

BEFORE THE WASHINGTON STATE UTILITIES
AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

MURREY'S DISPOSAL COMPANY, INC.
d/b/a OLYMPIC DISPOSAL,

Respondent.

Docket No. TG-230778

MURREY'S DISPOSAL COMPANY, INC.
d/b/a OLYMPIC DISPOSAL MOTION FOR
LEAVE TO FILE REPLY BRIEF IN
SUPPORT OF PETITION FOR INTERIM
RATE RELIEF

I. RELIEF REQUESTED

1 Respondent Murrey's Disposal Company, Inc. d/b/a Olympic Disposal ("Respondent" or
"Olympic") moves for leave to file a brief in reply to Washington Utilities and Transportation
Commission Staff's ("Staff") Response in Opposition to Olympic's Petition for Interim Rate
Relief ("Response").

II. PROCEDURAL AUTHORITY

2 RCW 480-07-520(6) authorizes the Commission to grant interim rates subject to refund when
considering proposed changes to tariffs requested by solid waste collection companies under
RCW 81.28.050.

3 RCW 480-07-370(3)(a) authorizes pleadings that seek relief from the Commission, including
requests for interim rates, and RCW 480-07-370(4)(a) authorizes a pleading responding to a
petition, i.e., a response.

4 Pursuant to RCW 480-07-370(5)(b), a party that wishes to reply to response must file a motion
requesting permission to reply – and should include as an attachment to that motion a proposed
reply – within five business days after the respondent serves a response. A motion requesting
leave to reply under WAC 480-07-370(5)(b) must explain why a reply is necessary including,

MURREY'S DISPOSAL COMPANY, INC. d/b/a OLYMPIC
DISPOSAL MOTION FOR LEAVE TO FILE REPLY BRIEF IN
SUPPORT OF PETITION FOR INTERIM RATE RELIEF - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

but not necessarily limited to, whether the response raises new facts or legal argument requiring a reply.

5 Pursuant to RCW 480-07-370(5)(a), the Commission may grant permission for a party to file a reply upon a showing of good cause.¹

6 On May 8, 2024 and pursuant to RCW 480-07-370(3)(a), Olympic filed its Petition for Interim Rate Relief under RCW 480-07-520(6) and, on May 29, 2024, Staff filed its Response in Opposition to Olympic’s Petition. Olympic now timely moves under RCW 480-07-370(5)(b), seeking permission to file a Reply to Staff’s Response. A copy of Olympic’s proposed Reply is attached hereto as **Exhibit A**.

**III. STAFF’S RESPONSE TO OLYMPIC’S PETITION RAISES “NEW FACTS”
DISCLOSED AFTER OLYMPIC FILED ITS PETITION ON MAY 8, 2024 WHICH
REQUIRES A REPLY**

7 Staff’s Response “raises new facts,” as contemplated by WAC 480-07-370(5)(b), by citing materials in support of its arguments in opposition to Olympic’s Petition for Interim Rates, including Olympic’s Responses to Staff’s Data Request Nos. 21-26, 28, and 31, which responses were only recently made, on May 28, 2024, which was after Olympic filed its Petition, on May 8, 2024.

8 Staff’s Data Request Nos. 21-26 – and Olympic’s responses thereto – concern new facts and include potential evidence that Staff cited in its Response to Olympic’s Petition. For example, Staff requested “presentations to Murrey’s Disposal Company’s management concerning [Olympic’s] purported financial hardship” (Data Request No. 21); copies of Olympic’s “emergency plan intended to address any financial difficulties” (Data Request No. 22); evidence

¹ For related reasoning on when Replies to Petitions for Administrative Review are permissible, *see, i.e., Order 05, TG-071194, In re: Waste Connections of Washington, Inc. v. Envirocon and Trucking Inc.* (Oct. 2008) at 8. For Motions, permissible Replies are not just limited to new facts or legal arguments, ostensibly a less strict standard than for Administrative Review Petitions.

of actions by Olympic taken toward bankruptcy, entering receivership, access to capital or reduction of creditor liability, or mitigation of financial distress (Data Request No. 23); a list of investments Olympic has refrained from making or expenses it has refrained from incurring (Data Request No. 24); and a list of all lines of credit available to Murrey's Disposal Company (Data Request No. 26).

9 Staff's Data Request Nos. 28 and 31 similarly concerned new facts and Olympic's responses thereto included potential evidence that Staff cited in its Response, including a copy of the "contiguous city contract with Port Angeles' that was lost by [Olympic]" (Data Request No. 28) and documentation for any damages award or other monetary amounts associated with the dispute detailed in dockets TG-200650 and TG-200651 and the loss of the aforementioned "contiguous city contract with Port Angeles" (Data Request No 31).

10 Because Staff cited in its Response their Data Request Nos. 21-26, 28, and 31, as well as Olympic's responses thereto, good cause exists to support Olympic's opportunity to reply to the information and potential evidence, i.e., new facts.

11 In fact, the bulk of Staff's Response is predicated on Olympic's Responses to Staff's Data Requests. Specifically, Staff cited to Olympic's Response to Staff's Data Request Nos. 21 to 23 at Page 3 of its Response, Olympic's Response to Staff's Data Request No. 25 at Page 4 of its Response, Olympic's Response to Staff's Data Request Nos. 28 and 31 at Page 5 of its Response, Olympic's Response to Staff's Data Request No. 26 at Page 7 of its Response, and Olympic's Response to Staff's Data Request No. 24 at Page 9 of its Response. Olympic's Responses to Staff's Data Requests, which include substantive responses and references to Olympic documents, records, meetings, etc. which are clearly "new facts" as contemplated under WAC 480-07-370(5)(b).

12 It would be prejudicial to preclude Olympic from responding to the “new facts” included in Staff’s Response, which new facts were not directly at issue until Staff’s Data Requests regarding the same.

IV. STAFF’S RESPONSE TO OLYMPIC’S PETITION RAISES “NEW LEGAL ARGUMENTS” MISAPPLYING REGULATIONS AND CASELAW, WHICH CRITICAL LEGAL ERRORS MUST BE REBUTTED VIA OLYMPIC’S REPLY

13 Staff’s Response to Olympic’s Petition raises new legal argument, which substantiates Olympic’s request for permission to file a reply under WAC 480-07-370(5)(b).

14 Specifically, Staff analyzes the following cases and sources not argued in Olympic’s Petition:

- (1) *Washington Util. and Transp. Comm. v. Verizon Northwest, Inc.*, Docket UT-040788, Order 11, at 9-10 (Oct. 15, 2004) (inaccurately alleging analysis limited to the six “PNB” factors);
- (2) *Re Avista Corp. d/b/a Avista Utilities*, Docket UE-010395, Sixth Supplemental Order (Sept. 24, 2001) (third and fourth PNB factors sometimes combined into single step);
- (3) *Staff Workbook*, LG Public – Regulated (Staff concludes Company not in immediate financial distress);
- (4) *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-060266 & UG-060267, Order 08, n.24 (Jan. 5, 2007) (although suspension delays recovery, it disciplines public service company spending);
- (5) *Goodwin Co. v. Nat. Discount Corp.*, 5 Wn.2d 521, 529, 105 P.2d 805 (1940) (a person who seeks equity must do equity); and
- (6) *Wash. Util. and Transp. Comm. v. Alderton-McMillin Water Supply*, Docket UW-911041 (June 3, 1992) (where company experiences mere underearning, equity on side of ratepayers).

15 As with the new facts discussed above, the determinative issues of state and administrative law interpretation raised in Staff's Response warrant thorough briefing to the Commission, which is confirmed by Staff's misapprehension and misapplication of regulations and caselaw included its responsive brief warranting response, particularly by the party with the burden of proof in a general rate case.

16 By this motion and in light of the good cause demonstrated herein, the Commission should grant Olympic permission to file the reply brief attached as **Exhibit A**, as contemplated by WAC 480-07-370(5)(a) and (b), so it may explain to the Commission the important legal errors advanced by Staff and why Olympic is entitled to interim relief in the prevailing circumstances.

V. CONCLUSION

17 Olympic respectfully requests that the Commission grant permission, pursuant to RCW 480-07-370(5)(a), for Olympic to file the Reply attached as **Exhibit A** where good cause exists to file the pleading in support of its Petition for Interim Relief.

RESPECTFULLY SUBMITTED, this 5th day of June, 2024.

s/Christopher Luhrs

s/David W. Wiley

s/Sean D. Leake

Christopher Luhrs, WSBA #43175

David W. Wiley, WSBA #08614

Sean D. Leake, WSBA #52658

WILLIAMS, KASTNER & GIBBS PLLC

601 Union Street, Suite 4100

Seattle, WA 98101-2380

Telephone: (206) 628-6600

Fax: (206) 628-6611

cluhrs@williamskastner.com

dwiley@williamskastner.com

sleake@williamskastner.com

Attorneys for Respondent Murrey's Disposal,

Inc. dba Olympic Disposal

EXHIBIT A

BEFORE THE WASHINGTON STATE UTILITIES
AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

MURREY'S DISPOSAL COMPANY, INC.
d/b/a OLYMPIC DISPOSAL,

Respondent.

Docket No. TG-230778

REPLY IN SUPPORT OF PETITION OF
MURREY'S DISPOSAL COMPANY, INC.
d/b/a OLYMPIC DISPOSAL FOR
INTERIM RATE RELIEF

I. REPLY IN SUPPORT OF PETITION FOR INTERIM RATE RELIEF

1 Pursuant to WAC 480-07-370(5)(a) and (b), Petitioner Murrey's Disposal Company, Inc d/b/a Olympic Disposal ("Olympic" or "Murrey's") submits this Reply in Support of its Petition for Interim Rate Relief filed on May 8, 2024 ("Petition"), following the Washington Utilities and Transportation Commission Staff's ("Staff") Response in Opposition to the Petition. ("Response").

II. WAC 480-07-520(6) SUCCEEDED THE PACIFIC NORTHWEST BELL SIX-FACTOR TEST AND REQUIRES THAT OLYMPIC DEMONSTRATE AN EMERGENCY, UNDUE HARDSHIP OR INEQUITY TO GRANT INTERIM RATE RELIEF.

2 *WUTC v. Pacific Northwest Bell Telephone Company, Cause No. U-72-30, Second Supplemental Order (October 1972)*, which gave rise to the "PNB six-factor test," was decided in 1972 whereas the rule allowing the Commission to grant interim rates, WAC 480-07-520, went into effect on January 1, 2004 and was most recently updated in September 29, 2018. While a WAC provision that is promulgated after a case decision does not automatically override the case as

REPLY IN SUPPORT OF PETITION OF MURREY'S DISPOSAL
COMPANY, INC. d/b/a OLYMPIC DISPOSAL FOR INTERIM RATE
RELIEF -1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

precedent, newly promulgated WAC provisions are authoritative and require compliance therewith, reflecting current regulatory intent and policy.¹

3 The analysis included in Olympic’s Petition was not limited to examination of the PNB factors² and, instead, included arguments about the overall guidance by WAC 480-07-520(6), which allows the Commission to establish interim rates where a company demonstrates “emergency, undue hardship, **or** inequity.”³ Relatedly, Staff asserts that, “[while the PNB] 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.”⁴ Contrary to this limiting premise in fact, the Commission in *Verizon Northwest* noted it “has broad powers to award interim relief” and stated the PNB “factors are neither a formula for interim relief, nor are they the only factors that the Commission may properly consider in its decision.”⁵ The Commission concluded there, “the PNB factors are not standards and that the Commission should remain open to consider unique circumstances or evolution in the factors.”

4 Further, *Pacific Northwest Bell Telephone Company* was a Title 80 RCW case concerning telephone utilities and not a Title 81 RCW transportation case, which providers generally have far smaller capital structures and far higher capital turnover than telephone utilities, and which naturally gives rise to increased fiscal vulnerability.

¹ Staff also overlooks the significant fact that the interim rate relief provision for solid waste collection companies is not replicated in the general rate case filing rules for other regulated industries such as energy, pilotage and water companies. See, WAC 480-07-510, WAC 480-07-525 and WAC 480-07-530, respectively.

² Response, Para. 2.

³ Emphasis added.

⁴ Response, Page 1 (citing *Washington Util. and Transp. Comm. v. Verizon Northwest, Inc.*, Docket UT-040788, Order 11, at 9-10 (Oct. 15, 2004).

⁵ Response, Page 1.

5 As argued in its Petition and further supported in this Reply, Olympic should be granted interim rate relief because it has demonstrated emergency, undue hardship, and/or inequity, consistent with WAC 480-07-520(6) while, at the same time, broadly satisfying the PNB factors.

**III. DESPITE THE LACK OF MANDATE OF ANALOGOUS APPLICATION,
OLYMPIC'S REQUEST FOR INTERIM RELIEF IN FACT DOES MEET THE
PACIFIC NORTHWEST BELL SIX-FACTOR TEST CONTRARY TO STAFF'S
ARGUMENTS IN RESPONSE**

6 **Factor No. 1.** *The Commission has authority under proper circumstances to grant interim rate relief, but only after an opportunity for adequate hearing.* Because Commission Staff “does not contest the requirement of an adequate hearing,” in either prior case law or solid waste collection company rate case requirements, the first *Pacific Northwest Bell* factor requiring an adequate hearing is not otherwise addressed in this reply.⁶

7 **Factor No. 2.** *An interim rate 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 Staff argues granting rate relief in this case “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”⁷ While it is true the passage of time since Olympic’s last general rate case, 12 years, is significant, Staff’s argument is an overbroad generalization and ignores the gross hardships and inequities adversely impacting Olympic, which were outside its control, including (1) its loss of a contiguous city contract in Port Angeles which caused extensive rerouting of both regulated and nonregulated services, and (2) protracted and

⁶ Response, Sec. III, pp. 2-3; *WUTC v. Pacific Northwest Bell Telephone Co.*, Cause No. U-72-30, Second Supplemental Order Denying Petition for Emergency Rate Relief (October 1972).

⁷ Response, Sec. III(A), p. 4.

expensive administrative and judicial litigation, from 2020 to 2022.⁸ Additionally, this is only the second adjudicated solid waste general rate case Olympic and its affiliates have had before the Commission in over a quarter of a century.

9 Staff argues Olympic “has presented absolutely no evidence as to the financial effects of its loss” associated with the above-mentioned City of Port Angeles contract, which is also unfounded.⁹ In its Response to Data Request No. 28 which was attached to Staff’s Response, Olympic outlined the omnibus contract, which was comprised of the following components that financially impacted Olympic: (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, and (6) Transportation and disposal of “moderate-risk” material (household hazardous waste).¹⁰

10 Olympic explained the detrimental impact the loss of the City contract had on its business, including the “significant amount of indirect costs that were previously shared with the City of Port Angeles contract [which] 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.”¹¹ Further, as argued in Olympic’s Petition, rates under the outdated tariff are grossly inequitable, due primarily to accumulated expense attrition over the interval since its last

⁸ Wonderlick Testimony, Pages 4-5, Exhibit JW-3C “Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C).

⁹ Response, Para. 10.

¹⁰ Olympic’s Response to Data Request No. 28.

¹¹ Olympic’s Response to Data Request No. 28.

general rate case filing, which is demonstrated by Olympic’s estimated shareholder’s loss in revenue of approximately \$100,000 per month.¹²

11 Interim rate relief would provide Olympic with the means necessary to mitigate present and future hardships and inequities, and would certainly not lead nor be tantamount to a scenario whereby “every common carrier who files a petition arguing that it suffers from regulatory lag” would be entitled to such relief.¹³ Like Olympic, any solid waste collection company requesting interim relief must demonstrate it is entitled to such relief under WAC 480-07-520(6) by demonstrating an “emergency, undue hardship, or equity”, and a hauler’s interval of any regulatory lag would be considered as one part of the associated analysis.¹⁴ This is also the first time Olympic has ever sought to recover interim rates subject to refund.

12 **Factor No. 3.** *The mere failure of the currently realized rate of return to equal that approved as adequate is not sufficient, standing alone, to justify the granting of interim relief.* In its Response, Staff offers commentary on Olympic’s credit rating, as well as the financial status of Olympic and its parent company, Murrey’s Disposal. Staff implies that the financial health of those entities is not grave *enough* to warrant interim relief. But, WAC 480-070-520(6) does not and should not qualitatively require a company to be on the verge of bankruptcy, receivership or imminent financial ruin before seeking to implement interim rates (nor has Olympic explored any such drastic measures).

13 Indeed, in *Washington Utilities and Transportation Commission v. Waste Management of Washington, Inc. d/b/a Waste Management of Spokane*, which was cited in Olympic’s initial

¹² Wonderlick Testimony, Page 15, Exhibit JW-3C “Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C).

¹³ Response, Sec. III(A), p. 4.

¹⁴ Wonderlick Testimony, Pages 15, Exhibit JW-3C “Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C).

Petition, neither the regulated company nor its parent were in financial peril when the Commission granted interim rates.¹⁵ Again, WAC 480-07-520(6) codifies “undue hardship” and/or “inequity” as the applicable standards for solid waste collection companies’ interim rate relief, not impending insolvency as Staff attempts to establish by its argument concerning PNB Factor No. 3.

14 **Factor No. 4.** *The Commission should review all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage and the growth, stability or deterioration of each, together with the immediate and short term demands for new financing and whether the grant or failure to grant interim relief will have such an effect on the financing demands as to substantially affect the public interest.* Staff here again broadly overreaches and argues *Waste Management of Spokane* is “completely inapposite” to the instant case.¹⁶ Staff acknowledges only a peripheral “surface resemblance to [Olympic’s] loss of the Port Angeles contract” but asserts that Waste Management “experienced a major disruption of service which caused a massive increase in the price it had to pay to render service.”¹⁷

15 In reality, the changes to Waste Management’s operations were not only related to a “major disruption of service” but also involved factors akin to those being experienced by Olympic. For instance, Waste Management incurred a \$6 million (40%) increase in total investment expenses, an increased labor cost of \$460,000 (3.7% of total labor expenses), decreased fuel costs of \$65,000 (6.5% of total fuel expenses), a \$107,000 (0.01%) decrease in disposal fees,¹⁸ and (4) the revised revenue requirement increased by \$992,000 (8.6%).¹⁹ The Commission in *Waste*

¹⁵ *Waste Management of Spokane*, 2015 WL 863028.

¹⁶ Staff’s Response, Para. 16.

¹⁷ Staff’s Response, Para. 16.

¹⁸ *Waste Management of Spokane* at *1 (emphasis added).

¹⁹ *Id.* at *2.

Management of Spokane however actually observed “[t]he similarity between the expense percentages in this case and the Company’s prior rate case shows that **costs remain in line with former operations despite the Company’s reduced customer base.**”²⁰ Olympic instead faced escalating costs due to rerouting of regulated and nonregulated services and labor shortages, particularly for “front-line workers” higher operating expenses and costs associated with insurance claims, metric-based compensation, travel-related expenses, company-specific severance pay, and safety training.²¹ *Waste Management of Spokane* therefore strongly supports the granting of interim rates here because Olympic faces *increasing* costs while Waste Management of Spokane apparently faced “costs [which remained] in line with former operations.”²²

16 Olympic’s prefiled direct testimony provides the testimonial support for financial indices, analyses, data and workpapers demonstrating Olympic’s on-going losses in the performance of regulated service and their impact on its ability to operate and the need for immediate fiscal relief, as opposed to waiting another half-year for the general rate case to conclude.²³ In his prefiled testimony, Mr. Wonderlick referenced several examples demonstrating the increased costs and financial harm endured by Olympic, including insurance claims,²⁴ work-based

²⁰ *Id.* at *1 (emphasis added).

²¹ Wonderlick Testimony, Pages 4-5, 18-19, Exhibit JW-3C “Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C)” and Page 32, Exhibit JW-7C “230778-GRC-Murreys Olympic-Staff Wkbk-10-16-2023-Company Offer (C).

²² *Waste Management of Spokane* at *1.

²³ Testimony which can also be additionally adduced under oath at the brief adjudicative proceeding/hearing required by WAC 480-07-520 (6).

²⁴ Wonderlick Testimony, Pages 21-22 and 27 (An insurance claim stemming from an August 8, 2022 accident, which was ultimately resolved before formal litigation commenced. Mr. Wonderlick explained that, “customers have benefited from low insurance premiums in rates for many years” and that it “is reasonable to ask customers to shoulder a portion of the burden when a material, (thankfully rare) casualty loss occurs in the ordinary course of its business.”).

compensation schemes²⁵ and travel costs relatively unique to Olympic.²⁶

Standard No. 5. *In the current economic climate, the financial health of a utility may decline very swiftly and interim relief stands as a useful tool in an appropriate case to stay off impending disaster.* In addressing PNB Factor No. 5, Staff alleges Olympic “gives no indication of either financial need or actions it has taken to alleviate its purported financial strain” and argues that Olympic’s ability to make new investments and not eliminating investments should support interim rate denial.”²⁷ As noted in its Petition, since 2011, Olympic has effectively operated on its current rate base, which now yields shareholder revenue losses as noted of approximately \$100,000 per month, which not only strains Olympic’s business operations but also potentially threatens its ability to serve and expand additional services to its customer base.

Interim relief would serve to avoid further significant and unnecessary financial deterioration.

17 **Standard No. 6.** *There exists a statutory charge to the Commission to “regulate in the public interest,” which is the ultimate responsibility and a reasoned judgment must give appropriate weight to all salient factors.* Staff dismisses Olympic’s underlying contention that interim rate relief would serve the public interest, but Olympic has long endured significant cost increases and attrition which have adversely impacted Olympic’s ability to operate, and there exists no sign that Olympic’s financial outlook will improve in the short-term. Staff’s abrupt analysis of the public interest ignores and minimizes the implications for UTC regulated customers and rate

²⁵ Wonderlick Testimony, Pages 27-28, JW-17C, JW-18C, JW-19C, JW-20C, JW-21C; Gingrich Testimony, Pages 2-12 (referencing JW-17C) (Olympic adopted a policy for work-related, performance-based compensation program, which had the effect of increasing the cost of labor while benefitting customers, as detailed in Mr. Wonderlick’s prefiled testimony, as well as the direct testimony of Mark Gingrich.).

²⁶ Wonderlick Testimony, Pages 29-30; Gingrich Testimony, Pages 12-19 (Unlike other regulated solid waste companies, Olympic incurs travel costs due to its geographic location at the north end of the Olympic Peninsula and must routinely travel to access resources and business activity more accessible on the I-5 corridor, which expenses were detailed in JW-23C DR8-10 Travel – Company Narrative Response (C) and JW-24C DR8-10 Travel – Details (C), which exhibit “included explanations for %65,197 of the total \$71,787 travel and meals support.”).

²⁷ Response, Para. 17; Response to Staff’s Data Request Nos. 23 and 24.

sufficiency specifically outlined by the Petition when regulated entities experience lengthy regulatory lag.

IV. OLYMPIC PROPOSES INTERIM RELIEF SUBJECT TO REFUND WHICH INSULATES RATEPAYERS FROM ANY RISK OF LOSS HERE THAT IS OTHERWISE DAILY INCURRED AND NEVER RECOUPED BY THE COMPANY

- 18 By its Petition, Olympic proposes, consistent with WAC 480-07-520(6), that interim rate relief be granted on a “subject to refund” basis. If temporary rate relief is granted, a refund would be issued if the Commission ultimately enters a decision on Olympic’s general rate case that diverges from and is below the interim rate relief level requested.²⁸
- 19 In *Gen. Tel. Co. of the Nw. v. Washington Utilities & Transp. Comm'n*, a telephone utility, “GTNW,” appealed a partial denial by Utilities and Transportation Commission of its requested rate increase, and the Washington State Supreme Court affirmed the trial court’s issuance of a supersedeas order reversing the Commission and allowing the utility to charge higher interim rates.²⁹ The Court’s opinion explained the reason temporary relief can be appropriate, in part because it is limited by potential refund: **“The interim rate increase is not ratemaking, but the creation of a pool of funds during the appeal period. Those funds will be returned to consumers, with interest, if the appeal fails. If GTNW is successful on the merits, it is entitled to these funds but would be unable to recoup them retroactively.”**³⁰ Staff utterly fails to acknowledge this effect by its advocacy of denying interim rate relief here.
- 20 Interim rates should be approved for this overarching reason that interim rates are subject to refund which, as the GTNW case starkly identifies, will serve as a pool of funds to be returned to ratepayers should the Commission ultimately find they produced excessive revenues.

²⁹ 104 Wash. 2d 460, 469, 706 P.2d 625, 631 (1985).

³⁰ *Id.* (emphasis added).

Considering the factors highlighted by the *Gen. Tel. Co. of the Nw.* Court, Olympic is entitled to interim relief given the nature, size and certainty of the damage, i.e., Olympic's estimated shareholder's loss in revenue of approximately \$100,000 per month, which is considerable when compared to the current requested revenue requirement that would generate approximately \$1,646,000 in additional annual revenue, i.e., an increase of 12.88%³¹ following a period of the highest national inflation in four decades. This damage will continue to adversely impact Olympic, including the potential diminution in Olympic's reinvestment in the ordinary course of its operations and from which Olympic cannot recover except through interim relief for the reason that it is unable to recoup such rates retroactively.³²

V. CONCLUSION AND REQUEST FOR INTERIM RATE RELIEF

21 For the foregoing reasons, Olympic respectfully requests the Commission's issuance of an order approving an overall interim rate increase of: \$989,946 or 7.75%, subject to refund.

RESPECTFULLY SUBMITTED, this 5th day of June, 2024.

s/Christopher Luhrs

s/David W. Wiley

s/Sean D. Leake

Christopher Luhrs, WSBA #43175

David W. Wiley, WSBA #08614

Sean D. Leake, WSBA #52658

WILLIAMS, KASTNER & GIBBS PLLC

601 Union Street, Suite 4100

Seattle, WA 98101-2380

Telephone: (206) 628-6600

cluhrs@williamskastner.com

dwiley@williamskastner.com

sleake@williamskastner.com

*Attorneys for Respondent Murrey's Disposal, Inc.
dba Olympic Disposal*

³¹ Wonderlick Testimony, Page 15, Exhibit JW-3C "Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C); RCW 80.04.180; *Department of Pub. Utils. v. New Eng. Tel. & Tel. Co.*, 325 Mass. 281, 90 N.E.2d 328 (1950).

³² *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975); *cf. State ex rel. Pac. Inland Tariff Bur. v. Clifford*, 46 Wash.2d 807, 818, 285 P.2d 569 (1955); *Gen. Tel. Co. of the Nw. v. Washington Utilities & Transp. Comm'n* at 469.