

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

MURREY'S DISPOSAL COMPANY, INC.  
D/B/A OLYMPIC DISPOSAL,

Respondent.

DOCKET TG-230778

COMMISSION STAFF'S POST-  
HEARING BRIEF CONCERNING  
MURREY'S REQUEST FOR  
INTERIM RATE RELIEF

**I. INTRODUCTION**

1           Should the Commission grant the extraordinary remedy of interim rate relief where the requesting solid waste collection company fails to show any basis for doing so, but offers to make the rates subject to refund? The answer to that question should simply and plainly be no. The Commission, accordingly, should deny the petition for interim rate relief filed by Murrey's Disposal Company (Murrey's) in this docket.

**II. STATEMENT OF FACTS**

2           On May 8, 2024, Murrey's filed a petition for interim rate relief in its ongoing general rate case. Staff filed a Response in Opposition to this petition on May 29, 2024. Murrey's filed a Motion for Leave to Reply to Staff's Response on June 4, 2024, which was subsequently denied by the Commission. On June 18, 2024, the Commission convened a Brief Adjudicative Proceeding for the purposes of an evidentiary hearing on the merits of the petition. At that hearing, Murrey's provided testimony by Brian Vandenberg, which largely concerned the method by which Murrey's calculated the interim rate revenue requirement. Staff provided testimony by Benjamin Sharbono concerning Murrey's failure

to justify interim rate relief. Mr. Sharbono’s testimony was accompanied by exhibits showing Murrey’s Olympic division’s positive net revenues,<sup>1</sup> Murrey’s revenue growth over the last six years,<sup>2</sup> and Murrey’s responses to a number of Staff data requests concerning Murrey’s request for interim rate relief.<sup>3</sup>

### III. ARGUMENT

3 Interim rate relief has historically been viewed by the Commission as a type of “extraordinary remedy” to be granted only after a showing by a company that it is in need of such relief.<sup>4</sup> Murrey’s has made no such showing.

#### A. Interim Rate Relief

4 Under WAC 480-07-520(6), the Commission may grant interim rate relief, subject to refund, to a solid waste collection company under limited circumstances. Specifically, the Commission will grant such relief only to “those companies that demonstrate, after a brief adjudicative proceeding or limited hearing, an emergency, undue hardship, or inequity.”<sup>5</sup>

5 The Commission did not define the terms “emergency, undue hardship, or inequity” by rule.<sup>6</sup> It has, however, defined those terms through years of precedent addressing petitions for interim rate relief.<sup>7</sup> Under that body of law, an emergency is “an existing or looming threat to the utility’s ability to provide service to its existing Washington intrastate customers of a magnitude that will justify the imposition of interim rate relief without a full

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<sup>1</sup> Sharbono, Exh. BS-11.

<sup>2</sup> Sharbono, Exh. BS-12.

<sup>3</sup> Sharbono, Exh. BS-13.

<sup>4</sup> *Wash. Utils. & Transp. Comm’n v. Verizon Nw. Inc.*, Docket UT-040788, Order 11, 13 ¶ 29 (Oct. 15, 2004).

<sup>5</sup> WAC 480-07-520(6).

<sup>6</sup> See generally chapter 480-7 WAC; chapter 480-70 WAC.

<sup>7</sup> *Verizon Nw.*, Order 11, 29 ¶ 78, 29-35 ¶¶ 80-97, 37 ¶ 101. Those definitions are generally applicable across the spectrum of industries regulated by the Commission. See *Wash. Utils. & Transp. Comm’n v. Alderton-McMillin Water Supply, Inc.*, Docket UW-911041, First Supplemental Order, 6 (June 3, 1992) (“[t]he above guidelines, although developed in a telecommunications case, have been used by the Commission in resolving interim rate requests of other types of utilities.”).

review of all relevant evidence and a determination that the rates are fair, just, reasonable, and sufficient.”<sup>8</sup> The type of “hardship” that justifies interim rate relief “occurs when a condition results in the occurrence or realistic threat of an event such as a drop in the price of stock or in the downgrading of bonds harms the owners.”<sup>9</sup> Importantly, a simple loss of revenues or unexpected increase in expense does not alone constitute the type of hardship that would justify interim rate relief.<sup>10</sup> Finally, an inequity occurs where the Commission, not outside circumstances or even Commission Staff, treats similarly situated entities differently.<sup>11</sup>

**B. Murrey’s Faces no Emergency that Would Justify a Grant of Interim Rate Relief**

6 Although not phrased as such, the Commission may construe some statements in Murrey’s petition as a claim that it faces an emergency.<sup>12</sup> If the Commission does construe Murrey’s petition as claiming it faces an emergency, the Commission should reject the claim because the evidence admitted at hearing does not and cannot support such a claim.

7 Murrey’s is financially healthy. It has enjoyed significant revenue growth in each of the last half dozen years, with revenue increasing from roughly \$44.6 million to roughly

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<sup>8</sup> *Verizon Nw.*, Order 11, at 29 ¶ 78.

<sup>9</sup> *Verizon Nw.*, Order 11, at 37 ¶ 101.

<sup>10</sup> *See Verizon Nw.*, Order 11, at 36-37 ¶¶ 100-01 (“Verizon is in no different situation from any other utility facing any substantial unexpected increase in expenses or reduction in revenues. In prior decisions, the Commission granted the request for interim rates when it found that the utility was, in essence, facing an emergency. . . It could be said (albeit with a touch of hyperbole) that any reduction in revenues, any increase in expenses, or any damaging physical even causes hardship. . . But we think that to constitute a gross hardship for application in consideration of interim rate increase requests, the appropriate definition is the one suggested by Mr. King (slightly paraphrased): gross hardship occurs when a condition results in the occurrence or realistic threat of an event such as a drop in the price of stock or the downgrading of bonds harms the owners.”).

<sup>11</sup> *Verizon Nw.*, Order 11, at 31 ¶¶ 84-85, 32 ¶ 86, 33-34 ¶ 92, 35 ¶ 97.

<sup>12</sup> Murrey’s, in several places in its petition, suggests that the failure to grant interim rate relief will threaten its ability to provide service. *E.g., Wash. Utils. & Transp. Comm’n v. Murrey’s Disposal Co., Inc. d/b/a Olympic Disposal*, Docket TG-230778, Petition of Murrey’s Disposal Co., Inc. d/b/a Olympic Disposal for Interim Rate Relief & Request for Expedited Consideration, Pursuant to WAC 480-07-520, 5 ¶ 13 (May 8, 2024) (hereinafter “Petition”).

\$65.4 million over that time period.<sup>13</sup> Its Olympic Disposal division is earning net revenue.<sup>14</sup> By its own admission, the company is not at the edge of insolvency or bankruptcy.<sup>15</sup> And, reflecting all of that, the company has made no plans to deal with any financial emergency,<sup>16</sup> which strongly suggests that the company does not view itself as facing one.

8           Given its financial health, Murrey's faces no "existing or looming threat" to its ability to provide regulated service.<sup>17</sup> While Murrey's alleges in its pleading that it might someday need to curtail its services, the Commission has rejected that type of speculative allegation as a basis for interim rate relief.<sup>18</sup> And Murrey's statements *are* speculative. When asked, the company could identify no expenses or investments that it had avoided, or was planning to avoid, because of its financial situation.<sup>19</sup> Murrey's, in other words, does not look like a company on the verge of ceasing to meet its public service obligations.<sup>20</sup> It faces no emergency.

### C.     **Murrey's has not Experienced Undue Hardship**

9           Murrey's petition identifies three specific events or conditions that it claims constitute undue hardship.<sup>21</sup> None of them do.

10          Murrey's first cites the loss of a contract with the city of Port Angeles.<sup>22</sup> There are three problems with this claim of hardship. Initially, Murrey's offered no testimony that the

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<sup>13</sup> Sharbono, Exh. BS-12.

<sup>14</sup> Sharbono, Exh. BS-11.

<sup>15</sup> Sharbono, Exh. BS-13 at 3 (Murrey's response to Staff DR No. 23 subparts (a) and (b), where Murrey's indicates it has taken no steps towards a receivership or a bankruptcy filing), 5 (Murrey's response to Staff DR No. 25, where Murrey's indicates it has received no notice of any credit rating downgrade).

<sup>16</sup> Sharbono, Exh. BS-13 at 2, 3 (Murrey's response to Staff DR No. 23.d).

<sup>17</sup> *Verizon Nw.*, Docket UT-040788, Order 11, at 29, ¶ 78.

<sup>18</sup> *Alderton-McMillan*, Docket UW-911041, First Supplemental Order, at 7 ("[t]he Commission is unwilling to grant extraordinary interim rate relief based on speculation.").

<sup>19</sup> Sharbono, BS-13 at 4 (Murrey's response to Staff DR No. 24).

<sup>20</sup> See Sharbono, BS-13 at 2 (Murrey's response to Staff DR No. 22, which indicates the company has not drafted a plan to deal with any financial difficulties, suggesting the company does not see itself as facing an emergency).

<sup>21</sup> *E.g.*, Petition at 5 ¶ 12, 9 ¶ 19.

<sup>22</sup> Petition at 5 ¶ 12.

loss of the contract affected its owners beyond an increase in expenses or a loss in revenue.<sup>23</sup>

As noted above, changes in revenues or expenses, standing alone, do not warrant interim rate relief.<sup>24</sup>

11           Moreover, as Murrey's admitted in discovery, the contract at issue was for the provision of unregulated services.<sup>25</sup> That means that while the loss of the contract had some incidental effects on the provision of jurisdictional services,<sup>26</sup> the company lost no jurisdictional customers or revenue,<sup>27</sup> and the spillover effects from the loss of the contract are not the kind that constitute a hardship.<sup>28</sup>

12           Finally, as Murrey's also admitted in discovery, it was compensated for the loss of the contract.<sup>29</sup> That compensation amounted to nearly \$2 million, and Murrey's allocated none of that compensation to its regulated services.<sup>30</sup> Murrey's cannot credibly claim that its owners suffered harm from the loss of the contract given the compensation paid to them to make them whole for the loss.

13           Murrey's also identifies as a hardship due to the costs involved with litigation over the provision of service to two paper mill customers.<sup>31</sup> There are two problems with that argument.

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<sup>23</sup> Mr. Vandenberg did not testify about the contract, and his Exhibit JW-30 does not specify the costs involved with its loss. Murrey's opening testimony makes a passing reference to the loss of the contract, and it does not discuss its impact on the company's owners. While that testimony was not admitted at the BAP, Mr. Sharbono testified as to the passing reference.

<sup>24</sup> *Verizon Nw.*, Docket UT-040788, Order 11, at 37 ¶ 101.

<sup>25</sup> Sharbono, BS-13 at 13 (Murrey's response to Staff DR No. 31.b).

<sup>26</sup> Sharbono, BS-13 at 9 (Murrey's response to Staff DR No. 28, which explains the loss of the contract as causing indirect effects on the provision of regulated services).

<sup>27</sup> Sharbono, BS-13 at 13 (Murrey's response to Staff DR No. 31.b, explaining that all services provided under the contract were non-jurisdictional).

<sup>28</sup> See *Verizon Nw.*, Docket UT-040788, Order 11, at 37 ¶ 101.

<sup>29</sup> Sharbono, Exh. BS-13 at 13 (Murrey's response to Staff DR No. 31(b)).

<sup>30</sup> Staff does not take issue with it refraining from doing so—if the lost services were unregulated, regulated customers have no claim to any damages or compensation paid to the company.

<sup>31</sup> Petition at 5 ¶ 12.

14           Initially, Murrey’s again fails to provide testimony or documentary evidence indicating that the litigation did more than increase its expenses. Specifically, although Murrey’s quantified the dollar amount at issue,<sup>32</sup> it produced no evidence that the litigation itself or the accompanying increase in expenses somehow harmed Murrey’s owners. And it could not. The litigation is long over,<sup>33</sup> meaning any effects should be already evident. But, as discussed above, Murrey’s owners have experienced no harms. The company admits that it is not at risk of a credit downgrade or the type of bankruptcy or insolvency that would harm its owners by eliminating their equity in the company. And Murrey’s has presented no evidence of any ongoing debts or payments associated with the litigation, emphasizing that it has no current need for an extraordinary remedy to solve a nonextant monetary drain.

15           Further, the litigation produced offsetting benefits that should prevent Murrey’s from claiming any kind of hardship. After the Commission ordered Waste Management to cease and desist providing service to the customers at the heart of the litigation, the company did; Murrey’s then began providing the regulated service formerly provided by Waste Management. Murrey’s, accordingly, increased the number of customers paying for its regulated services and its revenues as a result of the litigation.<sup>34</sup>

16           Murrey’s last claim of hardship involves its allegation that its tariff is now insufficient.<sup>35</sup> That claim should fare no better than the previous two, for two reasons.

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<sup>32</sup> Vandenberg, Exh. JDW-30.

<sup>33</sup> The litigation concluded at the administrative level in 2021 and the Washington State Supreme Court denied review of Waste Management’s petition for review in early 2023. Sharbono, Exh. BS-13 at 12-13 (Murrey’s response to Staff DR No. 31.a, which describes the litigation’s procedural history).

<sup>34</sup> Sharbono, Exh. BS-13 at 12-13 (Murrey’s response to Staff DR No. 31, discussing post-order events at the mills).

<sup>35</sup> *E.g.*, Petition at 9 ¶ 19.

17 To start, the Commission has always considered interim rate relief as an extraordinary remedy,<sup>36</sup> and it has rejected attempts to make it a more run-of-the-mill form of relief.<sup>37</sup> To the extent that Murrey's claims that a carrier is entitled to interim rate relief when its tariff is insufficient, it effectively argues that every carrier seeking a rate increase is entitled to interim rate relief. The Commission has previously refused to accept that becoming the state of the law, and it should do no differently here.

18 Moreover, Murrey's lacks the clean hands necessary to seek interim rate relief on this basis. The company last filed a general rate case for Olympic Disposal in 2011. Nothing prevented the company from filing to update its rates over the 13 years since then. Notably, after the mill litigation discussed just above concluded, the Commission ordered the company to file a complete picture of its financial situation by May 15, 2023.<sup>38</sup> Murrey's sought and obtained a six-month continuance of that filing,<sup>39</sup> which would have provided most, if not all, of the information needed for a general rate case.<sup>40</sup> The Commission should not reward Murrey's lack of urgency with extraordinary relief.

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<sup>36</sup> *E.g.*, *Wash. Utils. & Transp. Comm'n v. P. Nw. Bell Tel. Co.*, Cause No. U-75-40, 11 P.U.R.4<sup>th</sup> 166, 168 (Wash. Utils. & Transp. Comm'n Sept. 26, 1975) ("it has been determined that the granting of emergency interim rate relief in a utility rate proceeding constitutes an extraordinary remedy under the law of this state.").

<sup>37</sup> *Pac. Nw. Bell Tel. Co.*, 11 P.U.R.4<sup>th</sup> 166, 171 ("[w]ere the commission to accede to the company's request to grant interim rate relief on this petition, the commission would thereby establish a standard so liberal as to require the granting of interim increased rates pending the final decision of a general rate increase request in virtually every utility rate filing to come before this commission. Under those circumstances emergency interim rate relief could no longer be considered as extraordinary relief but would merely be an automatic pass-through on request of increased company expenses without the requisite hearings required by the procedures of the commission and the laws of this state. The commission does not believe that the public service laws of this state, as currently constituted, either authorize or allow the establishment of such a procedure as a normal process by general rate increase request[s].").

<sup>38</sup> *Wash. Utils. & Transp. Comm'n v. Murrey's Disposal Company, Inc, d/b/a Olympic Disposal*, Docket TG-210912, Order 01, 3-4 ¶ 13, 4 ¶ 19 (Jan. 27, 2022).

<sup>39</sup> *Wash. Utils. & Transp. Comm'n v. Murrey's Disposal Company, Inc, d/b/a Olympic Disposal*, Docket TG-210912, Order 02, 2 ¶ 4 (May 11, 2023).

<sup>40</sup> See generally WAC 480-07-520.

#### **D. Murrey's does not Face Inequitable Treatment**

19 Finally, although not phrased as such, Murrey's appears to argue that the Commission would subject it to inequitable treatment if it does not approve interim rates, comparing its filing to one made by Waste Management of Spokane.<sup>41</sup> Because the two cases are legally and factually dissimilar, Murrey's claim lacks merit.

20 The legal distinctions between the cases are dispositive. The Commission authorized temporary rates for Waste Management at an open meeting<sup>42</sup> after Staff agreed that the rates involved were fair, just, reasonable, and sufficient.<sup>43</sup> Here, Murrey's seeks interim rate relief through a contested adjudication where there is no agreement as to the propriety of the rates. That matters because the Commission "believe[s] that the grant of temporary rates in open meeting items is not precedent for a contested request for interim rates, as the open meeting result is almost always agreed by the company and staff."<sup>44</sup> Murrey's and Waste Management are thus not in comparable situations, and Murrey's claim of inequity must fail.

21 Regardless, the facts at issue here and in the Waste Management filing differ, again foreclosing any claim of inequity. Unlike Murrey's, which waited 13 years between rate cases, Waste Management had concluded its prior rate case approximately a year and a half before filing the case at issue.<sup>45</sup> And Waste Management pled in its initial filing a primary, major disruption in regulated service causing it to lose approximately half of its regulated customers and significantly skew its regulated cost allocation.<sup>46</sup> This stands in stark contrast

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<sup>41</sup> Petition at 7-8 ¶¶ 17-18.

<sup>42</sup> *Wash. Utils. & Transp. Comm'n v. Waste Mgmt. of Wash., Inc. d/b/a Waste Mgmt. of Spokane*, Docket TG-143889, Order 02, 4 ¶ 13 (Feb. 26, 2015).

<sup>43</sup> *Waste Mgmt. of Spokane*, Order 02, 3 ¶¶ 9-10.

<sup>44</sup> *Wash. Utils. & Transp. Comm'n v. Verizon Nw., Inc.*, Docket UT-040788, Order 13, 2 ¶ 4 (Oct. 25, 2004).

<sup>45</sup> *Waste Mgmt. of Spokane*, Order 02, 1 ¶ 1.

<sup>46</sup> *Id.* 2 ¶ 5.



to Murrey's multiple, unsubstantiated claims of cumulative hardship, which received little to no elaboration in its initial filing and involved no loss of regulated customers.

**E. Murrey's Arguments About the Rates Being Subject to Refund do not Justify Interim Rate Relief**

22 Murrey's has repeatedly argued that the Commission should have no concerns about approving interim rates here because those rates are subject to refund.<sup>47</sup> The Commission should reject that line of argument as inapposite to established precedent and principles of regulation.

23 First, the Commission regulates public service companies in the place of the market.<sup>48</sup> The Commission relies, in part, on regulatory lag, the time between when a regulated company incurs an expense and the time when it can seek to recover it, to discipline public service company spending in the absence of market pressure.<sup>49</sup> Assuming for the moment that Murrey's is correct, and that it has calculated the interim rates such that it will not need to make any refunds to customers (and Staff does not concede this issue), Murrey's has literally stated that it sees interim rate relief as a way to escape regulatory lag.<sup>50</sup> That it seeks to do so without the type of exigent circumstances that the Commission has always required for interim rate relief further belies that this petition is an attempt at an end-run around the established principles of ratemaking in Washington.<sup>51</sup> The Commission

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<sup>47</sup> E.g., Petition at 4 ¶ 10.

<sup>48</sup> *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 679-83, 911 P.2d 1301 (1996) (discussing the legislature's choice to displace competition with regulation for public service companies); *Wash. Utils. & Transp. Comm'n v. Timberland Tel. Co.*, Cause Nos. U-75-56, U-75-69 & U-75-74, 1976 Wash. UTC Lexis 5, Third Supplemental Order, at 5 (Aug. 16, 1976).

<sup>49</sup> C. Bonbright, *Principles of Public Utility Regulation*, at 53, 262 (Columbia Univ. Press 1961).

<sup>50</sup> Sharbono, Exh. BS-13 at 2 (Murrey's response to Staff DR No. 22, where Murrey's states that it seeks "temporary relief through interim rates so shareholders do not bear the entire burden of this suspension interval.").

<sup>51</sup> Sharbono, Exh. BS-13 at 2 (Murrey's response to Staff DR No. 22, which explains the company's desire for interim rate relief without reference to any emergency, hardship or inequity).

should not give up a valuable tool in ensuring low rates for customers without any kind of urgent need for emergency, temporary rate increases.

24           Second, the suspension date for Murrey’s rate filing is November 1, 2024, likely less than three months from when the Commission will issue the initial order concerning Murrey’s petition for interim rate relief. As Murrey’s has structured its proposal, if the Commission grants its petition, it will raise rates, then raise them again if it wins any incremental increases to its revenue requirement at hearing. The Commission recognizes the value of rate stability for consumers,<sup>52</sup> and Murrey’s plan unfortunately provides none, involving multiple rate changes over a short period of time.

25           Third, as the Commission has recognized, “an interim rate subject to refund is not a neutral remedy. Ratepayers are required to pay a higher price (which might be unwarranted) for an essential service, and with the concern that any overpayments might never be returned to some ratepayers.”<sup>53</sup> And that concern remains here. Although the time period in which customers might pay interim rates would be short, as discussed above, there is a possibility that the Commission requires a refund.<sup>54</sup> Any customer that paid interim rates but ceased service when the final order comes out would not receive a refund. Again, the Commission

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<sup>52</sup> *E.g., Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Docket UE-080416 & UG-080417, Final Order, at 22 ¶ 50 (Dec. 29, 2008) (“[i]n conclusion, we reject the joint parties’ proposed depreciation adjustment, finding it neither conforms to the removal cost methodology approved in our most recent rate case, nor promotes rate stability for ratepayers.”); *in re Investigation on the Commission’s Own Motion into the Propriety & Adequacy of Certain Depreciation Rates of US WEST COMMC’Ns, Inc.*, Docket UT-951425, Fifth Supplemental Order, at 4 (Aug. 15, 1997) (“[t]he Commission is concerned with the rate implementation which necessarily will flow from the instant settlement, and, more specifically, how it will be coordinated with other rate changes that may occur over the next several months. Rate stability for customers is an important goal for both the Commission and the Company. To avoid customer confusion, we prefer that the implementation of rate changes which may occur as a result of the Order in this proceeding be coordinated with any rate changes related to the ongoing informal audit and any rate changes that may be occasioned by the Washington Supreme Court decision in the appeal of our Order in US WEST’s general rate case.”).

<sup>53</sup> *Verizon Nw.*, Docket UT-040788, Order 11, 50 ¶ 139.

<sup>54</sup> Murrey’s calculated the incremental revenue requirement underlying its request for interim relief with reference to Staff’s litigation position, which is understandable given that Staff is the only party actively litigating this case. But the Commission makes its own decisions about the appropriate revenue requirement, and Staff cannot say that the Commission might decide that a lower revenue requirement is appropriate.

should not risk that without the kind of emergency, undue hardship, or inequity that Murrey's fails to show here.

#### IV. CONCLUSION

26 Staff respectfully requests that the Commission deny the petition for interim rate relief.

DATED this 29th day of July 2024.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General

*/s/ Jeff Roberson, WSBA No. 45550*  
Assistant Attorney General  
(360) 810-0509  
[jeff.roberson@atg.wa.gov](mailto:jeff.roberson@atg.wa.gov)

*/s/ Colin O'Brien, WSBA No.*  
Assistant Attorney General  
(360) 586-6413  
[colin.obrien@atg.wa.gov](mailto:colin.obrien@atg.wa.gov)

Office of the Attorney General  
Utilities and Transportation Division  
P.O. Box 40128  
Olympia, WA 98504-0128