

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

US ECOLOGY WASHINGTON, INC.,

Petitioner,

Seeking Extension of Settlement
Agreement to Become Effective January 1,
2020, through December 31, 2025

DOCKET TL-070848

ORDER 03

ORDER EXTENDING SETTLEMENT
RATES, TERMS, AND CONDITIONS

BACKGROUND

- 1 On May 28, 2019, US Ecology Washington, Inc., (US Ecology or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting a second extension of the terms and conditions of the Settlement Agreement originally approved by the Commission in Order 01 in this docket on June 27, 2007 (Petition). On October 10, 2013, the Commission entered Order 02, which extended the terms and conditions of the Settlement agreement until December 31, 2019. The Petition seeks to extend the Settlement Agreement for an additional six-year period, from January 1, 2020, through December 31, 2025.
- 2 US Ecology operates a low level radioactive waste (LLRW)¹ 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, Washington. 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,² and receives

¹ 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—ranging from multiple days to several hundred years.

² The NRC defines three different classes of LLW: A, B, and C. These classes are based on the

waste from states in 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 approved a settlement agreement that 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/NARM³ 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. On October 10, 2013, the Commission entered Order 02, which extended the 2007 Settlement Agreement through December 31, 2019.
- 5 US Ecology now asks the Commission to extend the 2007 Settlement Agreement for an additional six years, from January 1, 2020, to December 31, 2025. The proposed extension would continue the terms and conditions that have been in effect since 1996 for an additional six years with one modification. The Company requests to modify paragraph 1(b) of the settlement agreement related to annual projections.
- 6 The proposed modification would allow the Company to create its own estimates for its generators. Under the current Settlement Agreement, the Company requests from its customers their projections for the upcoming year, and US Ecology may prepare its own estimate only when a customer does not respond to its request.

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

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

7 The Company states that the modification will address recent revenue shortfalls caused by several of its generators over-estimating their use of the facility. These revenue shortfalls result in higher rates for customers in the subsequent year. The Company believes it will be able to utilize its historical data and expertise to analyze, and when necessary, to modify estimates provided by its generators. The Company was granted a one-time waiver allowing it to use this approach in Docket TL-180974, which set the preliminary rates for 2019. The Company indicated that it would seek to have this modification made permanent when it filed for its next extension. Accordingly, if granted, the Settlement Agreement would be modified to allow this approach to be used for the next 6-year period, through December 31, 2025.

8 In support of its Petition, US Ecology states that all interested parties either support or do not oppose extending and modifying the 2007 Settlement Agreement, as follows:

US Ecology has been in contact with all major 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 majority of the generators agree that the existing agreement (as amended) should be extended. Generators representing approximately thirty-five percent of total revenues had no opinion. This means that approximately ninety 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.⁴

9 US Ecology represents that it solicited generator comments regarding the proposed extension and modification of the 2007 Settlement Agreement, the results of which are shown in the table below.

Supports Petition	Neutral on Petition	No Response
Energy Northwest (Major Generator) ⁵	Pearl Harbor Naval Shipyard & IMF (Major Generator)	Qal-Tek Associates, LLC (Major Generator)
Framatome, Inc. (Major Generator)	Puget Sound Naval Shipyard & IMF (Major Generator)	EMC (Major Generator)

⁴ See Petition ¶ 3.

⁵ Major Generators ship waste directly to US Ecology.

PCC Structurals, Inc. (Other Generator)	Perma-Fix Northwest, Inc. (Major Generator)	RAD Solutions LLC (Major Generator)
University of Washington (Other Generator)	Environmental Management & Controls, Inc. (Broker Client)	
Washington State University (Other Generator)		

No generator responded that it “Disagrees with extending the existing agreement.”⁶

10 Commission staff (Staff) reviewed the proposed extension of the 2007 Settlement Agreement and concludes that the proposed extension, including the proposed modification, is reasonable. The Company’s revenue requirement for 2014 through 2019, as adjusted by the inflation index set forth in the 2007 Settlement Agreement, has increased 8.9 percent, an average annual increase of 1.5 percent, and thus Staff is satisfied that continuation of the existing rate-setting methodology would result in reasonable rates.

11 With regard to the proposed modification, the Company’s assertion that inflated customer estimates have caused under-recovery of its revenue requirement in recent years appears to be valid. The Company reported about \$445,000 in under-recovered revenue in 2016, about \$1.9 million in under-recovered revenue in 2017, and about \$1.7 million in under-recovered revenue in 2018. Because rates are set using these estimates and the annual revenue requirement is fixed and adjusted annually based on an inflation measure, these years of under-recovery are directly related to estimates provided by generators. Accordingly, Staff believes the proposed modification is reasonable.

DISCUSSION

12 The 2007 Settlement Agreement is an agreement between US Ecology and several other parties. The Commission approved the agreement and adopted its terms, but the Commission cannot unilaterally amend the agreement itself. Only the signatories to the agreement can take such action, 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.

⁶ See Petition, Exhibit 2.

13 Our rules, however, authorize the Commission to “liberally construe pleadings and motions with a view to effect justice among the parties.”⁷ US Ecology effectively requests that we extend the time during which the rates, terms, and conditions in the 2007 Settlement Agreement will continue to be effective. 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 opposed to the Petition. We therefore extend the rates, terms, and conditions in the 2007 Settlement Agreement until December 31, 2025, with the following modification to paragraph 1(b) of the 2007 Settlement Agreement.

(b) Annual Projections. Rates shall be determined each January on the basis of projections developed by the Company’s ~~customers~~, according to the following procedure. On or about October 15 of each year, the Company shall submit a written request to each of its customers for estimates of LLRW by volume (in cubic feet), numbers of containers and shipments, and average dose rate per container (in millirems per hour) to be disposed by such customers at the site during the following calendar year. ~~For those customers not responding to the request for estimates,~~ [T]he Company shall prepare its own estimate of the LLRW that the customers can be expected to deliver to the site during such calendar year [based on the customer estimates as adjusted by the Company using historical data where necessary]. On the basis of the estimates prepared by the Company and its customers, the Company shall calculate total projected LLRW for the calendar year. Estimates of volumes which meet the requirements of RCW 81.108.020(3) as "extraordinary" shall be included in the calculation weighted at 51.5% of such volume estimates. Estimates of decommissioning waste volumes shall be included in the calculation weighted at 80% of such volume estimates; provided, however, that the quantities set forth in such estimates must satisfy the requirements of paragraph 2(c) below.

FINDINGS AND CONCLUSIONS

- 14 (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.
- 15 (2) US Ecology proposed a six-year extension to the 2007 Settlement Agreement through 2025 as well as a modification to paragraph 1(b) of the 2007 Settlement Agreement. No generators have opposed the proposed extension and

⁷ WAC 480-07-395(4).

modification. Aside from the proposed modification, 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.

- 16 (3) This matter was brought before the Commission at its regularly scheduled meeting on August 8, 2019.
- 17 (4) The Commission has no authority to unilaterally extend an agreement between private parties, but the Commission is authorized to extend the effective date for the rates, terms, and conditions in the 2007 Settlement Agreement.
- 18 (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:

- 19 (1) The Commission extends effective date of the rates, terms, and conditions in US Ecology Washington, Inc.'s Settlement Agreement, dated April 30, 2007, attached to this Order as Appendix A, until December 31, 2025, with the following modifications:
- a. Section 5, Moratorium on General Rate Case Filing, the moratorium date of January 1, 2020, is modified to December 31, 2025.
 - b. Section 9, Term, January 1, 2014, is modified to December 31, 2025.
 - c. Section 1(b), Rate Adjustment Mechanism, is modified to read:
 - “(b) Annual Projections. Rates shall be determined each January on the basis of projections developed by the Company, according to the following procedure. On or about October 15 of each year, the Company shall submit a written request to each of its customers for estimates of LLRW by volume (in cubic feet), numbers of containers and shipments, and average dose rate per container (in millirems per hour) to be disposed by such customers at the site during the following calendar year. The Company shall prepare its own estimate of the

LLRW that the customers can be expected to deliver to the site during such calendar year based on the customer estimates as adjusted by the Company using historical data where necessary. On the basis of the estimates prepared by the Company and its customers, the Company shall calculate total projected LLRW for the calendar year. Estimates of volumes which meet the requirements of RCW 81.108.020(3) as "extraordinary" shall be included in the calculation weighted at 51.5% of such volume estimates. Estimates of decommissioning waste volumes shall be included in the calculation weighted at 80% of such volume estimates; provided, however, that the quantities set forth in such estimates must satisfy the requirements of paragraph 2(c) below."

- 20 (2) The Commission retains jurisdiction over the subject matter and US Ecology Waashington, 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 Lacey, Washington, and effective August 8, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON, Executive Director and Secretary