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SERVICE DATE

MAR 10 1994

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the)
petition of)
))
US ECOLOGY, INC.)
))
For determination of)
Initial Maximum Disposal)
Rate)
.)
))
WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
))
Complainant,)
))
v.)
))
US ECOLOGY, INC.,)
))
Respondent.)
.)
))
WASHINGTON PUBLIC POWER)
SUPPLY SYSTEM,)
))
Complainant,)
))
v.)
))
US ECOLOGY, INC.,)
))
Respondent.)
.)

DOCKET NO. TG-920234
TENTH SUPPLEMENTAL ORDER

DOCKET NO. UR-930711
SIXTH SUPPLEMENTAL ORDER

DOCKET NO. UR-930890
SIXTH SUPPLEMENTAL ORDER

DECISION GIVING REASONS FOR
ACCEPTING SETTLEMENT AGREEMENT

PROCEEDINGS: On January 20, 1994, the parties filed a settlement agreement which resolved all outstanding disputes in these three proceedings. On January 20, 1994, the Commission scheduled an expedited hearing for presentation of the settlement for January 24, 1994. On January 24, 1994, a hearing was held in Olympia, Washington, at which the settlement and responses to a set of bench requests were admitted.

COMMISSION: By order dated January 24, 1994, the Commission approved the settlement. In this decision giving the reasons for its order, the Commission finds that the settlement is in the public interest.

APPEARANCES: James M. Van Nostrand, attorney, Bellevue, represented US Ecology, Inc. Anne E. Egeler and Ann E. Rendahl, assistant attorneys general, Olympia, represented the staff of the Washington Utilities and Transportation Commission. Melvin N. Hatcher, attorney, Richland, represented intervenor/complainant Washington Public Power Supply System. J. Jeffrey Dudley, attorney, Portland, Oregon, represented intervenor Portland General Electric Company ("PGE"). Richard H. Williams, attorney, Portland, Oregon, represented intervenor Teledyne Wah Chang Albany. Mark A. Davidson, attorney, Denver, Colorado, represented intervenor Public Service Company of Colorado. James C. Paine, attorney, Portland, Oregon, represented intervenor Precision Castparts Corporation.

MEMORANDUM

A. Procedural History

Low level radioactive waste ("LLRW") disposal came under regulation through a process that began in 1990 with chapter 21, Laws of 1990, which directed the Commission to study the need for procedures to regulate rates at the state's LLRW disposal site in Richland, Washington. The Commission used a structured negotiation process that included representatives from US Ecology, LLRW generators, other state agencies regulating LLRW, and the public to design the regulatory framework for this industry. The results of this Study Group were accepted by the Commission and subsequently enacted by the Legislature in chapter 272, Laws of 1991, and codified in chapter 81.108 RCW.

In 1992, the Commission set the initial maximum disposal rate for LLRW pursuant to chapter 81.108 RCW.¹ The Commission determined the appropriate revenue requirement, rate of return, the mechanism for inflation and volume adjustments, and that the company was a monopoly. The filing in Docket No. UR-930711 was the final step in implementing this regulatory framework, through application of the inflation and volume adjustments.

In addition to establishing initial disposal rates for the facility in the 1992 Order, the Commission adopted the format for semi-annual rate adjustment filings which had been proposed by the company. The twice yearly filings are based on an historical twelve-month rolling average of volumes of waste disposed at the site. The company proposed that the first

¹ Docket No. TG-920234, In the Matter of the Petition of US Ecology, Inc., to Determine Initial Maximum Disposal Rate, Seventh Supplemental Order, December 18, 1992 ("1992 Order").

twelve-month test period be the period from May 1, 1992, through April 30, 1993. The company would provide evidence of volumes disposed, with no information on revenues, expenses, or earnings included in the filing.

The company appealed the Commission's 1992 Order to superior court.² The court stayed the Commission Order setting initial rates, imposed its own rate level, and has adjusted those rates quarterly. The rates established by the court are temporary and subject to refund. The difference between the Commission established rates and those established by the court is placed in escrow by the company. The court, in a partial remand filed on May 17, 1993, ordered the company to make a semi-annual rate adjustment filing with the Commission.

On June 15, 1993, in Docket No. UR-930711, US Ecology, Inc., filed its first semi-annual rate adjustment proposing revisions to its tariff for disposal of low level radioactive waste. The filing reflected an inflation adjustment and a volume adjustment. The company's semi-annual rate adjustment filing was not in the format adopted by the Commission in its 1992 Order, and was suspended.

On July 27, 1993, in Docket No. UR-930890, the Washington Public Power Supply System filed a complaint against US Ecology. The issues raised in that filing were substantially similar to the issues in the semi-annual rate adjustment proceeding. The two matters were consolidated for hearing and decision.

The Commission on October 21, 1993, entered its Third Supplemental Order in Docket Nos. UR-930711 and UR-930890, rejecting the suspended tariff filing and authorizing US Ecology, Inc. to refile certain tariff revisions complying with terms of the order.

US Ecology, Inc. petitioned for reconsideration of the Third Supplemental Order and asked that the Commission stay the effect of its order as to payment of reparations for excessive charges made prior to October 26, 1993. The Commission on November 3, 1993, entered its Fourth Supplemental Order in Docket Nos. UR-930711 and UR-930890, granting the stay pending resolution of petitions for reconsideration.

On January 20, 1994, the parties filed a settlement agreement which resolved all outstanding disputes. On January 20, 1994, the Commission scheduled an expedited hearing for presentation of the settlement for January 24, 1994. The Commission found that good cause existed for hearing on shortened

² Thurston County Cause No. 92-2-0324602.

notice in accordance with WAC 480-09-700. All parties waived objection to the shortened notice. Bench requests to the company accompanied the Notice of Hearing. On January 21, 1994, US Ecology answered the bench requests. On January 24, 1994, a hearing was held in Olympia, Washington, at which the settlement and responses to the bench request were admitted. The Commission heard testimony from Mr. Barry Bede of US Ecology, and all parties present supported the settlement agreement. On January 24, 1994, the Commission entered an order approving the settlement agreement presented by the parties to these proceedings.

The January 24, 1994, order noted that the Commission would enter in due course an order detailing its reasons for accepting the settlement. This order contains that discussion and the Commission's decision. We approve the settlement agreement, based in part on the commitments made by the company in its responses to the bench requests.

B. Description of the Settlement

The parties to the US Ecology rate proceedings filed a settlement agreement which would settle US Ecology's court appeal of the initial rate proceeding, PGE's court appeal of the semi-annual rate adjustment order, and would result in withdrawal of two motions for reconsideration of the semi-annual rate adjustment order pending before the Commission. The agreement was entered as Exhibit 40 in Docket Nos. UR-930711 and UR-930890.

The settlement would establish rates for disposal from the inception of regulation until the outcome of a general rate case is effective on January 1, 1996. The revenue requirement which is the basis of the settlement is that approved by the Commission in the first general rate case. A "temporary rate" which will recover 100% of the revenue requirement from the first general case from disposal of 75% of the expected volume of waste would be charged during the year, then trued-up to a permanent rate after volumes for the year are known. If volumes are at the predicted level, a 33% refund would result. Refunds will be issued, if appropriate, but rates will never be higher than the "temporary rate".

The settlement agreement requires that the Commission adopt the proposal with no material changes. The parties to the proceeding have agreed that the clarifications of the settlement provided in response to the bench requests are not material changes in the agreement. The bench requests and responses were entered as Exhibit 41 in Docket Nos. UR-930711 and UR-930890.

The company has agreed to drop its challenge to the Commission's conclusion that a "monopoly situation", as defined in RCW 81.108.100, exists with respect to the company's Richland

disposal site. It will continue to pursue the collaborative discussions ordered by the Commission in the Third Supplemental Order in Docket Nos. UR-930711 and UR-930890. It has agreed to file any tariff revisions contemplated by the settlement at least thirty days prior to their effective date.

The Commission stated concerns in the Third Supplemental Order in Docket Nos. UR-930711 and UR-930890 about the breakdown in the cooperative efforts of these parties and the extremely adversarial atmosphere of rate making proceedings before the Commission. We commend the efforts of the parties which resulted in this settlement.

Rate regulation of LLRW is a new task for all involved. Past records were not maintained in the manner required for traditional regulation. Past records also do not reflect the limited number of customers now using the facilities of US Ecology in Richland. The settlement agreement will provide a transition into regulation in which data may be gathered, studies done, and in which the parties may continue to work together to refine and make more workable the processes utilized by the Commission.

We find the settlement to be in the public interest. We encourage the parties to continue to work together in the future.

DATED at Olympia, Washington, and effective this 9th day of March 1994.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson
SHARON L. NELSON, Chairman

R. D. Casad
RICHARD D. CASAD, Commissioner

Richard Hemstad
RICHARD HEMSTAD, Commissioner