

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

MURREY'S DISPOSAL COMPANY,

Respondent.

DOCKET TG-230778

COMMISSION STAFF'S RESPONSE
IN OPPOSITION TO PETITION OF
MURREY DISPOSAL COMPANY
d/b/a OLYPMIC DISPOSAL FOR
INTERIM RATE RELIEF

I. INTRODUCTION

1 On May 8, 2024, Murrey's Disposal Company ("the Company") filed a Petition for Interim Rate Relief seeking authority to collect an additional \$989, 946 on an interim basis, subject to refund, during the pendency of this proceeding. Commission has repeatedly emphasized that interim rate relief is an extraordinary remedy, and the Company has wholly failed to show that it meets the high bar for receiving that relief. Staff, therefore, submits this response in opposition to the Company's petition for interim rates and requests that the Commission issue an order denying the Company's petition.

II. THE STANDARD FOR INTERIM RATE RELIEF

2 When evaluating a request for interim rate relief, the Commission has traditionally looked to six factors as first stated in *Washington Utilities and Transportation Commission v. Pacific Northwest Bell*, Docket No. U-72-30, colloquially referred to as the PNB factors.¹ These factors, in essence, walk the adjudicator through the procedural steps of Staff's evaluation of the

¹ While these factors are non-exclusive, in cases where a litigant briefs only the PNB factors, as happened here, the Commission generally treats them as the applicable standard and bases its disposition of the petition for interim rate relief solely on its analysis of the factors. *Washington Util. and Transp. Comm. v. Verizon Northwest, Inc.*, Docket UT-040788, Order 11, at 9-10 (Oct. 15, 2004).

Company's financial condition. First, the parties must be given an adequate hearing on the subject of interim rates.² Second, the adjudicator asks whether actual emergency, gross hardship, or gross inequity exists within the current rate structure.³ Third, the adjudicator examines the rate of return that the Company has earned during its operations.⁴ Fourth, the adjudicator broadens that inquiry to the overall financial condition of the company.⁵ Fifth, the adjudicator looks at the financial needs the company faces and how, or if, interim rate relief will have a measurable effect on those financial needs.⁶ Finally, the adjudicator asks the catch-all question for utility regulation: whether granting the request is in the public interest.⁷

3 Although not dispositive, the Commission generally treats factor two as the most significant in determining whether to grant interim rate relief. As stated by the Commission, "an interim increase [is an] extraordinary remedy and should be granted only where an actual emergency exists or where necessary to prevent gross hardship or gross inequity."⁸ This factor encompasses the heart and purpose of interim rate relief: to prevent irreparable harm to a Company in pressing need or immediate danger during the pendency of the rate setting process.

III. DISCUSSION

4 The Company has failed to present evidence that satisfies the high bar set by the PNB factors. More starkly, Staff has, through its evaluation of the Company's case, determined that the Company is not in fact in any immediate financial distress and that denial of the petition

² *Id.* at 15.

³ *Id.* at 16.

⁴ *Id.* at 38.

⁵ *Id.* at 41. The third and fourth factors are sometimes combined into a single step, since the Company's failure to meet the authorized rate of return is not particularly informative on its own. *Re Avista Corp. d/b/a Avista Utilities*, Docket UE-010395, Sixth Supplemental Order (Sept. 24, 2001).

⁶ *Verizon*, Docket UT-040788, Order 11, at 46.

⁷ *Id.* at 49.

⁸ *Id.* at 16.

would not inflict gross hardship or gross inequity.⁹ Staff therefore does not contest the requirement of an adequate hearing, but otherwise contests that the Company has failed to meet the other PNB factors and should not be granted interim rate relief.

A . Factor No. 2: Actual Emergency, Gross Hardship, or Gross Inequity

5 The Company does not suffer from any emergency, gross hardship, or inequity. It seeks interim rate relief to escape the effects of regulatory lag.¹⁰ But all regulated companies experience such lag whenever they modify their tariffs,¹¹ and all experience more of it upon the suspension of a tariff.¹² That is quite literally what the legislature intended, and with good reason.¹³ Although suspension delays recovery, it disciplines spending by public service companies.¹⁴ To overcome the lag built into the system, Murrey's must therefore show that the lag creates a financial emergency or inflicts undue hardship or gross inequity. It fails to do so.

6 Initially, Murrey's faces no financial emergency. Staff's review shows both the Olympic Disposal Operation and Murrey's Disposal Company earning net revenue.¹⁵ The company can provide no documentary evidence that it has engaged in discussions related to any emergency,¹⁶ and it does not have any emergency or contingency plans drawn up to try to address its claimed crisis.¹⁷ Indeed, some of Murrey's answers to Staff's DR's indicate that Murrey's is taking no steps to alleviate any alleged crisis beyond seeking interim rate relief.¹⁸ Although Murrey's claims that its revenue shortfall could force it to curtail services, it declined to list any expenses it

⁹ See Staff Workbook, LG Public – Regulated.

¹⁰ Petition at 5 ¶ 12.

¹¹ RCW 80.28.060; RCW 81.28.050.

¹² RCW 80.04.130; RCW 81.04.130.

¹³ E.g., RCW 81.050, RCW 81.04.130.

¹⁴ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-060266 & UG-060267, Order 08, n.24 (Jan. 5, 2007).

¹⁵ See Staff Workbook, LG Public – Regulated.

¹⁶ Response to Staff's Data Request No. 21.

¹⁷ Response to Staff's Data Request No. 22.

¹⁸ Response to Staff's Data Request No. 23.

has considered refraining from incurring or investments it has considered refraining from making when asked by Staff. And Murrey's acknowledges it has received nothing that would indicate it was at risk of a credit downgrade.¹⁹ In short, the evidence available to Staff indicates a healthy company, and the Company does not act like one staring down a financial crisis or emergency. It is not the duty of Staff or the Commission to make the Company's case for it regarding interim rates, nor to accept the Company's bare assertions that it requires relief. Indeed, quite to the contrary, "[the Company] must present evidence that demonstrates that its actual condition meets the standards for the relief that it requests."²⁰

7 Nor does Murrey's indicate any undue hardship. It does not claim that any regulatory lag affects it differently than its peers. Nor does it claim that regulatory lag affects it more severely than its peers. It simply claims that absent interim rate relief it cannot collect money that it would like to collect until the process at the Commission runs its course. Granting Murrey's interim rate relief here would necessitate granting it to every common carrier who files a petition arguing that it suffers from regulatory lag, transforming interim rate relief into an everyday remedy, something inconsistent with all the Commission has said on the topic.²¹

8 Finally, Murrey's does not show any inequity, let alone a gross one. A basic principle of equity is that a person who seeks equity must do equity.²² As discussed above, Murrey's has seemingly taken no steps to address its current situation, other than seek interim rate relief. Further, as discussed below, the Commission has recognized that the equities lie in the favor of customers, not the companies, in cases like this. And finally, not to belabor the point, but the

¹⁹ Response to Staff's Data Request No. 25.

²⁰ *Wash. Util. and Transp. Comm. v. Puget Sound Energy, Inc.*, Docket UE-011163-70, Sixth Supplemental Order (Oct. 24, 2001).

²¹ E.g., *Verizon*, Docket UT-040788, Order 11, at 16 (interim rate relief is an extraordinary remedy).

²² *Goodwin Co. v. Nat. Discount Corp.*, 5 Wn.2d 521, 529, 105 P.2d 805 (1940).

Legislature built regulatory lag into the system. By claiming that it suffers some kind of gross inequity simply because of the existence of that regulatory lag, Murrey's effectively calls the basic and every day operation of the public service laws inequitable. That claim should find no traction at the Commission.

9 In its petition, the Company claims that it is suffering "gross hardships and inequities" due to events "outside of Olympic's control." The Company points to two events as the primary culprits: the "loss of a contiguous city contract in Port Angeles" and "protracted . . . litigation . . . against an unauthorized competitor." These events, the Company claims, "have threatened Olympic's reinvestment in the ordinary course of its operations which, if unrestrained, will adversely impact its customers." The Commission should reject each of those claims.

10 With regard to the city contract, the Company has presented absolutely no evidence as to the financial effects of its loss, either to Staff or to the Commission. Despite being one of two major events that the Company claims entitles it to interim rate relief, the contract loss received but a passing mention in the Company's direct case²³ and no supporting documentation. In its responses to Staff's data requests, the Company has elaborated on this contract, which was wholly for non-regulated services and only provided indirect benefits to regulated services through efficiency and condensed services.²⁴ Moreover, the Company received a \$1.99 million dollar settlement as damages for the loss of the contract, yet it claims that such settlement should not matter since the contract was for non-regulated services.²⁵ The Company cannot have it both ways. A company cannot claim that a lost contract forms a primary basis for interim rate relief

²³ Wonderlick, Exh. JW-1T at 4-5. That passing mention consists, in its entirety, of Mr. Wonderlick's testimony that "In abbreviated form, [the reasons for the 12-year delay in filing a rate case] include: . . . the loss of a contiguous city contract in Port Angeles which caused extensive rerouting of both regulated and nonregulated services." *Id.*

²⁴ Response to Staff Data Request Nos. 28, 31.

²⁵ Response to Staff Data Request No. 31.

while also having the Commission ignore any settlement or damages that the Company received for the loss of that contract. The fact that this contract was for nonregulated services is even more evidence that it cannot form the basis for interim rate relief.

11 The Company's other basis for relief, the litigation between itself and an unauthorized competitor, presents similar problems for Staff's evaluation of the Company's petition. As with the city contract, the Company provides no evidence to indicate why this litigation should provide a basis for interim rate relief. In its petition, the Company states that this litigation has concluded in a victory for the Company. Not only does this indicate a return of any ratepayers that the Company may have lost due to the interference, it also indicates that any expenses that the Company may have incurred during the pendency of the litigation have now concluded. The Company may rightfully recover these expenses in its general rate case, but it cannot justify interim rate relief with a past expense which has no negative impact on current operations, and in fact should have increase the revenue stream of the Company. In the absence of any evidence to the contrary, this seems, rather than an actual emergency, gross hardship, or gross inequity, simply a matter of impatience by the Company to recover expenses that it would otherwise have to go through the normal process of regulation to obtain. Such impatience is exactly why the Commission has set the bar so high for interim rate relief, as such relief would otherwise be vulnerable to abuse during the pendency of cases.

B. Factor Nos. 3 and 4: The Company's Rate of Return and Earnings

12 The Company's analysis of Factor 3 is entirely lacking in any data from which Staff could evaluate the Company's petition. In support of its claim that it was operating below "sufficient levels", the Company proffers nothing but the fact that it has requested between a 15% and 17% rate increase in its main case, a wholly conclusory statement. Staff's own analysis

of the Company's financial situation paints a far different picture, showing the Company's Olympic division to still be operating with a yearly income of \$227,415.²⁶

13 Moreover, even if the Commission accepts that the Olympic division of Murrey's is operating at a loss, it is but one subdivision of a much larger operation at Murrey's. Olympic, the portion of the Company for which interim rate relief is being requested, is not a separate corporate entity but merely an operating name for Murrey's Disposal within Clallam and Jefferson County. Moreover, this entity does not directly access debt, instead accessing any needed debt through its parent company.²⁷ Therefore, its finances should not be treated as separate from the larger Company operation for the purposes of interim rate relief analysis.²⁸

14 Murrey's Disposal as a whole reported an annual operating revenue of \$65,367,949.24 in 2023. In fact, Murrey's operating revenues have grown every year since 2010, and have more than doubled since 2017.²⁹ From 2022 to 2023 alone, Murrey's reported a revenue growth of over \$4.5 million, a nearly 7.5% year over year growth.³⁰ This growth would also have taken into account any purported losses during the test year of this case. Murrey's credit rating is currently sound, and the Company has not shown any evidence that it is in danger of a downgrade.³¹ By every indicator Staff has, Murrey's looks like a healthy company, and this does not resemble the type of situation where the Commission would grant interim rate relief.

15 Finally, the Company claims in its analysis of Factor 4 that the fact it has not come in for a rate case in 12 years should weigh in favor of its request for interim rate relief. Murrey's has it backwards. The Company waited an inexplicably long amount of time to return for a rate case

²⁶ Staff Workbook, LG Public – Regulated.

²⁷ Response to Staff's Data Request No. 26.

²⁸ See *Verizon*, Docket UT-040788 for an example of subdivided companies where the overall structure is too inextricably intertwined with each subdivision for the business expenses to be properly separated.

²⁹ Murrey's Annual Revenue Report for 2023.

³⁰ *Id.*

³¹ Response to Staff's Data Request No. 26.

and, indeed, this case was precipitated by a Commission order for Murrey's to file a rate case given the length of time since its last.³² This lack of urgency in filing a case was even further demonstrated when Murrey's then requested and was granted a 6-month extension to file that case.³³ The Commission cannot, as a matter of prudence and policy, allow a company to use its own delay in filing a rate case, even after an order to file from the Commission, as support for that company's claimed need for interim rate relief.

16 In support of its request, Murrey's points to the recent case of *Washington Utilities and Transportation Commission v. Waste Management of Washington Inc. d/b/a Waste Management of Spokane*, in which the Commission granted rates to a company which had a rate case only two years prior. But the situation in *Waste Management of Spokane* was completely inapposite of that in the instant case beyond a surface resemblance to the Company's loss of the Port Angeles contract. In *Waste Management of Spokane*, Waste Management experienced a major disruption of service which caused a massive increase in the price it had to pay to render service within its regulated areas, and it had only recently come in for a rate case. Again, based on what it knows, Staff sees no financial emergency, gross hardship, or gross inequity, and Murrey's delay in filing this case weighs against the idea that such circumstances exist.

C. Factor No. 5: The Company's Immediate Financial Needs and Actions

17 In its pleading, the Company gives no indication of either financial need or actions it has taken to alleviate its purported financial strain. The only allusion it makes to such need are vague, blanket statements that its "ability to serve and expand additional services to its customer base" are threatened without interim rate relief. The Company does not give any indication of what those services might be, when or how they would be affected, or what the downstream

³² Docket TG-210912, Order 01.

³³ Docket TG-210912, Order 02.

consequences would be to ratepayers. As noted above, the Company, in its response to Staff's questions, indicated that it is still making new investments and declined to list any particular investments which it has even contemplated refraining from making.³⁴ The Company has further stated that it currently does not directly access debt, instead applying along with other affiliates, and has taken no steps to either increase access to capital or reduce liability to any existing creditors.³⁵ Neither the Company's financial needs nor actions portray a Company which sees itself as experiencing actual emergency, nor gross hardship or gross inequity compared to other, similarly situated companies. In cases where a company experiences under-earning, but is not on the brink of financial disaster and has pled no immediate need for increased cash flow, the Commission has historically determined that equity is on the side of ratepayers who have no say in the company's decision-making.³⁶ When paired with its revenue history and delay in filing, the Company has presented no indication that the Commission should buck that trend and require ratepayers to immediately bolster the Company's income.

D. Factor No. 6: the Public Interest

18 The Company makes vague allusions to the public interest in its analysis of Factor 6, but its failure to support those statements with any actual evidence belie the fact that the public interest sides squarely with denying interim rate relief. The Company claims that "the public has an obvious interest in maintaining Olympic's services." Yet, as has been shown above, Staff contends Olympic itself is financially healthy, and as an entity is inseparable from Murrey's, which shows every indication of robust financial health. Nowhere has the Company provided

³⁴ Response to Staff's Data Request No. 24.

³⁵ Response to Staff's Data Request No. 23.

³⁶ See *Wash. Util. and Transp. Comm. v. Alderton-McMillin Water Supply*, Docket UW-911041 (June 3, 1992); *Re Avista Corp. d/b/a Avista Utilities*, Docket UE-010395, Sixth Supplemental Order (Sept. 24, 2001); *Verizon*, Docket UT-040788.

any evidence that its operations are in danger of reduction or cessation. Neither has it shown that it or its shareholders are experiencing anything like a gross hardship or gross inequity. A utility earning less than it would like, but still well within the realm of sustainable operating revenue, in no way meets the requirements of interim rate relief, nor does it threaten the public interest. Ratepayers are not and should not be the party responsible for buoying a company's shareholder profits during the pendency of a rate proceeding, especially after the aforementioned delays in the case requested by the Company. The public interest, therefore, is firmly against the Company's proposed interim rate relief.

IV. CONCLUSION

19 The Company has not demonstrated that either the Olympic division or Murrey's Disposal meet the high bar for interim rate relief. The complete lack of evidence in the petition to support such an extraordinary measure falls far below the standard set by the Commission in its precedents, and the granting of such relief given this inadequate pleading would harm not only the public interest in this immediate case but also place in jeopardy the regulatory principles that underlie the reasoning behind such relief. The Commission should therefore deny the petition for interim rate relief.

DATED this 29th day of May 2024.

Respectfully submitted,

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