commission.

As discussed previously, Bellingham’s contractual arrangements are consistent with its authority and obligations under state law. When it comes to garbage, the Washington Supreme Court acknowledged that a city has the authority to exercise its police powers and, “In such circumstances, the United State Supreme Court said, the property rights of individuals must be subordinated to the general good.” Spokane v. Carlson, 73 Wn.2d 76, 79 (referring to Gardner v. Michigan, 199 U.S. 325, 50 L. Ed. 212, 26 S. Ct. 106 (1905)). In this case, Bellingham has

apparently determined that its obligation is to the citizenry as a whole, and it has effectuated that obligation through a contract process that included opportunity for public comment. If the City believes that it is an inadvertent effect of its efforts in furtherance of the general good for commercial drop box customers to pay slightly more than they otherwise might, it is authorized by statute and by constitution to do so. Bellingham has the right to control where its solid waste is disposed, and for the Commission to question that authority would seriously undermine the public policy underlying the City's contractual scheme.

#### **4. What Weight Should Be Given to the Commission's Past Practices?**

As stated previously, SSC believes the Commission's past practices are important evidence. In every rate filing since at least 1979, the Commission has included the disposal fees at the City-designated facility in SSC's commercial collection rates. To SSC, this is compelling evidence that the Commission has worked out a way to reconcile its authority with Bellingham's in a reasonable manner.

First, if nothing else, the historical practices show what may be considered "just, fair and reasonable" action by the Commission in handling the disposal fees at the City-designated facility. If the Commission has in the past passed-through the disposal fees and expressly rejected the notion that the contract did not create an obligation as to commercial rates, then why should now be any different? To change its course of dealing at this stage may be arbitrary and capricious.

Second, it has been suggested that this evidence may be relevant to a claim of estoppel against the Commission. Although SSC believes the evidence is more useful for determining reasonableness, a claim of estoppel against the Commission is possible in this case. Equitable estoppel against a governmental agency may be made if there is evidence of (1) an admission,

statement, or act by the government inconsistent with its later claim; (2) a party acting in reliance on the admission, statement, or act; (3) injury to the relying party if the government were allowed to contradict or repudiate its prior admission, statement, or act; (4) the necessity of estoppel to prevent a manifest injustice; and (5) there being no impairment of the exercise of governmental functions if estoppel is applied. Kramarevcky v. The Department of Social and Health Services, 122 Wn.2d 738, 743 (1993).

Thus, in this case it is possible that a claim of estoppel may be made, and the five elements set forth in the Kramarevcky decision can be met: 1) The Commission has consistently passed-through to SSC's collection rates the full disposal fee at the facility to which the company was directed by the City; 2) In reliance on those actions, SSC and the City entered into the 1989 contract that obligated SSC to deliver both residential and commercial waste to the facility designated by the City; 3) If the Commission is allowed to now question the pass-through of rates at the City-designated facility to SSC's collection rates or if drop box customers are allowed to direct SSC to their chosen disposal site, SSC will be injured because it must either incur costs that will not be allowed in its rate base, thus causing a significant and injurious loss of revenue – or it must violate its agreement with the City, which may potentially lead to an immediate and incurable declaration of default; 4) Estoppel is necessary to prevent manifest injustice against SSC, since the dispute that underlies this matter is really between the City and the Commission, and yet SSC is the one who would be harmed if the Commission were to change its past practice and disallow a full pass-through, or require SSC to deliver drop boxes to facilities designated by customers; and finally, 5) To estop the Commission from passing-through the disposal fees at the City's facility will not impair the Commission's ability to



regulate, since the Commission has never been in the business of regulating disposal; and certainly it has never done so with regard to the City of Bellingham.


Whether it is characterized as a claim of equitable estoppel, or merely used as evidence of what would be considered "reasonable," the Commission's historic practices are compelling testimony to the fact that it and Bellingham can each operate under their respective authorities in a consistent fashion.

#### D. CONCLUSION

As the WUTC is obligated to the ratepayers, so is Bellingham obligated to its citizens. For SSC, both constituents are its customers, its most important audience. SSC seeks only to provide the best service consistent with its legal obligations. SSC believes the Commission's past practices have evidenced a working balance of powers between the City and the agency, and that this Petition affords an opportunity to clarify the reasoning behind such historical actions. The Commission regulates SSC's commercial collection, but it is apparently the intent of the legislature and the state Constitution that Bellingham establish a scheme for disposal. To include the disposal fee at the City-designated facility in SSC's collection base results in rates that are "fair, just, reasonable and sufficient" and is in the best interests of the public.

DATED this 7th day of October, 1997.

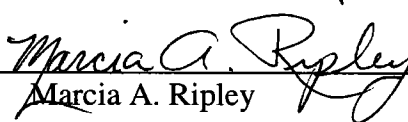
SUMMIT LAW GROUP PLLC  
Attorneys for Sanitary Service Company

By   
Polly L. McNeill

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed on the Service List below via facsimile and by depositing a copy of said document in the United States Mail, addressed as shown on said Service List, with first-class postage prepaid.

DATED this 7<sup>th</sup> day of October, 1997.

  
\_\_\_\_\_  
Marcia A. Ripley

### SERVICE LIST

James L. Austin, Jr., Esq.  
Karr Tuttle Campbell  
Washington Mutual Tower  
1201 Third Avenue, Suite 2900  
Seattle, WA 98101-3028

Richard N. Little, Jr., Esq.  
Assistant City Attorney  
Office of the City Attorney  
210 Lottie Street  
Bellingham, WA 98225

Robert A. Rowland, Esq.  
2602 Westridge Avenue West  
Suite M-301  
Tacoma, WA 98466

James K. Sells, Esq.  
Ryan, Sells, Uptegraft and Decker, Inc. P.S.  
9657 Levin Road N.W., Suite 240  
Silverdale, WA 98383

Mary M. Tennyson, Esq.  
Senior Assistant Attorney General  
Attorney General of Washington  
Utilities and Transportation Division  
1400 S. Evergreen Park Drive S.W.  
P.O. Box 40128  
Olympia, WA 98504-0128

CERTIFICATE OF SERVICE

000601