

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PENINSULA SANITATION SERVICE,
INC.,

Respondent.

DOCKET TV-190476

REVISED JOINT NARRATIVE
SUPPORTING SETTLEMENT
AGREEMENT

I. INTRODUCTION

1 This Joint Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to Washington Administrative Code (WAC) 480-07-740(3)(a) on behalf of Peninsula Sanitation Service, Inc. (Peninsula or Company) and Staff of the Washington Utilities and Transportation Commission (Commission) (collectively, the Parties). The Parties have signed the settlement agreement (Agreement), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

II. PROPOSAL FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Agreement. The Parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). Accordingly, the Parties submit that conducting a hearing will not assist the Commission to decide whether to approve

and adopt the settlement because of the limited scope of the incident and the Company's cooperation with Commission staff (Staff). *See* WAC 480-07-740(2)(e).

3 If the Commission conducts a hearing, however, the Parties will present one or more witnesses to testify in support of the Agreement and to answer questions concerning the Agreement's details, costs, and benefits. *See* WAC 480-07-740(3)(b). In addition, counsel for each party will be available to address any legal matters associated with the Agreement. The Parties intend to file a narrative supporting the Agreement. If the Commission requires supporting documents beyond the Agreement and narrative, the Parties will provide any documentation needed.

III. APPLICABLE LAW

4 RCW 81.28.080 provides that:

A common carrier subject to regulation by the commission as to rates and service shall not charge, demand, collect, or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time ...¹

5 Additionally, WAC 480-70-236 provides that:

(1) No company may provide solid waste collection service until it files, and the commission approves, a tariff.

(2) No company may assess rates and charges for solid waste collection service that are higher, lower, or different from those contained in its approved tariff.

¹ RCW 81.28.080.

(3) No company may accept a payment for service provided that is higher, lower, or different from the rates and charges contained in its approved tariff.²

6 Furthermore, WAC 480-70-411 requires that “Companies that collect customer deposits must pay interest on those deposits” at an interest rate and time period set by rule.³

7 Any solid waste collection company that violates or fails to comply with any provisions of Title 81 RCW or any order, rule, direction, or requirement of the Commission is subject to a penalty of up to \$1,000 per violation.⁴

8 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission.⁵

IV. SCOPE OF THE UNDERLYING DISPUTE

9 In January 2019, Staff conducted an investigation to determine if Peninsula was in compliance with Commission laws and rules outlined in RCW 81.77, WAC 480-70, and Peninsula’s Tariff No. 16, Certificate No. G-011, on file with the Commission.

10 On January 9, 2019, Staff issued a data request to Peninsula requesting copies of its procedures relating to customer deposits for service as well as customer refunds. Staff also requested that Peninsula provide a list of all customers who had been charged a drive-in fee between June 1, 2016 and January 1, 2019. The investigation focused on: (1) the charging of customers deposits in order to establish service; (2) the charging customers drive-in fees outside of the Company’s tariffed rates; and (3) customer complaints.

² WAC 480-70-236(1)-(3).

³ WAC 480-70-411(6).

⁴ RCW 81.04.380.

⁵ RCW 81.04.110.

11 On January 16, 2019, Peninsula produced an Excel spreadsheet reflecting its customer deposit records from June 2017 through November 2018. The document indicates that 12 customers were charged a deposit fee for service, along with the deposit date, customer name, account number, service address, deposit amount, the date on which the deposit was applied, and the reason for requiring the deposit. After reviewing the available information, Staff found that the Company had discontinued its practice of requiring deposits for service based on a customer's service address. Furthermore, according to Company records, the deposits collected were applied to customer accounts within the allowable timeframe under WAC 480-70-411. However, Staff found 12 instances in which the Company failed to include accrued interest when refunding customer deposits, in violation of WAC 480-70-411(6).

12 On January 17, 2019, Peninsula produced an Excel spreadsheet documenting 12,824 distinct drive-in charges, generally ranging from \$1.70 to \$7.36 per month. Peninsula's Tariff G-011, Item 80, specifies the rate the company may charge for drive-in service. Item 80 specifies that Peninsula is required to charge customers drive-in fees according to a tiered, rather than a flat rate. Item 75 of Peninsula's Tariff sets forth the services for which Company can charge customers a flat rate. Item 75 covers many of the Company's services, but does not include Item 80, drive-in charges.

13 On July 17, 2019, the Commission issued a Complaint for Penalties and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements on August 20, 2019, at 9:30 a.m. in Docket TV-190476. The Complaint alleged 669 violations of RCW 81.28.080 and/or WAC 480-70-236(2), at \$50 per violation (totaling \$33,450).⁶ The Complaint also alleged 12

⁶ During the course of settlement negotiations, Staff and the Company met on multiple occasions and exchanged information. After receiving information from the Company, and independently reviewing the Excel spreadsheet provided by the Company, Staff agreed to lower the count of alleged violations of 81.28.080 and/or WAC 480-70-236(2) from 669 to 574.

violations of WAC 480-70-411(6), at \$1,000 per violation (totaling \$12,000). Additionally, the Complaint's Request for Relief requested that:

- “Peninsula be ordered to bill its customers drive-in fees as specified in its tariff.”
- “Peninsula be ordered to revise its tariff to be consistent with similar solid waste companies with respect to drive-in fees: if a driveway provides access to multiple residences or accounts, no drive-in fee will be assessed.”
- “Peninsula be ordered to file a general rate case to socialize its drive-in charges as a normal function of operation and performing solid waste service to its customers.”
- “Peninsula [be ordered] to calculate interest payments as described in WAC 480-70-411(6) for each of the 12 affected customers, and apply a credit or provide a refund to those customers' accounts as appropriate.”

14 The brief adjudicative proceeding set for August 20, 2019 was rescheduled to October 16, 2019, and was subsequently cancelled and the procedural schedule suspended pursuant to a joint request filed by the Parties on October 18, 2019.

15 On October 22, 2019, the Commission granted the Parties' request to continue the suspension of the procedural schedule and required that the Parties file a status report by November 5, 2019.

16 On November 5, 2019, the Parties notified the Commission of their settlement in principle, and indicated the Parties' intent to file settlement papers by November 20, 2019.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

17 The Agreement resolves all of the issues in dispute in Docket TV-190476. The Parties agree to the following terms set forth in the Agreement:

18 Violation: The Company admits that, on 574 occasions, it violated RCW 81.28.080 and/or WAC 480-70-236(2). The total penalty for these violations (before any mitigation and/or suspension is applied) is \$28,700. The Company will pay a penalty of \$4,400, and \$24,300 of this penalty will be suspended for a period of two years from the effective date of the Commission order approving this settlement. Additionally, the Company admits that on 12 occasions, it violated WAC 480-70-411(6). The total penalty for these violations (before any mitigation and/or suspension is applied) is \$12,000. The Company will pay a penalty of \$600. \$6,000 of this penalty will be mitigated and \$5,400 suspended for a period of two years from the effective date of the Commission order approving this settlement.

19 Mitigating circumstances and reduced likelihood of future violations concerning the Company's 12 violations of WAC 480-70-411(6): Due to the Company's cooperation with Staff, its subsequent conduct in discontinuing its practice of requiring deposits for service based on a customer's service address, and its subsequent conduct in refunding the applicable accrued interest to the 12 impacted customers, Staff believes the likelihood of repeated future violations of WAC 480-70-411(6) to be low.

20 Monetary penalty: The Commission will impose a penalty of \$40,700, \$5,000 of which is to be paid, \$6,000 of which is mitigated to zero, and \$29,700 of which is suspended for a period of two years from the effective date of the Commission order approving this settlement. The suspended penalty will be waived after the two year period provided that the Company refrain from any additional violations of applicable tariff rules.

21 Tariff: Peninsula will revise its tariff to be consistent with similar solid waste companies with respect to drive-in fees: if a driveway provides access to multiple residences or accounts, no drive-in fee will be assessed. Peninsula will bill its customers drive-in fees as specified in its Tariff (e.g., if the Tariff calls for a tiered/measured rate structure, then Peninsula will apply that structure rather than flat rates). Staff is willing to assist the Company in transitioning to a flat rate structure for drive-in fees, rather than tiered/measured drive-in fees.

22 Rate case: Peninsula will file a general rate case with the Commission by July 1, 2020, to socialize its drive-in charges as a normal function of operation and performing solid waste services to its customers.

23 Billing practices concerning drive-in fees: Peninsula will cease and desist its non-compliant billing practices with respect to drive-in fees, and will come into complete compliance by January 1, 2020. Peninsula's next billing cycle will occur on or about February 1, 2020. This will be Peninsula's first bill following January 1, 2020.

24 Future enforcement of allegations set forth in complaint: Staff confirms that it will not pursue further enforcement against the Company arising out of any of the allegations set forth in Docket TV-190476.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

25 The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources or litigation expenses.

26 In accordance with WAC 480-07-740-750, the Parties believe the Agreement is in the public interest and appropriate for the Commission's acceptance without conditions under WAC 480-07-750(2)(a) for three reasons. First, the Company has agreed to revise its tariff, discontinue its current billing practices with respect to drive-in fees and the collection of customer deposits, refund accrued interest on customer deposits, and file a rate case by July 1, 2020. Therefore, there is a low likelihood that the Company will again violate the statutes and rules that are the subject of the Complaint. Second, the Company's good faith cooperation with Staff demonstrates the Company's understanding of the importance of compliance with Commission rules and intention to comply on a going-forward basis. Third, the significant suspended penalty imposed under this settlement will create a strong incentive for the Company to comply with the terms of the settlement and discourage future violations.

27 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. The rule states: "the commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest" WAC 480-07-700. For the reasons stated above, the Parties contend that their Agreement is lawful and consistent with the public interest.

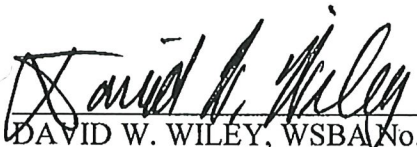
VII. CONCLUSION

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The Agreement resolves all of the issues in this docket and the Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

DATED this 3rd day of December, 2019.

PENINSULA SANITATION SERVICE,
INC.

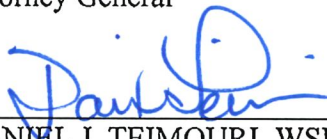


DAVID W. WILEY, WSBA No. 8614
dwiley@williamskastner.com
SEAN LEAKE, WSBA No. 52658
sleake@williamskastner.com
601 Union St., Suite 4100
Seattle, WA 98101
(206) 628-6600

Attorneys for Peninsula Sanitation Service,
Inc.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General



DANIEL J. TEIMOURI, WSBA No. 47965
Assistant Attorney General
daniel.teimouri@utc.wa.gov
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1189

Attorney for Commission Staff