Exh. BT-4T
Witness: Branko Terzic

**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

RESPONDENT MURREY'S DISPOSAL COMPANY, INC'S

REBUTTAL TESTIMONY

OF BRANKO TERZIC

June 28, 2024

I. IDENTIFICATION OF WITNESS

Q. Can you please just briefly identify yourself?

A. Yes. My name is Branko Terzic.

Q. Did you previously provide testimony in this proceeding?

A. Yes.

II. PURPOSE AND SCOPE OF REBUTTAL TESTIMONY

Q. What is the purpose of your testimony today?

A. The purpose of my testimony is to respond to the filed testimony of Mr. Benjamin Sharbono of the staff of the Washington Utilities and Transportation Commission (“WUTC”) in this Docket, TG-230778. This testimony regards Murrey Disposal d/b/a Olympic Disposal’s filing for a general rate increase including a request to have a large insurance deductible claim incurred in 2022 amortized in rates.

Q. After reviewing Mr. Sharbono’s testimony have you changed your opinion?

A. No, I have not. I still believe that the requested normalization of the insurance deductible is still in accordance with;

1) prior Washington Utilities and Transportation Commission decisions;

2) accepted regulatory principles; and

3) will result in just, fair, reasonable, and sufficient rates.

Q. What is the regulatory significance of this request as being in accordance with prior WUTC decisions?

A. The prior decisions can be considered to create “precedents.” As I did, Staff also notes excerpts from Leonard Saul Goodman’s treatise, *The Process of Ratemaking* (PUR 1998). On this topic of precedents, Professor Goodman observes that “[a]dministrative agencies…cite and rely on their prior decisions to maintain consistency and fairness…"[1] Precedents are relied upon to facilitate administrative "consistency" as stated by Goodman. This effect is also confirmed by Roger Morin in *New Regulatory Finance (*PUR 2006) where he observes that "[r]egulatory risk refers to the quality and consistency of regulation applied to a regulated utility,"[2] While precedents can be ignored, in doing so, Goodman cites a federal regulator's order language that: "[a] change cannot be made without either a reasoned explanation or a finding that such practice is unjust or unreasonable."[3] I do not believe Staff's testimony either justifies or requires that the WUTC change its prior practice.

III. RESPONSE TO STAFF'S RATIONALE FOR PROPOSED DISALLOWANCE OF INSURANCE DEDUCTIBLE

A. "Normal" or "Recurring"

Q. Do you agree with Staff's position that the deductible amortization should be rejected because it is not "normal" or "recurring?"

A. No. First, because the occurrence of insurable events is a normal condition, especially in the case of automotive and liability insurance for a large fleet of vehicles. There is nothing abnormal about that whatsoever. Secondly, insurable events are considered to be "recurring" because without these "recurrences," ironically, there would be no need for insurance. An event does not have to appear at "regular" intervals to be "recurring." The fact that accidents occur at irregular intervals should not be the sole criterion for rejection of the acceptance of the cost and the normalization of insurance.

Q. Do you agree with Staff's definition of "recurring"?

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[1] Vol. I., Leonard Saul Goodman, The Process of Ratemaking, p. 129, (PUR, 1998).
[2] Roger A. Morin, New Regulatory Finance, p. 43, (PUR 2006) [emphasis added].
[3] *Id.*, at 130.

A. No, as Staff has too narrowly defined the term as: "[r]ecurring means that the same or similar expenses occur would be recorded in any randomly selected continuous 12-month period."[4] There is no citation by the witness as to the origin of this definition.

Q. Does this align in your experience as a former state Public Service Commission and FERC Commissioner with concepts of "recurring?"

A. No, and actually one can find the term "recurring" even in scientific literature as distinctly episodic: "[t]he shooting star...[is] part of a **recurring** celestial phenomena…the Swift-Tuttle comet…a trip it makes once every 130 years."[5] The issue before this Commission however is not so "other-worldly," but rather that of periodic insurance payments/claims associated with automobile liability coverage for the operator of a large fleet of vehicles on the road every working day. Given the size and activity of this fleet, it is implausible that an insurable event would not occur while rates were in effect. Mr. Sharbono's rather facile conclusion that: "…Staff concludes that accidents resulting in significant claims are not regularly occurring," epitomizes the strained logic that seeks to rationalize this wholesale disallowance of expenses ordinarily incurred over time by transportation companies on the basis of regularity of occurrence.[6] Mr. Sharbono actually doubles down on this rather abrupt and erroneous conclusion when he notes " [w]here the company's explanation indicates that the expense is unusual, unlikely to recur, or is otherwise abnormal to general ongoing operations, it is removed."[7] This to me is a very subjective and "wrong-footed" defense of his adjustment.

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[4] Sharbono, Exh. BS-1CTr, at 5:3-4.
[5] **https://phys.org/news/2009-08-professor-current-meteor-shower-theory.html [emphasis added].**
[6] Sharbono, Exh. BS-1CTr, at 7.
[7] *Id*, at 5:8,9.

Q. Do you agree with Staff's justification for the removal of the entire amount of insurance deductible expenses?

A. Absolutely not. Staff testimony is "[t]he primary reason staff removed the expense was that due to the unusually large and non-recurring nature of the underlying event and its impact on customer rates."[8] As my opening testimony noted, the WUTC has allowed amortization of deductibles in the past so there is no question conceptually that this expense can be included in the revenue requirement. This is the complete converse of Staff's present position that "…insurance deductible expenses should not be included in operating expenses."[9]

B. <u>Size of Loss Claim</u>

Q. Are there other factors you believe why the analyst might have arrived at this rather unilateral decision?

A. Yes, the other reason for his rejection is apparently that this particular expense is "large." This suggests that if the expense were smaller, it may have been considered and allowed. This type of "sliding scale" is not a good regulatory policy. Normalization would lower the annual expense and mitigate the impact on consumers. The Staff testimony recognizes this and the Staff witness has actually alternatively offered a number of alternatives for normalization.

C. <u>Insurance Deductibles as Operating Expenses</u>

Q. Do you believe that insurance deductible expenses should be included in a utility's "operating expenses.?"

A. Yes, I certainly do. The cost of the automotive and liability insurance discussed here is based on two components: the annual premium and the level of deductible. Staff's position seems to be that one component, the annual premium, **can** be included in rates

[8] *Id.*, at 7:10-11.
[9] *Id.*, at 7:17-18.

while the other component, the deductible, should be isolated and paid for by shareholders. Thus, one would assume Staff would only look at the level of the premium when evaluating this expense.

Q. Is this bifurcation of insurance expense logical in your view?

No. No one reviewing insurance options only just looks at the annual premium. In evaluating an insurance policy one obviously needs to assess the amount of a deductible. Indeed, Staff itself looked at the combination of premium and deductible itself when it did its analysis of insurance costs. "Staff analysis found that using a lower deductible-higher premium" insurance would provide more protection to ratepayers if ratepayers are required to cover deductible costs."[10]

Q. Does this analytical presumption or exclusion concern you?

A. Yes. If the WUTC does not allow the normalization of deductible amounts in operating expenses for insurance that poses the question of whether the Staff evaluation would be solely on the level of premium without regard to the deductible. This is not a fair, reasonable or accurate perspective of insurance expense.

D. <u>Deductibles and Self-Insurance</u>

Q. Do you agree with Staff's analysis that Olympic Disposal is "self-insured" due to the large size of its deductible?

A. No, I do not and neither apparently does Staff, as it recognizes that Olympic Disposal has an insurance policy as required by the WUTC.[11] Moreover, Mr. Wonderlick's testimony had simply analogized the effect of a deductible as equivalent to self-insurance and did not suggest that an insurance deductible was equivalent to self-insurance where an applicable insurance policy includes a deductible layer before the monetary coverage in the policy is triggered.

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[10] *Id.*, at 13:11-13.
[11] *Id.*, at 10:14.

Q. Do you see any concerns with the Staff announcing appropriate standards of deductibles for auto liability insurance and what is prudent for a regulated company in that regard?

A. Yes. The qualitative issue of the appropriate size of a deductible is instead best left to management with advice from its insurer and insurance advisors depending on the individual circumstances of the individual insured. Olympic Disposal has a $7.5 million insurance policy on file with the WUTC and thus is certainly not self-insured as also reflected in Exh. BS-4C.

E. Return on Risk/Assessment of Risk Factors

Q. Do you agree with the Staff observation that the establishment of a return on equity already compensates Olympic Disposal for "business risk factors"?[12]

A. No. The Staff testimony includes a statement " that the company is already collecting a risk return premium from ratepayers through the revenue requirement generated by the LG model."[13] The risk of automobile accidents is an *insurable risk* which is why the WUTC requires that Olympic Disposal have an insurance policy. Thus, investors would recognize that insurable risks such as this one are covered by insurance with no need to factor that risk into their return requirements. All other things being equal, return requirements are actually lower due to the coverage of insurable risks with insurance policies.

Q. Do you agree with Staff's overall statement on financial risks?

A. No, I certainly do not. Staff asserts that "[r]equiring the ratepayers to cover deductibles essentially insulates shareholders against all financial risks from management decisions."[14] The notion that the inclusion of the automobile insurance deductible in the revenue requirement, the topic of Staff's testimony here, "insulates shareholders against

[12] *Id.* at 10:18.
[13] *Id.* at 11:2-3.
[14] *Id.* at 9:17-19.

all financial risks" is incomprehensible. How could that one payment insure against "all" financial risks?

Q. Do you have additional thoughts on Staff's financial risk testimony?

A. Yes. Financial risk is defined as the risk associated with financing and financial transactions. The connection between the single revenue requirement line item associated with the expense of insurance and financial risk is nowhere established in Staff's testimony. As I discussed above, the risk of automobile accidents is an insurable risk and is accommodated by the purchase of insurance. The deductible payments are part of the cost of insurance and are an operating expense to, in Staff own words, "cover the risk associated with operating a motor vehicle."[15] There are many other business risks which this company faces that are real, incurred and uninsurable and for those risks we have a rate of return mechanism which accommodates business risk.

F. Staff's "Outlier" Premise

Q. Do you agree that Staff's position comports with recognized authority?

A. No, I do not. Staff cites Goodman that "[r]ate payers must be protected from permanent rates that include unusual or one-time items of expense."[16]

There is nothing "unusual" or even unexpected about a solid waste collection company with a large fleet of vehicles experiencing a motor vehicle accident. Since the notion of vehicle accidents is not unusual, neither is it "unusual" to expect that a deductible would be incurred more than "one-time." Staff's rather simplistic argument is that the "one-time" occurrence of a large loss in 2022 was isolated and would not occur again. That is the only scenario in which a "one-time" assumption makes sense and that could be considered an isolated event, statistically.

[15] *Id.*, at 9:15.
[16] *Id.*, at 10:8, 9.

Q. What type of "one-time," non-recurring event would you identify consistent with Staff's view?

A. One such example would be a vehicle hit by a meteorite. Those are the type of non-recurring, extraordinary events that might be consistent with Mr. Sharbono's adjustment philosophy here. Certainly, motor vehicle accidents in the realm of commercial motor fleet operations are neither "non-recurring" nor isolated in time. Again, exactly why the Commission requires insurance for all regulated companies' operations and which insurance uniformly requires deductibles.

G. Ratepayers as Insurers?

Q. Finally, do you agree with Staff that the inclusion of the deductible in the revenue requirement "turns ratepayers into the Company's insurers"?[17]

A. No, for a number of reasons. To begin with, it has been well established in Staff's own testimony that Olympic Disposal does have insurance. That insurance includes the conventional components of an annual premium and a deductible. Secondly, as Staff admits, there is an R.C.W. requirement that solid waste companies carry liability insurance for their operations. It is inconceivable that the statute was enacted without an understanding that the costs of insurance include both premium and deductible payments. Insurance costs are a normal cost of doing business and are included in the prices for service for any company, regulated or not. The inclusion of these costs in the overall cost of service is a normal ratemaking allowance and fully recognized in regulation.

Q. **Does that conclude your testimony?**

A. Yes, it does.

[17] *Id.*, at 10:11-12.