September 8, 2014

VIA ELECTRONIC FILING

Steven King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Cascadia Law Group
ENVIRONMENTAL ATTORNEYS

Re: Olympic Water and Sewer, Inc. – Surcharge Filing for Deferred Costs
Consolidated Response to Public Comments
UTC Docket No. UW-110436

Dear Mr. King:

This firm represents Olympic Water and Sewer, Inc. (OWSI or the Company), and provides this response on behalf of the Company to the comment letter submitted September 3, 2014 by three individual customers of the Company.[1] As the Commission is aware, the Company has worked diligently to reach a compromise as to the surcharge sought, and has, after several meetings open to the public in the Port Ludlow community, reached such a compromise with the Port Ludlow Village Council. The Company believes that such a compromise serves the interests of its customers, and it is that compromise that the Company seeks approval of here. The Company responds to the issues raised by the three individuals below:

First, the surcharge does not expand the law regarding liability for contaminated sites. The Company is not making a MTCA claim against its customers for recovery of remedial action costs (here environmental investigation and legal costs). Rather, the Company is seeking recovery of the reasonably and prudently incurred costs resulting from and arising out of its efforts to develop and secure a safe and reliable water supply source for its North Bay service area. Following the discovery of groundwater contamination, *previously unknown at the site*, the Company diligently investigated the nature and scope of that contamination with respect to the property, and its potential impact on both Well No. 17 and Well No. 2. It would have been, and in fact the Company believes was, both prudent and necessary for the Company to incur these costs regardless of any obligation arguably imposed by MTCA to do so. These costs were prudent and necessary as no prior knowledge of groundwater contamination existed, and the site was seen as a potential new water supply source and continued to be

[1] Letter from G. David Armitage, Carol Reichstetter, and Elizaebeth Van Zonneveld to Washington Utilities and Transportsation Commission dated September 3, 2014.

relied on as a major current source of water supply for a significant potion of the Company's water customers. With this in mind, the central question before the Commission should be did the Company act reasonably and prudently in pursuing a new water supply source, and upon the discovery of groundwater contamination, did it act reasonably and prudently in investigating that contamination in support of and protection of its water supply purposes and water utility operations, in addition to responding to and minimizing any MTCA liability. The Company has submitted a detailed explanation in support of these efforts, as supported by the declarations of its consultants involved in the projects which support these decisions, and support a finding that they were rationally made, after appropriate due diligence by the Company.

Second, while an analysis of MTCA liability is not a necessary component of this filing, for discussion purposes, and as previously addressed, as both the current owner and operator, and as the owner and/or operator at the time of release, MTCA imposes strict, joint, and several liability on the Company. Accordingly, MTCA places strict and joint liability on OWSI for all costs associated with the release of hazardous substances at the property. The commenters' statement that Pope Resources (Pope) was the responsible entity for the contamination, and their implication that Pope is the sole responsible entity, is not supported by the record or MTCA's liability scheme. While OWSI diligently pursued and achieved a settlement from Pope related to this contamination, an assertion that Pope was the sole responsible entity under MTCA for the contamination is not accurate.

Third, the commenters' statement that OWSI's parent company, Port Ludlow Associates (PLA), assumed Pope's liabilities when it took over the Company in 2001, and hence is now solely liable, also is not supported by the record or the law. This assertion rests on a mistaken predicate assumption that Pope, and not the Company, was solely liable for the investigation and remediation costs at the site, and that PLA assumed that sole liability. As discussed above, neither the facts of this case, including OWSI's operational history and current ownership, nor MTCA's liability scheme supports this assumption. OWSI, as the owner and operator of the site, is a potentially liable party under MTCA. OWSI's pursuit of contribution from Pope for a portion of these costs cannot be characterized as a "renegotiation," but was a claim brought by OWSI and PLA against Pope. If Pope believed, as the commenters' assert, that it had transferred all site liability to PLA, it would have had no incentive to entertain discussions with OWSI over these liabilities now. With this in mind, the Company reemphasizes that the legal costs associated with the site investigation were incurred in support of the Company's efforts to minimize liability and navigate the regulatory requirements associated with the site

investigation, and in successful pursuit of contribution from a third party. These costs were part and parcel of the site investigation and incurred in furtherance of OWSI's water utility operations.

Fourth, in their September 3 letter, the three objectors allege for the first time that the surcharge would violate RCW 80.28.090. It would not. RCW 80.28.090 provides that public service corporations must not provide any unreasonable preference to, or discriminate against, any individual or corporate customer in setting its rates or its terms of service. The proposed surcharge is proposed to apply uniformly, and nothing in the surcharge improperly discriminates amongst the Company's rate-payers.

In conclusion, OWSI performed significant due diligence, consulted with the appropriate experts, and reviewed pertinent documentation in selecting the site for Well #17. OWSI could not have predicted in 2009 that the then known limited soil contamination (estimated at approximately 8 cubic yards, at a depth of less than 13' bgs, and located under a garage structure) would have traveled to the area in which it was discovered. OWSI elected to pursue Well #17 in lieu of alternatives that would have presented more uncertainty (exploration outside of the property and pursuit of new water rights) or greatly increased costs (extending water from South Aquifer at estimated cost in excess of $1.5 million). OWSI decision-making was made with the best interests of the customers in mind and the efficient and economical operation of the water system. Comments that OWSI should not be able to recover these costs hamper the Company's ability to address its water supply needs, and infers that the Company should only choose options that present the least amount of risk, even if the known cost of such options to the Company and ultimately the consumer is much greater. Such a determination would seem to be counter to OWSI's goal of providing service in the most cost-effective manner.

Just as importantly, once OWSI discovered the site groundwater contamination, it was imperative that the Company take prompt and diligent action to investigate that contamination. When that discovery was made, OWSI took the reasonable and necessary actions to investigate the source of and extent of that contamination. These costs were necessary costs in response to Ecology regulations and state law, in support of OWSI's water system, and to ensure OWSI could continue to reliably and safely serve its customers, at that time and into the future. One of the objectives of regulation is to ensure water companies' supply and to further ensure they are able to supply public water service that is "safe, adequate, and efficient." RCW 80.28.010(2) (emphasis added). Once discovered, costs incurred in the

investigation of groundwater contamination at this property were prudent and necessary costs to ensure the safe, adequate, and efficient service of water by the Company to its customers. These costs were necessary costs to OWSI, and incurred to protect and ensure reliable supply to its ratepayers and customers.

The proposed temporary surcharge is just, fair, and reasonable, and results from OWSI's reasonable efforts to address the water supply needs of its customers, and to thoroughly investigate and address discovered contamination at a site holding a current major water supply source for the community in order to ensure that Well #2 continued to produce contaminant free drinking water. OWSI has worked diligently and cooperatively with the community to seek a reasonable compromise, and one it believes is ultimately in the best interests of both the Company and the rate-payers, and the PLVC now supports this compromise. UTC staff have also thoroughly investigated this filing, determined that the Company's actions were proactive, reasonable, and prudent, and have recommended approval of the surcharge.

If you have any questions concerning this matter, please contact me at the phone or email listed below, or Larry Smith, phone (360) 437-2101, or email owsi@portludlowassociates.com.

Sincerely,

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

JR:en

cc: Sally Brown, Senior Assistant Attorney General (via email)
Brett P. Shearer, Assistant Attorney General (via email)
Jim Ward, WUTC (via e-mail)
Larry Smith, Olympic Water and Sewer, Inc.