BEFORE THE WASHINGTON STATE UTILITIES AND

TRANSPORTATION COMMISSION

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| In re the Matter of:  The Penalty Assessment Against Rabanco, Ltd. d/b/a Allied Waste Services of Klickitat County | Docket TG-091292  NARRATIVE IN SUPPORT OF SETTLEMENT AGREEMENT |

**I. INTRODUCTION**

1. This narrative statement is filed pursuant to WAC 480-07-740(2)(a) on behalf of Rabanco, Ltd. d/b/a Allied Waste Services of Klickitat County, holder of Certificate No. G-12, (“Klickitat Allied Waste” or “KAW”) and the Staff of the Washington Utilities and Transportation Commission (“Staff”), collectively (“the Settling Parties”). The Settling Parties have signed a Settlement Agreement (“Agreement”), which is filed concurrently with this Narrative, subject to Commission approval. This Narrative is intended to summarize the Agreement as required by rule and is not intended to modify any of the terms of the Agreement.

**II. PROPOSAL FOR REVIEW PROCESS**

1. Consistent with WAC 480-07-740(2)(b), should the Commission require a hearing on the Agreement, the Settling Parties are prepared to present one or more witnesses and answer questions concerning the Agreement’s details, its costs and benefits and the motivation for resolving the matter. Counsel for both parties are available to respond to any questions regarding the proposed settlement.

**III. BACKGROUND AND SCOPE OF THE UNDERLYING DISPUTE**

1. In February 2009, Staff received a complaint from a Klickitat County customer of KAW. That customer had requested weekly solid waste collection service from Klickitat Allied Waste. KAW explained to the customer that his remote location and lengthy roundtrip service to pick up a single can necessitated every other week service. After reviewing KAW’s tariff, Commission Staff informed the company’s local county representative that the applicable tariff authorized weekly service, not every other week service. The company then promptly notified the complaining customer that he would now receive weekly service beginning the following week. To implement the weekly service to all similarly-situated customers, the company promptly repositioned equipment and drivers by early March 2009. Since then, KAW has received no additional service complaints.
2. Because KAW instituted prompt and effective remedial action and because there is no evidence KAW has been the subject of similar complaints about tariff misapplication, the Settling Parties believe that the proposed sanction of $10 per affected customer for a total of $4,440 is a fair, proportionate and adequate disposition of this incident.

**IV. STATEMENT OF PARTIES’ INTERESTS AND THE PUBLIC INTEREST**

1. Based on the above factual recitation, the company admits that, in offering every other week solid waste collection service, Klickitat Allied Waste violated RCW 81.28.080 and WAC 480-70-236(2). In addition, after due deliberations, and in order to resolve this matter without additional expense of time and costs, KAW has agreed to accept the proposed imposition of a monetary penalty in the amount of $4,440.
2. After further evaluation of the file and with full consideration of the nature of the violation and the actions taken by KAW to correct the conduct and ensure prospective compliance with tariff requirements, Staff has accepted a proposed fine of $10 per customer, rather than the original proposal of $100 per customer. Again, in the interests of judicial economy and in recognizing the prompt, effective corrective actions taken by KAW to resolve the matter once it was brought to its attention, Commission Staff and KAW believe this settlement fully satisfies the public interest.

**V. SUMMARY OF LEGAL POINTS BEARING ON PROPOSED SETTLEMENT AND THE PUBLIC INTEREST**

1. The Commission has had recent opportunity, in the context of solid waste collection company tariff violations, to articulate some of the important criteria it uses to evaluate penalty amounts and impose appropriate sanctions. In *Washington Utilities and Transportation Commission v. Waste Management Inc. d/b/a Waste Management of Greater Wenatchee* (“*Waste Management of Wenatchee*”), Docket No. TG-091127, Order No. 3, (May 2010), the Commission reiterated many of the criteria weighed by the Commission in imposing penalties in circumstances similar to those here. Relying largely on *MCI Access Transmission Services Inc. v. U.S. West Communications*, Docket No. UT-971063, Final Order (Feb. 1999), the Commission set forth the following criteria:

[W]hether 1) the offending conduct was associated with new requirements or issues of first impression, 2) the offending party should have known its conduct constituted a violation, 3) the offending conduct was knowing or intentional, 4) the offending conduct was gross or malicious, 5) repeated violations occurred, 6) the Commission previously had found violations, 7) the offending conduct improved, and 8) remedial steps were undertaken.

*Waste Management of Wenatchee*, TG-091127, at 7.

1. While not all of the above criteria may be fully relevant here, there is no evidence that the tariff in question was intentionally misapplied, that the conduct was gross, malicious or otherwise intended to do harm to any party, that KAW has ever been subject to similar violations, and indeed, there *is* affirmative evidence that the offending conduct was promptly remedied and that there were no further violations found on service level frequency.
2. Based on the criteria set forth in the *MCImetro* and *Waste Management of Wenatchee* cases, the Settling Parties urge the Commission to find that the proposed sanction is fully consistent with law and rule and serves the public interest.[[1]](#footnote-1) Considering then the foregoing criteria, and the agency’s inherent discretion to impose sanctions up to a certain range but not mandating the quantified maximum range be applied, the Settling Parties urge the Commission to exercise its statutory discretion and approve the proposed monetary settlement and, after payment thereof to the Commission, dismiss the subject complaint.

**VI. CONCLUSION**

1. Because the Settling Parties have negotiated a full compromise on all of the issues in this dispute, and because the settlement is in the public interest, both parties request that the Commission enter an Order approving the Agreement.

Respectfully submitted this \_\_\_\_\_\_ day of July, 2010.

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION |  | RABANCO, LTD. D/B/A ALLIED WASTE SERVICES OF KLICKITAT COUNTY |
| ROBERT M. MCKENNA,  Attorney General |  |  |
| SALLY BROWN  Senior Assistant Attorney General  Counsel for the Washington Utilities and Transportation Commission |  | DAVID W. WILEY  Counsel for Respondent Rabanco, Ltd. d/b/a Allied Waste Services of Klickitat County |
| Dated: , 2010 |  | Dated: , 2010 |

1. Indeed, the $10 per customer violation proposed is identical to that imposed in the *Waste Management of Wenatchee* case. [↑](#footnote-ref-1)