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November 5, 2004

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Carole J. Washburn, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P. O. Box 47250  
Olympia, Washington 98504-7250

Re: *In re Joint Applications GA-79141, GA-79142 and GA-78159 of Rabanco, Ltd.*  
Docket Nos. TG-030433, TG-030434, TG-030590

Dear Ms. Washburn:

Enclosed for filing in the above-referenced docket are the original and 9 copies of the Response by Commission Staff to the Answer of Rabanco, Ltd., and Certificate of Service.

Very truly yours,

DONALD T. TROTTER  
Senior Counsel

DTT:kl  
Enclosures  
cc: Parties

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UTIL. AND TRANSP.  
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Joint Applications GA-79141,  
GA-79142, and GA-79159 of Rabanco,  
Ltd.

DOCKET NOS. TG-030433  
TG-030434  
TG-030590

RESPONSE BY COMMISSION  
STAFF TO THE ANSWER OF  
RABANCO, LTD.

1           The Commission has invited the parties to respond to Rabanco, Ltd.'s  
Answer to King County's Petition in this docket to that petition. In its Petition,  
King County is asking the Commission to divide Rabanco, Ltd.'s Certificate No. G-  
12 into separate certificates, one for each county.

2           This response is filed on behalf of the Commission Staff.

**I. BACKGROUND<sup>1</sup>**

3           King County has a solid waste management plan and implementing  
ordinances that require all solid waste collected or generated in unincorporated

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<sup>1</sup> Staff believes the facts stated in this section are correct and essentially uncontroverted.

areas of King County, to be disposed of at disposal sites designated by King County, located in King County. In other words, King County does not require, and in fact prohibits, solid waste collected or generated in unincorporated King County to be disposed of in any other county.<sup>2</sup>

4 Rabanco, Ltd. (Rabanco), is a solid waste collection company regulated by the Commission. Rabanco is authorized to collect solid waste in several counties.

5 In 2003, Rabanco sought, and was granted, permission to consolidate several of its certificates into one certificate: G-12.<sup>3</sup> The territory in Certificate No. G-12 covers several counties, in addition to King County.<sup>4</sup>

**A. Impact of RCW 36.58.040**

6 RCW 36.58.040 states, in pertinent part:

However, for any solid waste collected by a private hauler under a certificate issued by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

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<sup>2</sup> King County Code § 10.08.020, "System of disposal" states: A. Under the authority provided by the King County Charter and RCW 36.58.040, a system is hereby established for disposal of all solid waste either generated, collected or disposed, in unincorporated King County. Additionally, this system shall include all solid waste either generated or collected, or both, in any other jurisdictions with which an interlocal agreement exists under K.C.C. 10.08.130.

B. It is unlawful for any person to dispose of county solid waste except at disposal facilities and in a manner authorized under this title.

<sup>3</sup> August 21, 2003, Order in Docket Nos. TG-030433, TG-030434, and TG-030590, transferring Certificate Nos. G-41, G-235, and G-12, respectively, into Certificate No. G-12.

<sup>4</sup> *Id.*, Appendix A to the August 21, 2004, Order.

7           Because the King County Code designates King County disposal sites for disposal of solid waste collected or generated in unincorporated King County, King County has no interlocal agreements with other counties designating such sites.

8           In the civil litigation described below, Rabanco argues that one result of the consolidation of authorities into Certificate No. G-12 is that RCW 36.58.040 renders inapplicable King County Code requirements that Rabanco dispose in King County all solid waste that Rabanco collects in King County that is generated in King County.

**B.     Legal Issues Raised in the Petition**

9           **Issue #1:**     Whether RCW 36.58.040 relieves Rabanco from obeying the King County ordinance directing solid waste collected or generated in King County to be disposed of in King County, because:

- a) Rabanco's Certificate No. G-12 authorizes service in several counties; and
- b) King County does not have an interlocal agreement with other counties listed in its permit, under which solid waste generated in King County is agreed to be taken to King County-approved disposal sites?

10          **Issue #2:** If the answer to Issue #1 is "Yes," should the Commission divide Certificate No. G-12 into separate permits encompassing individual counties only, so that King County's solid waste management plan and implementing ordinances may be enforceable?

**C.     Posture of the Issues**

11          Issue #1 has been answered in the negative by an order entered July 1, 2004, by King County Superior Court Judge Douglass North, in *Rabanco, Ltd., v. King*

County, King County Superior Court Docket No. 04-2-06720-I SEA. Rabanco has appealed that order on that issue, and the matter is before Division I of the Court of Appeals in Cause No. 54535-3-I.

12 Resolution of Legal Issue #2 would require a hearing.

13 In its Answer to King County's Petition, Rabanco alleges that King County's Petition is not ripe, it is untimely, and King County lacks standing. *Answer at 1, Part III.* Rabanco's Answer notes the pending issue in the Court of Appeals. *Answer at 2.* Finally, the Answer alleges that dividing Certificate No. G-12 as requested is "contrary to the public interest." *Id.*

14 In its Answer, potential Intervener Washington Refuse and Recycling Association (WRRRA) also opposes the Petition, asking the Commission either to reject it outright for lack of standing, or wait out the appellate process.

## II. COMMISSION STAFF RESPONSE

15 Counties have a significant interest in ensuring that their solid waste collection plans be implemented. The Legislature has recognized this, *inter alia*, by requiring the Commission to enforce such plans and implementing ordinances as to solid waste companies under regulation by the Commission. RCW 81.77.030(5).

16 These are important matters; significant investments can be involved. Moreover, a well-ordered system of solid waste disposal benefits the public. As King County Code § 10.04.010 states: "This chapter shall be known as the 'King

County Solid Waste Code,' and is necessary for the preservation and protection of public health, welfare and safety."

17 By the same token, the "law of the case" as between Rabanco and King County is that RCW 36.58.040 does not apply to allow Rabanco to dispose of solid waste collected or generated in King county to any location it sees fit. However, Staff understands Rabanco has posted a bond and therefore Rabanco is not complying with that ruling pending appeal.

18 To Staff, the issue is whether this *status quo* is sufficiently fair so that the Commission should await the Court of Appeals decision before setting this matter for hearing. Thus far, King County has not made a clear case for proceeding at this time. Staff knows the Commission will consider King County's response in deciding that issue.

19 The procedural defenses erected by Rabanco and the WRRRA (timeliness and standing) do not forestall Commission action, even if those defenses otherwise had merit. RCW 81.04.210 permits the Commission "at any time upon notice to the public service company affected, and after opportunity to be heard ... alter or amend any ... order ... made ... by it ..."

20 Accordingly, if the Commission decides the issue is important and in need of Commission action, the Commission could treat the Petition as a request for the Commission to take action on its own motion.

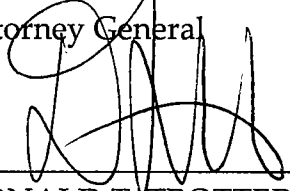
### III. CONCLUSIONS

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Commission Staff recommends the Commission consider whether King County's response shows sufficient present harm to the public to justify setting this matter for hearing now, rather than awaiting a decision by the Court of Appeals. At present, the state of the record would support holding such a hearing in abeyance until the Court of Appeals rules.

DATED this 5<sup>th</sup> day of November 2004.

CHRISTINE O. GREGOIRE  
Attorney General



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DONALD T. TROTTER  
Senior Counsel  
Counsel for Washington Utilities and  
Transportation Commission Staff