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Sent Via UTC Web Portal and Email

Washington Utilities and Transportation Commission
ATTN: Commission Secretary
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Olympia, WA 98504-7250
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UTIL. AND TRANSP.
COMMISSION

Re: Contest to “Notice of Penalties” and Request for Hearing
Penalty Assessment: TG-180253

To the Secretary of the Utilities and Transportation Commission:

Our firm represents Harold LeMay Enterprises, Inc. (“LeMay”) in the above-captioned matter. Please direct any and all communications concerning this matter to the undersigned. Pursuant to RCW 81.04.405, LeMay submits this Contest and Request for Hearing (“Contest”) to the Washington Utilities and Transportation Commission’s (“UTC”) “Notice of Penalties” received by LeMay on April 11, 2018. For the reasons set forth below, and the attached documents, the UTC’s Notice of Penalties must be rescinded. LeMay also requests a hearing before an administrative law judge to present evidence on the information below.

I. Background Summary

LeMay Enterprises Inc. has been providing recycling and refuse services to the Puget Sound region since 1942. LeMay takes pride in its excellent tradition of providing safe and effective recycling and refuse services. LeMay has fully cooperated with UTC audits and vehicle inspections, and it has promptly responded to UTC requests.

In this tradition of fully complying with the UTC, LeMay allowed five UTC inspectors to conduct an on-site inspection of 12 LeMay garbage trucks. Attachment A: Declaration of Larry Meany (“Meany Decl.”), ¶3; Attachment B: Declaration of Donald Kenney (“Kenney Decl.”), ¶3. One of the inspectors identified himself as a trainee. Meany Decl. ¶3. The garbage trucks were inspected on LeMay’s private property after the trucks had returned to the yard. Meany Decl. ¶4.

The garbage trucks were inspected in LeMay's 7-acre paved yard. *Id.* The inspection took place before drivers conducted their post-trip safety inspection. Meany Decl. ¶4; Kenney Decl. ¶4.

While LeMay's trucks were parked in the yard, special investigator Sandi Yeomans inspected trucks driven by, among others, Ian Marsh and Nathan Molinek. Meany Decl. ¶5; Kenney Decl. ¶4. Mr. Marsh's truck was a rear-loader garbage truck (vehicle 1044). Kenney Decl. ¶4. Mr. Molinek's truck was an automated side-loader garbage truck (vehicle 3571). *Id.* Investigator Yeomans claimed that she saw paint worn off of the Pitman arm of Mr. Marsh's truck. Kenney Decl. ¶5. She said that she assumed that the paint was rubbing off of the Pitman arm due to the Pitman arm coming into contact with the front tire. *Id.* However, investigator Yeomans did not witness the Pitman arm come into contact with the front tire. In fact, she was not observed testing the turning radius at the time to determine whether the tire came into contact with the Pitman arm. *Id.* Instead, investigator Yeomans claimed there was a violation, and placed Mr. Marsh's truck out-of-service. *Id.*

Investigator Yeomans also inspected Mr. Molinek's truck. Meany Decl. ¶6; Kenney Decl. ¶6. During the inspection, she observed that the brake lights were not operational. LeMay mechanic Chris Twiggs concluded that the brake light fuse might have "popped" immediately prior to the inspection, causing the brake lights to no longer be operational. Meany Decl. ¶6. Before LeMay trucks are parked in the yard, they are required to drive over a large speed bump that could have "popped" the brake light fuse just before the inspection. *Id.* Moreover, this likely occurred just before the inspection because as part of the driver's pre-trip inspection, he is required to check to ensure the brake lights are operational. Kenney Decl. ¶6. There was no evidence cited by the driver that his brake lights were not functional. In any event, Mr. Twiggs immediately installed a new brake light fuse. Meany Decl. ¶6. The brakes lights on Mr. Molinek's truck became operational. *Id.* Despite this fact, investigator Yeomans placed Mr. Molinek's truck out-of-service even though the brake lights were immediately operational. Kenney Decl. ¶6.

As a result of the March 20, 2018 inspection, including the two out-of-service determinations, LeMay's Compliance Safety and Accountability ("CSA") score significantly increased. Meany Decl. ¶7. This increase in the CSA score will adversely impact LeMay's business operations. *Id.*

Following the inspection, UTC special investigator Wayne Gilbert commended LeMay employees for their conduct during the inspection. In an email entitled "Thank you!" to LeMay District General Manager Larry Meany, investigator Gilbert wrote that "[a]ll of your drivers and staff were very professional and we appreciate that type of support." Meany Decl. Exh. 1. Mr. Gilbert

also acknowledged that the March 20 inspection of LeMay's garbage trucks "allow[ed] us to get the experience on looking at these vehicle types." *Id.*

II. Analysis

The UTC's Notice of Penalties is factually and legally deficient and must be rescinded. Under the UTC's "Enforcement Policy" Docket A120061, penalties are not warranted in this case because the UTC's out-of-service criteria have not been met and there were no violations.

A. The UTC erroneously reported the alleged out-of-service violations as "roadside inspections."

Initially, LeMay notes that the inspections of Mr. Marsh's and Mr. Molinek's trucks were not conducted at a public "roadside." Instead, the UTC conducted its inspection on LeMay's private property in a 7-acre yard. Despite this fact, the Federal Motor Carrier Safety Administration's ("FMCSA") Safety Measurement System ("SMS"), a component of LeMay's CSA score, lists the alleged violations at issue as "roadside" violations. Meany Decl. ¶9. This is erroneous and must be corrected immediately. This is critical because the trucks in question were not on-the-road operating at the time of the inspection.

B. Investigator Yeomans' decision to place LeMay vehicles out-of-service was not supported by evidence.

Under Washington law, in order for the UTC to place a vehicle out-of-service, the alleged safety defects of the vehicle must be "identified in the *North American Uniform Out-of-Service Criteria*" published by the Commercial Vehicle Safety Alliance ("CVSA"). WAC 480-70-201(3). Washington has adopted the April 1, 2016 version of the *North American Uniform Out-of-Service Criteria*. WAC 480-70-999(1). Pursuant to Washington law, a "company must not operate any vehicle placed out-of-service until after proper repairs have been completed." WAC 480-70-201(3).

Mr. Marsh's truck did not meet the *North American Uniform Out-of-Service Criteria* when investigator Yeomans placed it out-of-service. Investigator Yeomans claimed that the Pitman arm was rubbing against the front tire of Mr. Marsh's truck. Investigator Yeomans claimed this violated 49 C.F.R. §396.3(a)(1). Under this regulation, the *North American Uniform Out-of-Service Criteria* specifically provides that "[a]n out-of-service condition exists only if the tire can be made to contact another component at the time of the inspection." *Id.*, p. 61 (emphasis added). Investigator Yeomans did not test to determine if the Pitman arm came into contact with the front tire of Mr. Marsh's truck. Kenney Decl. ¶5. Instead, investigator Yeomans said she observed that some paint rubbed off the Pitman arm and assumed the paint was rubbing off from contact with the tire. Mr. Marsh's truck did

not meet the out-of-service conditions under Washington law at the time investigator Yeomans placed the vehicle out-of-service. Assumptions and guesses don't meet the necessary legal standard.

Mr. Molinek's truck did not meet the *North American Uniform Out-of-Service Criteria* when investigator Yeomans placed it out-of-service. After it was observed that the brake lights on Mr. Molinek's truck were not operational, the fuse was immediately replaced. The brake lights were operational. Despite this fact, investigator Yeomans placed an out-of-service sticker on Mr. Molinek's truck after the brake lights were operational. At the time the out-of-service sticker was placed on the truck, the *North American Uniform Out-of-Service Criteria* were not met.

III. Conclusion

Based on the above, the UTC's "Notice of Penalties" must be rescinded. LeMay requests a hearing before an administrative law judge to present evidence in support of the information provided above.

Sincerely,



John M. Payne
Erik M. Laiho

Enclosures:

- Attachment A: Declaration of Larry Meany, Exhibits 1 and 2
- Attachment B: Declaration of Donald Kenney