

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| In the Matter of the Petition of   | ) | DOCKET TL-070848      |
|                                    | ) |                       |
| US ECOLOGY, INC.,                  | ) | ORDER 02              |
|                                    | ) |                       |
| Petitioner,                        | ) |                       |
|                                    | ) |                       |
|                                    | ) |                       |
| To Approve Extension of Settlement | ) | ORDER EXTENDING       |
| Agreement to Become Effective      | ) | SETTLEMENT RATES,     |
| January 1, 2014, Through 2019      | ) | TERMS, AND CONDITIONS |
| .....                              | ) |                       |

**BACKGROUND**

- 1 On March 16, 2013, US Ecology Washington, Inc., (US Ecology or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition to extend the current Settlement Agreement, which expires December 31, 2013, for an additional six-year period, 2014 through 2019 (Petition).
  
- 2 US Ecology operates a low level radioactive waste (LLRW)<sup>1</sup> disposal facility licensed by the state of Washington. The facility is located on a site the Company leases from the United States Environmental Protection Agency (EPA) at the Hanford Federal Reservation near Richland, WA. Various state and federal agencies regulate the facility and operations, including the EPA, United States Department of Transportation, United States Nuclear Regulatory Commission (NRC), and the Washington State Department of Ecology. The facility accepts Class A, B, and C waste<sup>2</sup> and receives waste from states in

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<sup>1</sup> Radioactive waste is generated from nuclear weapons programs, commercial nuclear power, medical applications, and corporate and university-based research programs. Waste is generally categorized as high level waste (HLW) and low-level waste (LLW). Some of the materials LLW consists of are: "gloves and other protective clothing, glass and plastic laboratory supplies, machine parts and tools, and disposable medical items that have come in contact with radioactive materials." LLW contains materials such as irradiated tools, lab clothing, ion exchanger resins, animal carcasses, and trash from defense, commercial nuclear power, medical, and research activities. These materials usually have radioactivity that have short half-lives—from ranges of multiple days to several hundred years.

<sup>2</sup> The NRC defines three different classes of LLW: A, B, and C. These classes are based on the waste's concentration, half-life, and types of radionuclides it contains. Class A consists of radionuclides with the shortest half-life and lowest concentrations. This class makes up 95 percent of LLW, and its radioactivity levels return to background levels within 100 years. Classes B and C contain greater concentrations of radionuclides with longer half-lives, fading to

the Northwest Compact (Washington, Alaska, Hawaii, Idaho, Montana, Oregon, and Wyoming) and, by contract, from states in the Rocky Mountain Compact (Colorado, Nevada, and New Mexico).

- 3 The Commission first accepted a settlement agreement to set rates for US Ecology's LLRW disposal services in 1995. That settlement agreement was in effect for six years and defined the rate setting methodology, revenue requirement, rate design, rate adjustment mechanism (including deferrals, annual revenue adjustment using an index, and annual true ups) and how to treat NORM/NARM<sup>3</sup> revenue. The settlement agreement also prohibited, except under specified circumstances, US Ecology from filing a general rate case during the settlement agreement period.
- 4 The Commission accepted a second settlement agreement in 2001, with the same terms and conditions as the first settlement agreement, for setting rates in 2002 through 2007. In Order 01, Order Accepting Settlement Agreement and Approving Rates (Order 01) in this docket, the Commission accepted a third settlement agreement, dated April 30, 2007 (2007 Settlement Agreement), with the same terms and conditions as the first settlement agreement, for setting rates in 2008 through 2013.
- 5 US Ecology now asks the Commission to extend the 2007 Settlement Agreement for an additional six years, 2014 through 2019. The proposed extension would continue the terms and conditions that have been in effect since 1996 for an additional six years through 2019 with some minor technical adjustments.
- 6 In support of its Petition, US Ecology states that all interested parties either support or do not oppose extending the 2007 Settlement Agreement:

US Ecology has been in contact with all generators or their representatives and has received no objection to the extension of the six year plan. In fact many of the major generators have either indicated that they agree with extending the existing agreement or that they have no opinion one way or another. See, the signature pages attached as Exhibit 2. A strong, two-thirds majority of the generators agree that the existing agreement should be extended. Generators

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background levels in less than 500 years. They must meet stricter disposal requirements than Class A waste.

<sup>3</sup> "NORM" means naturally occurring radioactive material, while "NARM" means naturally occurring and accelerator-produced radioactive material.

representing approximately thirteen percent of total revenues had no opinion. This means that approximately eighty percent of the generators either agree with or do not oppose extension of the existing agreement. Not a single generator expressed opposition to the extension.<sup>4</sup>

7 US Ecology represents that it solicited generator comments regarding the proposed extension of the 2007 Settlement Agreement with the following results:

Major generators that ship waste directly to US Ecology:

- Agree with extending the existing agreement through 2019.
  - Energy Northwest
  - University of Washington
  - Areva NP, Inc.
  - Pearl Harbor Naval Shipyard and IMF
- Has no opinion (does not agree or disagree) with extending the agreement.
  - Perma-Fix Northwest, Inc.
  - Environmental Management & Controls, Inc.
- No Response
  - Qal-Tek Associates, LLC
  - EMC
  - Puget Sound Naval Shipyard

Brokers that ship the waste of smaller generators

- No Response

All Other Generators

- Agree with extending the existing agreement through 2019.
  - University of Washington

No generator responded that it “Disagrees with extending the existing agreement.”<sup>5</sup>

8 Commission Staff reviewed the proposed extension of the 2007 Settlement Agreement and concludes that the proposed extension is reasonable. Specifically with respect to the rates, the Company’s last rate adjustment was effective May 1, 2007, in Docket TL-070626, and established the base revenue requirement for 2008 at \$5.2 million, a reduction of approximately \$482,000 (9.3 percent) from the 2007 revenue requirement under the previous second settlement agreement. The Company’s revenue requirement

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<sup>4</sup> Petition ¶ 3 (footnote omitted).

<sup>5</sup> See *id.*, Exhibit 2.

for 2009 through 2013, as adjusted by the inflation index set forth in the 2007 Settlement Agreement, has increased 9.5 percent, an average annual increase of 1.9 percent,<sup>6</sup> and thus Staff is satisfied that continuation of the existing rates will not result in unreasonable rates.

### DISCUSSION

9 The 2007 Settlement Agreement is an agreement between US Ecology and several other parties. The Commission approved the agreement and adopted its terms as part of that approval, but the Commission cannot unilaterally amend the agreement itself. Only the signatories to the agreement can do so, and no amendment signed by all parties to the 2007 Settlement Agreement is before us. Thus, we cannot grant the relief US Ecology seeks in the form the Company requests in its petition.

10 Our rules, however, authorize the Commission to “liberally construe pleadings and motions with a view to effect justice among the parties.”<sup>7</sup> US Ecology effectively requests that we extend the time during which the rates, terms, and conditions in the 2007 Settlement Agreement will be effective, and we construe the pleading accordingly. We also accept the Company’s documentation and representation that the other parties to that agreement support or do not oppose such an extension. Nor has the Commission received comments from any other interested person in opposition to the petition. We therefore extend the rates, terms, and conditions in the 2007 Settlement Agreement until January 1, 2020.

### FINDINGS AND CONCLUSIONS

- 11 (1) US Ecology is a low-level radioactive waste disposal company and as such is a public service company subject to the jurisdiction of the Commission.
- 12 (2) US Ecology proposed a six-year extension to the 2007 Settlement Agreement through 2019. No generators have opposed the proposed extension. The terms and conditions set forth in the 2007 Settlement Agreement are the same as two previous settlement agreements, and have been in effect since 1996.
- 13 (3) This matter was brought before the Commission at its regularly scheduled

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<sup>6</sup> Order 01 ¶ 4.

<sup>7</sup> WAC 480-07-395(4).

meeting on October 10, 2013.

- 14 (4) The Commission cannot unilaterally extend an agreement between private parties, but the Commission can extend the effective date for the rates, terms, and conditions in the 2007 Settlement Agreement.
- 15 (5) Extension of the effective date for the rates, terms, and conditions in the 2007 Settlement Agreement, with the modifications the Company has proposed, is in the public interest and results in rates, terms, and conditions for US Ecology's low-level radioactive waste disposal services that are fair, just, reasonable, and sufficient.

**ORDER**

**THE COMMISSION ORDERS:**

- 16 (1) The Commission extends the rates, terms, and conditions in US Ecology, Inc.'s Settlement Agreement, dated April 30, 2007, and attached to this Order as Appendix A, until January 1, 2020, with the following modifications:
- a. Section 5, Moratorium on General Rate Case Filing, the moratorium date of January 1, 2014, is modified to January 1, 2020.
  - b. Section 9, Term, January 1, 2014, is modified to January 1, 2020.
- 17 (2) The Commission retains jurisdiction over the subject matter and US Ecology, Inc., to effectuate the provisions of this Order.

The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective October 10, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING, Executive Director and Secretary