

HEARINGS: Hearings were held at Olympia, Washington on July 13, 1995 (hearing on a proposed stipulation on rate design, ratesetting methodology, and changes in the semiannual rate adjustment mechanism), September 18, 1995 (hearing on a revised proposed proposed stipulation), and October 9, 1995 (cross of company on revenue requirements), before Chairman Sharon L. Nelson, Commissioner Richard Hemstad, Commissioner William R. Gillis, and Administrative Law Judge John Prusia. A hearing on a proposed Settlement Agreement on Revenue Requirements Issues was held on December 4, 1995, before Chairman Sharon L. Nelson, Commissioner Richard Hemstad, and Administrative Law Judge John Prusia.

APPEARANCES: At the December 4, 1995 hearing, James M. Van Nostrand, attorney, Bellevue, represented US Ecology, Inc., Ann E. Rendahl, assistant attorney general, 1, Olympia, represented the Staff of the Washington Utilities and Transportation Commission (Commission Staff). J. Jeffrey Dudley, attorney, Portland, Oregon, represented intervenor Portland General Electric Company ("PGE"). Richard H. Williams, attorney, Portland Oregon, represented intervenor Teledyne Wah Chang ("TWC"). James C. Paine, attorney Portland, Oregon, represented intervenor Precision Castparts Corp. ("Precision"). James T. Irish, program analyst, Richland, represented intervenor Bonneville Power Administration ("BPA"). The following parties, which also are signatories to the proposed Settlement Agreement, appeared at other stages of the proceedings: Intervenor Washington Public Power Supply System ("Supply System") by Melvin N. Hatcher, attorney, Richland; Intervenor Public Service Company of Colorado ("PSC Colorado") by Mark A. Davidson and Frank Prager, attorneys, Denver, Colorado.

COMMISSION: The Commission accepts the Settlement Agreement on Revenue Requirement Issues (Exhibit 45). It authorizes the company to file revised tariffs consistent with the rate design, ratesetting methodology, semiannual rate adjustment, NORM/NARM, and other ratemaking determinations made in the Fifth Supplemental Order, and consistent with the determinations made in this Order.

MEMORANDUM

BACKGROUND AND PROCEDURAL HISTORY

Low level radioactive waste (LLRW) disposal came under regulation through a process that began in 1990 with Chapter 21, Laws of 1990.

The history of the Commission's regulation of this company is set out in Docket No. TG-920234, In re US Ecology, Inc., Seventh Supplemental Order (December 1992); in Docket No. UR-930711, WUTC v. US Ecology, Inc., Third Supplemental Order, and Docket No. UR-930890, WPPSS v. US Ecology, Inc., Third Supplemental Order

(consolidated) (October 1993);¹ and in Docket No. TG-920234, In re US Ecology, Inc., Tenth Supplemental Order, Docket No. UR-930711, WUTC v. US Ecology, Inc., Sixth Supplemental Order, and Docket No. UR-930890, WPPSS v. US Ecology, Inc., Sixth Supplemental Order (consolidated) (March 1994). The company presently operates under rates established in a settlement agreement approved by the Commission in January 1994.²

In its October 1993 order in Docket Nos. LTR-930711 and UR-93089,0, the Commission expressed its belief that a collaborative process would provide a better forum for raising and resolving disputes than contested hearings. The Commission concluded that a consensus-based process would be particularly appropriate for defining or resolving as many issues as possible before hearing the 1994-95 rate case directed in the Commission's 1992 order, including cost study methodology; cost allocation approaches; rate design; and possible changes to the semiannual rate adjustment (SARA) to better track costs. The order directed the company to convene a collaborative, inviting all parties to the Study Group that designed the original regulatory framework for this industry and all intervenors in Docket Nos. UR-930711 and UR-930890, to address, at a minimum, the issues listed above.

In early 1995, the company reported on the efforts of the Collaborative Group, as described in the Third and Fifth Supplemental Orders. The company filed this general rate case on May 31, 1995. Following the commencement of the general rate case, pursuant to notice, the Commission on July 13, 1995, held a hearing to consider a proposed stipulation on rate design, ratemaking methodology, and other non-revenue requirements issues. At that hearing, the parties had not reached complete consensus. Several customers of the company who are not parties also testified in opposition to the proposed stipulation. The Commission entered its Third Supplemental Order on July 21, 1995, rejecting the proposed stipulation. The order set out the Commission's reasons for rejecting the proposed stipulation. It urged the parties to make another effort to reach consensus on a stipulation which the Commission could accept.

Subsequently, the Collaborative Group reconvened, and reached consensus on rate design and ratemaking recommendations. On September 5, 1995, the company filed with the Commission a revised proposed stipulation on rate design, ratemaking methodology, and other non-revenue requirements issues (Exhibit 14). The Commission held a hearing on the

revised proposed stipulation on September 18, 1995. On October 6, 1995, the Commission entered its Fifth Supplemental Order Accepting Stipulation.

¹ Published in the Commission's October 1993 Utility final orders; another copy was included with the Commission's January 1994 Transportation final orders. Before October 1995, orders concerning US Ecology usually were published in the Transportation Final Orders. They now are published in both the Transportation and Utility Final Orders.

² Docket No. TG-920234, In re US Ecology, Inc., Ninth Supplemental Order, Docket No. UR-030711, WUTC v. US Ecology, Inc., Fifth Supplemental Order, and Docket No. UR-930890, WPPSS v. US Ecology, Inc., Fifth Supplemental Order (consolidated) (January 1994).

Included in the stipulation accepted by the Commission was agreement that the participants would not relitigate the issues decided by the Commission in the company's 1992 general rate case regarding (1) use of an operating ratio to set rates or (2) the 71 % operating ratio determined by the Commission. See, Docket No. TG-920234, In re US Ecology, Inc., Seventh: Supplemental Order (December 1992). The stipulation provided that the expenses to which the operating ratio would be applied would be narrowed to exclude amortization of rate case expenses and recovery of a return on working capital, inventory, or unamortized balances.

A hearing for cross examination of the company was held on October 9, 1995.

On November 29, 1995, the parties filed with the Commission a proposed Settlement Agreement on Revenue Requirements Issues which resolves all outstanding issues. The proposed Settlement Agreement is signed by all parties to this proceeding. Hearing on the proposed Settlement Agreement was held on December 4, 1995. All parties present stipulated to admission of the prefiled testimony and exhibits of Sondra Walsh and Albert A. Jones for Commission Staff and to admission of the prefiled testimony and exhibits of Mark Drazen for the intervenors. These same parties waived the right to cross examine the testimony for purposes of the Settlement Agreement. All parties present at the hearing supported the Settlement Agreement.

PROPOSED SETTLEMENT AGREEMENT ON REVENUE REQUIREMENT ISSUES

A summary of the principal provisions of the proposed Settlement Agreement on Revenue Requirement Issues follows.

1. Revenue Requirements

The Agreement provides that the company's revenue requirement for 1996 shall be \$5,600,090, supported by Exhibit A attached thereto (Results of Operations, including restating and pro forma adjustments). The Agreement recites that the company's filing requested: a revenue requirement of \$6,498,362 for 1996; that Commission Staff in its prefiled testimony proposed various adjustments to the company's filing, and recommended a revenue requirement of \$4,969,224; and that the intervenors proposed various adjustments that would reduce the revenue requirement by \$977,571.

2. RCRA Expenditures

The company's filing included \$750,000 in costs associated with Phase I of an investigation to be conducted in 1995 and 1996 under the Resource Conservation and Recovery Act of 1976 (RCRA). The revenue requirement agreed upon does not include these costs. The Agreement provides that the company may submit a separate rate filing to recover these costs once they become certain as to amount and timing, limits the scope of such a filing, and reserves to Commission Staff and Intervenors the right to dispute the recoverability of these expenditures in rates.

3. Benton County Property Tax

The Agreement provides that the company withdraws its Petition for Accounting Order in Docket No. UR-950620; that the company shall not seek to recover such amounts; and that any rate relief related to assessments for the Benton County property tax shall be for the liability which relates to periods after January 1, 1996, in accordance with provision set out in the Agreement which provides for collection of a tax surcharge through Schedule C, allocation of the surcharge for rate design purposes, refund of excess collections, and provision: for reduction in collected amounts and for collection of additional amounts in the event assessments relating to periods after January 1, 1996, differ from the parties' stipulated estimate of \$140,000.

4. No Precedent

The Settlement Agreement expressly provides that by entering into the Agreement, no party shall be deemed to have accepted or consented to the facts, principles, methods, or theories employed in arriving at the Agreement, nor shall any party be deemed to have agreed that such a Settlement Agreement is appropriate for resolving issues in any other proceeding.

PUBLIC COMMENT

The Commission on December 4, 1995, held a hearing in Olympia for the purpose of allowing public comment on the proposed Settlement Agreement and the issues there raised. No members of the public appeared.

COMMISSION DISCUSSION AND DECISION

The Commission has reviewed the record and the proposed Settlement Agreement. The Commission concludes that acceptance of the Settlement Agreement is consistent with the public interest. The Agreement concludes a long and difficult process in a manner that is acceptable to all of the parties. It spares the parties and the Commission the costs of potentially lengthy and expensive litigation. It allows permanent rates to go into effect immediately upon expiration of the company's present rates. We commend the efforts of the parties which resulted in this settlement. A copy of the Settlement Agreement is attached to this Order as Appendix A.

The settlement is not without drawbacks. Settlements, by definition, balance interests and allow each of the parties to satisfy the interests that are most important.

The Commission's major concern in this case is pro forma adjustment number PA-7. The company uses an operating ratio methodology to set rates. Under that methodology, recovery of capital, unlike operating expenses, is not included in the base on which the operating margin is calculated. Recovery of and return on capital is covered by the margin, rather than being included in the calculation of the margin. Any migration of capital needs to operating expenses raises concern that a company is gaming the formula -- that it is in one stroke reducing its capital expenses and increasing the base on which its margin is calculated. It appears in this case that the company is leasing equipment that in the past was purchased. This creates the above situation and raises concerns. The agreed adjustment also skirts the issue of the prudence of entering into large non-capital leases; operating leases usually are more expensive than capital leases. The Commission's acceptance of this Settlement Agreement does not constitute a change in the Commission's general policy that a company should choose the least cost method to provide service. Further, the movement of costs from the margin portion to the operating expense portion of the revenue requirement calls into question the viability of the ratemaking approach used for this company. However, the Commission is swayed, based upon the unanimous support of the parties for the overall settlement, that our concerns in this case should not result in rejection of the Settlement Agreement.

The settlement accepted in this order shall not constitute precedent for any purpose, except the principles that the Commission encourages disputing parties before us to consider settlements and that the Commission may accept settlements that we determine are consistent with the public interest.

FINDINGS OF FACT

Having discussed the relevant evidence above, and having stated its findings and conclusions, the Commission now makes the following summary of the facts as found. Those parts of the preceding detailed findings pertaining to the ultimate facts are incorporated by reference in the ultimate facts found below.

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington empowered by statute to regulate rates for the disposal of low-level radioactive waste.
2. US Ecology, Inc., operates a low-level radioactive waste disposal site within the state of Washington.

3. On May 31, 1995, US Ecology, Inc., filed with the Commission, in Docket No. UR-950619, a request for a general rate increase for disposal of low-level radioactive waste at its Richland, Washington facility. The company requested that the rates become effective January 1, 1996. The filing requested an increase of \$1,490,905, or 29.8 percent. On June 9, 1995, the Commission entered a complaint and order suspending the filing.

4. On May 31, 1995, US Ecology, Inc., filed with the Commission, in Docket No. UR-950020, a Petition for Accounting Order regarding the accounting treatment of the company's Benton County property tax liability. This petition was consolidated with Docket No. UR-950619 for hearing and decision.

5. The parties submitted to the Commission for approval in Docket No. UR-950619 a Stipulation Regarding Rate Design and Ratemaking Issues. The Commission accepted the stipulation in its Fifth Supplemental Order, entered October 6, 1995.

6. The parties submitted to the Commission for approval in both dockets a Settlement Agreement on Revenue Requirement Issues which would resolve the remaining issues in these consolidated dockets. A copy of the Settlement Agreement is attached to this order as Appendix A and incorporated herein; the original Settlement Agreement has been admitted into evidence as Exhibit 45. As part of the Settlement Agreement, the company withdraws its Petition for Accounting Order in Docket No. UR-950620.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties thereto.

2. The terms of the proposed Settlement Agreement on Revenue Requirement Issues are consistent with the public interest. The Commission should accept the Settlement Agreement.

3. The Commission should authorize US Ecology, Inc., to file revised tariffs consistent with the rate design, ratesetting methodology, semiannual rate adjustment mechanism, NORM/NARM, and other ratemaking determinations made in the Fifth Supplemental Order in this docket, and consistent with the revenue requirement determinations set out in the parties Settlement Agreement on Revenue Requirement Issues.

4. The Commission should authorize US Ecology, Inc., to withdraw its filing in Docket No. UR-950620.

ORDER

THE COMMISSION ORDERS:

1. The Settlement Agreement on Revenue Requirement Issues filed herein (Exhibit 45), a copy of which is attached as "Appendix A", is accepted.
2. The company's withdrawal of its Petition for Accounting Order in Docket No. UR-950620 is accepted. The petition is dismissed. Any rate relief related to assessments for the Benton County property tax shall be in accordance with paragraph 4(b) of the Settlement Agreement.
3. US Ecology, Inc., is authorized to file revised tariffs consistent with the rate design, ratesetting methodology, semiannual rate adjustment mechanism, NORM/NARM, and other ratemaking determinations made in the Fifth Supplemental Order and consistent with the, revenue requirement determinations made in this order.
4. The compliance filing required by this order is strictly limited in scope to effectuate the terms of the Commission's decision and order.
5. The refiled tariff pages should bear the notation that the pages are filed by authority of the Commission's SIXTH SUPPLEMENTAL ORDER IN DOCKET NO. UT-950619.
6. The Commission retains jurisdiction over the parties and the subject matter to effect the terms of this order.

DATED at Olympia, Washington, and effective this 6th day of December 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-8920(1).