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3 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

4 In Re Application of

5 KLEEN ENVIRONMENTAL  
6 TECHNOLOGIES, INC.

Docket No.: TG-040248

RESPONSE OF APPLICANT TO  
STERICYCLE'S MOTION TO STRIKE

7 The Applicant, Kleen Environmental Technologies, Inc. ("Kleen"), requested admission  
8 of documents marked as Exhibits 52 and 53 during rebuttal testimony of Mr. Kenneth Lee.  
9 Protestants objected to the exhibits and related testimony of Mr. Lee and have now moved to  
10 strike the exhibits and testimony, arguing that there was no direct testimony of the Protestants to  
11 which these documents would be rebuttal. Administrative Law Judge Ann Rendahl allowed the  
12 parties to submit pleadings with the Commission by Monday, October 25, 2004, concerning  
13 whether the documents marked as Exhibits Nos. 52 and 53 are properly rebuttal exhibits,  
14 whether the proposed exhibits should be admitted or rejected, and whether the testimony of Mr.  
15 Lee concerning the proposed exhibits should be allowed or stricken from the record.

16 The documents marked as Exhibit 52 are computer printouts of listings for commercial  
17 real estate for lease in South King County. These documents were offered through Mr. Lee in  
18 rebuttal of the prefiled testimony of Nannette Walker that Kleen did not currently have more  
19 than a month-to-month lease. Exhibit 115, p. 8. The documents marked as Exhibit 52, and Mr.  
20 Lee's corresponding testimony, are offered to show how Kleen will be able to obtain a lease of  
21 adequate facilities, instead of their current month-to-month lease, to provide the services  
22 proposed in this application consistent with Kleen's projected pro forma costs.

1 The documents marked as Exhibit 53 are from Harris Ford describing possible terms of  
2 leases of commercial trucks. These documents were offered through Mr. Lee in rebuttal of the  
3 prefiled testimony of Ms. Walker that Kleen did not provide a statement or other evidence to  
4 demonstrate that Harris Ford was prepared to extend credit to Kleen in the form of a lease "with  
5 minimal money down". Exhibit 115, p. 7. As stated on the first page of the documents marked  
6 as Exhibit 53, the only initial payment required of Kleen will be the first month's lease payment  
7 and license fee. The documents marked as Exhibit 53, and Mr. Lee's corresponding testimony,  
8 are offered to show how Kleen will be able to obtain a lease of adequate vehicles to provide the  
9 services proposed in this application consistent with Kleen's projected pro forma costs, with  
10 minimal money down.

11 The parties agreed on the first day of these proceedings that rebuttal was not to be  
12 presented until after direct testimony. Thus, even though the claims in Ms. Walker's prefiled  
13 statements were known prior to the direct testimony of Mr. Lee, the documents marked as  
14 Exhibits 52 and 53, and testimony regarding those documents from by Mr. Lee, were properly  
15 withheld until offered in rebuttal. The documents marked as Exhibits 52 and 53 are properly  
16 rebuttal exhibits and should be admitted, and the testimony of Mr. Lee concerning those  
17 proposed exhibits should be allowed.

18 **DATED** October 25, 2004.

19 CURRAN MENDOZA P.S.

20 By 

21 Greg W. Haffner, WSBA #19414  
22 Attorneys for Kleen Environmental  
Technologies, Inc.