

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

1. RESPONSE TO STAFF'S POST-HEARING BRIEF

1 Petitioner Murrey's Disposal Company, Inc d/b/a Olympic Disposal ("Olympic" or "Murrey's") submits this Response to Commission Staff's Post-Hearing Brief submitted July 29, 2024 Concerning Murrey's Request for Interim Rate Relief ("Post-Hearing Brief").

2. OLYMPIC FACES AN EMERGENCY JUSTIFYING A GRANT OF INTERIM RATE RELIEF

2 Staff argues Olympic does not face an emergency based on an overly broad characterization of the company's financial status and a narrowed misapplication of that which constitutes an "emergency" under WAC 480-070-520(6). Because it indeed faces an emergency and undue hardship, Olympic should be granted interim rate relief.

3 In the briefing submitted in opposition to Olympic's Petition and at hearing, Staff offered broad commentary on Olympic's credit rating, as well as the financial status of Olympic and its parent company, Murrey's Disposal; all sentiments echoed in Staff's Post-Hearing Brief. Staff there implies that the financial health of those entities is not *grave enough* to warrant interim relief.

But, WAC 480-70-520(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 again has Olympic explored any such drastic measures).

4 Further, as acknowledged in its Post-Hearing Brief, the Commission, in *Washington Util. and Transp. Comm. v. Verizon Northwest, Inc.*, Docket UT-040788, Order 11, 13 Para. 29 (Oct. 15, 2004) defines an emergency as “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 review of all relevant evidence and a determination that the rates are fair, just reasonable, and sufficient.”¹ Here, Olympic’s shareholders are enduring losses in revenue of approximately \$100,000 per month at a minimum since the rate case filing in September, 2023, due in large part to the recently escalated costs of doing business which have increased over the 13 years since the company’s last general rate case.² While Olympic has acknowledged it is not at the doorstep of financial ruin – which would constitute an “**existing . . . threat** to the utility’s ability to provide service” – its continued cumulative revenue losses exemplify the “looming threat to the utility’s ability to provide service” contemplated by the Commission in *Verizon*.³

5 Indeed, in *Washington Utilities and Transportation Commission v. Waste Management of Washington, Inc. d/b/a Waste Management of Spokane*, cited in Olympic’s initial Petition, neither the regulated company nor its parent were in financial peril when the Commission granted interim rates.⁴ Further, the changes to Waste Management’s operations involved factors

¹ Emphasis added.

² Exh-JW-1T, Page 15 and Exh. JW-3C “Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C).

³ *Washington Util. and Transp. Comm. v. Verizon Northwest, Inc.*, Docket UT-040788, Order 11 ¶ 78 (Oct. 15, 2004) (emphasis added).

⁴ *Washington Utilities and Transportation Commission v. Waste Management of Washington, Inc. d/b/a Waste Management of Spokane*, 2015 WL 863028, Order Allowing Revised Rates to Become Effective on a Temporary Basis (Wash. U.T.C, 2025) (hereinafter “*Waste Management of Spokane*”).

akin to those 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,⁵ and (4) the revised revenue requirement increased by \$992,000 (8.6%).⁶ The Commission in *Waste 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.**”⁷ Olympic instead faces 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.⁸ *Waste Management of Spokane* strongly supports the granting of interim rates here because Olympic faces *increasing* costs while Waste Management of Spokane instead apparently faced “costs [which remained] in line with former operations.”⁹

6 In its Post-Hearing Brief, Staff announces “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.’”¹⁰ Staff omits from its Post-Hearing Brief advocacy, however, that the quoted excerpt derived from the

⁵ *Waste Management of Spokane* at *1 (emphasis added). In other words, Waste Management was hardly not in financial extremis.

⁶ *Id.* at *2.

⁷ *Id.* at *1 (emphasis added).

⁸ Exh. JW-1T, Pages 4-5, 18-20 and Exh. JW-3C “Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C)” and Page 32, Exh. JW-7C “230778-GRC-Murreys Olympic-Staff Wkbk-10-16-2023-Company Offer (C).”

⁹ *Waste Management of Spokane* at *1.

¹⁰ Post-Hearing Brief, ¶ 20 (citing *Wash. Utils. & Transp. Comm’n v. Verizon Nw., Inc.*, Docket UT-040788, Order 13, 2 ¶ 4 (Oct. 25, 2004)).

Commission's *Discussion of the Dissent* and not the underlying holding of a majority of the Commission in its Order in the Verizon case.¹¹ Assuming arguendo that *Waste Management of Spokane* is not precedent, it is at least persuasive and serves as an example of the Commission granting interim rates in the extraordinary suspended rate environment for solid waste collection company filings, whether following an open meeting or contested adjudication. In fact, the overwhelming majority of all solid waste collection rate cases are resolved at the Open Meeting forum, not in adjudicated proceedings like energy and telecom cases which are automatically suspended, a fundamental distinction not acknowledged by Staff in discussing the Open Meeting approval track for all solid waste general rate cases, whether or not interim rates are at issue.¹²

7 Olympic's prefiled direct testimony instead provides broad testimonial support through 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 more than a third of a year for the general rate case to conclude. In his prefiled testimony, Mr. Wonderlick referenced several examples demonstrating the increased costs and financial harm endured by Olympic, including insurance claims,¹³ work-based compensation schemes¹⁴ and travel costs relatively unique to Olympic.¹⁵

¹¹ *Wash. Utils. & Transp. Comm'n v. Verizon Nw., Inc.*, Docket UT-040788, Order 13, ¶ 4 (Oct. 25, 2004) (Hemstad, R. and Oshie, P., discussion of dissent).

¹² Indeed, this is the first suspended general rate case for a Waste Connections company in a quarter of a century and the first formal request for interim rates. *See*, Exh. JW-1T, Pages 4-5. It also appears to be the first adjudicated solid rate case at the Commission since the *Waste Management of Spokane* case almost a decade ago.

¹³ Exh. JW-1T, 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.").

¹⁴ Exh. JW-1T, Pages 27-28, and JW-17C, JW-18C, JW-19C, JW-20C, JW-21C; *see also* Testimony of Mark Gingrich, Exh. MG-1T, 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.).

¹⁵ Exh. JW-1T, Pages 29-30; *see also* 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

These conditions serve as a “looming threat to the utility’s ability to provide service to its existing Washington intrastate customers” such that interim rate relief under WAC 480-07-520(6) is justified.

3. OLYMPIC FACES AN UNDUE HARDSHIP JUSTIFYING A GRANT OF INTERIM RATE RELIEF

8 The Commission in *Verizon* explained that the “hardship” justifying 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.”¹⁶ As with the analysis of an “emergency,” the mere existence of a “realistic threat” of a drop in the price of stock or downgrading of bonds can constitute “hardship” for the purpose of analyzing a Petitioner’s right to interim rate relief. The record demonstrates Olympic faces such an analogous hardship, and interim rate relief should be granted.

9 In its Response to Data Request No. 28 which was attached to Staff’s Response, Olympic outlined the omnibus City of Port Angeles contract, which Olympic lost and 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).¹⁷ The loss of this contract caused extensive rerouting of both

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.”).

¹⁶*Verizon Nw.*, Order 11, at 36-37 ¶¶ 100-01 (emphasis added).

¹⁷ Olympic’s Response to Data Request No. 28.

regulated and nonregulated service in the rearrangement of shared routes, which was outside its control and adversely impacted Olympic.

- 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.”¹⁸
- 11 As established in the record and described in its Petition, Olympic in this interval also endured protracted and expensive administrative and judicial litigation in defense of its certificate and revenue loss, from 2020 to 2022, which adversely impacted its financial status.¹⁹
- 12 Since 2011, Olympic has effectively operated on its current rate base, now yielding 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.
- 13 In its Post-Hearing Brief, Paragraph 7, and during the hearing on Olympic’s Petition for Interim Rate Relief, Staff maintained Murrey’s Olympic Division is earning a “net revenue.” To begin with, under the Lurito-Gallagher rate methodology, “net revenue” is not a term of art nor analytical metric in the formula used by the Commission to set solid waste rates.
- 14 Moreover, analysis of Staff’s own exhibit for the interim rate hearing, BS-11C, leads to the inevitable conclusion that the unadjusted net income from operations for the period of August 2022 through July 2023 (also known as the “test period”) yielded a *loss* of \$542,171.²⁰ If only

¹⁸ Olympic’s Response to Data Request No. 28.

¹⁹ Exh. JW-1T, Pages 4-5 and Exh. JW-3C “Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C).

²⁰ BS-11C (see the “2112 IS tab” at cell AI329).

Staff's current proposed adjustments are accepted, Olympic's overall net profit is \$219,613 on \$20,502,548 of revenue, or 1.07%.²¹ Further analysis demonstrates that a large portion of this net profit, i.e., \$156,549,²² derives from nonregulated activity, whereas regulated activity reflects only a \$63,064 net profit.²³ Notably, the Lurito-Gallagher ("LG") model also assigns to Olympic an interest expense of \$132,016,²⁴ which is the amount of interest expense Olympic is charged through the LG and which is based on the regulated value of Olympic's "investment value" (or "net book value" after accumulated depreciation expense) multiplied by Waste Connection's capital structure debt percentage of 49.23% and multiplied by its cost of capital (i.e., interest rate) of 2.93%. In sum, to say Olympic is operating at a positive "net revenue" is misleading, at a minimum, and does not align with the LG model that is used by the Commission to calculate a company's revenue requirement.

15 In assessing Olympic's current financial status under applicable methodology, one should also not look to the "whole operation" of Murrey's-Olympic combined structure because such an approach would consider both regulated and non-regulated activity and revenues. Staff would certainly not tolerate regulated customers subsidizing the operations and services of non-regulated customers, yet its argument here would require nonregulated customers to subsidize regulated activity in order to achieve the fabled positive "net revenue" conclusion. This analysis of regulated rates is certainly not fair, just, reasonable nor *sufficient*, considering Staff's argument that Murrey's/Olympic is healthy as a whole – which in the case of Olympic would only be due, if accurate at all, to nonregulated operations. Staff's rather facile analysis of the

²¹ BS-11C (see the "Master IS" tab at Cell H366 and Cell H36).

²² BS-11C (see the "Master IS" tab at Cell H366).

²³ This profit of \$63,064 is indicated at BS-11C, LG Public – Regulated-Staff Tab, at Cell I9.

²⁴ BS-11C, LG Public – Regulated-Staff Tab at Cell I11.

effect of the loss of the Port Townsend contract also appears to want to have it both ways. It completely minimizes the financial effect of the absence of those collection revenues and the deleterious impact on cost of service efficiencies in the loss of shared routes, personnel, etc. by dismissing them as “unregulated activity” and then relies on those exact activity revenues in suggesting Olympic faces no financial peril.

16 Interim relief again would partially ameliorate these various cumulative hardships presently facing Olympic and would avoid further significant and wholly preventable financial deterioration.

4. OLYMPIC FACES AN INEQUITY SUCH THAT A GRANT OF INTERIM RATE RELIEF IS APPROPRIATE

17 As argued in Olympic’s initial Petition, rates under the outdated tariff are inadequate, due primarily to accumulated expense attrition over the interval since its last general rate case filing. Additionally, this is the first adjudicated solid waste general rate case Olympic and its affiliates have had before the Commission since beginning operations over a quarter of a century ago. Olympic was justified in not previously advancing a general rates case for various reasons such as having the benefit of cost sharing under the city of Port Angeles contract and did not experience nor fully appreciate the loss of the second significant industrial customer in its regulated service territory until approximately 2020, all-the-while confronting the pandemic’s completely disruptive, distracting and detrimental effect on its daily operations.

18 In its Post-Hearing Brief, Staff asserts, “an inequity occurs where the Commission, not outside circumstances or even Commission Staff, treats similarly situated entities differently.” This argument is rather curiously misleading as the definition appears to be derived from Petitioner Verizon Northwest, Inc.’s **unsuccessful argument** in *Washington Util. and Transp. Comm. v.*

Verizon Northwest, Inc., Docket UT-040788, Order 11, at Para. 80 (Oct. 15, 2004), which included a citation to the definition of “inequity” from *Webster’s Ninth New Collegiate Dictionary*.²⁵ In fact, the Commission there held, “[f]or all of these reasons, we reject Verizon’s argument that the demonstrated circumstances of its intrastate jurisdictional operations is proof of any, let alone gross, inequity.”²⁶ As pointed out in the Dissent by the then Chairman of the Commission in that case, at the time Order 11 was issued in *Washington Util. and Transp. Comm. v. Verizon Northwest, Inc.* (and to the present day), “gross inequity” was one of the “as-yet undeveloped prongs” highlighted by *WUTC v. Pacific N.W. Bell Tel. Co.*, Cause No. U-72-30 tr, Second Supplemental Order (October 1972).

19 In contrast, Olympic asserts inequity exists in the case at bar for the reasons articulated above, and that interim rate relief would provide Olympic with the means necessary to mitigate those inequities. Granting interim relief would certainly not lead nor be tantamount to a “parade of horrors” scenario whereby “every common carrier who files a petition arguing that it suffers from regulatory lag” would be entitled to such relief, as argued in Staffs Response to Olympic’s Petition.²⁷ Like Olympic, any solid waste collection company requesting interim relief must still demonstrate it is entitled to such relief under WAC 480-07-520(6), by establishing an inequity (or an emergency or undue hardship), and a solid waste collection company’s interval of any regulatory lag would be considered as one part of that associated analysis.

²⁵ *Webster’s Ninth New Collegiate Dictionary* at Page 538.

²⁶ *Washington Util. and Transp. Comm. v. Verizon Northwest, Inc.*, Docket UT-040788, Order 11, at ¶ 97 (Oct. 15, 2004).

²⁷ Staff’s Response to Petition for Interim Rates, Sec. III(A), Page 4.
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5. 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

20 By its Petition, Olympic again proposes, consistent with WAC 480-07-520(6), that interim rate relief be granted on a “subject to refund” basis if those rates are ultimately reduced by a final Commission Order.

21 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.²⁸ The Court’s opinion explained a compelling 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.”**²⁹ Staff fails to acknowledge this inescapable effect or otherwise distinguish this critical holding by the Washington Supreme Court in its opposition to interim rate relief and which represents the only Washington Supreme Court ruling cited concerning interim rate relief and its appropriateness in this full refund circumstance.

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

²⁹ *Id.* (emphasis added). The *GTNW* Court at Page 469 noted that “Washington law allows an appellate court to grant interim relief to ensure the effectiveness of the review process.” Citing RAP 8.3; *Washington Fed'n of State Employees, Coun. 28 v. State*, 99 Wash.2d 878, 883, 665 P.2d 1337 (1983) (temporary injunction pursuant to RAP 8.3 is “to prevent destruction of the fruits of a successful appeal.”) and *In re Koome*, 82 Wash.2d 816, 514 P.2d 520 (1973); *Shamley v. Olympia*, 47 Wash.2d 124, 286 P.2d 702 (1955). Here, the analogy to loss of the fruits of a successful case prosecution seems particularly apt as again, there is no mechanism for recovery of those important lost revenues.

22 Interim rates should be approved here for the 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.

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 ongoing damage, i.e., Olympic's estimated shareholder's loss in revenue of approximately \$1.2 million annually (which Staff appears to think is of no consequence), particularly where Staff presents in its Response Testimony a revenue *increase* of \$1,163,417, with a revenue requirement of \$13,928,985 is now indicated.³⁰ This shortfall is particularly concerning when compared to the current company-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.

23 This fiscal harm will continue to haunt Olympic, including the potential diminution in Olympic's reinvestment in the ordinary course of its operations and from which Olympic cannot recover except through the interim relief for the reason that it is unable to recoup such rates retroactively.³² Interim rates subject to full refund in this circumstance simply provide a contingency fund to restore Olympic's financial health while it awaits a decision by the Commission that, while expected in about 100 days, still in itself represents another \$300,000 in lost revenue that can never be recovered, despite the fact that Staff's own testimony acknowledges should be almost wholly included in a rate adjustment for Olympic.

³⁰ BS-11C (see "LG Public -Regulated-Staff" tab).

³¹ Exh. JW-25CT, Pages 3 and 16, and Exh. JW-3C "Original Rate Case Submittal – Olympic GRC Pro Forma 7.31.2023(C).

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.

24 Finally, Staff professes near the end of its argument against interim rate relief to be concerned about “rate stability” and any repeated increase in rates over a relatively short period of time despite the decade-long plus rate stability enjoyed by Olympic’s regulated customers before this filing. If intervening rate adjustments are necessary, for example because of new labor agreements or in response to emergencies or changes in law or taxes, “rate stability” is not a factor in implementing necessary adjustments. Indeed, while this case was pending, Olympic obtained an adjustment in rate levels accommodating a county tip fee increase effective January 1, 2024.³³ Broadly equating interim rate relief with rate stability suggests that any change in regulated rates adversely disturbs the status quo. Neither regulated nor nonregulated companies can ever credibly promise customers uninterrupted intervals of frozen prices and that reality should not be used as a basis to deny interim rates here. Carried to its analytical extreme, this would in fact ultimately threaten the continued viability of a regulated company which Staff here ironically, coming full circle, seems to suggest should be the only standard upon which interim rates need ever be awarded.

6. CONCLUSION AND REQUEST FOR INTERIM RELIEF

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

³³ In re: Murrey’s Disposal Company, Inc, d/b/a Olympic Disposal, Order 01, TG-231007 (Dec. 2023).
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RESPECTFULLY SUBMITTED, this 6th day of August, 2024.

s/Christopher Luhrs

s/David W. Wiley

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