

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

RECOMP OF WASHINGTON, INC., a Washington corporation,

Petitioner,

v.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, an agency of the State of Washington, CITY OF BELLINGHAM, a municipality, SANITARY SERVICE COMPANY, INC., a Washington corporation, WASHINGTON REFUSE & RECYCLING ASSOCIATION, a Washington corporation, and RECYCLING AND DISPOSAL SERVICES, INC., a Washington corporation.

Respondents.

98 2 00378 0

NO.

PETITION FOR REVIEW OF DECLARATORY ORDER OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

COPY

Petitioner RECOMP OF WASHINGTON, INC. ("Recomp") petitions as follows:

I. NAME AND ADDRESS OF PETITIONER

The name and mailing addresses of the petitioner is:

Recomp of Washington, Inc. Attention: Frank Moscone, President 1524 Slater Road Ferndale, WA 98248

RECEIVED RECORD MANAGEMENT 98 FEB 13 PM 4:52 STATE OF WASH. UTIL. AND TRANSP. COMMISSION

1 II. NAME AND MAILING ADDRESS OF PETITIONERS' ATTORNEYS

2 The names and mailing address of the petitioner's attorneys are:

3 James L. Austin, Jr.  
4 Mark R. Johnsen  
5 Karr Tuttle Campbell  
6 Suite 2900, Washington Mutual Tower  
7 1201 Third Avenue  
8 Seattle, WA 98101-3028

8 III. NAME AND ADDRESS OF AGENCY

9 The name and mailing address of the agency whose action is at issue is:

10 Washington Utilities and Transportation Commission  
11 Attention: Secretary  
12 Chandler Plaza Building  
13 1300 S. Evergreen Park Drive S.W.  
14 P.O. Box 47250  
15 Olympia, WA 98504-7250

15 IV. AGENCY ACTION AT ISSUE

16 The agency action at is the Declaratory Order of the Washington Utilities and  
17 Transportation Commission (the "Commission") dated January 13, 1998, entered in *In The*  
18 *Matter Of The Petition Of Recycling And Disposal Service, Inc. For A Declaratory Ruling*  
19 (Docket No. TG-971167), a copy of which is attached to this Petition as Exhibit A.

21 V. IDENTIFICATION OF PARTIES

22 Persons who were parties to the proceeding which led to the agency action at issue  
23 were:

24 City of Bellingham  
25 Attention: R. Mark Asmundson, Mayor  
26 210 Lottie Street  
27 Bellingham, WA 98225

1 Sanitary Service Company, Inc.  
2 Attention: Paul Razore, President and Registered Agent  
3 1001 Roeder Avenue  
4 P.O. Box 1702  
5 Bellingham, WA 98227

6 Washington Refuse & Recycling Association  
7 Attention: Harold E. LeMay, Registered Agent  
8 711 S. Capitol Way, Suite 704  
9 Olympia, WA 98507

10 Recycling and Disposal Services, Inc.  
11 Attention: Craig P. Hayes, Registered Agent  
12 4916 LaBounty Place  
13 P.O. Box 399  
14 Ferndale, WA 98248

15 Also participating in that proceeding was the Staff of the Washington Utilities and  
16 Transportation Commission (the "Commission"), whose mailing address is the Commission's  
17 mailing address identified in Paragraph III above.

## 18 VI. FACTS DEMONSTRATING ENTITLEMENT TO RELIEF

19 5.1 On or about July 18, 1997, Recycling and Disposal Services, Inc. ("RDS") filed a  
20 petition with the Commission seeking a declaratory order, a copy of which is attached to this  
21 Petition as Exhibit B.

22 5.2 Facts pertinent to RDS's declaratory order petition are set forth in the Statement of  
23 Facts And Exhibit List submitted in that proceeding attached hereto as Exhibit C (all but  
24 Paragraph 20 of which were included as the Final Statement Of Facts submitted by the parties  
25 and considered by the Commission), and are incorporated herein by reference.

1           5.3 RDS has commenced an action in the United States District Court against the City  
2 of Bellingham (the "City"), Sanitary Service Company, Inc. ("SSC") and Recomp in which  
3 RDS seeks, among other things, a declaratory judgment to the effect that SSC is not required  
4 by the terms of its contract with the City to deliver all of the solid waste which SSC collects  
5 within the City to Recomp's facility.  
6

7           5.4 A failure by the Commission to recognize and give effect to SSC's contractual  
8 obligation to deliver all solid waste which SSC collects within the City to Recomp, as the  
9 disposal facility designated by the City pursuant to that contract, jeopardizes (a) Recomp's  
10 ability to perform its obligations, both under Recomp's disposal contract with the City and  
11 under a Consent Decree with the Washington Department of Ecology, to dispose of ash from  
12 Recomp's incineration of residential and commercial City solid waste which is presently stored  
13 in a permitted temporary ash storage facility which Recomp established and utilized under  
14 contract with the City; (b) Recomp's right to performance by the City of the City's obligation  
15 under its contract with Recomp to require all solid waste collected within the City to be  
16 delivered exclusively to Recomp's facility; (c) the financial integrity of the City's collection  
17 contractor, SSC, by placing SSC at risk that it will be forced by the Commission to absorb  
18 disposal charges which SSC incurs in its delivery of solid waste to Recomp's facility as  
19 required by SSC's contract with the City; and (d) the stable, reasonable long-term rates for  
20 disposal services which the City has obtained through its disposal contract with Recomp.  
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1 VII. REASONS RELIEF SHOULD BE GRANTED

2 Relief should be granted because:

3 1. The Commission's conclusion that it is not required to recognize and to give effect  
4 for rate-making purposes to a provision in a contract between a city and solid waste collection  
5 company which requires delivery of waste collected under a Commission certificate of public  
6 convenience and necessity to a facility designated by the city pursuant to that contract is error  
7 as a matter of law, and its Findings Of Fact Nos. 12, 13 and 14 in support of that conclusion  
8 are erroneous in one or more respects.  
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10  
11 2. The Commission's conclusion that Section 5.1 of the Residential Solid  
12 Waste And Curbside Collection Of Recyclables Agreement between the City and Sanitary  
13 Service Company, Inc. ("SSC") does not require SSC to deliver all of the solid waste which it  
14 collects within the City to the facility which the City has designated pursuant to that section,  
15 being contrary to both the literal language of that section and the intention of both the City and  
16 SSC, is error as a matter both of fact and of law, and its Finding Of Fact No. 11 in support of  
17 that conclusion is erroneous in one or more respects. Moreover, the Commission in making  
18 that finding considered, over the objections of Recomp and others, late-offered evidence  
19 improperly submitted after the parties had stipulated to the submission of agreed facts and  
20 exhibits in lieu of an evidentiary hearing, without giving opposing parties (including Recomp)  
21 the opportunity of to present rebuttal evidence at a hearing.  
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1 facility or facilities as the City may designate pursuant to that section. Alternatively, the  
2 Court should either remand the matter for an evidentiary hearing to determine the intention of  
3 SSC and the City as to the meaning of Section 5.1, or should receive evidence itself with  
4 respect to the parties' intention pursuant to RCW 34.05.562; and  
5

6 3. Any other relief to which Recomp may be entitled, including, if applicable, an  
7 award of its costs.  
8

9 DATED this 13th day of February, 1998.

10 KARR TUTTLE CAMPBELL, A Professional  
11 Service Corporation  
12 Attorneys for Recomp of Washington, Inc.

13 By: 

14 James L. Austin, Jr. WSBA #2786

15 Mark R. Johnsen, WSBA #11080

16 1201 Third Avenue, Suite 2900

17 Seattle, WA 98101-3028

18 Telephone: (206) 223-1313

19 Fax: (206) 682-7100  
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1 DECLARATION OF SERVICE

2 I hereby certify that I have this day caused to be served the foregoing document upon  
3 the Washington Utilities And Transportation Commission by personal service upon both:

4 Paul Curl, Acting Secretary  
5 Washington Utilities and Transportation  
6 Commission  
7 Chandler Plaza Building  
8 1300 S. Evergreen Park Drive S.W.  
9 P.O. Box 47250  
10 Olympia, WA 98504-7250

Anne Levinson, Chair  
Washington Utilities and Transportation  
Commission  
Chandler Plaza Building  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

9 and upon the other parties of record and Commission staff by depositing the same in the  
10 United States mail and by overnight courier service, addressed as follows:

11 Transmitted To Party At

Additional Copy To:

12 Commission Staff  
13 Washington Utilities and Transportation  
14 Commission  
15 Chandler Plaza Building  
16 1300 S. Evergreen Park Drive S.W.  
17 P.O. Box 47250  
18 Olympia, WA 98504-7250

Mary M. Tennyson, Esq.  
Ann E. Rendall, Esq.  
Attorney General of Washington  
Utilities and Transportation Division  
P.O. Box 40128  
Olympia, WA 98504-0128

19 City of Bellingham  
20 Attention: R. Mark Asmundson, Mayor  
21 210 Lottie Street  
22 Bellingham, WA 98225

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

23 Sanitary Service Company, Inc.  
24 Attention: Paul Razore, Registered Agent  
25 1001 Roeder Avenue  
26 P.O. Box 1702  
27 Bellingham, WA 98227

Polly R. McNeil, Esq.  
Summit Law Group P.L.L.C.  
1505 Westlake Avenue N., Suite 300  
Seattle, WA 98109

28 Washington Refuse & Recycling Association  
Attention: Harold E. LeMay, Registered Agent  
711 S. Capitol Way, Suite 704  
Olympia, WA 98507

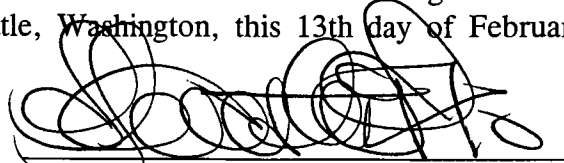
James K. Sells, Esq.  
Ryan, Sells, Uptegraff & Decker  
9657 Levin Rd. N.W., Suite 240  
Silverdale, WA 98383



1 Recycling and Disposal Services, Inc.  
2 Attention: Craig P. Hayes, Registered Agent  
3 4916 LaBounty Place  
4 P.O. Box 399  
5 Ferndale, WA 98248

Robert A. Rowland, Esq.  
Attorney At Law  
2602 Westridge Ave. W., Suite M-301  
Tacoma, WA 98466

6 I declare under penalty of perjury under the laws of the State of Washington that the  
7 foregoing is true and correct. DATED at Seattle, Washington, this 13th day of February,  
8 1998.



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JAMES L. AUSTIN, JR.