

[Service Date November 24, 2004]

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re Joint Application GA-79141 for authority to transfer all rights under Certificate No. G-41 from)	DOCKET NOS. TG-030433; TG-030434; TG-030590 (Consolidated)
RABANCO CONNECTIONS INTERNATIONAL, INC.)	ORDER NO. 02
to)	
RABANCO, LTD.)	PREHEARING CONFERENCE ORDER; ORDER GRANTING CONTINUANCE; NOTICE OF PREHEARING CONFERENCE (To be held on February 16, 2005, at 1:30 p.m.)
In re Joint Application GA-79142 for authority to transfer all rights under Certificate No. G-235 from)	
NORTHWEST WASTE INDUSTRIES, INC.,)	
to)	
RABANCO, LTD.)	
In re Joint Application GA-79159 for authority to transfer all rights under Certificate No. G-12 from)	
RABANCO LTD. & RABANCO RECYCLING, INC.)	
to)	
RABANCO, LTD.)	

- 1 **NATURE OF PROCEEDING.** These dockets were originally initiated by Rabanco to consolidate disparate authorities held by the carrier into a single permit. In this proceeding, King County seeks a ruling that severs the consolidated permit along county lines.
- 2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on November 23, 2004, before Administrative Law Judge C. Robert Wallis.
- 3 **APPEARANCES.** P. Steven DiJulio, attorney, Foster Pepper & Shefelman, PLLC, Seattle, represents petitioner King County. James K. Sells, attorney, Ryan Sells Uptegraft, Inc. P.S., Silverdale, WA, represents respondent Rabanco. Assistant Attorney General Donald T. Trotter, Olympia, WA, represents the Commission's regulatory staff ("Commission Staff" or "Staff").¹ Contact information is attached as Appendix A to this order.
- 4 **PETITIONS FOR INTERVENTION.** No other party sought intervention in this docket.
- 5 **CONSOLIDATION.** The three dockets appear to be legally or factually related. The parties confirmed their assent to the Commission's order of consolidation of the dockets for hearing and order, subject to the Commission's authority to sever the dockets and to enter individual orders as appropriate.
- 6 **DISCOVERY.** Parties indicated that, where necessary, the parties have engaged in informal discovery. Parties anticipate no need for invocation of the

¹ In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

Commission's discovery processes. They remain free to request that the rules be invoked should the need arise.

7 **PROTECTIVE ORDER.** The parties disclosed that a protective order has been entered in *Rabanco Ltd. v. King County*, Docket No. 04-2-06720-1 SEA, an action involving the petitioner and respondent in this docket.² The Commission Staff is not a party to that proceeding, nor is the Commission. Parties did not foresee the need for the Commission to enter a separate protective order but were asked to be particularly sensitive to the requirements of the King County protective order and to the potential need to seek a protective order from this Commission if appropriate.

8 **SUMMARY PROCEEDING.** The parties appeared to be in general agreement that this matter might be decided without hearing, inasmuch as they anticipated no disagreement on material issues of fact. Mr. Sells, however, indicated that such differences might become apparent as his client continues its preparation for this hearing. The parties agreed that they could complete and submit pleadings and associated materials within two weeks of an order to proceed (on the part of King County) or of King County's filing (on the part of Rabanco and Commission Staff).

9 King County moved for expeditious handling of the matter, while Rabanco moved for a continuance to allow time for a decision in the Court of Appeals. In its motion for expedited review, the county argued that a Commission decision could save litigation expense. During argument, the parties appeared to agree that neither the Commission's decision in this matter nor a Court of Appeals decision would necessarily be conclusive, and that both decisions could well be

² The parties indicated that the trial court's ruling has been appealed to the Court of Appeals and that the matter was argued on November 8, 2004. The parties anticipate a decision within 90 days, while acknowledging that the timeframe is merely their own estimate based on their understanding of common times for entry of the court's decisions on appeals.

the subject of further litigation. It appears that Commission action would not save litigation expense.

- 10 The parties agreed that the issue before the Court of Appeals and the issue before the Commission both involve RCW 36.58.040.³ In the judicial proceeding, it appears that the question is whether or not the statute allows Rabanco to use disposal sites other than King County for wastes collected in King County. In its petition to revise Rabanco's permit, King County asks the Commission to segregate the authority by county to preclude it from taking King County wastes to other counties for disposal. While the issues are not identical, a ruling in the judicial matter that Rabanco may not use the statute for the purpose it seeks would—at least as to Rabanco—render the Commission proceeding unnecessary. Conversely, a Commission decision could run counter to a judicial determination of the meaning or effect of the statute.
- 11 The County offered no indication of urgent or significant need for a Commission decision, except that a Commission decision might lawfully be inconsistent with or more far-reaching than an unpublished Court of Appeals decision.
- 12 In the absence of a demonstrated need for expedition, we granted the motion for a continuance. The issues in the two matters are clearly related, and we have reservations about proceeding under the circumstances, when the matter is being

³ In relevant part, RCW 36.58.040 reads as follows:

The legislative authority of a county may by ordinance provide for the establishment of a system or systems of solid waste handling for all unincorporated areas of the county or for portions thereof. A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter [70.95](#) RCW. However for any solid waste collected by a private hauler operating under a certificate granted 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.

adjudicated, when no savings would be apparent if the Commission were to proceed, and when no harm is now shown to be occurring.

13 The parties agreed to convene in a further prehearing conference at 1:30 p.m. on February 16, 2005, in the Commission's Hearing Room in Olympia. In the event that the Court of Appeals decision is entered prior to that date, parties may ask that the conference be moved forward on the calendar.

14 **NOTICE OF PREHEARING CONFERENCE.** The Commission convenes a prehearing conference in this matter, to address the status of judicial litigation, changes in the need to pursue litigation before the Commission, and any other procedural matter that the Commission or a party may raise for discussion. **The conference will be held on Wednesday, February 16, 2005, at 1:30 p.m. in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.** Persons who cannot attend in person may participate via the Commission's teleconference bridge line 360-664-3846. Persons desiring to participate via the bridge line must make advance reservations, by calling Ms. Kippi Walker at 360-664-1139, no later than 5:00 p.m. on Tuesday, February 15, 2005.

15 King County agreed to provide copies for the record of the Superior Court decision and the briefs on appeal; those documents may present reasons why it is urgent to proceed, or clarify why the Commission should proceed to consider this matter while a related though perhaps not identical issue is pending in the judicial system.⁴ If that appears to be the case, the Commission may on its own motion advance the schedule for the ensuing prehearing conference.

⁴ We request that the documents be presented in digital format as well as paper. The County need not provide certified copies so long as parties have the opportunity to verify the accuracy of the documents.

- 16 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission an original plus ten (10) copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 17 All filings must be mailed to the Commission Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Secretary at the Commission's Records Center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 18 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 19 **ELECTRONIC FILING.** Parties may only file documents electronically with the Commission in this proceeding with the permission of the administrative law judge. Under WAC 480-07-145(6), electronic filing of documents provides a one-day extension of the paper-filing requirement. If, at any time during this proceeding, parties are authorized to file documents with the Commission electronically under WAC 480-07-145(6), Parties must submit the document to

records@wutc.wa.gov, and file an original, plus ten (10) copies, of the document with the Commission by the following business day.

20 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 24th day of November, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES
DOCKET NO. TG-030433 et al

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
King County	P. Steven DiJulio Foster Pepper & Shefelman 1111 Third Avenue Suite 3400 Seattle, WA 98101-3299	(206) 447-8971	(206) 749-1927	dijup@foster.com
Rabanco	James K. Sells Ryan Sells Uptegraft, Inc. P.S. 9657 Levin Road N.W. Suite 240 Silverdale, WA 98383	(360) 307-8860	(360) 307-8865	Jimsells@rsulaw.com
Commission Staff	Donald T. Trotter Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	(360) 664-1189		dtrotter@wutc.wa.gov