

December 4, 2023

SENT VIA WEB PORTAL

Kathy Hunter
Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: In the Matter of Olympic Water and Sewer Inc.
Company Response and Comments
UTC Docket UW-230132

Dear Acting Director Hunter:

This firm represents Olympic Water and Sewer, Inc. (“OWSI” or the “Company”) and provides the following comments in support of the proposed rates, and in response to the comments submitted by Public Counsel. The Company has reviewed the Staff Memo and the comments submitted to the Washington Utilities and Transportation Commission (WUTC) with respect to the above docket by Public Counsel.

Background

OWSI serves approximately 1760 mixed-use, primarily residential, customers in Port Ludlow in Jefferson County. This filing was filed by the Company consistent with direction from this Commission and as a compliance filing to UW-190160 to provide financial support for the operation with its newly finished filtration system required by the Department of Health which has now come online. As directed by the WUTC in Docket UW-190160 Order 01 (Apr. 11, 2019), the Company was required to file a general rate case following the completion of the water system filtration and chlorination project, to permit the Company to recover its portion of the project through general rates. The Company filed proposed rates on February 24, 2023, based on a test year of 2022.

Initial Staff Review and Commission Order 01

On April 13, 2023, UTC Staff submitted an Open Meeting Memo, recommending the Commission take no action and allow the revised tariff pages filed by the Company to go into effect. Ultimately, Staff concluded that:

The Company asked for \$185,015 in this filing, however, after the review Staff found that the Company is entitled to a larger amount than the requested amount. Staff and the Company agreed to the original request of \$185,015 or 23.3 percent with lower revised rates than noticed to customers. The Company will file again in the future to recover the shortfall to its revenue requirement that was discovered in Staff's review. Staff's position is the rates agreed upon are fair, just, reasonable, and sufficient for the Company's current request.

Staff Open Meeting Memo at 2 (Apr. 13, 2023).

On June 15, 2023, following additional review and process, UTC Staff submitted a second Open Meeting Memo. In that memo, UTC staff confirmed it had met with customers of the Company, including members of the Port Ludlow Village Council (PLVC),¹ providing information on the UTC staff process, investigation, and audit of the Company, and also separately met with Public Counsel. UTC Staff again confirmed that:

The Company's request was for \$185,015 of additional annual revenue in this filing, however, after the review, Staff found that the Company is entitled to a larger amount than what was requested due to the change in the Company's capital structure as mentioned above.

Staff and the Company agreed to the original request of \$185,015 or 23.3 percent of additional annual revenue with lower revised block rates than noticed to customers. Staff adjusted the block structure for block one and block two from what the company proposed to reflect average usage for winter and summer. This reduced the average bill from what it would have been at the requested rates for customers using a 3/4-inch meter and allows for the third block to promote

¹ While PLVC members may claim to represent the entire Port Ludlow community of approximately 1,794 home and condo owners, that is not the case. By way of explanation and clarification, while membership is available to all property owners within the OWSI service area, membership is obtained and voting membership is granted, by virtue of participation and voting in the last annual election of the Council, see Articles of Incorporation art. V (available online at https://www.plvc.org/docs/govdocs/PLVC_2016-10-06_Rstd-Art-of-Inc.pdf (last visited Nov. 21, 2023)). As such, it is worth noting that PLVC represents only those individuals classified as Voting Members. Of the stated approximate 1,794 property owners, only approximately 211 votes were cast in the most recent annual election of the Council and is therefore deemed to be their membership. Accordingly, PLVC's membership consists of only a fraction of OWSI's customer base.

conservation. Staff's position is that the rates agreed upon are fair, just, reasonable, and sufficient.

Open Meeting Memo at 3 (June 15, 2023).

We agree with Staff that the proposed rates appear to be fair, just, reasonable, and sufficient and that the Company should be authorized to collect those rates effective June 19, 2023, to recover its known costs. We are concerned, however, about the customer comments regarding transparency and are unable to conclude at this time whether the approved rates will ultimately be excessive and thus require a refund to the Company's customers. We therefore suspend Olympic Water's proposed tariff revisions but allow the proposed rates to become effective on June 19, 2023, on an interim basis, subject to refund, pending the Commission's final determination in this Docket.

Order 01 at 2 ¶ 5 (June 16, 2023).

To the extent the Commission had concerns regarding "transparency" when this matter was last before it in June, based on the extensive process engaged in since that time, as discussed below, those concerns should now be settled and addressed. Further, following that extensive process Public Counsel now agrees that "the UTC should approve the current rate increase so that it is no longer interim."²

OWSI Engaged in Substantial Engagement with PLVC and UTC Staff

Since the Commission's issuance of Order 01 in June, the Company, as well as and UTC Staff, have engaged in protracted and substantial engagement with PLVC members. This has included multiple informal meetings, multiple in-person meetings, formal discovery conferences, and formal discovery through PLVC's propounding of multiple rounds of formal discovery and data requests (DRs) on both UTC Staff and OWSI. While PLVC representatives before the Commission may continue to raise questions and complain about the lack of resolution of their alleged issues, at the end of the day, they have not alleged that the proposed rates, as confirmed on multiple occasions by UTC audits and staff, are fair, just, and reasonable, let alone set forth sufficient or any evidentiary basis not to allow the rates to become permanent. Rather, as UTC Staff can confirm, the proposed rates are based on a proposed revenue

² See Comment letter of Public Counsel y 3 (Dec. 1, 2023).

requirement less than staff would conclude to be reasonable, and hence less than may be allowed.

To provide additional context regarding the transparency and significant attempts at engagement with PLVC, the Company provides the following additional summary of events since the June 16, 2023 Order:

- On July 5, 2023, OWSI and UTC Staff met with PLVC and Public Counsel by Zoom to discuss the proposed rates.
- On July 27, 2023, pursuant to WAC 480-07-415, OWSI agreed to and did meet with PLVC representatives in person at the Company's offices in Port Ludlow to answer questions regarding the proposed rates.
- On August 2, 2023, PLVC propounded DRs on UTC Staff, to which Staff timely responded with written responses and the production of documents concerning the proposed rates and UTC staff's investigation.
- On August 3, 2023, PLVC propounded DRs to the OWSI, to which OWSI timely responded with written responses and the production of documents concerning the proposed rates.
- On August 23, 2023, PLVC propounded a second set of seventeen (17) detailed DRs on UTC Staff, to which UTC Staff timely responded.
- On August 23, 2023, PLVC propounded a second set of DRs on OWSI, to which OWSI again timely responded.
- On August 23, 2023, Public Counsel also propounded DRs on the Company, to which the Company also timely responded.
- On September 12, 2023, OWSI and UTC Staff again met with PLVC and Public Counsel by Zoom to discuss the information exchanged through discovery and data requests, and the substantiation of the proposed rates.
- On October 20, 2023, pursuant to WAC 480-07-415, OWSI and UTC Staff met with PLVC representatives and Public Counsel in person in Port Ludlow to discuss the information exchanged through discovery and data requests, additional questions posed by PLVC, and the substantiation of the proposed rates.

At all times, the Company participated in these meetings in good faith, answered PLVC's questions to the best of its ability, and sought to explain the Company's water operations, the expenses incurred, and the justification for the proposed rates.

In addition to the above formal engagement with select PLVC representatives, OWSI has continued to more broadly engage with its customers and the Port Ludlow community. This has included, without limitation:

- Attending monthly PLVC meetings that are open to the community.
- Holding a Town Hall meeting on October 30, 2023. Over 160 Port Ludlow residents and customers of the Company attended and OWSI representatives answered questions for over an hour. Only one question was raised about rates and it was to understand the process. One member of the PLVC ad hoc utility sub-committee even handed out information to every person while leaving the town hall meeting noting that if they had comments about the Company's rates to contact UTC.
- Direct engagement with residents in the community

While an apparent vocal minority segment of the Company's customer base continues to raise purported questions, OWSI does not believe such concerns are reflective of the broader customer base. Moreover, based on the above, any prior concerns regarding transparency and process should be alleviated by the extensive informal and formal process engaged in over the past nearly six (6) months. Finally, following this process, both UTC Staff and Public Counsel have recommended the rates become permanent.

The Proposed Rates are Fair, Just, Reasonable, and Sufficient

The approved and suspended rates are just, fair, and reasonable, and supported by the UTC Staff's investigation and audit. In fact, UTC Staff's investigation, audit of the Company, and resulting confirmed an additional revenue requirement that was nearly 12% higher than that requested by the Company (finding an additional annual revenue requirement of \$207,006, as compared to the \$185,015 requested by the Company). Despite PLVC's renewed and restated questioning and purported concerns, and amorphous request for yet additional "investigation" and process, no material issues have been raised to conclude the rates are not just, fair, and reasonable.

While Public Counsel takes no position on the proposed rates, and in fact agrees it would be appropriate to "approve the current rate increase" so they

can become permanent, it nonetheless goes on to ask the Commission to apply a heightened level of scrutiny to the Company's future filings, without specificity. OWSI has been and remains committed to sound utility and accounting practices. It is audited annually by a third-party auditor and has always sought to cooperate with UTC staff in its filings. While the Company welcomes further review and audit by UTC staff as appropriate in future filings, the Company should be treated like any other similarly situated water company, and no further order is needed in this regard.

Additional Delay or Process Is Not Necessary and Would be Detrimental to OWSI's Customers

Despite the prolonged process that has taken place between the Commission's June 16, 2023 Order 01 and this Open Meeting, certain PLVC members, while continuing to complain about the process and sufficiency of UTC Staff's investigation, have not brought forth any evidence that the current approved and suspended rates are not just, fair, and reasonable. Yet, as a result of this prolonged process led by PLVC, OWSI has been forced to incur significant legal fees and expenses over the past nearly six (6) months, which compelled the Company to engage counsel to defend the proposed rates. At PLVC's request and assistance, this led to multiple formal and informal meetings amongst the parties and engagement in multiple rounds of formal data requests, all in defense of rates which UTC Staff has now three times confirmed are fair, just, and reasonable, and in fact, based on a reduced revenue requirement, and hence less than may be allowed. Despite this fact, PLVC now yet again takes issue with the UTC Staff's investigation, and purportedly requests more process, and hence the incursion of additional expenses and fees, without justification.

The Company has worked diligently and cooperatively with both PLVC and Public Counsel over the past nearly six (6) months in good faith to address any and all questions and concerns raised. From the Company's perspective, most of the issues raised have been and are focused on disagreement with the UTC's audit procedures and process, and are largely immaterial to the proposed rates. The Company believes it is ultimately in the best interests of its customers and rate-payers for the Commission to permit the approved and suspended rates to go into effect permanently. Engaging in further and continued process will necessitate even further, and likely significant, incursion of not only Company staff time but legal fees and expenses in defense of the rates (rates that UTC staff have now confirmed on three separate occasions are less than the Company would be entitled to). The Company does not see that continued process in this instance benefits, and in fact will ultimately harm, its customers,

Kathy Hunter
December 4, 2023
Docket UW-230132
Page 7

as given the expenses, the Company will necessarily seek to recover these fees through future rate cases. See, e.g., *Wash. Util. and Transp. Comm'n v. Puget Sound Energy*, Docket No. U-85-53, 1986 Wash. UTC LEXIS 37, *73 (Wash. U.T.C. May 16, 1986) ("The Commission considers reasonable rate case costs to be a legitimate expense incurred whenever the company must defend itself."). While OWSI is committed to continued transparency and engagement with its customers, which it demonstrated herein, the further required process would only lead to additional costs, with no benefit to its customers or rate-payers.

Based on the above, and in concurrence with and consistent with the Staff Memo, the Company respectfully requests the Commission approve the proposed rates and permit them to go into effect on a permanent basis.

If you have any questions concerning this matter, please contact me at the phone or email listed below, or Diana Smeland, phone (360) 437-8342, or email owsi@portludlowassociates.com.

Sincerely,



Joseph A. Rehberger
Direct Line: (360) 786-5062
Email: jrehberger@cascadialaw.com
Office: Olympia

cc: Service List (via E-mail)

Kathy Hunter
December 4, 2023
Docket UW-230132
Page 8

CERTIFICATE OF SERVICE

DOCKET UW-230132
In the Matter of Olympic Water & Sewer Inc. Tariff Update

I HEREBY CERTIFY that I have this day served the Company Response and Comments on behalf of Olympic Water and Sewer, Inc. upon all parties of record in this proceeding, by electronic transmission to the email address(es) or by mailing a true and correct copy, postage prepaid, to each party or party representative listed in the Commission's master service list for this docket.

COMMISSION STAFF:

Liam Weiland
Office of the Attorney General
Utilities & Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
Email: liam.weiland@atg.wa.gov

Nina M. Suetake
Assistant Attorney General
Phone: (206) 389-2055
E-mail:
Nina.Suetake@ATG.WA.GOV

Ann N.H. Paisner Assistant
Attorney General
Phone: (206) 521-3211
E-mail:
Ann.Paisner@ATG.WA.GOV

PUBLIC COUNSEL:

Washington Attorney General's
Office
Public Counsel Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

Lisa W. Gafken
Assistant Attorney General,
Unit Chief Phone: (206) 464-6595
Email: Lisa.Gafken@ATG.WA.GOV

**PORT LUDLOW VILLAGE
COUNCIL:**

David McDearmid,
330 Rainier Lane,
Port Ludlow, WA 98365
Email:
dmcdearmid98365@gmail.com

DATED this 4th day of December 2023 at Olympia, Washington.


Morava Nelson, Legal Assistant