



ATTORNEY GENERAL OF WASHINGTON

Public Counsel

800 Fifth Ave • Suite 2000 • MS TB-14 • Seattle WA 98104-3188 • (206) 464-7744

December 1, 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. Rate Increase Tariff Update (General Rate Increase)***
Docket UW-230132

Dear Acting Director Hunter:

The Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments in advance of the December 7, 2023, Open Meeting, in the above referenced matter. These comments address the proposed general rate increase of Olympic Water and Sewer Inc. (OWSI or Company) that was approved on June 16, 2023, on an interim basis subject to refund to allow the Commission Staff (Staff) of the Washington Utilities and Transportation Commission (UTC or Commission) to "investigate Olympic Water's books, accounts, practices, and activities; to make a valuation or appraisal of Olympic Water's property; and to investigate and appraise various phases of Olympic Water's operations."¹ The Commission's Order 01 in this Docket explains that the interim rate approval and Staff investigation are to address Commission concerns about "customer comments regarding transparency" that were provided at the June 16, 2023, Open Meeting by the Port Ludlow Village Council (PLVC), a group of OWSI customers.

Public Counsel requested information from the Company and engaged in communications among PLVC, Staff, and the Company (collectively the Parties) in this matter during our review of the filing. We appreciate the Company's responses to our informal data requests and willingness to discuss specific issues. Public Counsel has the following recommendations.

¹ See *Wash. Utils. & Transp. Comm'n v. Olympic Water and Sewer, Inc.*, Order 01, Complaint and Order Suspending Tariff Revisions; Allowing Rates on a Temporary Basis Subject to Refund; and Granting Port Ludlow Village Council's Petition to Intervene, Docket UW-230132, ¶¶ 5-13 (June 16, 2023).

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Public Counsel's Recommendations

To increase the transparency of the water rate setting process, which is less accessible to customers than electric or gas rate cases, Public Counsel:

- 1) Takes no position on the interim rates;
- 2) Recommends that the Commission order Staff to verify the accuracy of OWSI annual filings and any other OWSI rate adjustment filing over the next five (5) years, separate from and in addition to Staff's general water rate case review, to increase scrutiny on these filings and prevent Staff from taking a simple position that any rate request totaling less than a formulaic default is *de facto* reasonable; and
- 3) Points to prior open meeting discussions in which the Commission indicated interest in opening a policy docket to revisit the UTC's application of a 12 percent return on equity (ROE) in all water rate cases and notes that this case is yet another example for the need to revisit the UTC's formula approach to water rate case reviews.

1. Public Counsel Takes no Position on the Interim Rate Approval in Order 01.

Following the Commission's directive in Order 01 that Staff investigate OWSI's operations, the Parties engaged in discussions and exchanged information relating to various aspects of the filing including tax amounts, allocation of costs to OWSI's unregulated sewer operations, allocation of costs to affiliate entities, management fees, and loan fees. A meeting took place in late October 2023 to discuss the information exchanged and PLVC's remaining questions. Staff indicated that regardless of any amounts in question relating to the topics discussed among the parties to date, the interim rate increase approved in Order 01 remained lower than the formula rate increase calculation that Staff would recommend as reasonable if the Company were to have requested it. Staff has not provided written material or other workpaper computation to explain its position more fully regarding the comparison of its formula calculation versus amounts in question by PLVC. However, as discussed in greater detail below, Public Counsel believes that updating the Company's initial filing could lead to additional rate increases above Staff's most recent calculation. For this reason, Public Counsel takes no position on the current rate increase the Commission approved in Order 01.

In February 2023, OWSI filed its initial general rate request in this Docket to increase total annual revenues by \$187,015 (23.3 percent) to recover the remaining 30.0 percent of costs for a

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water treatment system that the Department of Health required the Company to build.² In an earlier 2019 case (Docket UW-190160), the UTC approved a temporary rate surcharge for OWSI to cover 70.0 percent of the cost of the treatment system. In its Final Order in the 2019 Docket, the Commission ordered the Company to file this separate request to recover the remaining costs through a general rate increase, allowing the UTC to review all of the Company's rates more broadly.³

PLVC reached out to Staff with questions about the OWSI rate case during Staff's review period following the initial filing in February 2023. In Staff's memo filed prior to the June 15, 2023, Open Meeting, Staff recommended approval of OWSI's rate increase based on OWSI's need to recover costs. Staff also based its recommendation on the previous Commission order in Docket UW-190160 requiring the Company to seek to recover the remaining 30.0 percent of the water treatment plant costs through a request for general rate increase.⁴ At the June 15, 2023, Open Meeting, PLVC told the UTC that, although the Staff had responded to PLVC's questions, PLVC was not satisfied with the responses. Staff had either not answered or not resolved the issues they identified about allocations of unregulated sewer service costs and about allocation of water service revenue from OWSI to its affiliate entities.

Following the June 15, 2023, Open Meeting discussion, the UTC issued its interim approval of the rate increase to allow Staff to address PLVC's concerns about the lack of transparency and for the Staff to investigate OWSI's "books, accounts, practices, and activities; to make a valuation or appraisal of Olympic Water's property; and to investigate and appraise various phases of Olympic Water's operations."

In the months that followed, the Parties engaged in various communications, and on September 26, 2023, PLVC provided Parties with a written summary of its unresolved issues. PLVC identified what appear to be inconsistencies across past annual filings and the Company's rate increase filing in this Docket. A discovery conference was scheduled for October 20, 2023, to address these issues. Staff did not provide a written response to PLVC's written summary but maintains that it has resolved PLVC's issues. PLVC continues to dispute the rate case.

Because the rate increase the Company requested is less than the amount Staff calculates would be justified based on the UTC's generic water rate case review method, Staff insists further investigation is unnecessary. Although PLVC identifies anomalies in the rate case filing, Staff's independent calculation of a justified rate increase is still above the total rate increase that OWSI requested. Staff uses a formula rate calculation using the Company's information to calculate rates. While this process is less robust than energy rate case review, Public Counsel believes that further investigation in this case could lead to additional rate increases above Staff's current calculation.

² See Staff's Open Meeting Memo at 2–3 (filed June 15, 2023); See *In re the Petition of Olympic Water and Sewer, Inc.*, Docket UW-19160, Order 01 (Apr. 11, 2019) and Order 02 (Apr. 14, 2022).

³ See *In re the Petition of Olympic Water and Sewer, Inc. for Approval of a Surcharge for Cost Recovery of Water Treatment Project*, Docket UW-190160, Order 02 (Apr. 14, 2022).

⁴ See Staff's Open Meeting Memo at 2–3; See *In re the Petition of Olympic Water and Sewer, Inc.*, Docket UW-19160, Order 01 (Apr. 11, 2019) and Order 02, ¶¶ 8–14 (Apr. 14, 2022).

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To resolve these issues going forward, Public Counsel believes it is best for the UTC to approve the current rate increase so that it is no longer interim, take steps going forward to ensure accuracy of OWSI filings, and initiate a broader policy docket to improve its generic water rate case review method to account better for specific circumstances of each water company requesting a rate increase.

2. Public Counsel Recommends the Commission Order Staff to Verify the Accuracy of OWSI Annual Filings and Any Other Rate Adjustment Filing Over the Next Five Years.

Although Public Counsel takes no position on the interim rate increase approved in this Docket in Order 01, Public Counsel observes that no written responses have been provided in response to PLVC's questions relating to incorrect tax amounts stated in the Company's initial rate increase filing and in the Company's annual filings to the Commission, allocations in the Company's initial rate increase filing of unregulated sewer service costs, and about allocation of water service revenue from OWSI to its affiliate entities, among other things.⁵ Concerns remain about the accuracy of information that was used in Staff's formula rate calculation that the Staff maintains correctly calculates the rate increase that would be justified for OWSI if they had requested a higher rate increase in their initial filing from February 2023.

However, as explained above, Public Counsel recognizes the possibility that correcting inputs to the Company's rate increase filing or the Staff's calculation could lead to a higher rate increase for OWSI customers than the interim amount approved in Order 01. During discussions among the Parties, the Company claimed that the cost of processing refund amounts would exceed the amount of the refund itself.

Nevertheless, Public Counsel believes a heightened level of scrutiny over the Company's filings to the UTC is warranted. As we previously stated in our comments during the June 15 Open Meeting, we believe that it is important that Staff be transparent and specific in explaining their analysis of all components of a rate case, including cost allocation. Staff should provide clear explanations to customer questions in a way that customers can understand. Public Counsel therefore recommends that the Commission order Staff to take additional steps to verify the accuracy of OWSI annual filings and any other rate adjustment filing that OWSI may file with the UTC over the next five years, through more detailed audits or enforcement action.

3. Water Rate Case Review Recommendations

Public Counsel notes that the Commission has previously expressed interested in opening a policy docket to revisit the UTC's formula approach to water rate cases. Public Counsel has brought attention to, with acknowledgment from the Commission, the precedent that the return

⁵ WAC 480-110-505 requires water companies to file an annual report with the Commission.

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on equity for water companies was set at 12.0 percent in a rate case 20 years ago. This Docket presents yet another example for why the UTC should take concurrent market conditions specific to each water company into account in calculating fair, just, reasonable, and sufficient rates.

Public Counsel made similar comments in the LakeLand Village Water Company rate case (Docket UW-210744),⁶ Washington Water Service Company rate case (Docket UW-210560)⁷, Suncadia Water Company rate case (Docket UW-220052),⁸ and Gold Beach Water Company, Inc. rate case (Docket UW-220206).⁹

Return on equity for regulated utilities should be set at an amount to simulate the conditions of a competitive market. Furthermore, the *Bluefield*¹⁰ and *Hope*¹¹ standards require that a fair ROE should be (1) comparable to what investors expect on investments of similar risk in a competitive environment, (2) adequate to maintain financial integrity, and (3) sufficient to attract capital. With this in mind, it is critical that the authorized ROE for all regulated utilities, including water utilities, reflect current market conditions. Market risk and overall market conditions have shifted since the Commission set the 12.0 percent ROE in Docket UW-010877. Generically applying a 12.0 percent ROE since 2002 without any re-evaluation of market conditions is neither just nor reasonable. As such, it is critical that the Commission examine evidence of market conditions to develop a fair, just, and reasonable ROE for all water utilities serving Washington customers. Public Counsel does not recommend a specific methodology at this time, but requests that the Commission open a policy docket, stakeholder collaborative, or rulemaking to evaluate current policy and develop means to set ROEs that actually reflect evidence and market conditions while acknowledging the dynamics of large and small water companies.

Similarly, using the same capital structure assumptions in every water rate case regardless of the actual capital structure may also lead to inappropriate outcomes. Discussions among parties in this Docket also indicated a lack of clarity in Staff's basis for determining the allocation of costs between water and unregulated sewer operations that flowed through to the water rate increase amount. While the Company's water operations have focused on installation of a treatment plant in 2022, it is unclear whether activities related to that plant will continue to justify the same

⁶ Comments of Public Counsel Unit, at 3–4, *LakeLand Village Water Co. General Rate Case*, Docket UW-210744, (filed Dec. 20, 2021).

⁷ Comments of Public Counsel Unit, at 2–3, *Washington Water Service Co. General Rate Case*, Docket UW-210560 (filed Feb. 7, 2022).

⁸ Comments of Public Counsel Unit, at 2–3, *Suncadia Water Co. General Rate Case*, Docket UW-220052 (filed April 22, 2022).

⁹ Comments of Public Counsel Unit, at 3, *Gold Beach Co. General Rate Case*, Docket UW-220206 (filed June 24, 2022); *See Wash. Utils. & Transp. Comm'n v. Rainier View Water Co.*, Docket UW-010877, Sixth Supplemental Order, ¶ 105 (July 12, 2002).

¹⁰ *Bluefield Water Works and Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923).

¹¹ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).

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allocation of costs going forward, and whether and how that allocation will be corrected if underlying assumptions change over time.

For these reasons, Public Counsel believes that the Commission should open a policy docket to revisit the UTC's approach to water rate cases. The Commission should consider the differences among the regulated water companies in Washington in service territory size, customer counts, and capital structure, as well as how the fluidity of market conditions over time affects the needs of individual companies and whether the UTC's formula approach appropriately captures these considerations.

Public Counsel appreciates the opportunity to submit these comments. Public Counsel also plans to offer brief oral comments at the Open Meeting on December 7th. If you have any questions about this filing, please contact Ann Paisner at (206) 573-1127 or via email at Ann.Paisner@ATG.WA.GOV or Stephanie Chase at (206) 521-3212 or via email at Stephanie.Chase@ATG.WA.GOV.

Sincerely,

/s/ Ann Paisner

ANN N.H. PAISNER, WSBA No. 50202
Assistant Attorney General
Public Counsel Unit
(206) 573-1127
Ann.Paisner@ATG.WA.GOV