

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND) DOCKET TG-111991
TRANSPORTATION COMMISSION,) (*consolidated*)
)
Complainant) ORDER 04
)
v.)
) FINAL ORDER APPROVING
RABANCO LTD., d/b/a EASTSIDE) SETTLEMENT AGREEMENT
DISPOSAL, CONTAINER HAULING,)
RABANCO CONNECTIONS AND)
RABANCO COMPANIES,)
)
Respondent.)
.....) DOCKET TG-111992
WASHINGTON UTILITIES AND) (*consolidated*)
TRANSPORTATION COMMISSION,)
) ORDER 04
Complainant)
)
v.) FINAL ORDER APPROVING
) SETTLEMENT AGREEMENT
RABANCO LTD., d/b/a ALLIED)
WASTE SERVICES OF KENT,)
RABANCO COMPANIES AND SEA-)
TAC DISPOSAL,)
)
Respondent.)
.....) DOCKET TG-111993
WASHINGTON UTILITIES AND) (*consolidated*)
TRANSPORTATION COMMISSION,)
) ORDER 04
Complainant,)
)
v.) FINAL ORDER APPROVING
) SETTLEMENT AGREEMENT
RABANCO LTD., d/b/a LYNNWOOD)
DISPOSAL,)
)
Respondent.)
.....)

1 *Synopsis.* The Commission approves the parties' settlement agreement to permit
each company to retain an amount of up to five percent of its expenditures on its 2011
recycling revenue sharing plan as an incentive payment while crediting any
remaining unspent revenues to customers.

2 **Nature of Proceedings.** Dockets TG-111991, TG-111992 and TG-111993 involve
filings by Rabanco Ltd., d/b/a Eastside Disposal, Container Hauling (Eastside),
Rabanco Connections and Rabanco Companies, Rabanco Ltd., d/b/a Allied Waste
Services of Kent, Rabanco Companies and Sea-Tac Disposal (Sea-Tac), and Rabanco
Ltd., d/b/a Lynnwood Disposal (Lynnwood) (collectively Rabanco). Each company
proposes to increase the amount it pays to single family and multi-family customers
for the value of the recyclable materials that Rabanco collects in its residential
recycling collection service. Each company also seeks Commission approval of its
recycling revenue sharing plan under RCW 81.77.185.

3 **Appearances.** Fronda Woods, Assistant Attorney General, Olympia, Washington,
represents the Commission's regulatory staff (Commission Staff or Staff).¹ David W.
Wiley, Williams, Kastner & Gibbs, PLLC, Seattle, Washington, represents Rabanco,
Ltd.

4 **Settlement Agreement.** On July 16, 2012, the parties filed a Settlement Agreement,
supporting narrative, and joint motion to lift the suspension and approve the
agreement. The parties previously waived an initial order and now request expedited
consideration of a "less complex settlement agreement" pursuant to WAC 480-07-
740(1)(b). The Settlement Agreement addresses both the disposition of unspent
revenues from the 2010-2011 recycling plan period and incentive payments in the
January-July 2012 recycling plans.

5 With respect to unspent revenues from the earlier plan period, the Settlement
Agreement permits Eastside to keep as an incentive payment an amount equal to five

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

percent of its expenditures on its 2011 recycling revenue sharing plan and to return the remaining unspent revenues to customers in the form of credits through tariffs awaiting Commission approval in Docket TG-121059.² Sea-Tac is authorized to retain all currently unspent revenues from the 2010-11 plan period, which is an amount less than five percent of that company's 2011 plan expenditures.³ Lynnwood has returned all unspent revenues from this period to its customers.⁴

- 6 Rabanco's January-July 2012 recycling plans authorize the companies to keep an incentive payment equal to five percent of expenditures, plus performance bonuses based on a percentage of revenues. The Settlement Agreement would permit Rabanco to keep an incentive equal to five percent of expenditures, but the companies would not receive performance bonuses based on a percentage of revenues. Instead, Rabanco will return remaining unspent revenues to customers.⁵
- 7 Rabanco and Staff represent that the Settlement Agreement is in the public interest by avoiding further expenditure of public and company resources on litigation expenses.⁶ In addition the parties state that ratepayers will benefit from the Settlement Agreement by paying reduced rates because some of the revenues previously allocated to the companies will instead be returned to customers in the form of credits.⁷
- 8 **Evaluation of Settlement.** WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

² Settlement Agreement ¶ 17.

³ *Id.* ¶ 18.

⁴ *Id.* ¶ 19.

⁵ *Id.* ¶ 20.

⁶ Settlement Narrative ¶ 23.

⁷ *Id.* ¶ 24.

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

9 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

10 **Commission Decision:** The Settlement Agreement is approved without condition. The Agreement permits Rabanco to retain an incentive payment of five percent of plan expenditures under the current and prior recycling plan periods. The payment structure and amount is consistent with the direction we gave on incentive payments in our Interpretive and Policy Statement in Docket TG-112162 (Statement).⁸

11 In the Statement, however, we stated our view that incentive payments “are permissible to the extent they are reasonably designed to encourage the company to achieve or exceed Plan goals or objectives.”⁹ The record does not demonstrate the extent to which the incentive payments authorized under the Settlement Agreement are so designed.

12 We nevertheless observe that the incentive amounts are relatively modest, and we issued the Statement after the close of the 2010-11 plan period and late in the current January-July 2012 period. Under these circumstances, we will not withhold approval of the Settlement Agreement or require a demonstration that the incentive payments in that Agreement are reasonably designed to encourage Rabanco to achieve recycling plan goals and objectives. The parties, however, should expect the Commission to require such a demonstration for incentive payments included in any future recycling revenue sharing plans.

13 The terms in the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Without prejudging the acceptable

⁸ In re Commission Investigation of Recycling Revenue Sharing Plans, Docket TG-112162, Interpretive and Policy Statement on RCW 81.77.185 ¶¶ 31-32 (May 30, 2012).

⁹ *Id.* ¶ 29.

design of incentive payments in future recycling plans, we find that the Settlement Agreement in the context of the circumstances described above is consistent with the public interest.

ORDER

THE COMMISSION ORDERS:

- 14 (1) The Settlement Agreement is approved without condition and adopted as the final resolution of the disputed issues in these dockets; and
- 15 (2) The suspensions ordered by the Commission on December 29, 2011, in these dockets are lifted.

Dated at Olympia, Washington, and effective July 20, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.