

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET TG-111991
	)	<i>(consolidated)</i>
	)	
Complainant	)	SETTLEMENT AGREEMENT
	)	
v.	)	
	)	
RABANCO LTD., d/b/a EASTSIDE DISPOSAL, CONTAINER HAULING, RABANCO CONNECTIONS AND RABANCO COMPANIES,	)	
	)	
Respondent.	)	
.....	)	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET TG-111992
	)	<i>(consolidated)</i>
	)	
Complainant	)	SETTLEMENT AGREEMENT
	)	
v.	)	
	)	
RABANCO LTD., d/b/a ALLIED WASTE SERVICES OF KENT, RABANCO COMPANIES AND SEA- TAC DISPOSAL,	)	
	)	
Respondent.	)	
.....	)	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET TG-111993
	)	<i>(consolidated)</i>
	)	
Complainant,	)	SETTLEMENT AGREEMENT
	)	
v.	)	
	)	
RABANCO LTD., d/b/a LYNNWOOD DISPOSAL,	)	
	)	
Respondent.	)	
.....	)	

1 All parties to these consolidated proceedings enter into this Settlement Agreement as a  
full settlement of all issues raised in the above dockets.

### I. PARTIES

2 The parties to this Settlement Agreement are Rabanco Ltd., d/b/a Eastside Disposal,  
Container Hauling, Rabanco Connections and Rabanco Companies (“Eastside”);  
Rabanco Ltd., d/b/a Allied Waste Services of Kent, Rabanco Companies and Sea-Tac  
Disposal (“Sea-Tac”); Rabanco Ltd., d/b/a Lynnwood Disposal (“Lynnwood”)  
(collectively “Rabanco”), and the Staff of the Washington Utilities and Transportation  
Commission (“Staff”).

### II. AGREED FACTS

3 RCW 81.77.185 directs the Commission to allow solid waste collection companies to  
retain up to fifty percent of the revenue they receive from the sale of recyclable materials,  
if certain conditions are met. The remaining revenue is to be passed to residential  
customers.

4 In Order 03 in Docket TG-101224, the Commission authorized Lynnwood to retain fifty  
percent of the revenue it received from the sale of recyclable materials during the period  
of September 1, 2010 to December 31, 2011.<sup>1</sup> In orders entered in Dockets TG-101857  
and TG-101858, the Commission authorized Sea-Tac and Eastside to retain fifty percent  
of the revenue they received from the sale of recyclable materials during the period of  
September 1, 2010 to December 31, 2011.<sup>2</sup> All three orders directed that unspent

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<sup>1</sup> *In re Rabanco Ltd., DBA Lynnwood Disposal, G-12, Docket TG-101224, Order 03 (Dec. 30, 2010).*

<sup>2</sup> *In re Rabanco Ltd., DBA Allied Waste Services of Kent, Rabanco Companies and Sea-Tac Disposal, G-12, Docket TG-101857, Order 01 (Dec. 30, 2010); In re Rabanco Ltd., DBA Eastside Disposal Container Hauling, Rabanco Connections and Rabanco Companies, G-12, Docket TG-101858, Order 01 (Dec. 30, 2010).*

retained revenues “are to be carried over to the following year, unless some other treatment as may be ordered by the Commission.”<sup>3</sup>

5 In May 2011, the Commission ruled in another case that RCW 81.77.185 does not authorize the Commission to require a solid waste collection company to carry over to a subsequent plan period the retained revenue from the sale of recyclable materials that the company does not spend on recycling activities within a given plan period. The Commission further ruled that RCW 81.77.185 does not require a company to spend all retained revenues on recycling activities, and that financial incentives for meeting performance goals may be included in a recycling plan.<sup>4</sup>

6 On November 16, 2011, pursuant to WAC 480-70-351(2),<sup>5</sup> Rabanco initiated these dockets by filing with the Commission proposed revisions to certain tariffs, to reflect adjustments in commodity credits for residential and multi-family customers receiving recycling collection services.

7 On December 21, 2011, King County filed a letter in Dockets TG-111991 and TG-111992 recommending that Eastside and Lynnwood be permitted to keep some unspent recycling revenues retained during 2011 as an “incentive payment,” although the 2011 recycling plans had not provided for an incentive payment. On the same date, Snohomish County filed a letter in Docket TG-111993 recommending that all unspent recycling revenues that Lynnwood had retained during the 2010-2011 period be returned

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<sup>3</sup> Docket TG-101224, Order 03 ¶ 24; Docket TG-101857, Order 01 ¶ 19; Docket TG-101858, Order 01 ¶ 19.

<sup>4</sup> *In re Mason County Garbage Co., et al.*, Dockets TG-101542/TG-101545/TG-101548, Order 05 (May 6, 2011).

<sup>5</sup> WAC 480-70-351(2) provides: “Companies that estimate the revenue from the sale of recyclable materials collected in residential curbside programs as part of a deferred accounting program to return

to rate payers. Rabanco filed substitute tariff pages to incorporate the counties' recommendations and return unspent recycling revenues not retained as an "incentive payment" to rate payers through credits on their bills.

8 In December 2011, in these dockets, Rabanco filed requests to retain fifty percent of the revenue Rabanco would receive from the sale of recyclable materials that it collects in its residential recycling collection service during the recycling plan period of January through July, 2012. As required by RCW 81.77.185, Rabanco also submitted plans for the use of the revenues. The plans for Eastside and Sea-Tac were certified by King County, and the plan for Lynnwood was certified by Snohomish County. All three plans included provisions that would allow the companies to keep some of the money in the form of performance bonuses plus a five percent return on recycling plan expenditures.

9 Rabanco's revised tariffs under WAC 480-70-351(2), and its revenue sharing requests under RCW 81.77.185, came before the Commission at its December 29, 2011 Open Meeting. The Commission accepted Staff's recommendation and suspended the tariffs,<sup>6</sup> while allowing the rates and revenue sharing to be in effect on a temporary basis, subject to refund or credit, pending the outcome of an adjudicative proceeding.<sup>7</sup> The Commission referred the matters to its Administrative Law Division to be set for hearing.

10 Between January and March 2012, the Commission conducted workshops on recycling revenue sharing programs and received comments from interested persons on how the

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recycling revenues or charges to customers must use the most recent twelve-month historical period to estimate the revenue for the next twelve months."

<sup>6</sup> See RCW 81.04.130.

<sup>7</sup> *WUTC v. Rabanco Ltd., DBA Eastside Disposal, Container Hauling, Rabanco Connections, and Rabanco Companies, G-12*, Docket TG-111991, Order 01 (Dec. 29, 2011); *WUTC v. Rabanco Ltd., DBA Allied Waste Services of Kent, Rabanco Companies, and Sea-Tac Disposal, G-12*, Docket TG-111992,

Commission should administer RCW 81.77.185. The Commission announced that it expected to issue an interpretive and policy statement under RCW 34.05.230.

11 Administrative Law Judge Gregory J. Kopta consolidated these Rabanco dockets and convened a prehearing conference on March 5, 2012.<sup>8</sup> During the prehearing conference, the parties agreed that the issues the Commission was addressing in its workshops were related to those in these dockets. The parties agreed on a procedural schedule that effectively stayed further proceedings until after the Commission had issued its expected interpretive and policy statement on RCW 81.77.185.<sup>9</sup>

12 The Commission issued an Interpretive and Policy Statement on May 30, 2012.<sup>10</sup> Among other things, the Commission stated:<sup>11</sup>

Bonus or incentive payments . . . are permissible to the extent they are reasonably designed to encourage the company to achieve or exceed plan goals or objectives.

\* \* \*

[P]ayments should be structured as a percentage of revenues or expenses. We find particularly appealing King and Snohomish County's proposal that incentive payments should be determined based on a pre-determined percentage of company expenditures to achieve the goal or objective, rather than a percentage of revenues. . . . Both King and Snohomish Counties recently have negotiated Plans in which they have agreed to "an incentive equal to 5% of expenditures." We believe that is an appropriate amount and will expect any bonus or incentive percentage to be no higher than that percentage without compelling justification.

13 In Paragraph 7 of the Interpretive and Policy Statement, the Commission said:

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Order 01 (Dec. 29, 2011); *WUTC v. Rabanco Ltd., DBA Lynnwood Disposal, G-12*, Docket TG-111993, Order 01 (Dec. 29, 2011).

<sup>8</sup> *WUTC v. Rabanco*, Dockets TG-111991/TG-111992/TG-111993, Order 02 (Feb. 15, 2012).

<sup>9</sup> *WUTC v. Rabanco*, Dockets TG-111991/TG-111992/TG-111993, Order 03 (March 6, 2012).

<sup>10</sup> *In re Commission's Investigation of Recycling Revenue Sharing Plans*, Docket TG-112162, Interpretive and Policy Statement on RCW 81.77.185 (May 30, 2012).

The statement the Commission is issuing in this docket reflects our current interpretation of RCW 81.77.185, but it is not binding on the Commission or interested persons and thus does not preclude parties from raising these issues in the context of specific Plans.

14 According to RCW 34.05.230(1), “Current interpretive and policy statements are advisory only.”

### III. AGREEMENT

15 In light of the Interpretive and Policy Statement, the parties have reached agreement on the disputed issues in these consolidated dockets.

16 Rabanco acknowledges the relatively modest amount of unspent retention now in dispute and believes that resolving these suspended plans now without further litigation as proposed in this settlement agreement is thus fully consistent with the Company’s, its customers’ and the public’s interest. Rabanco and Staff have the right to raise the issues in the Interpretive and Policy Statement in the context of future specific plans.

#### **Unspent Revenues from 2010-2011 Recycling Plan Period**

17 In Docket TG-111991, Eastside will keep as an incentive payment an amount equal to 5% of its expenditures on the 2011 recycling plan, as reflected in the table below. Eastside will return the remaining unspent revenues to customers in the form of credits through tariffs awaiting Commission approval in Docket TG-121059.

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<sup>11</sup> *Id.* ¶¶ 29, 31, 32.

Company	2011 Recycling Revenue Retained @ Fifty Percent	Retained Revenue Spent on Recycling Plan Activities	Unspent Retained Revenues Already Returned to Customers	Unspent Retained Revenues to be Kept by Company (5% of Expenditures)	Unspent Revenues to be Returned to Customers via Docket TG-121059.
Eastside Disposal	\$323,166	\$183,386	\$124,441	\$9,169	\$6,170

18 In Docket TG-111992, Sea-Tac has kept \$744 in unspent retained revenues from the 2011 recycling plan period, which is less than five percent of its expenditures on recycling plan activities. Sea-Tac has already returned the remaining unspent retained revenues to customers. Sea-Tac will keep \$744, and no adjustments are needed to the 2011 recycling plan revenues.

19 In Docket TG-111993, Lynnwood has returned all unspent retained revenues from the 2010-2011 recycling plan period to customers. No adjustments are needed.

**Incentive Payments in January-July 2012 Recycling Plans**

20 The January-July 2012 recycling plans that Rabanco submitted in December 2011 would have permitted the companies to keep an incentive equal to 5% of expenditures, plus performance bonuses based on a percentage of revenues. Rabanco will keep an incentive equal to 5% of expenditures, but will not receive performance bonuses based on a percentage of revenues. Instead, Rabanco will return remaining unspent revenues to customers.

21 Eastside will return revenues to customers in the form of credits through tariffs awaiting Commission approval in Docket TG-121059. Sea-Tac will return revenues to customers in the form of credits through tariffs awaiting Commission approval in Docket

TG-121061. Lynnwood will return revenues to customers in the form of credits through tariffs awaiting Commission approval in Docket TG-121060.

#### IV. GENERAL PROVISIONS

22 The parties agree that this Settlement Agreement reflects the settlement of all contested issues between them in these consolidated dockets. The parties understand that this Settlement Agreement is not binding unless and until accepted by the Commission.

23 The parties agree to cooperate in submitting this Settlement Agreement promptly to the Commission for acceptance. The parties agree to support adoption of this Settlement Agreement in proceedings before the Commission through testimony or briefing. No party to this Settlement Agreement or their agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Settlement Agreement.

24 The parties have entered into this Settlement Agreement to avoid further expense, inconvenience, uncertainty, and delay of continuing litigation. The parties recognize that this Settlement Agreement represents a compromise of the parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Settlement Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement Agreement or any Commission order fully adopting those terms. This Settlement Agreement shall not be construed against either party because it was a drafter of this Settlement Agreement.

25 The parties have negotiated this Settlement Agreement as an integrated document to be effective upon execution and Commission approval. This Settlement Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly,



the parties recommend that the Commission adopt this Settlement Agreement in its entirety.

26 The parties shall take all actions necessary, as appropriate, to carry out this Settlement Agreement.


27 In the event that the Commission rejects or modifies any portion of this Settlement Agreement, each party reserves the right to withdraw from this Settlement Agreement by written notice to the other party and the Commission. Written notice must be served within ten (10) business days of the Order rejecting part or all of this Settlement Agreement. In such event, neither party will be bound or prejudiced by the terms of this Settlement Agreement, and either party shall be entitled to seek reconsideration of the Order.

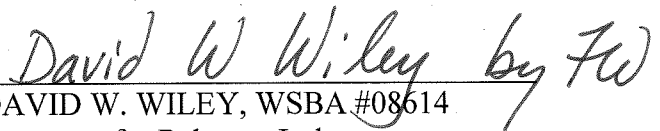
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
STAFF

RABANCO LTD., D/B/A EASTSIDE  
DISPOSAL, CONTAINER HAULING,  
RABANCO CONNECTIONS AND  
RABANCO COMPANIES ("EASTSIDE");  
RABANCO LTD., D/B/A ALLIED WASTE  
SERVICES OF KENT, RABANCO  
COMPANIES AND SEA-TAC DISPOSAL  
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Dated: July 16, 2012

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