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BEFORE THE STATE OF WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Cause No. TG-140512

v.

MALTBY CONTAINER'S
STATEMENT OF DISPUTED
ISSUES OF FACT AND LAW
RE PENALTY ASSESSMENT

MCAULIFFE AUTO SALES, INC. d/b/a
MALTBY CONTAINER & RECYCLING

Allan Bakalian of Zeno Bakalian P.S., on behalf of McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling (Maltby Container), hereby responds to the State of Washington Utilities and Transportation Commission (WUTC) Penalty Assessment of \$27,100 issued on April 1, 2014, and consistent with the WUTC's April 17, 2014 Notice of Opportunity to Submit Support for Request for Hearing.

I. INTRODUCTION AND SUMMARY OF ISSUES FOR REVIEW

Maltby Container operates a Intermediate Solid Waste Handling Facility pursuant to a permit issued by the Snohomish Health District (#SW-237) in accordance with the Washington Department of Ecology's Intermediate Solid Waste Handling Permit

1 regulations at WAC 173-350-310 and Snohomish Health District Sanitary Code,
2 Chapters 3.1 and 3.2. **Exhibit A.**

3 In 2012, the WUTC staff commenced an investigation and instituted a "Special
4 Proceeding: Complaint Seeking to Impose Penalties and Notice of Hearing" alleging
5 Maltby was operating in violation of RCW 81.77.040 without a required certificate to
6 conduct its recycling business. See Order 01, **Exhibit B.** That matter was settled on June
7 19, 2012, pursuant to the WUTC's Order 02 approving the June 9, 2012 Settlement
8 Agreement. **Exhibit C.**

9 Following the Settlement Agreement, the WUTC staff conducted a compliance
10 investigation. The WUTC did not find any further violations with respect to the
11 solicitation of residential recycling as alleged in Order 01 and resolved in Order 02.
12 However, WUTC staff conducted a 'new' investigation regarding Maltby Container's
13 transportation of recyclable materials that involved inspections of Maltby Container's
14 facility, a review of its recycling records and reports, issuance of multiple emails to
15 Maltby Container seeking answers and information, and requests for documents from
16 Snohomish County and other sources. The WUTC staff subsequently issued a January
17 30, 2013 Compliance Review and Inspection Report that concluded Maltby Container
18 had violated the terms of the Settlement Agreement; the WUTC thereafter issued a *Notice*
19 *of Intent to Impose Suspended Penalty* in *WUTC v. McAuliffe Auto Sales, Inc. d/b/a*
20 *Maltby Container & Recycling*, TG-120308. Maltby Container has appealed the WUTC's
21 decision to impose the \$700 suspended penalty.

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1 The April 1, 2014 Penalty Assessment of \$27,100 is based on the same WUTC
2 staff report and involves the same alleged violations of Order 02 as in TG-120308, but
3 seeks to impose additional and substantially greater penalties.

4 **II. DISPUTED ISSUES OF MATERIAL FACT**

5 1. Whether the WUTC is barred or estopped from issuing new or additional civil
6 penalties for alleged violations during the compliance period established in the June 9,
7 2012 Settlement Agreement approved by Order 02.

8 2. Whether the allegations in this matter should be dismissed or consolidated
9 with the pending appeal in *WUTC v. McAuliffe Auto Sales, Inc. d/b/a Maltby Container*
10 *& Recycling*, Docket TG-120308.

11 3. Based on the following (and only) allegation in the Penalty Assessment: "The
12 Commission has determined that Maltby Container provided solid waste collection
13 services subject to regulation when it transported solid waste to a landfill for disposal 271
14 times during the compliance period" as alleged in the Penalty Assessment, whether:

- 15 a. Maltby provided solid waste collection services;
- 16 b. Maltby transported solid waste;
- 17 c. Maltby disposed solid waste in a landfill 271 times.

18 4. Whether a permitted Intermediate Solid Waste Handling Facility such as
19 Maltby Container may lawfully transport recyclable materials from commercial jobsites
20 or facilities to or from its permitted facility for processing, separation and/or recycling, or
21 to any other permitted recycling facility in the state of Washington without a Certificate.

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1 5. Whether Maltby Container's shipments of recyclable materials to the
2 Anderson Limited Purpose Landfill and Recycling facility constitute transportation of
3 solid waste that requires a Certificate.

4 6. Whether the WUTC is exceeding its jurisdiction regarding issuance and
5 enforcement of solid waste transportation certificates insofar as it is seeking to regulate
6 the processing, recycling and transportation of recyclable materials or other materials
7 exempt from regulation as solid waste (such as hog fuel, e.g., wood waste used in
8 industrial boilers).

9 7. Whether Maltby Container must obtain a "Certificate of Convenience and
10 Necessity" pursuant to RCW 81.77.040 to haul construction, demolition and landscaping
11 debris (CDL) or any recyclable materials to a permitted ISWH recycling facility, solid
12 waste landfill, incinerator or any other facility in Washington.

13 8. If such activities in No. 8 require a Certificate, under what procedures will the
14 WUTC issue such a Certificate to a recycling business in Washington when no
15 Certificates are available based on the public necessity standard.

16 9. Whether Maltby Container is a "solid waste collection company" as defined in
17 RCW 81.77.010 (7).

18 10. Whether the WUTC has the authority to impose its rate and service based
19 regulation of garbage companies over commercial recycling companies based on its
20 purported determination that recyclable materials are also solid wastes and require an
21 unobtainable Certificate.

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II. REQUEST FOR EVIDENTIARY HEARING

Maltby Container requests an evidentiary hearing to resolve the above disputed issues of material fact in this matter. Maltby Container also requests an initial hearing to determine the scope of the issues to be considered, formal discovery, and for the issuance of a case schedule in this matter.

III. PRAYER FOR RELIEF

Maltby Container respectfully requests that Judge Kopta find that Maltby Container has (1) not provided solid waste collection services subject to a Certificate or any other regulation by the WUTC, (2) has not transported solid waste to a landfill for disposal 271 times during the compliance period, (3) complied with the WUTC's Order 02 and underlying June 9, 2012 Settlement Agreement, and accordingly dismiss the WUTC's Penalty Assessment and order such further relief as is just and equitable, including a payment of Maltby Container's costs and attorneys' fees.

Dated this 24th day of April, 2014.

ZENO BAKALIAN P.S.



Allan B. Bakalian, WSBA #14255
Attorneys for Maltby Container &
Recycling