

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

MURREY'S DISPOSAL COMPANY,

Respondent.

DOCKET TG-230778

DECLARATION OF COLIN O'BRIEN

I, COLIN O'BRIEN, declare as follows:

- 1 I am over 18 years of age and competent to be a witness.
- 2 I am an attorney of record for the complainant in the above-captioned action.
- 3 Attached to this declaration are the true and correct copies of the following:
 - a. The responses of Murrey's Disposal Company to Staff's Data Request Nos. 21-26, 28, and 31;
 - b. An excerpted portion of Staff's workbook containing its calculations for the current revenue, expenses, and net income of Murrey's Disposal Company;
 - c. The annual revenue report of Murrey's Disposal Company for 2023 as filed with this Commission.
- 4 The entirety of Staff's workbook has not been submitted, as it is otherwise duplicative with submissions already on record in this proceeding.
- 5 This declaration and attachments comprise the entirety of the material, not already on record in this case, referenced in Staff's Response in Opposition to the Petition of Murrey's Disposal Company d/b/a Olympic Disposal for Interim Rate Relief.

DATED this 29th day of May 2024.

/s/ Colin O'Brien
COLIN O'BRIEN

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
Murrey’s Disposal Co., Inc. d/b/a Olympic Disposal
Responses to Staff Data Request No. 21-31

GENERAL OBJECTION

Murrey’s initially notes that WAC 480-07-520(6) expressly prescribes both “undue hardship[s] or inequity” as a basis for the granting of interim solid waste collection rates. This express allowance by rule for interim rates significantly is not replicated in the general rate case filing rules for other industries such as energy, pilotage or water companies, See, WAC 480-07-510, WAC 480-07-525 and WAC 480-07-530, respectively.

Moreover, interim rates under this provision are fully subject to refund. Thus, customers subject to interim rate relief are in no jeopardy overcollection of rates will occur. Therefore, the Staff’s framing of Data Requests 21-31 eliciting circumstances or indicia of financial extremis as justification for or as an implied prerequisite of entitlement to interim relief is an erroneous presumption pervading the inquiries to the Company and to which it formally objects as a fundamental misreading of the applicable rule, apart from any of the referenced standards cited in previous case law. In addition, the Data Requests in the aggregate are argumentative, overly broad and due to their presumptive flaws, lacking in foundation.

DATE PREPARED:	May 28, 2024	WITNESS:	Mark Gingrich
DOCKET:	TG-230778	RESPONDER:	Mark Gingrich/Joe Wonderlick
REQUESTER:	UTC Commission Staff		

DATA REQUEST NO. 21:

Please provide all presentations to Murrey’s Disposal Company’s management concerning Murrey’s (“the Company”) purported financial hardship, and any minutes where management took action to address the Company’s situation.

RESPONSE TO DATA REQUEST NO. 21:

Company Response: Company management has had numerous meetings and discussions including focus on current company operations and its significant present underperformance; however, none are memorialized in the form of written presentations or meeting minutes, which is not a typical practice of the company.

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DATA REQUEST NO. 22:

Has the Company drafted an emergency plan intended to address any financial difficulties? If so, please provide a copy of the plan. If not, please explain why not.

RESPONSE TO DATA REQUEST NO. 22:

Company Response: The Company does not have a written "emergency" or contingency plan regarding fiscal adversities, nor has it needed to have one in the past 20 years or so under its current shareholders ownership.

The remaining step toward restoring financial health for the Company is addressing present chronic revenue deficiencies. The Company has sought to address this underearning through its general rate case (GRC), but Staff has yet to acknowledge the Company's underearning by negotiating reasonable rate levels for implementation to present to the Commission. Through this proceeding, it continues to seek to achieve sufficient rates for operations in Washington and has now acted while this case is pending consistent with Commission rule to obtain temporary relief through interim rates so shareholders do not bear the entire burden of this suspension interval.

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DOCKET: TG-230778

REQUESTER: UTC Commission Staff

WITNESS: Joe Wonderlick

RESPONDER: Joe Wonderlick

DATA REQUEST NO. 23:

Please give any available information on the following actions taken by Murrey's Disposal Co. ("the Company") since January of 2019.

- a. Any action that the Company has taken towards declaring bankruptcy.
- b. Any action that the Company has taken towards entering receivership.
- c. Any action that the Company has taken to increase its access to capital or reduce its liability to creditors.
- d. Any steps taken to address the Company's financial situation or otherwise mitigate any financial distress the Company is experiencing.

RESPONSE TO DATA REQUEST NO. 23:

Company Response:

Objection, argumentative and lacking in foundation. Without waiving its objection, the Company answers as follows.

In regard to Data Request No. 23 a. and b., the Company has not taken any action toward declaring bankruptcy or receivership. WAC 480-070-520 (6) does not require a company to be on the verge of bankruptcy or receivership before seeking to implement interim rates fully subject to refund nor has the Company explored any such drastic measures. Indeed, in the Waste Management of Spokane, Inc. 2015 Order Granting Temporary Rates Subject to Refund cited at pages 7 and 8 of the Company's Petition for Interim Rate Relief, neither the regulated company nor its parent were in financial peril when the Commission granted interim rates. Again, WAC 480-07-520 (6) codifies "undue hardship" and "inequity" as the applicable standards for solid waste collection companies' interim rate relief, not impending insolvency as this inquiry clearly implies.

Answering Data Request No. 23 c., the Company has taken no action. Olympic Disposal as a standalone entity is not recouping its costs to provide regulated service at present. Nevertheless, the longer the current fiscal malaise continues, the more likely its creditworthiness as an independent entity will erode.

In answer to Data Request 23 d., see again, the discussion in Response to Data Request No. 22 and the significance of the move to seek approval for interim rates subject to refund, which is the most obvious and expedient alternative to remedy the Company's financial distress.

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DATA REQUEST NO. 24:

The Company's petition for interim rate relief indicates that financial hardship has "threatened Olympic's reinvestment in the ordinary course of its operations which, if unrestrained, will adversely impact customers." Petition at 5 ¶ 13. Please provide a list of investments that Murrey's Disposal Company has refrained from making, expenses that the Company has refrained from incurring, or investments or expenses the Company has contemplated refraining from making or incurring, due to its financial situation. Please provide contemporaneous documentary evidence supporting the Company's claim that it refrained from making the investment or from incurring the expense, or contemplated such action, because of its financial situation.

RESPONSE TO DATA REQUEST NO. 24:

Company Response:

Objection, argumentative and lacks foundation. Without waiving said objection, the Company answers as follows: the petition spoke of "threatened" reinvestment obstacles and did not indicate it had presently rejected all new investments.

There are additional implications for UTC regulated customers when regulated entities experience lengthy regulatory lag on a regular basis. Recently, the staff and the Commission have increased the number of general rate filing extensions and suspensions beyond historical patterns. TG-220857 (Murrey's), TG-230518 (Peninsula), TG-240111 (Sanitary Services), along with Olympic, were extended or suspended within the past 24 months. This number of extensions is extraordinary when compared to similar periods over the 25 years that the Company and its affiliates have provided service in Washington and obviously exacerbates intervals of non-recovery that cannot be ameliorated under regulatory ratemaking methodology

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DATA REQUEST NO. 25:

The Company's petition indicates that interim rate relief "is necessary for Olympic to . . . avoid any adverse impact on its overall credit rating." Petition at 6 ¶ 15. Please provide any notices or other documentary evidence that would indicate that Murrey's Disposal Company is at risk of a credit rating downgrade.

RESPONSE TO DATA REQUEST NO. 25:

Company Response: To date, the Company has not received notice of a credit rating downgrade.

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DATA REQUEST NO. 26:

The Company's petition indicates that interim rate relief "in [sic] necessary for Olympic to . . . obtain reasonable financing." Petition at 6 ¶ 15. Please provide a list of all lines of credit available to the Murrey's Disposal Company, including credit facilities available to the Company from its parent.

RESPONSE TO DATA REQUEST NO. 26:

Company Response: Olympic Disposal does not currently directly access debt. The Company competes with other affiliates for credit based upon its past and anticipated future financial performance.

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DATA REQUEST NO. 28:

Please provide a copy of "contiguous city contract with Port Angeles" that was lost by the company. Please also confirm when the Company lost that contract, explain why the contract was lost, and further explain the actions the company took in reaction to losing that contract.

RESPONSE TO DATA REQUEST NO. 28:

Company Response:

Objection, overly broad and not reasonably calculated to lead to the admission of relevant evidence. Without waiving the objection, the Company answers as follows:

The omnibus contract, "City of Port Angeles Processing Facility Development and Management Services Agreement" provided as Exhibit "TG-230778-DR28 City of PA Contract 2005" was executed in 2005 between the City of Port Angeles and Waste Connections of Washington, Inc ("WCW"). and involved numerous operations. The contract was broken into six broad components:

- 1) Operation of the Transfer Station
- 2) Long haul of "acceptable" solid waste from Transfer Station to City approved landfill and/or railhead.
- 3) Special Waste transport and disposal
- 4) Collection and processing of recyclable material
- 5) Co-Composting of bio-waste at the City sewage plant adjacent to the Transfer Station
- 6) Transportation and disposal of "moderate-risk" material (household hazardous waste)

While the City performed solid waste collection services within the city limits as authorized by RCW 81.77.020 , curbside collection and transportation of residential and commercial recyclables and organics within the city was performed by Murrey's/Olympic as delegate of Waste Connections of Washington, Inc. as authorized by the agreement. Murrey's Olympic, in operating throughout Clallam and Jefferson Counties, had the local office, equipment and personnel stationed in the area and could thus most efficiently serve the approximate 6,000 Port Angeles recycling and yard waste city contract customers.

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In 2017, WCW conducted a comprehensive study of the results of the contract and billing and payment practices at the transfer station and concluded that the City had been underpaying it for years. After lengthy negotiations to resolve the dispute failed, WCW filed suit against the City which ultimately resulted in a mediated settlement with the City.

In addition, the City of Port Angeles exercised its unilateral option to exit the contract on the 15th anniversary of the contract under Section 4.2. The City gave notice in 2021 and after negotiation, the Company ended all services in the City on February 28, 2022.

With the loss of the contract, the Company reduced direct costs immediately. Headcount at the Company was adjusted downward to reflect the loss of work. Roll carts were transferred out to Murrey's Disposal in Tacoma. Due to global supply chain issues, the trucks were retained, allowing the company to move older trucks into spare status.

While direct variable costs fell immediately, a significant amount of indirect costs that were previously shared with the City of Port Angeles contract then had to be absorbed across the remaining city contracts with the cities of Port Townsend and Sequim, a Native American tribe contract, and the regulated service area. Because the driver count under the city contract was relatively small, the Company retained all supervisors. Costs of running the facility and customer service function did not fall in direct proportion to the lost Port Angeles revenue, nor should it be expected to do so. The incremental impact of these increased costs occurred prior to the test year and is reflected in the Company's requested revenue requirement.

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DATA REQUEST NO. 31:

Please provide documentation for any damages awards or other monetary amounts the Company received from the following events. If the company has not received any damage awards or other monetary amounts related to the events, please explain what steps the company has taken to pursue awards or other compensation for the events.

- a. The dispute detailed in dockets TG-200650 and TG-200651.
- b. The loss of the "contiguous city contract with Port Angeles."

Please ensure the documentation shows the account(s) into which the funds were deposited and the ownership of those accounts.

RESPONSE TO DATA REQUEST NO. 31:

Company Response:

- a. Objection, argumentative and lacks foundation. Without waiving its objections to this Data Request, the Company answers as follows:

On May 3, 2021 the Commission issued Order 06, in Docket Nos. TG-200650 and TG-200651, which granted Complainant Murrey Disposal's Motion for Summary Determination and Denied Respondents, Waste Management of Washington et al's ("WMW") Cross- Motion for Summary Determination. By that Order, it found the Commission was not preempted by federal law from regulating the operations of the Respondents at issue in the consolidated proceedings and ordered the Respondents to cease and desist from their present operations which was the subject of the complaint. The Commission's Order was the first formal pronouncement by the Commission rejecting a claim that federal law preempted intermodal transportation by rail and motor carrier of solid waste and finding that Congress never granted the federal Surface Transportation Board jurisdiction over either solid waste collection services or solid waste transfer facilities.

WMW appealed the Commission's Order to Thurston County Superior Court and also sought to stay enforcement of the Commission's Order.

Exactly two weeks after the Commission's Order 06 was entered, the Company filed suit in King County Superior Court seeking to enjoin WM's ongoing activities and for damages for unlawful operations under RCW 81.04.440. Subsequent to that filing, the Superior Court of Thurston County on June 30, 2021 denied WMW's Motion to Stay and

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sometime in mid-July, WMW halted all operations involved in the original Complaint. Murrey's/Olympic then began/resumed service to the two industrial shippers that WMW had been serving.

As noted, the May 3, 2021 Order of the Commission was the first formal adjudication and ruling on the issue. Due to a prior erroneous informal staff opinion letter in 2011 that Respondents argued authorized their service, when WMW ceased and did not resume operations in compliance with the Commission's Final Order, following a final affirmation of the Commission's Order by the Washington Court of Appeals in November, 2022 and denial of further review by the Washington Supreme Court in March, 2023, the Company voluntarily dismissed its damages action in King County Superior Court.

Commission Order 06 is therefore the only adjudicated administrative ruling in this case. As staff is aware, the Commission has no authority to award monetary damages to one regulated company against another in a successful administrative complaint circumstance. Consequently, there is no damage award or other monetary amount to report. To the Company's knowledge, no other regulated solid waste company has previously filed suit under the provisions cited in its King County Superior Court Complaint to recover damages against a third-party carrier for violation of a Commission's Order interpreting certificate authority. Had WMW not ceased operations following Thurston County's denial of its Motion to Stay in July 2021, there is a strong likelihood that the Company would have maintained its damages and injunction action and proceeded to trial. Despite the unfortunate implication in Staff Data Request No. 31 a. above, the history of the administrative and judicial actions surrounding the underlying complaint cannot credibly challenge the Company's complete resolve and commitment to vindicate its property and regulated service rights in its certificated territory.

- b. Objection, overly broad and not reasonably calculated to lead to the admission of relevant evidence. Without waiving these objections, the Company answers as follows:

See also, response to Data Request No. 28, above. As a consequence of the breach of contract litigation with the City, WCW et. al., ultimately received a \$1.99 million dollar settlement from the City as compensatory damages and legal fee reimbursement. Because none of the activities rendered under the contract were regulated, the settlement payment is not associated with any regulated services.

ATTACHMENT B

TEXT IN RED BOX CONFIDENTIAL PER WAC 480-07-160

Public Companies		Public Co	LURITO - GALLAGHER FORMULA MODEL 2018 V5.2c		Public Co	
INPUTS - Test Year		(a)	(b)	(c)	(d) + (e)	(d) + (e)
Line No.		Historical	Revenue Change	Proforma	Add: Revenue Sensitive Taxes	Revenue Requirement
1	Operating Revenue	13,186,249				
2	Operating Expenses	12,996,063				
3	Investment	5,683,864	950,402	14,136,651	26,116	14,162,767
4	Capital Structure-Debt %	49.23%		12,996,063	26,116	13,022,179
5	Capital Structure-Debt Rate	2.93%		1,140,587		\$1,140,587
6	Federal Income Tax Rate	21.00%				
7	B&O Tax Rate	1.750%		82,083		82,083
8	WUTC Fee	0.510%	#REF!	222,286		222,286
9	City Tax	0.000%				
10	Bad Debts	0.199%				
11	Basis Points - Flotation	0.25%				
12	Operating Ratio	98.56%		91.93%		91.95%
13	Revenue Requirement					
14	Historical Revenue	13,186,249			Revenue Increase before taxes	950,402
15	Rate Increase	976,518			Rev Sensitive Taxes	26,116
16	Revenue Requirement	14,162,767			Rate Increase	976,518
17				Percent Increase		7.41%
18	Capital Structure Financing Investment					
19	Type	Percent	Amount	Cost of Capital	Weighted	Amount
20	Equity	50.77%	2,885,895	28.98%	14.71%	836,219
21	Debt	49.23%	2,797,969	2.93%	1.44%	82,083
22	Total	100.00%	5,683,864		16.16%	918,301
23	Operating Statistics					
24			Before	After		
25			Income Tax	Income Tax		
26	Return on Investment		20.07%	16.16%		
27	Return on Equity		36.68%	28.98%		
28	Operating Ratio		91.93%	91.95%		
29	Profit Margin		8.07%	8.07%		
30	Final turnover		2.49	2.49		
31	Tax Rate		21.00%	21.00%		
32	Revenue Sensitive Taxes Charges					
33			Rate	Taxes		
34	B & O Tax		1.750%	18,586		
35	WUTC Fee		0.510%	5,416		
36	City Tax		0.000%	-		
37	Bad Debts		0.199%	2,114		
38	Revenue Sensitive		2.459%	26,116		
39	Conversion Factor			89.49%		

2018 Version Update Changes

- Allows Income Tax Rate Changes.
- Minimizes impact of changes in test-year revenue from resulting revenue requirement.
- Corrects interest rate transposition in LG.

TEXT IN RED BOX CONFIDENTIAL PER WAC 480-07-160

ATTACHMENT C

	Year	Ind Code	Idx	Req'd	Revenue	Late	Report Status	Payment Status
Report	2023	227	0	RA	\$65,367,949.24		Complete	Paid
Report	2022	227	0	RA	\$60,816,390.07		Finalized	
Report	2021	227	0	RA	\$57,088,091.00	✓	Finalized	
Report	2020	227	0	RA	\$52,171,685.57		Finalized	
Report	2019	227	0	RA	\$50,259,621.43		Finalized	
Report	2018	227	0	RA	\$44,574,309.00		Finalized	
Report	2017	227	0	RA	\$31,918,739.00	✓	Complete	Unknown
Report	2016	227	0	RA	\$31,075,607.00	✓	Complete	Unknown
Report	2015	227	0	RA	\$29,644,657.00	✓	Complete	Unknown
Report	2014	227	0	RA	\$27,778,431.00	✓	Complete	Unknown
Report	2013	227	0	RA	\$25,747,109.00	✓	Complete	Unknown
Report	2012	227	0	RA	\$26,852,641.00	✓	Complete	Unknown
Report	2011	227	0	RA	\$27,364,198.00	✓	Complete	Unknown
Report	2010	227	0	RA	\$26,845,808.00	✓	Received	Unknown
Report	2009	227	0	RA	\$24,616,186.00	✓	Received	Unknown
Report	2008	227	0	RA	\$25,449,992.00	✓	Received	Unknown
Report	2007	227	0	RA	\$24,870,463.00	✓	Received	Unknown
Report	2006	227	0	RA	\$23,410,508.00	✓	Received	Unknown
Report	2005	227	0	RA	\$21,654,290.00	✓	Received	Unknown